

INDIGENT LEGAL SERVICES  
TASK FORCE

# Final Report and Recommendations



OCTOBER 1, 2023

# Table of Contents

Introduction.....	<b>3</b>
Background on South Dakota’s Indigent Legal Defense System .....	<b>4</b>
Challenges With Current System.....	<b>5</b>
Formation of Indigent Legal Services Task Force .....	<b>6</b>
Task Force Members.....	<b>7</b>
Task Force Work Plan .....	<b>7</b>
Task Force Findings .....	<b>7</b>
Task Force Recommendations.....	<b>11</b>
Appendix.....	<b>18</b>

## Introduction

The Sixth Amendment to the United States Constitution guarantees that in all criminal prosecutions the accused shall have the right to the assistance of counsel for their defense. That same right is recognized in the South Dakota Constitution in Article VI, section 7. As the United States Supreme Court has noted, “The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” *Gideon v. Wainwright*, 372 US 335, 344 (1963). Further, “[o]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects [an individual’s] ability to assert any other rights [they] may have.” *United States v. Cronin*, 466 US 648 (1984). Since *Gideon*, the law has become well-established that every person is entitled to have an attorney to assist with their defense when they face the loss of liberty and are unable to afford an attorney. That same right has also been extended to criminal appeals, child dependency and juvenile proceedings.<sup>1</sup>

### Types of Proceedings

The appointment of counsel applies to various proceedings:

- Criminal case, any appeal or post-sentencing proceedings including habeas corpus. (SDCL 23A-40-9) (SDCL 21-27-4)
- Abuse and neglect of a minor child proceedings (SDCL 26-8A-9) (SDCL 26-8A-18) for the parents and the child(ren).
- Juvenile delinquency or child in need of supervision cases for the child, parents or their guardian. (SDCL 26-7A-31).

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<sup>1</sup> Providing a strong public defense system is recognized as necessary to a functioning democracy no matter political leanings. Compare for example American Legislative Exchange Council (ALEC) statement on public defense: [Resolution in Support of Public Defense - American Legislative Exchange Council - American Legislative Exchange Council \(alec.org\)](#); Americans for Prosperity op-ed on making the case for a strong public defense system: [Delayed justice is a hidden crisis in our federal justice system | The Hill](#); and American Civil Liberties Union (ACLU) public defense reform project: [Public Defense Reform | American Civil Liberties Union \(aclu.org\)](#).

## Background on South Dakota's Indigent Legal Defense System

South Dakota has a long tradition of providing legal representation to an accused that pre-dates federal case law on this issue. In fact, that history began in South Dakota Territorial times. See 1868 General Laws of the South Dakota Territory, Section 273 (1868) (recognizing a defendant appearing for arraignment without counsel be informed of their right to counsel and the court assign counsel for the defendant). South Dakota's indigent legal defense system has historically been delegated to the counties. There is no state entity that oversees indigent legal defense, and only a very small portion of indigent legal defense costs are reimbursed by the state.



**South Dakota is one of only six states that has no state entity overseeing trial-level indigent legal services.**



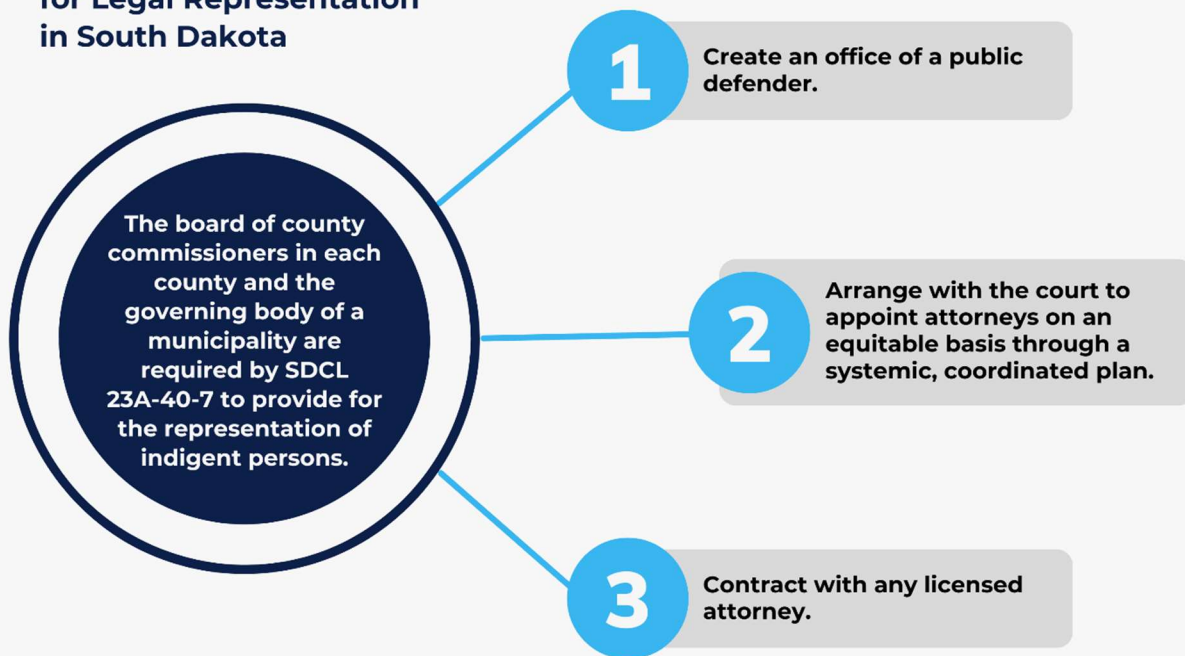
**South Dakota is one of only two states that requires counties to fund and provide indigent legal services at all levels (trial and appellate).**



**South Dakota ranks 49th in the nation for the state's contribution to indigent legal defense costs.**

Counties are responsible by state law for either establishing public defender offices or establishing a system to provide indigent defense representation. SDCL 23A-40-7. Only three counties in South Dakota have established public defender offices: Lawrence, Minnehaha and Pennington. The rest of the 63 counties provide representation through attorneys appointed by the court from a list of available lawyers or attorneys that independently contract with a county to provide indigent legal defense. While there are statutory provisions for counties to join to provide indigent legal defense in a cooperative fashion, there are no examples of that structure in use in South Dakota. SDCL ch. 7-16A.

## Three Options for Providing for Legal Representation in South Dakota



## Challenges With Current System

The current system highlights the inherent challenges of a county-based system to recruit, obtain, qualify, train and then ultimately pay for the costs of indigent legal defense in an efficient and effective manner. South Dakota's county-based system provides no mechanism for oversight and training for defenders statewide. This lack of oversight places the burden on individual judges in many instances to assist in finding attorneys, determine if an attorney is competent to handle the case in which they have been appointed, review attorney billings, and then sit in judgment over the case and the attorney's actions in the case. The process of counties contracting with lawyers also does not necessarily factor in the quality of representation as the impetus behind those contracts in many instances is focused on controlling costs. The state's attorney may also be involved in the process of selecting defense lawyers in the county contracting process which could create concerns of a potential conflict of interest. This system certainly places the financial burden on the counties to provide indigent legal defense, and such costs are both unpredictable and increasing. These two factors have made it difficult for counties to budget and plan for such expenses.

These challenges have driven both the counties and the judicial system to question if the current system is meeting the needs of South Dakota.



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“While South Dakota has a great tradition of providing court-appointed counsel, we are facing some challenges in our public defender system that I want to discuss today. Three counties—Minnehaha, Pennington and Lawrence counties—have public defender offices and full-time attorneys to handle indigent defense. The other 63 counties either negotiate an annual rate contract with one or more private attorneys or pay the cost of defense to private attorneys on a case-by-case basis. The variety of public defender arrangements from county to county can make it difficult for judges to appoint counsel and counties to manage costs. Judges, particularly in rural areas, are having more and more difficulty finding counsel to represent defendants in criminal cases.”

—Chief Justice Steven R. Jensen, 2023 State of the Judiciary Message

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## Formation of Indigent Legal Services Task Force

In response to these concerns, the Indigent Legal Services Task Force was created by House Bill 1064 during the 2023 Legislative Session. The goal of this Task Force as stated in the legislation is to:

1. Identify how legal services are delivered in South Dakota to indigent parties in criminal, juvenile, and child abuse and neglect proceedings statewide.
2. Recommend ways to improve the delivery of legal services to indigent parties.
3. Recommend methods to provide services for conflict cases where local public defenders may be unable to take cases.
4. Address how to ensure competent representation is provided to indigent parties.
5. Identify potential funding options to ensure delivery of legal services for indigent parties.

HB 1064 was passed with an emergency clause, and the Indigent Legal Services Task Force began forming immediately upon passage given the complexity of the topic and the legislative deadline for a final report and recommendation prior to Nov. 15, 2023.

## Task Force Members

Hon. Michael Day (Co-Chair)	Circuit Court Judge
Dean Neil Fulton (Co-Chair)	USD Knudson School of Law
Sen. Jim Mehlhaff	State Senator
Rep. Will Mortenson	State Representative
Brent Kempema	Assistant Attorney General
Wendy Kloepfner	Lake County State's Attorney
Lori Stanford	Attorney
Thomas Cogley	Attorney
Hon. Christina Klinger	Circuit Court Judge
Eric Witcher	Pennington County Public Defender's Office
Randy Brown	Hughes County Commission
Arthur Hopkins	Oglala Lakota County Commission
Traci Smith	Minnehaha County Public Defender's Office

## Committee Project Staff

Greg Sattizahn	State Court Administrator
Aaron Olson	UJS Director of Budget and Finance
Jeff Tronvold	UJS Legal Counsel

## Task Force Work Plan

The Task Force conducted six meetings of its membership beginning in the spring of 2023. In addition to reviewing relevant statutory information, financial data and background information, the Task Force held 10 listening sessions across the state to learn more about the challenges of indigent legal defense. The Task Force further conducted surveys of judges, lawyers and county officials related to indigent legal defense to gather additional information. Finally, the Task Force conducted a comparative analysis of states similar in size, geography and structure to determine how they provide indigent legal defense. That information, along with the varied experiences of Task Force members, informed the following findings.

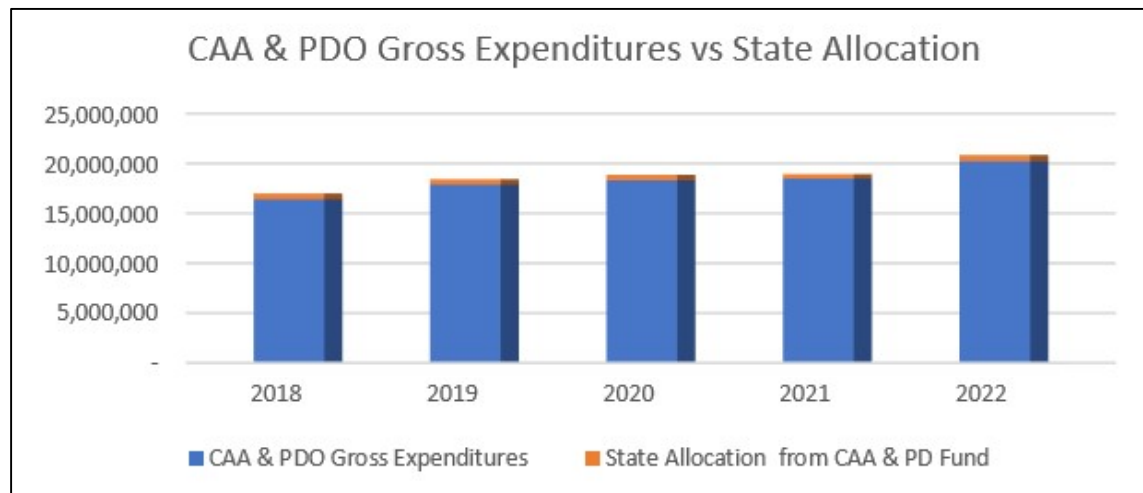
## Task Force Findings

- There is a lack of available attorneys across the state willing to provide indigent legal defense. The lack of available attorneys is particularly pronounced in rural areas of the state. There is also a lack of attorneys willing to take appointment in high-level felony cases.

- There is a need for increased training and mentorship for attorneys who provide indigent legal defense. The current system provides no organized support, training, mentoring or overarching structure to assist lawyers interested in, or currently providing, indigent legal defense services.
- Court-appointed attorney costs are increasing in counties statewide.

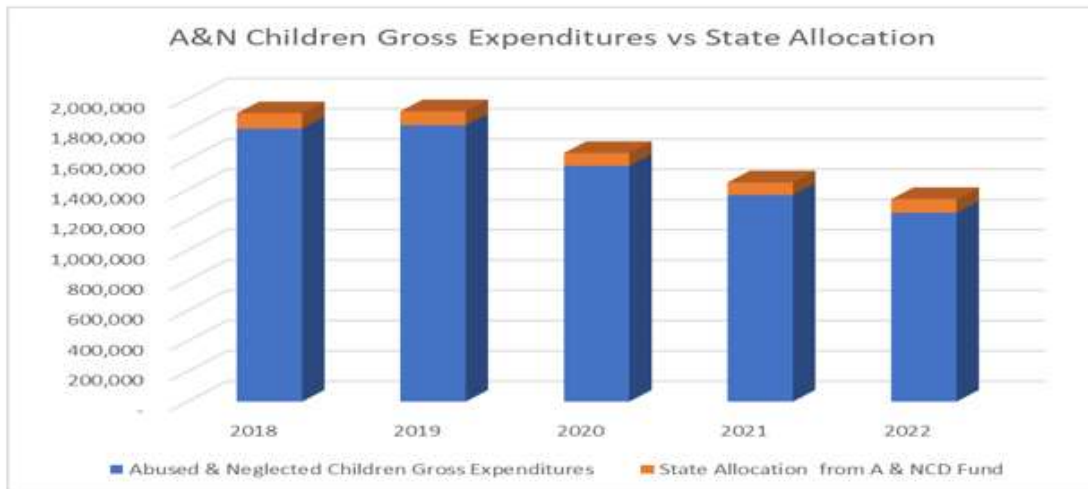
## History of County Expenditures and State Allocation

	Court-Appointed Attorney & Public Defender Office Gross Expenditures	State Allocation from Court-Appointed Attorney & Public Defender Payment Fund	Percentage of Expenditures
FY2018	\$16,395,692.85	\$602,581.32	3.68%
FY2019	\$17,882,383.69	\$551,986.16	3.09%
FY2020	\$18,325,552.02	\$546,138.83	2.98%
FY2021	\$18,486,125.40	\$461,213.51	2.49%
FY2022	\$20,218,239.93	\$637,741.23	3.15%



	Abused & Neglected Children Gross Expenditures	State Allocation from Abused & Neglected Child Defense Fund	Percentage of Expenditures
FY2018	\$1,804,555.58	\$100,443.99	5.57%
FY2019	\$1,825,854.54	\$92,410.10	5.06%
FY2020	\$1,557,880.76	\$84,077.85	5.40%
FY2021	\$1,364,726.83	\$83,841.66	6.14%
FY2022	\$1,247,455.13	\$90,520.78	7.26%

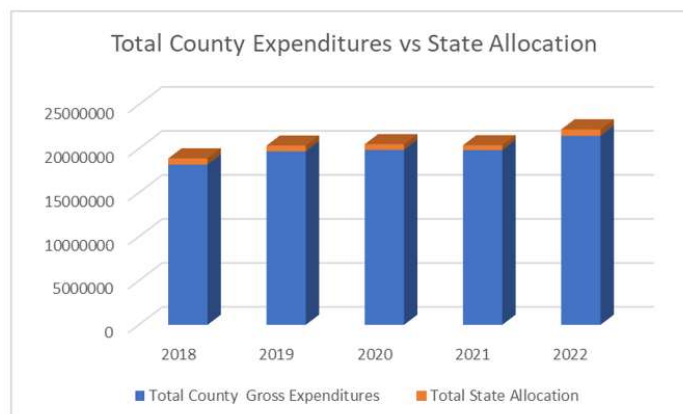




- Current state funding to the counties through the Court-Appointed Attorney and Public Defender Payment Fund and the Abused and Neglected Child Defense Fund is inadequate and does not meaningfully reimburse the counties for the cost of indigent legal defense. There are no other payments to counties for indigent legal defense from the state. The state does provide general funding, and there is a surcharge to support the Equal Access to our Courts Commission, which provides grants for civil legal aid but that does not support indigent legal defense.

## Total County Expenditures vs. State Allocation

	Total County Gross Expenditures	Total State Allocation	Percentage of Expenditures
FY2018	\$18,200,248.43	\$703,025.31	3.86%
FY2019	\$19,708,238.23	\$644,396.26	3.27%
FY2020	\$19,883,432.78	\$630,216.68	3.17%
FY2021	\$19,850,852.23	\$545,055.17	2.75%
FY2022	\$21,465,695.06	\$728,262.01	3.39%



- The current policy on compensation for private attorneys taking court appointments is viewed largely as inadequate, and the policy related to how attorneys are paid for travel time limits the availability of lawyers in rural areas because of a lack of willingness to travel for that rate. These rates significantly impact the appointment of counsel for cases involving serious charges where attorneys must devote a substantial amount of time toward representation in a single case.

### Presiding Judge Policy

- All lawyers willing to furnish services as court-appointed counsel to indigent defendants will be paid for all legal services on an hourly basis as follows: **\$107/hour** beginning Jan. 1, 2023. Subsequently, 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. Travel will be paid at the rate of **\$1/mile for both the use of the automobile and for the attorney's time on necessary travel.**
- Requests for payment of court-appointed counsel fees should be presented to the court on the date of the completion of the case, but in no event later than 30 days after the case is complete before the circuit court.
- If the full amount of the voucher or statement for fees by counsel is not approved by the trial judge, the trial judge must explain, either orally or in writing, the reasons for change or modification of the statement or voucher submitted by counsel.

- There is no entity that oversees indigent legal defense, and there has been no resources dedicated to studying or improving indigent legal defense on a statewide basis.
- There is no uniform method to review attorney bills and ensure uniformity in compensation rates as compared to other attorneys doing similar work. County oversight of billing is typically governed by terms of a contract or via review by the court of billings submitted by counsel in a case.
- When local counsel is not able to handle cases because of a conflict of interest, it can be difficult to obtain outside counsel to handle those cases.

- There is no entity that monitors attorney caseloads and staffing needs for indigent legal defense.
- Specific information from all counties in South Dakota on indigent legal defense spending is not available in a format that provides more than cursory analysis. The lack of data in this area is a limiting factor in analyzing the data based on specific case types or offenses. For instance, the Task Force has sought ways to determine the cost per case for certain types of cases (felony, misdemeanor, abuse and neglect, juvenile etc.) or amount per case, and those number are not available.
- South Dakota, like 42 other states and the District of Columbia, statutorily authorizes indigent defendants to pay back some or all the cost of court appointed counsel to the county and creates a lien upon the property of the defendant (SDCL 23A-40-11) or parents for juvenile cases (SDCL 26-7A-32).
- The quality of services provided may vary from county to county as there are no uniform caseload standards or performance measures for attorneys who are appointed to represent indigent clients.
- The current system cannot keep pace with the changes in legal demand, cost and lawyer availability, and significant action must be taken to address these issues.

## Task Force Recommendations

The issue of indigent legal representation is complex and layered. The Task Force recognized very early in the process that the information available was limited in many instances and that there had been no statewide review of this important topic in recent times. While counties were interested in assisting and recognized the importance of this topic, the way data is maintained and de-aggregated by county coupled with the lack of oversight over the indigent legal defense system leaves a gap in the available information to consider when formulating policy recommendations. However, the Task Force was able to learn from other states, particularly with the assistance of the Sixth Amendment Center, as to how those systems are organized and also how they have historically transitioned from a county-based system to either a state-based system or a hybrid model with shared responsibilities between the state and county. Based on this information, the Task Force recommends the following:



## RECOMMENDATION ONE

### **Statutorily create a statewide indigent defense commission and state public defender office.**

- The indigent defense commission would oversee the strategic work needed in this area and be responsible for future development of an enhanced and coordinated indigent defense model for South Dakota.
  - The commission should be an independent entity that oversees indigent defense services statewide.
    - ✓ Must be detached from the executive and judicial branches to avoid political influence or create a conflict of interest.
  - The commission should consist of nine members appointed by various appointing authorities. Potential appointing authorities include the Supreme Court, Governor, Legislature and State Bar. The membership should include county government, tribal and citizen representation.
  - Members selected to serve on the commission should have significant experience in criminal proceedings or a demonstrated commitment to indigent defense.
- The initial caseload of the state public defender office should include criminal appellate work and abuse and neglect and habeas appeals from counties statewide.
  - This appellate work and abuse and neglect and habeas appeals will be handled by the state office at state expense.
    - ✓ Best estimates indicate this will relieve approximately \$1.5 million to \$2 million from the county indigent legal defense costs on an annual basis. Projected costs would be approximately \$1.4 million as detailed below.
- The work of the office could later expand to include felony trial level appointments through a structure to be determined by a combination of staff attorneys and contract lawyers.
- The work of the office should also include training and support for court-appointed counsel.
- The chief public defender would be the representative of the office and oversee the office of indigent defense services for indigent defendants entitled to counsel in South Dakota.
  - The proposed framework would be intended to increase communication and resource sharing with the private bar and county public defender offices,

similar to the Attorney General's Office in providing for statewide oversight and resources to criminal defense practitioners.

- The chief public defender would perform reduced case work to account for administrative responsibilities.
- The chief public defender would identify and oversee training of staff.
- The chief public defender would develop a strategic plan and oversee implementation of commission objectives.
- The state public defender's office should have parity of resources with the Attorney General's Office to ensure robust criminal defense. Parity does not mean equal resources, but instead, adequate resources to fulfill the mission of the office.

## Resources for State Appellate Defender Office

### Executive Director/Chief Public Defender:

**1 FTE**

- Oversees office
- Supervising attorney
- Performs reduced case work
- Identifies and oversees staff training
- Strategic planning and implementation

### Attorney FTE Estimated:

- **3 FTE** for criminal case direct appeal and habeas representation
  - Supreme Court three-year average of 52 cases a year
  - Attorney General's Office has 6-7 FTE equivalent
  - Minnehaha and Pennington effectively have 1 FTE each for their current caseloads
- **1 FTE** for abuse and neglect representation
  - Supreme Court three-year average of 21 cases

### Other Budgetary Considerations:

- **2 FTE** support staff
  - Paralegal
  - Secretary
- Budget for commission or state board
  - Per diem
  - Travel
  - Training
- Office rent, furniture, supplies, technology
- Case management system
- Human resources support
- Accounting and budget/finance support
- Contract dollars for conflict cases, or to hire outside counsel as necessary
- Travel and training budgets
- Legal research subscriptions



## Projected Budget

### Personal Services

Executive Director	\$133,750
Attorney—Direct Appeal and Habeas	\$110,000
Attorney—Direct Appeal and Habeas	\$100,000
Attorney—Direct Appeal and Habeas	\$80,000
Appellate Attorney—Abuse and Neglect	\$85,000
Paralegal	\$60,000
Legal Secretary	\$50,000
Commissioners (seven)	\$7,000
<b>Total Salaries:</b>	<b>\$625,750</b>

Social Security & Medicare	\$47,870
Retirement	\$37,545
Health Insurance	\$82,474
Worker's Compensation	\$3,567
Unemployment Compensation	\$626
<b>Total Benefits</b>	<b>\$172,081</b>

<b>Total Salaries &amp; Benefits</b>	<b>\$797,831</b>
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### Operating Expenses

Commission Travel, CS, Supplies	\$25,000
Staff Travel	\$15,000
Legal Research Subscriptions	\$50,000
Defense Counsel Contracts—Conflicts	\$200,000
Training Contracts	\$100,000
Rent	\$25,000
Case Management System	\$30,000
IT Infrastructure, Hardware, Software	\$100,000
Office Supplies	\$25,000
Office Furniture	\$20,000
Miscellaneous Expenses	\$25,000
<b>Total Operating Expenses</b>	<b>\$615,000</b>

<b>Total Personal Services &amp; Operating Expenses</b>	<b>\$1,412,831</b>
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- In addition to handling and reporting on appellate criminal, abuse and neglect, and habeas cases, reporting provisions for the commission and office should include the requirement for a plan to provide statewide oversight for indigent legal defense for felony cases and child abuse and neglect cases at the trial level.
  - The Task Force recommends that the plan exclude cases where a misdemeanor is the highest charged offense.
  - It will also be important that the plan establish processes to handle conflict cases to ensure representation can be obtained throughout the state in a coordinated and timely fashion.
- Challenges in the current system have been exacerbated and allowed to linger because of the lack of statewide oversight and review in this area. The commission and statewide public defender office should fill that role.
- Examples of areas that necessitate statewide study and oversight include:
  - Developing a process to audit attorney billings and services provided to ensure efficient and fair representation across the state.
  - Identifying best practices in indigent legal defense and establishing training and mentorship requirements for defenders and private counsel.
  - Authority to set rates for court-appointed counsel and travel reimbursement.
  - Creating and monitoring caseload standards for defenders and a mechanism to ensure those standards are not exceeded.
  - Review of statewide standards for verification of income procedures to ensure consistency as to the determination of court-appointed attorney eligibility.
  - Study and review the current process and desirability of continuing the process of requiring individuals to reimburse the cost of indigent legal defense and the statutory lien process for indigent legal defense costs.



## RECOMMENDATION TWO

### **Evaluate alternatives for funding and cost-containment in indigent defense.**

- County officials expressed significant concern about both the volume and variability of indigent defense costs. Both present a budget challenge for counties. Indigent defendants are best served when taxpayer dollars are thoughtfully allocated and carefully accounted for. Budget shortfalls present a danger both to county finances and effective representation.
- The Task Force had extensive discussion of alternative funding structures and the importance of ensuring that public funds are allocated toward a coordinated study of the problem by the executive, legislative and judicial branches. The Task Force does not endorse a particular approach, but discussed these options:
  - Increase in the surcharge for court-appointed attorney reimbursement and abuse and neglect funds that currently flows to the counties.
  - Consider a one-time appropriation to the county reimbursement funds to offset costs to counties. This one-time appropriation could be limited to small counties or enhanced to support small counties as they will see fewer immediate benefits from the proposed state office focusing initially on appellate cases.
  - Create a reinvestment pool between the state and counties that reimburses county indigent defense costs when those costs exceed a certain baseline cost. There exists a model for such a structure in SDCL ch. 7-16B (County Legal Expense Relief Program) that could be expanded further and should consider state participation in that program.
  - Create a dollar cap on the amount a county is responsible for related to an individual case and also a total cap on the maximum outlay a county is required to pay for court-appointed defense costs on an annual basis. Any amounts above those caps would become the responsibility of the state.
  - Consider reallocating revenue from the alcohol excise tax to provide a larger share to the counties.
  - Explore the use of federal funds and grants for indigent legal defense.
  - Require cities to contribute to costs of indigent legal defense for city offenses.
  - Explore cost-sharing of criminal defense costs with tribal governments.
  - Coordinate with the State Bar Association to encourage lawyers to provide pro bono legal services to indigent defendants as required by Rule of Professional Responsibility 6.2.

- Require the defendant to pay a reasonable fixed cost for court-appointed counsel.
- Require a fiscal note on the costs of public defense associated with the creation of a new or enhanced criminal penalty as part of any proposed legislation.
- Consider removing the sales tax on the provision of legal services.



### RECOMMENDATION THREE

#### **Contract with Sixth Amendment Center to perform a thorough review of representative counties to gather further information to inform the work of the commission.**

- This study would inform the work of the commission and state office and would reveal specific information to assist in policy discussions and provide in-depth information to assist in the analysis of the impact of specific policy choices.
- This assessment will include:
  - Review of existing statutes and rules governing indigent defense in South Dakota.
  - Identify key cost drivers of indigent legal defense.
  - County data collection and analysis; review of defense contracts, policies, procedures to determine case costs and adequate reimbursement rates.
  - Court observations and stakeholder interviews from the seven selected jurisdictions.

## Conclusion

An effective indigent defense delivery system is paramount to ensure the rights of South Dakota citizens are protected and to ensure an efficient operation of the judicial system. There is no way around the fact that indigent defense demand and costs have not kept pace with the resources counties currently provide for indigent defense services. This has made it challenging to deliver services in a large rural state where the supply of lawyers is limited. These recommendations are intended as a starting point in the evolution of a system that requires strategic efforts to ensure those rights protected by our state and federal constitutions are vigilantly guarded.

# Appendix

Appendix A: Relevant Indigent Legal Representation Statutes

Appendix B: ABA 10 Principles of a Public Defense Delivery System

Appendix C: Lawyer, Judge and County Official Survey Summary

Appendix D: History of Court-Appointed Attorney and Abused and Neglected Reimbursement Fund and Expenditures by County

Appendix E: Map of Listening Sessions Held by the Task Force

Appendix F: South Dakota Federal Court Plan for Adequate Representation of Defendants

Appendix G: State Primers Considered by Task Force for Comparative Analysis



## **Appendix A:**

### Relevant Indigent Legal Representation Statutes

## Appendix: Relevant Indigent Legal Services Representation Statutes

### PUBLIC DEFENDER

- [7-16A-1](#) Establishment of office by commissioners' resolution.
- [7-16A-2](#) Joint office established by two or more counties.
- [7-16A-3](#) Provisions by establishing board for office.
- [7-16A-4](#) Advisory committee to be established--Composition--Chairman.
- [7-16A-5](#) Appointment and qualifications of public defender.
- [7-16A-6](#) Employment of personnel for defender's office--Administration.
- [7-16A-7](#) Qualifications of assistant defenders--Assignment to cases.
- [7-16A-8](#) Facilities and supplies for office.
- [7-16A-9](#) Persons to be represented--Services provided.
- [7-16A-10](#) Proceedings in which indigents represented--Co-counsel.
- [7-16A-11](#) Representation restricted to state courts--Federal matters excepted--  
Compensation paid by federal courts.
- [7-16A-12](#) Assignment of substitute when public defender unable to perform--Duty--  
Compensation of substitute.
- [7-16A-13](#) Extension to representation in municipal ordinance violations--  
Contributions by municipality.
- [7-16A-14](#) Payment of expenses directly related to particular cases.
- [7-16A-15](#) Apportionment of expenses not otherwise allocable.
- [7-16A-16](#) County appropriations for public defender fund--Administration and  
accounting for fund--Private contributions.
- [7-16A-17](#) Monthly report to circuit court for setting liens--Disposition of funds  
collected from liens.
- [7-16A-18](#) Records maintained by public defender--Annual report to advisory  
committee.

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#### **[7-16A-1. Establishment of office by commissioners' resolution.](#)**

Each board of county commissioners may, by resolution, establish and maintain an office of public defender to fulfill the requirements of § [23A-40-7](#).

**Source:** SL 1978, ch 152, § 1.

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#### **[7-16A-2. Joint office established by two or more counties.](#)**

If a board of county commissioners elects to establish and maintain an office of public defender, it may join with the board of county commissioners of one or more other counties to

jointly establish and maintain an office of public defender. In that case the participating counties shall be treated for the purpose of this chapter as if they were one county.

**Source:** SL 1978, ch 152, § 6.

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#### **7-16A-3. Provisions by establishing board for office.**

If a board of county commissioners elects to establish an office of public defender it shall:

- (1) Prescribe the qualifications of the public defender, the term of office and the rate of annual compensation; and
- (2) Provide for the establishment, maintenance, and support of the office.

**Source:** SL 1978, ch 152, § 1.

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#### **7-16A-4. Advisory committee to be established--Composition--Chairman.**

A public defender advisory committee shall be established whenever an office of public defender is established. A committee shall consist of the following members:

- (1) One person not admitted to the practice of law, not an employee of the county, and not a law enforcement officer, who shall be appointed by the county commissioners of the originating county;
- (2) Two members of the board of county commissioners of the county, or if two or more counties are participating, one commissioner from each county, who shall be appointed by the chairman of the board of county commissioners of each county;
- (3) Two attorneys practicing in the county or one attorney, if available, from each county, if two or more counties are participating in the plan, who shall be appointed by the presiding judge of the county's circuit court.

The committee shall elect one of its members as chairman.

**Source:** SL 1978, ch 152, § 2; SL 1983, ch 45, § 1.

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#### **7-16A-5. Appointment and qualifications of public defender.**

The advisory committee shall appoint and dismiss the public defender. To be appointed, a person shall be licensed to practice law in this state, be competent to counsel and defend a person charged with a crime, and have basic knowledge of, and experience in, criminal law.

**Source:** SL 1978, ch 152, §§ 3, 4; SL 1983, ch 45, § 2.

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#### **7-16A-6. Employment of personnel for defender's office--Administration.**

If an office of public defender has been established, the board of county commissioners may employ, on recommendation by the public defender and in the manner and at the compensation prescribed by the advisory committee, such assistant public defenders, clerks, investigators, stenographers, and other persons as the advisory committee considers necessary for carrying out the public defender's duties. The employees shall serve at the pleasure of the public

defender. Such employees and the public defender shall, for administrative purposes, be considered to be employees of the county which administers the public defender fund.

**Source:** SL 1978, ch 152, § 7.

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#### **7-16A-7. Qualifications of assistant defenders--Assignment to cases.**

An assistant public defender, before employment, must be licensed to practice law in this state and be competent to counsel and defend a person charged with a crime. A public defender may assign and substitute his assistant public defenders to cases referred to the office of the public defender without prior approval of the court.

**Source:** SL 1978, ch 152, §§ 7, 11.

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#### **7-16A-8. Facilities and supplies for office.**

If an office of public defender has been established the board of county commissioners shall provide appropriate facilities, including office space, furniture, equipment, books, postage, supplies, and interviewing facilities in the jail, necessary for carrying out the public defender's duties.

**Source:** SL 1978, ch 152, § 8.

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#### **7-16A-9. Persons to be represented--Services provided.**

A public defender shall represent any indigent person who is:

- (1) Detained by a law enforcement officer without charge or judicial process;
- (2) Arrested or charged with having committed a crime or of being a juvenile delinquent;
- (3) Detained under a conviction of a crime, juvenile delinquency, or mental illness; or
- (4) Otherwise an indigent person entitled to representation by law, to the same extent as a person having his or her own counsel, and with the necessary services and facilities of representation, including investigation and other preparation, authorized or approved by a court.

**Source:** SL 1978, ch 152, § 9; SL 2016, ch 44, § 35.

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#### **7-16A-10. Proceedings in which indigents represented--Co-counsel.**

An indigent person who is entitled to be represented by a public defender shall be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney, including the revocation of probation or parole, appeal, and any other post-conviction proceeding that the public defender and the indigent consider appropriate, unless the court in which a proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense. Representation may include co-counsel or associate counsel in appropriate cases.

Source: SL 1978, ch 152, § 9.

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**7-16A-11. Representation restricted to state courts--Federal matters excepted--  
Compensation paid by federal courts.**

This chapter applies only to representation in the courts of this state, except that it does not prohibit a public defender from representing an indigent person in an action seeking relief other than the recovery of money damages in a federal court of the United States, if;

- (1) The matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction of the state;
- (2) Representation is under a plan of the United States District Court as required by the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) and is approved by the board of county commissioners;
- (3) The matter arises out of an action pending in the juvenile courts of this state; or
- (4) The matter arises out of an action pending for the involuntary commitment to the state hospital.

Any compensation paid by a federal court of the United States shall be placed directly in the public defender fund.

Source: SL 1978, ch 152, § 16.

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**7-16A-12. Assignment of substitute when public defender unable to perform--Duty--  
Compensation of substitute.**

If at any stage of proceedings, including appeal or other post-judgment proceedings, a public defender is unable to represent an indigent person, because of a conflict of interest or other good cause, the court concerned may assign a substitute private attorney to represent the indigent person.

A substitute attorney has the same duty to the indigent person as the public defender for whom the attorney is substituted. The court shall prescribe reasonable compensation for the substitute attorney and approve the expenses necessarily made by the attorney for the defense of the indigent person in the manner pursuant to § [23A-40-8](#).

Source: SL 1978, ch 152, § 10; SL 2016, ch 44, § 36.

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**7-16A-13. Extension to representation in municipal ordinance violations--Contributions by  
municipality.**

The governing body of a municipality situated in a county in which an office of public defender has been established, may request the board of county commissioners of the county to extend the duties of the public defender to represent all indigent persons who are subject to proceedings for a violation of the ordinances of the municipality. On receipt of the request, the board of county commissioners shall adopt a resolution so extending the duties of the public defender. The contribution that the municipality shall make toward the expenses of the public defender whose duties include the municipality, shall be set and paid as provided by written



contract of the board of county commissioners and the governing body of the municipality involved.

**Source:** SL 1978, ch 152, § 5.

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**7-16A-14. Payment of expenses directly related to particular cases.**

Any direct expense, including the cost of a transcript or substitute for a transcript, that is necessarily incurred in representing an indigent under this chapter shall be paid by the municipality or county on behalf of which the service is performed.

**Source:** SL 1978, ch 152, § 13.

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**7-16A-15. Apportionment of expenses not otherwise allocable.**

If two or more jurisdictions jointly establish an office of public defender, the expenses not otherwise allocable among the participating jurisdictions, unless otherwise agreed upon, shall be allocated on the basis of population according to the most recent federal decennial census.

**Source:** SL 1978, ch 152, § 14.

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**7-16A-16. County appropriations for public defender fund--Administration and accounting for fund--Private contributions.**

The board of county commissioners of each county participating in a public defender plan shall annually appropriate money from the general fund to administer the public defender. The funds appropriated by the participating counties shall be placed in a public defender fund which shall be administered by the county originating the public defender plan, unless otherwise agreed upon by the participating boards of county commissioners. Private contributions for the support of the office may be accepted and placed in the fund. The county administering the fund shall give an annual accounting to other participating counties.

**Source:** SL 1978, ch 152, § 12; SL 1985, ch 77, § 4.

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**7-16A-17. Monthly report to circuit court for setting liens--Disposition of funds collected from liens.**

Each public defender shall submit, at least monthly, to the presiding judge of his circuit court, a list of cases disposed of by his office for the purpose of setting the liens required by § [23A-40-9](#). Any funds collected from public defender liens pursuant to the provisions of § [23A-40-9](#) shall be placed in the public defender fund to carry out the provisions of this chapter.

**Source:** SL 1978, ch 152, § 15.

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**7-16A-18. Records maintained by public defender--Annual report to advisory committee.**

A public defender shall keep appropriate records for each indigent person represented by the public defender's office. A public defender shall submit an annual report to the advisory committee showing the number of indigent persons represented by the public defender's office, the crimes involved, the outcome of each case, and the expenditures made in carrying out the public defender's responsibilities.

**Source:** SL 1978, ch 152, § 17; SL 2016, ch 44, § 37.

## COUNTY LEGAL EXPENSE RELIEF PROGRAM

[7-16B-1](#) to 7-16B-12. Repealed.

[7-16B-13](#) County legal expense relief fund established--Administration.

[7-16B-14](#) Request for participation fund--Minimum number of participating counties required for chapter to become effective--Time limit.

[7-16B-15](#) Promulgation of rules.

[7-16B-16](#) Application for funds--Qualifying amount of expenses.

[7-16B-17](#) Approval of application and disbursements--Amount.

[7-16B-18](#) Series of trials as one trial.

[7-16B-19](#) Calculation of disbursements and each county's share--Certification of assessment.

[7-16B-19.1](#) Supplemental assessment if fund reserve is likely to be depleted.

[7-16B-20](#) Factors utilized in computing participating county's share of fund.

[7-16B-21](#) Acceptance of gifts, contributions or funds authorized.

[7-16B-22](#) County legal expense relief board established--Appointment and term of members--Payment of board's costs.

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7-16B-1 to 7-16B-12. Repealed by SL 1992, ch 55, § 11.

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### **[7-16B-13](#). County legal expense relief fund established--Administration.**

There is established at the association of county commissioners a county legal expense relief fund administered by the county legal expense relief board created pursuant to § [7-16B-22](#). Expenditures from the fund shall be approved by the board.

**Source:** SL 1992, ch 55, § 1; SL 1995, ch 40; SL 2010, ch 37, § 1; SL 2016, ch 44, § 38.

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### **[7-16B-14](#). Request for participation fund--Minimum number of participating counties required for chapter to become effective--Time limit.**

A majority of the members-elect of the county commission shall pass a resolution requesting participation in the county legal expense relief fund before November 1, 1993, to initially be considered a participating county for the purposes of this chapter. If less than thirty-

five of the counties in the state have passed resolutions requesting participation in this chapter before November 1, 1993, this chapter does not become effective. Each board of county commissioners shall by resolution take official action on whether the county will participate in the county legal expense relief fund. Such resolution shall be sent to the Office of the South Dakota Association of County Commissioners.

**Source:** SL 1992, ch 55, § 2; SL 1993, ch 66, § 1.

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**7-16B-15. Promulgation of rules.**

The county legal expense relief board shall promulgate rules, pursuant to chapter [1-26](#), regarding the procedure and requirements for allowing additional counties to participate in the fund, the procedure and requirements for allowing participating counties to withdraw from the fund, and other policies to facilitate the administration, distributions, and assessments associated with the fund.

**Source:** SL 1992, ch 55, § 3; SL 1993, ch 66, § 2; SL 2016, ch 44, § 39.

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**7-16B-16. Application for funds--Qualifying amount of expenses.**

Any participating county may apply to the board for funds from the county legal expense relief fund if that county has incurred expenses related to any one criminal prosecution resulting in a court trial that are in excess of twenty-five thousand dollars.

The application shall include such information as the board may prescribe.

**Source:** SL 1992, ch 55, § 4; SL 1993, ch 66, § 3; SL 1995, ch 41, § 1; SL 2016, ch 44, § 40.

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**7-16B-17. Approval of application and disbursements--Amount.**

The board established pursuant to § [7-16B-22](#) shall determine if the application is in order and the claim is justified and may approve disbursements to the county for ninety percent of any expenses related to any one criminal prosecution resulting in a court trial which qualifies pursuant to § [7-16B-16](#) and may continue to reimburse the county for ninety percent of the expenses for that trial. Reimbursement pursuant to this section shall be made only upon that portion of the legal expenses related to such criminal prosecution resulting in a court trial which is in excess of the qualifying amount set forth in § [7-16B-16](#).

**Source:** SL 1992, ch 55, § 5; SL 1995, ch 41, § 2.

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**7-16B-18. Series of trials as one trial.**

A series of trials arising out of a single incident shall be considered as one court trial in applying the provisions of §§ [7-16B-16](#) and [7-16B-17](#).

**Source:** SL 1992, ch 55, § 6.

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**7-16B-19. Calculation of disbursements and each county's share--Certification of assessment.**

Prior to January thirty-first, the board shall calculate the actual disbursements from the county legal expense relief fund in the previous calendar year and shall compute each participating county's share utilizing the formula established in § [7-16B-20](#). The board shall certify each participating county's share of the total assessment to the county auditor before the last day of January, April, July, and October. Each participating county shall remit its share of the county legal expense relief fund to the board within thirty days of certification.

**Source:** SL 1992, ch 55, § 7; SL 2012, ch 52, § 1.

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**7-16B-19.1. Supplemental assessment if fund reserve is likely to be depleted.**

If it appears to the board that the county legal expense relief fund reserve is likely to be completely depleted, the board may determine a supplemental assessment is required and shall compute each participating county's share utilizing the formula established in § [7-16B-20](#). The board shall certify each participating county's share of the supplemental assessment to the county auditor. Each participating county shall remit its share of the supplemental assessment to the board within thirty days of certification.

**Source:** SL 2012, ch 52, § 2.

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**7-16B-20. Factors utilized in computing participating county's share of fund.**

Each participating county's share of the county legal expense relief fund shall be computed utilizing the following factors:

- (1) The percent of the total population of the participating counties in the state which reside in the county excluding individuals not subject to the jurisdiction of the unified judicial system; and
- (2) The percent of the true and full assessed value of the participating counties in the state associated with the county as determined by the Department of Revenue.

Each participating county's share of the county legal expense relief assessment shall be calculated by multiplying the average of the two factors by the total assessment.

**Source:** SL 1992, ch 55, § 8.

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**7-16B-21. Acceptance of gifts, contributions or funds authorized.**

The board may accept any gifts, contributions, or funds obtained from any other source for the purpose of carrying out the provisions of this chapter. The administration and expenditure of these funds shall be in accordance with this chapter.

**Source:** SL 1992, ch 55, § 9.

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**7-16B-22. County legal expense relief board established--Appointment and term of members--Payment of board's costs.**

There is established a county legal expense relief board to consist of five county commissioners from participating counties appointed by the executive board of the association of county commissioners established pursuant to § [7-7-28](#). The executive board of the association may appoint an alternate board member to serve when the county legal expense relief board does not have a quorum at meeting. The alternate board member may be a county commissioner or a county manager appointed pursuant to § [7-8A-4](#). Board members shall serve staggered terms of four years or until their term as county commissioner has expired. Per diem costs for the board shall be established by the executive board of the association and shall be paid from funds collected by the association.

**Source:** SL 1992, ch 55, § 10; SL 2011, ch 38, § 1.

## **COUNSEL FOR INDIGENT DEFENDANT**

[23A-40-1](#), 23A-40-2. Reserved.

[23A-40-3](#) to 23A-40-5. Repealed.

[23A-40-6](#) Arrest or detention without formal charge--Assignment of counsel--Certification of indigency required.

[23A-40-6.1](#) Assigned counsel not required where defendant not deprived of liberty--Statement of judge required.

[23A-40-7](#) Representation provided by county or municipality for indigents detained without formal charge.

[23A-40-8](#) Compensation of assigned counsel.

[23A-40-9](#) Compensation of assigned counsel for services after judgment and conviction.

[23A-40-10](#) Funds available from or on behalf of defendant--Order for reimbursement--Applicability--Credit against lien.

[23A-40-11](#) Lien created against property of person for whom counsel provided--Limitation.

[23A-40-12](#) Public defender's lien.

[23A-40-13](#) Statement of claim filed--Enforceability of lien.

[23A-40-14](#) Enforcement or disposition of lien.

[23A-40-15](#) Foreclosure prohibited upon homestead or exempt personal property.

[23A-40-16](#) Correction of mistake in lien record at request of adversely affected person.

[23A-40-17](#) Court appointed attorney and public defender payment fund established.

[23A-40-18](#), 23A-40-19. Repealed.

[23A-40-20](#) Annual distribution of moneys in fund--Determination of pro rata

payments to counties.

[23A-40-21](#) Training on mental illness and services.

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23A-40-1, 23A-40-2. Reserved

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23A-40-3 to 23A-40-5. Repealed by SL 1979, ch 159, §§ 30 to 32

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**[23A-40-6](#). Arrest or detention without formal charge--Assignment of counsel--Certification of indigency required.**

In any criminal investigation or in any criminal action or action for revocation of suspended sentence or probation in the circuit or magistrate court or in a final proceeding to revoke a parole, if it is satisfactorily shown that the defendant or detained person does not have sufficient money, credit, or property to employ counsel and pay for the necessary expenses of his representation, the judge of the circuit court or the magistrate shall, upon the request of the defendant, assign, at any time following arrest or commencement of detention without formal charges, counsel for his representation, who shall appear for and defend the accused upon the charge against him, or take other proper legal action to protect the rights of the person detained without formal charge.

In each case, the indigent person, subject to the penalties for perjury, shall certify in writing or by other record such material factors relating to his ability to pay as the court prescribes.

**Source:** SDC 1939, §§ 34.1901, 34.3506; SL 1957, ch 182; SDCL, §§ 23-2-1, 23-35-11; SL 1968, ch 147; SL 1969, ch 155; SL 1978, ch 178, § 492; SDCL Supp, § [23A-40-3](#); SL 1979, ch 159, § 33; SL 1983, ch 190, § 1.

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**[23A-40-6.1](#). Assigned counsel not required where defendant not deprived of liberty--Statement of judge required.**

At the time of arraignment for a violation of a Class 2 misdemeanor or a violation of an ordinance or at the time of the hearing for a petty offense, the circuit court judge or magistrate may conclude and state on the record, in the defendant's presence, that the defendant will not be deprived of his liberty if he is convicted. The circuit court judge's or magistrate's statement that the defendant will not be deprived of his liberty if he is convicted shall be made before the defendant enters his plea. If the defendant is not in custody and if the court has concluded that he will not be deprived of his liberty if he is convicted, an indigent defendant charged with violating a Class 2 misdemeanor, an ordinance not having a penalty greater than a Class 2 misdemeanor or a petty offense, is not entitled to court assigned counsel.

**Source:** SL 1983, ch 190, § 2.

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**[23A-40-7](#). Representation provided by county or municipality for indigents detained without formal charge.**

The board of county commissioners of each county and the governing body of any municipality shall provide for the representation of indigent persons described in § [23A-40-6](#). The board or body shall provide this representation by any or all of the following:

- (1) Establishing and maintaining an office of a public defender;
- (2) Arranging with the courts in the county to appoint attorneys on an equitable basis through a systematic, coordinated plan; or
- (3) Contracting with any attorney licensed to practice law in this state.

In those counties which have established an office of public defender, any proceedings after judgment may be assigned to the public defender. The provisions of chapter [5-18A](#) do not apply to this section.

**Source:** SL 1979, ch 159, §§ 34, 35; SL 1998, ch 152, § 1; SL 2011, ch 2, § 132.

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#### **[23A-40-8](#). Compensation of assigned counsel.**

Counsel assigned pursuant to § [23A-40-6](#) and subdivision 23A-40-7(2) shall, after the disposition of the cause, be paid by the county in which the action is brought, or, in case of a parole revocation, by the county from which the inmate was sentenced, a reasonable and just compensation for his services and for necessary expenses and costs incident to the proceedings in an amount to be fixed by a judge of the circuit court or a magistrate judge within guidelines established by the presiding judge of the circuit court.

**Source:** SDC 1939, § 34.1901; SL 1957, ch 182; SDCL, §§ 23-2-2, 23-2-3; SL 1968, ch 147; SL 1969, ch 155; SL 1978, ch 178, § 493; SDCL Supp, § 23A-40-4; SL 1979, ch 159, § 34; SL 1983, ch 191, § 1.

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#### **[23A-40-9](#). Compensation of assigned counsel for services after judgment and conviction.**

If proceedings after judgment and conviction are taken, by motion in arrest of judgment, motion for a new trial or any presentence or post-sentence proceedings, or an appeal to the Supreme Court, an allowance for a sum as may be reasonable and just for the services rendered and for necessary expenses and cost incident to the proceedings shall be allowed to counsel assigned by the court pursuant to § [23A-40-6](#) and subdivision 23A-40-7(2), in an amount to be set by a judge of the circuit court or a magistrate judge within guidelines established by the presiding judge of the circuit court.

**Source:** SDC 1939, § 34.1901; SL 1957, ch 182; SDCL, §§ 23-2-2, 23-2-3; SL 1968, ch 147; SL 1969, ch 155; SL 1978, ch 178, § 493; SDCL Supp, § 23A-40-4; SL 1979, ch 159, § 35; SL 1983, ch 191, § 2.

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#### **[23A-40-10](#). Funds available from or on behalf of defendant--Order for reimbursement--Applicability--Credit against lien.**

If the court finds that funds are available for payment from or on behalf of a defendant to carry out, in whole or in part, the provisions of this chapter, the court may order that the funds be



paid, as court costs or as a condition of probation, to the court for deposit with the county or municipal treasurer, to be placed in the county or municipal general fund or in the public defender fund in those counties establishing the office pursuant to subdivision 23A-40-7(1) as a reimbursement to the county or municipality to carry out the provisions of this section. The court may also order payment to be made in the form of installments or wage assignments, in amounts set by a judge of the circuit court or a magistrate judge, either during the time a charge is pending or after the disposition of the charge, regardless of whether the defendant has been acquitted or the case has been dismissed by the prosecution or by order of the court. The provisions of this section also apply to persons who have had counsel appointed under chapters [26-7A](#), [26-8A](#), [26-8B](#), and [26-8C](#). The reimbursement is a credit against any lien created by the provisions of this chapter against the property of the defendant.

**Source:** SL 1979, ch 159, § 40; SL 1983, ch 192, § 1; SL 1997, ch 146, § 1; SL 2001, ch 123, § 1.

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#### **23A-40-11. Lien created against property of person for whom counsel provided--Limitation.**

A lien, enforceable as provided by this chapter, upon all the property, both real and personal, of any person, including the parents of a minor child, for whom legal counsel or a public defender has been appointed under the provisions of § [23A-40-6](#), subdivisions 23A-40-7(2) and (3), or § [26-7A-31](#) may be filed. The services rendered and expenses incurred are a claim against the person and that person's estate, enforceable according to law in an amount to be determined by a judge of the circuit court or a magistrate judge and paid by the county or municipality chargeable for them. A lien on the parents of a minor child pursuant to this section may not exceed one thousand five hundred dollars plus an amount equal to any taxable court costs.

**Source:** SL 1969, ch 156, § 1; SDCL Supp, § 23-2-3.1; SL 1978 ch 178, § 494; SDCL Supp, § 23A-40-5; SL 1979, ch 159, § 36; SL 1983, ch 191, § 3; SL 1983, ch 192, § 2; SL 1989, ch 227, § 2; SL 1991, ch 217, § 167; SL 1998, ch 152, § 2; SL 2002, ch 122, § 1.

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#### **23A-40-12. Public defender's lien.**

If the legal services have been provided by a public defender or an attorney with whom a contract has been entered into to provide services in lieu of a public defender, a public defender's lien shall be set by a judge of the circuit court or magistrate judge at a reasonable amount for the services rendered.

**Source:** SL 1969, ch 156, § 1; SDCL Supp, § 23-2-3.1; SL 1978, ch 178, § 494; SDCL Supp, § 23A-40-5; SL 1979, ch 159, § 36; SL 1983, ch 191, § 4; SL 1998, ch 152, § 3.

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#### **23A-40-13. Statement of claim filed--Enforceability of lien.**

Immediately upon payment by the chargeable county or municipality, or upon the setting of the public defender's lien by a circuit court judge or magistrate judge, a statement of claim showing the name and residence of the recipient shall be filed by the county auditor or municipal, finance officer in the office of the register of deeds in the county where the recipient resides. A

certified copy of the lien may be filed in any other county in which the recipient may have or may acquire an interest in real or personal property. The lien is enforceable, until satisfied or compromised.

**Source:** SL 1979, ch 159, § 37; SL 1980, ch 182; SL 1983, ch 191, § 5; SL 1983, ch 192, § 3.

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**23A-40-14. Enforcement or disposition of lien.**

The board of county commissioners of the county or the governing board of the municipality filing the lien may enforce, foreclose, satisfy, compromise, settle, subordinate, release, or otherwise dispose of the lien.

**Source:** SL 1979, ch 159, § 38; SL 1983, ch 192, § 4.

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**23A-40-15. Foreclosure prohibited upon homestead or exempt personal property.**

No lien provided for in this chapter shall be foreclosed upon the homestead, as defined by chapter [43-31](#), of the recipient or his family, nor upon any personal property which is exempt from process under chapter [43-45](#).

**Source:** SL 1979, ch 159, § 39.

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**23A-40-16. Correction of mistake in lien record at request of adversely affected person.**

If, in the record of a lien made under the provisions of this chapter, the name of the person or persons for whose benefit any payment was made, or the name of a person or persons against whose property a lien may appear to have been created, is shown or stated to have been made by mistake or incorrectly or in such manner as not to identify easily the owner or owners of property, or the amount of such lien is incorrectly stated or recorded, any person whose interests are adversely affected thereby may apply to the board of county commissioners for correction of the record to conform to the facts. The board may grant the relief sought and direct the correction of the record accordingly.

**Source:** SL 1979, ch 159, § 38.

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**23A-40-17. Court appointed attorney and public defender payment fund established.**

There is hereby created in the Office of the State Treasurer a court appointed attorney and public defender payment fund.

**Source:** SL 1982, ch 186, § 6.

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23A-40-18, 23A-40-19. Repealed by SL 1988, ch 189, §§ 4, 5

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**23A-40-20. Annual distribution of moneys in fund--Determination of pro rata payments to counties.**

All moneys in the court appointed attorney and public defender payment fund shall be annually distributed by the state treasurer to the counties on a pro rata basis. The state treasurer shall, within sixty days of the end of the fiscal year, determine and verify from receipts and expenditure records the total expenditures by all counties in the state for court appointed attorneys and public defender offices. He shall then establish a percentage ratio between moneys collected in the fund for the past fiscal year and the total expenditures by counties for court appointed attorneys and public defender offices. That percentage ratio shall then be applied to each county's gross expenditure for court appointed attorneys and public defender offices to determine its respective payment from the fund.

**Source:** SL 1982, ch 186, § 9; SL 1991, ch 197, § 4.

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**23A-40-21. Training on mental illness and services.**

Each court-appointed defense attorney shall receive training on mental illness, available mental health services, eligibility criteria and referral processes, and forensic evaluations.

**Source:** SL 2017, ch 109, § 25, eff. July 1, 2018.

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## **HABEAS CORPUS**

**21-27-4. Counsel appointed for indigent applicant--Counsel fees--Ineffective assistance of counsel.**

If a person has been committed, detained, imprisoned, or restrained of liberty, under any color or pretense whatever, civil or criminal, and if upon application made in good faith to the court or judge thereof, having jurisdiction, for a writ of habeas corpus, it is satisfactorily shown that the person is without means to prosecute the proceeding, the court or judge shall, if the judge finds that such appointment is necessary to ensure a full, fair, and impartial proceeding, appoint counsel for the indigent person pursuant to chapter [23A-40](#). Such counsel fees or expenses shall be a charge against and be paid by the county from which the person was committed, or for which the person is held as determined by the court. Payment of all such fees or expenses shall be made only upon written order of the court or judge issuing the writ. The ineffectiveness or incompetence of counsel, whether retained or appointed, during any collateral post-conviction proceeding is not grounds for relief under this chapter.

**Source:** SL 1943, ch 126; SDC Supp 1960, § 37.5504-1; SL 1969, ch 163; SL 1983, ch 169, § 5; SL 2012, ch 118, § 4.

## ABUSE AND NEGLECT

### **26-8A-9. Investigation of oral report--Other action permitted--Appointment of attorney--Compensation.**

Upon receipt of a report pursuant to § [26-8A-8](#), the Department of Social Services or law enforcement officers shall investigate. Investigating personnel may personally interview a child out of the presence of the child's parents, guardian, or custodian without advance notice or consent. The investigation does not prohibit any other lawful action. If the investigation and report indicate that child abuse or neglect has occurred, the state's attorney shall take appropriate action immediately. The court may appoint an attorney, guardian ad litem, or special advocate to assist in representing the best interests of the child. Any such appointment shall occur in the manner the county in which the action is being conducted has chosen to provide indigent counsel under § [23A-40-7](#). Compensation and expense allowances for the child's attorney, guardian ad litem, or special advocate shall be determined and paid according to § [26-7A-31](#).

**Source:** SL 1973, ch 172, § 3; SL 1975, ch 179, § 4; SL 1980, ch 192, § 2; SL 1984, ch 192, § 7; SL 1985, ch 214, § 1; SL 1991, ch 217, § 118B; SDCL Supp, § 26-10-12.1; SL 2010, ch 139, § 2.

### **26-8A-18. Appointment of counsel--Compensation--Assistance.**

Notwithstanding the provisions of §§ [26-7A-31](#) and [26-8A-9](#), the court shall appoint an attorney for any child alleged to be abused or neglected in any judicial proceeding. The court shall appoint an attorney in the manner the county in which the action is being conducted has chosen to provide indigent counsel under § [23A-40-7](#). The attorney for the child shall represent the child's best interests and may not be the attorney for any other party involved in the judicial proceedings. The court may designate other persons, including a guardian ad litem or special advocate, who may or may not be attorneys licensed to practice law, to assist the attorney of the child in the performance of the attorney's duties. Compensation and expense allowances for the child's attorney shall be determined and paid according to § [26-7A-31](#).

**Source:** SL 1984, ch 192, § 9; SL 1991, ch 217, § 126B; SDCL § 26-10-17; SL 2010, ch 139, § 3.

## JUVENILES

### **26-7A-30. Rights of child and parents, guardian, or custodian--Representation by attorney--Motion for new hearing--Appeal.**

The court shall advise the child and the child's parents, guardian, or custodian involved in any action or proceedings under this chapter or chapter [26-8A](#), [26-8B](#), or [26-8C](#) of their constitutional and statutory rights, including the right to be represented by an attorney, at the first appearance of the parties before the court. The court shall also advise them of the right of the parties to file, at the conclusion of the proceedings, a motion for a new hearing and, if the motion is denied, the right to appeal according to the rules of appellate procedure governing civil actions.

**Source:** SDC 1939, § 43.0309 as added by SL 1968, ch 164, § 7; SL 1991, ch 217, § 37B; SDCL, § 26-8-22.3.

**26-7A-31. Court appointed attorney--Compensation.**

If the child or the child's parents, guardian, or other custodian requests an attorney in proceedings under this chapter or chapter [26-8A](#), [26-8B](#), or [26-8C](#) and if the court finds the party to be without sufficient financial means to employ an attorney, the court shall appoint an attorney for the party. The court may appoint an attorney for any child or any party to the proceedings without request of the party if the court deems representation by an attorney necessary to protect the interests of the party. Reasonable and just compensation for services of a court-appointed attorney and for necessary expenses and costs incident to the proceedings shall be determined by the court within guidelines established by the presiding judge of the circuit court and shall be paid by the county in which the action is being conducted according to the manner prescribed by the court. If the court-appointed attorney is a party to a contract with the county to provide indigent counsel pursuant to subdivision 23A-40-7(3), the compensation for that attorney shall be that which the attorney would receive under the contract. This section does not preclude the court from appointment of an attorney for a child as required by provisions of chapter [26-8A](#).

**Source:** SDC 1939, § 43.0309 as added by SL 1968, ch 164, § 7; SL 1991, ch 217, § 38B; SDCL § 26-8-22.2; SL 2010, ch 139, § 1.

**26-7A-32. Lien against property of parents for payment of court-appointed attorney--Exceptions--Limitation.**

There is hereby created a lien, enforceable as provided in chapter [23A-40](#), upon all the property, both real and personal, of the parents, jointly or severally, of any child involved in proceedings under this chapter or chapter [26-8A](#), [26-8B](#), or [26-8C](#) to repay funds paid by the county for a court-appointed attorney for the child's parents or by the county or the state for the child. The county, on behalf of the county or the state, shall have a claim against the parents and their estates, jointly or severally, as provided in chapter [23A-40](#).

However, except in the case of informal adjustment or suspended imposition of adjudication, no lien or claim against the parents of a child may be created or may arise if the child is not adjudicated to be an abused or neglected child, a child in need of supervision or a delinquent child at the completion of the adjudicatory hearing and the proceedings are terminated.

The lien and claim on the property of the parents of a child pursuant to this section may not exceed one thousand five hundred dollars plus an amount equal to any taxable court costs. This limit does not apply to any claim or lien against the parents of a child adjudicated to be an abused or neglected child.

**Source:** SL 1989, ch 227, § 1; SL 1991, ch 217, § 39B; SDCL Supp, § 26-8-22.14; SL 2002, ch 122, § 2.

**26-7A-52. Bond to secure court appearance of child in need of supervision or delinquent child.**

Any alleged child in need of supervision or alleged delinquent child who is the subject of proceedings under this chapter or chapter [26-8B](#) or [26-8C](#) may give bond or other security for the child's appearance before the court according to the order of the court. The court may appoint an attorney to appear and represent the child.

**Source:** SDC 1939, § 43.0309; SL 1961, ch 213, § 2; SL 1968, ch 164, § 7; SL 1991, ch 217, § 64B; SDCL, § 26-8-21.

## **Appendix B:**

### ABA 10 Principles of a Public Defense Delivery System

**ADOPTED**

**AMERICAN BAR ASSOCIATION**

**STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENSE  
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE**

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

1 RESOLVED, That the American Bar Association adopts the revised Ten Principles of a  
2 Public Defense Delivery System, dated August 2023, including black letter and  
3 commentary; and  
4

5 FURTHER RESOLVED, That the American Bar Association recommends that each  
6 jurisdiction swiftly assess its compliance with the Ten Principles of a Public Defense  
7 Delivery System, dated August 2023, and implement any necessary legal and policy  
8 changes where deficiencies may exist.



## ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

August 2023

### **PRINCIPLE 1: Independence**

Public Defense Providers<sup>1</sup> and their lawyers should be independent of political influence and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting agency and its lawyers.<sup>2</sup> To safeguard independence and promote effective<sup>3</sup> and competent<sup>4</sup> representation, a nonpartisan board or commission should oversee the Public Defense Provider.<sup>5</sup> The selection of the

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<sup>1</sup> The term “Public Defense Providers” refers to public defender agencies and to programs that furnish assigned lawyers and contract lawyers who provide defense services at public expense. The term “Public Defense Providers” is also used in the *ABA Eight Guidelines of Public Defense Related to Excessive Workloads* (2009).

<sup>2</sup> Independence should extend to the selection, funding, and payment of Public Defense Providers and lawyers. “The selection of lawyers for specific cases should not be made by the judiciary or elected officials but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-service programs.” *ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-1.3(a) (3<sup>rd</sup> edition, 1992). See also Nat’l Ass’n for Public Defense, *Statement on the Importance of Judicial Independence*, July 1, 2016, <https://www.publicdefenders.us/positionpapersstatements>. Establishing independence from political and judicial influence is also critically important to effective public defense at the federal level. See Ad Hoc Committee to Review the Criminal Justice Act, *2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act* (2017); Nat’l Ass’n of Criminal Defense Lawyers, *Federal Indigent Defense 2015: The Independence Imperative* (2015), <https://www.nacdl.org/Document/FederalIndigentDefense2015IndependenceImperative>.

<sup>3</sup> The Sixth Amendment right to counsel requires “reasonably effective assistance of counsel pursuant to prevailing professional norms of practice.” See *Strickland v. Washington*, 466 U.S. 668, 688 (1984). In *Strickland*, the U.S. Supreme Court noted that the ABA Criminal Justice Standards on Defense Function are guides to determining what is reasonably effective. A quarter of a century later, the Court described these standards as “valuable measures of the prevailing professional norms of effective representation.” *Padilla v. Kentucky*, 559 U.S. 356 (2010). The Court has also held that criminal cases must be subject to “meaningful adversarial testing.” *United States v. Cronin*, 466 U.S. 648, 658-59 (1984).

<sup>4</sup> Under the ethical rules, lawyers are required to provide clients “competent” representation. *ABA Model Rules of Professional Conduct*, Rule 1.1 (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”). These rules have been adopted by every state throughout the country.

<sup>5</sup> The board’s mission should be to advocate for and provide high-quality, well-funded public defense that ensures effective assistance of counsel for all eligible defendants. The selection process for members of the board or commission should ensure the independence of the Public Defense Provider. Appointments of members should be divided among the different branches of government and may also include appointments from interested organizations such as bar organizations, law schools, and organizations representing the client community. No members should be judges, prosecutors, law enforcement officials or current Public Defense Providers. Members should serve staggered terms to ensure continuity. See National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976); National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems*, Standard 3.2.1 (1989). The structure of board oversight may be adjusted based upon

head of the Public Defense Provider, as well as lawyers and staff, should be based on relevant qualifications and should prioritize diversity and inclusion to ensure that public defense staff are as diverse as the communities they serve.<sup>6</sup> Public Defender Providers should have recruitment and retention plans in place to ensure diverse staff at all levels of the organization.<sup>7</sup> Neither the chief defender nor staff should be removed absent a showing of good cause.<sup>8</sup>

## **PRINCIPLE 2: Funding, Structure, and Oversight**

For state criminal charges, the responsibility to provide public defense representation rests with the state;<sup>9</sup> accordingly, there should be adequate state funding and oversight of Public Defense Providers. Where the caseloads allow, public defense should be a mixed system: primarily dedicated public defense offices,<sup>10</sup> augmented by additional

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the organization of Public Defense Providers. It may consist of a single board or multiple separate boards requiring separate governing bodies. See *ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-1.3(b) (3<sup>rd</sup> edition, 1992) (“An effective means of securing professional independence for defender organizations is to place responsibility for governance in a board of trustees. Assigned counsel and contract-for-service components for defender systems should be governed by such a component. Board of Trustees should not include prosecutors or judges. The primary function of Boards of Trustees is to support and protect the independence of the defense services program.”).

<sup>6</sup> In Florida and Tennessee, and in some cities in the United States, public defenders are popularly elected. See Ronald F. Wright, *Public Defender Elections and Popular Control over Criminal Justice*, 75 Mo. L. Rev. 803, 814 (2010). The ABA has not endorsed popular election of chief public defenders.

<sup>7</sup> 16AM113 (encouraging “all providers of legal services, including law firms and corporations, to expand and create opportunities at all levels of responsibility for diverse attorneys”).

<sup>8</sup> See *ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-4.1 (3<sup>rd</sup> edition, 1992) (“The chief defender should be appointed for a fixed term of years and be subject to renewal. Neither the chief defender nor staff should be removed except upon a showing of good cause. Selection of the chief defender and staff by judges should be prohibited.”)

<sup>9</sup> See *Gideon v. Wainwright*, 372 U.S. 353 (1963) (right to counsel in felony cases); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (right to counsel in misdemeanor cases); *In re Gault*, 387 U.S. 1 (1967) (right to counsel in juvenile delinquency cases); *Alabama v. Shelton*, 535 U.S. 654 (2002) (right to counsel attaches to any case in which there is a potential for active jail or prison time, including suspended sentences). For federal criminal charges, the responsibility for adequate funding and oversight rests with the federal government. Local governments should also provide funding and resources as needed or constitutionally required.

<sup>10</sup> Full-time public defenders, working in a fully staffed office, develop valuable expertise in handling criminal cases and working with persons charged with crimes. See, e.g., *ABA Criminal Justice Standards: Providing Defense Services*, Standard 5-1.2 (“When adequately funded and staffed, defender organizations employing full-time personnel are capable of providing excellent defense services. By devoting all of their efforts to legal representation, defender programs ordinarily are able to develop unusual expertise in handling various kinds of criminal cases. Moreover, defender offices frequently are in the best position to supply counsel soon after an accused is arrested. By virtue of their experience, full-time defenders also are able to work for changes in laws and procedures aimed at benefiting defendants and the criminal justice system.”)

Public Defense Providers<sup>11</sup> to handle overflow and conflict of interest cases.<sup>12</sup> The compensation for lawyers working for Public Defense Providers should be appropriate for and comparable to other publicly funded lawyers. Full-time public defender salaries and benefits should be no less than the salaries and benefits for full-time prosecutors.<sup>13</sup> Other provider attorneys should be paid a reasonable fee that reflects the cost of overhead and other office expenses, as well as payment for work.<sup>14</sup> Investigators, social workers, experts, and other staff and service providers necessary to public defense should also be funded and compensated in a manner consistent with this Principle.<sup>15</sup> There should be at least parity of resources between public defense counsel and prosecution.<sup>16</sup>

### **PRINCIPLE 3: Control of Workloads**

<sup>11</sup> These additional Public Defense Providers may be a second public defender office for handling conflict cases and/or assigned counsel operating pursuant to a defense service contract. The appointment process for assigned counsel should be according to a coordinated plan directed by a lawyer-administrator familiar with private lawyers, investigators and other vital defense services in the jurisdiction. See, e.g., *ABA Criminal Justice Standards: Providing Defense Services*, Standard 5-1.2 (“The participation should be through a coordinated assigned counsel system and may also include contracts for services.”).

<sup>12</sup> Absent substantial private practitioners to augment the representation of full-time public defenders, public defenders are likely to become overwhelmed with cases. See *id.*, at Commentary to Standard 5-1.2 (“In some cities, where a mixed system has been absent and public defenders have been required to handle all of the cases, . . . [c]aseloads have increased faster than the size of staffs and necessary revenues, making quality legal representation exceedingly difficult.”). In rural areas, it may be appropriate to consider regional Public Defense Providers. Adherence to all of the Principles is critically important to an effective public defense system irrespective of whether a jurisdiction relies on public defender offices or solely on a system of appointed counsel.

<sup>13</sup> Public defense counsel should also receive raises and promotions commensurate with prosecutors and other publicly funded lawyers in order to encourage retention of experienced counsel.

<sup>14</sup> *ABA Criminal Justice Standards: Providing Defense Services*, Standard 5-2.4. The fee rate should be subject to regular increases to ensure the ongoing availability of quality counsel and reviewed regularly. Contract selection should be based on factors such as counsel training and experience in public defense representation and should not merely be awarded to the lowest bidder. Counsel should not be paid on a flat fee basis, as such payment structures reward counsel for doing as little work as possible. See *Wilbur v. Mt. Vernon*, No. C11-1100RSL, U.S.D.C. D. Wash., at 15 (Dec. 4, 2013) (district court finding that a flat fee contract “left the defenders compensated at such a paltry level that even a brief meeting at the outset of the representation would likely make the venture unprofitable.”).

<sup>15</sup> The importance of these providers is discussed in more detail in Principle 9.

<sup>16</sup> In determining appropriate funding and resources, jurisdictions should consider that while prosecutors can often draw upon separately funded resources for investigations such as police departments and state crime labs, Public Defense Providers normally must pay for investigative and other ancillary services. In many jurisdictions, defender offices face a significant funding gap with prosecutors despite this distinction. Bryan Furst, *A Fair Fight: Achieving Indigent Defense Resource Parity* 9 (Brennan Center for Justice, Sept. 9, 2019), <https://www.brennancenter.org/our-work/research-reports/fair-fight> (discussing the lack of investigators and other support staff in public defender offices as compared prosecutorial investigatory resources).

The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation.<sup>17</sup> Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations.<sup>18</sup> Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology. Jurisdiction-specific workload standards may be employed when developed appropriately,<sup>19</sup> but national workload standards should never be exceeded.<sup>20</sup> If workloads become excessive, Public Defense Providers are obligated to take steps necessary to address excessive workload, which can include notifying the court or other appointing authority that the Provider is unavailable to accept additional appointments, and if necessary, seeking to withdraw from current cases.<sup>21</sup>

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<sup>17</sup> Excessive caseloads impinge upon a lawyer's ability to provide competent and effective representation to all clients. See *ABA Eight Guidelines of Public Defense Related to Excessive Workloads*, Commentary to Guideline 1 (“[A]n excessive number of cases create[s] a concurrent conflict of interest, as a lawyer is forced to choose among the interests of various clients, depriving at least some, if not all clients, of competent and diligent defense services.”) (citations omitted). Those who provide public defense services, no less than those who represent persons with financial means, are duty bound not to accept a representation when doing so would impinge upon their ability to provide competent and effective representation. See ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation* (2006). The National Association for Public Defense has concluded that public defenders “can no longer operate in a system without meaningful workload standards” and has “encourage[d] public defense providers in every jurisdiction to develop, adopt, and institutionalize meaningful, evidence-based workload standards in their jurisdictions.” Nat’l Ass’n for Public Defense, *Statement on the Necessity of Meaningful Workload Standards for Public Defense Delivery Systems*, Mar. 19, 2015, <https://www.publicdefenders.us/positionpapersstatements>.

<sup>18</sup> See *ABA Eight Guidelines of Public Defense Related to Excessive Workloads*; Formal Ethics Opinion 06-441.

<sup>19</sup> The ABA’s Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID) partnered with national data analysis firms to complete workload studies for seven jurisdictions. See, e.g., Moss Adams and ABA SCLAID, *The New Mexico Project* (2022). These workload studies are available through the ABA SCLAID website, [www.indigentdefense.org](http://www.indigentdefense.org).

<sup>20</sup> Notably, in 2023, new National Public Defense Workload Standards (NPDWS) were published by The RAND CORPORATION, ABA SCLAID, The National Center for State Courts, and Stephen F. Hanlon. The NPDWS are grounded in a rigorous study of 17 prior jurisdiction-specific workload studies conducted between 2005 and 2022 and use the Model Rules and ABA Criminal Justice Section standards as the reference for reasonably effective assistance of counsel. The NPDWS then used the Delphi Method to obtain a reliable professional consensus of criminal defense experts, both public and private, from across the nation. These new national standards are intended to replace the 1973 NAC Standards. See National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Chapter 13, The Defense* (1973). The NPDWS reflect the changes in defense practice that have occurred in the fifty years since the creation of the NAC Standards, including the significant role of digital evidence from body-worn cameras to smart phone data and forensics in modern defense practice, as well as the expanded role of defense attorneys.

<sup>21</sup> See Formal Opinion 06-441; *ABA Eight Guidelines of Public Defense Related to Excessive Workloads* (August 2009). Failure to take steps to reduce an excessive caseload can result in bar discipline. See, e.g., *In re: Karl William Hinkebein*, No. SC96089 (Mo. Sup. Ct. Sept. 12, 2017) (suspending the public

#### **PRINCIPLE 4: Data Collection and Transparency**

To ensure proper funding and compliance with these Principles, states should, in a manner consistent with protecting client confidentiality, collect reliable data on public defense, regularly review such data, and implement necessary improvements.<sup>22</sup> Public Defense Providers should collect reliable data on caseloads and workloads,<sup>23</sup> as well as data on major case events,<sup>24</sup> use of investigators, experts, social workers and other support services, case outcomes, and all monetary expenditures.<sup>25</sup> Public Defense Providers should also collect demographic data on lawyers and other employees.<sup>26</sup> Providers should also seek to collect demographic data from their clients to ensure they are meeting the needs of a diverse clientele.<sup>27</sup> Aggregated data should be shared with other relevant entities and made publicly available in accordance with best practices.<sup>28</sup>

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defender's license indefinitely but staying that suspension and placing him on probation for one year). Courts should not order public defenders to take a case, if doing so would result in an excessive caseload. See *State ex rel. Missouri Public Defender Commission v. Waters*, 370 S.W.3d 592 (Mo. 2012) (holding that a trial judge exceeded his authority in appointing a public defender after the public defender office had declared unavailability due to an excessive caseload); *c.f. Lavalley v. Justices in the Hampden Superior Court*, 442 Mass. 228 (Sup. J. Ct. Mass. 2004) (rejecting a judge's appointment of public defenders despite an assertion by the Public Defense Provider that the public defenders had reached caseload limits).

<sup>22</sup> Data collection is essential to proper oversight at every level. A state's duty to fully fund the public defense function, as outlined in Principle 2, includes a duty to fully fund data collection. Florida has adopted a statute mandating the collection of extensive data throughout the criminal justice system. See Florida Statutes, Title 47, § 900.05 – Criminal Justice Data Collection. The Texas Indigent Defense Commission collects data on public defense from each county and publishes the data on a portal. See [Indigent Defense Data for Texas](#), TIDC (visited Mar. 21, 2023).

<sup>23</sup> Such data should include the number and types of cases assigned to each Public Defense Provider. As noted in Principle 3, caseloads and workloads must be regularly monitored and controlled to ensure ability to comply with ethical and practice standards.

<sup>24</sup> Such data should include eligibility determinations and decisions, initial appearance outcomes including pretrial detention and conditions of release, motions filed, use of services such as translators, investigators, social workers, and experts, and case outcomes. Effective data collection may require the hiring of specific staff to focus on the collection, verification and presentation of data. The ABA has endorsed similar data collection responsibilities for prosecutors. [2021A504](#). An effective way to collect such data is through regular timekeeping.

<sup>25</sup> Case data is most often collected using timekeeping and/or standardized case opening and closing forms. The ABA has recognized the Los Angeles Independent Juvenile Defender Program, which requires attorneys to complete case intake and resolution forms, for its effective case data collection system. ABA SCLAID, *Exemplary Defense: A Study of Three Groundbreaking Projects in Public Defense* 44-45, Oct. 2018.

<sup>26</sup> The ABA has endorsed collecting demographic data on all judges and government lawyers to promote and track progress toward improving diversity in the legal profession and increasing trust in the justice system. [2021A605](#).

<sup>27</sup> [2021A504](#) (urging prosecutor offices to similarly collect and publish outcomes by demographic data); see, e.g., [Ramsey County Attorney's Office Public Data Portal](#) (visited Mar. 21, 2023)(showing case



## **PRINCIPLE 5: Eligibility and Fees for Public Defense**

Public defense should be provided at no cost to any person who is financially unable to obtain adequate representation without substantial burden or undue hardship.<sup>29</sup> Persons<sup>30</sup> should be screened for eligibility in a manner that ensures information provided remains confidential.<sup>31</sup> The process of applying for public defense services should not be complicated or burdensome, and persons in custody or receiving public assistance should be deemed eligible for public defense services absent contrary evidence.<sup>32</sup> Jurisdictions should not charge an application fee for public defense

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outcomes by race and gender). Such data should be collected from clients voluntarily and in accordance with best practices. These best practices are evolving; accordingly, data collection and reporting practices should be regularly reviewed and updated. See, e.g., [A Vision for Equitable Data: Recommendations from the White House Equitable Data Working Group](#) (Apr. 2022). Absent such data, Public Defense Providers cannot identify, assess, and seek to address disparate impact. See, e.g., [Guidelines for data collection on race and ethnicity](#), Utah Dept. of Health and Human Services, Office of Health Equity (Oct. 2022).

<sup>28</sup> See *id.* Sensitive data should be made public in an aggregated format that protects the privacy of individuals. See 2021A605 (discussing best practices of aggregating data for privacy). Individual client data should be carefully guarded. See, e.g., *ABA Model Rules of Professional Conduct*, Rule 1.6 (providing that a lawyer may not, generally, “reveal information relating to the representation of a client unless the client gives informed consent” and that a lawyer “shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client”).

<sup>29</sup> *ABA Criminal Justice Standards: Providing Defense Services*, §5-7.1 (“Counsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship.”); Eligibility consideration should consider the prevailing fee for the charge(s) faced by the person in the jurisdiction. See Brennan Center for Justice, *Eligible for Justice: Guidelines for Appointing Defense Counsel*, at 13 (2008) (“In determining whether someone can afford counsel, jurisdictions should take into account the actual cost of obtaining counsel.”), <https://www.brennancenter.org/publication/eligible-justice-guidelines-appointing-defense-counsel>. Jurisdictions should also consider how the type and nature of the charged offense would affect the cost of an effective defense.

<sup>30</sup> Persons refers to any person arrested or detained or seeking the assistance of indigent defense counsel.

<sup>31</sup> *ABA Criminal Justice Standards: Providing Defense Services*, §5-7.3 (“Determination of eligibility should be made by defenders, contractors for services, assigned counsel, a neutral screening agency or by the court.”); *ABA Model Rules of Professional Conduct*, Rule 1.6. Eligibility screening should not be conducted by the presiding judge. See also Brennan Center for Justice, *Eligible for Justice: Guidelines for Appointing Defense Counsel*, at 11 (2008). Eligibility information should be disclosed only to the extent required by applicable Rules of Professional Conduct or other law.

<sup>32</sup> A person should never be discouraged from or punished for applying for public defense services. See National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of our Constitutional Right to Counsel*, at 85-87 (2009) (observing how defendants can be pressured to waive counsel rather seek public defense because “a defendant who wants . . . counsel must wait several days for counsel to be appointed and possibly several more days for appointed counsel . . . to make contact.”).

services, nor should persons who qualify for public defense services be required to contribute to or reimburse defense services.<sup>33</sup>

### **PRINCIPLE 6: Early and Confidential Access to Counsel**

Counsel should be appointed immediately after arrest, detention, or upon request. Prior to a client's first court appearance, counsel should confer with the client and prepare to address pretrial release and, if possible, probable cause.<sup>34</sup> Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information.<sup>35</sup> Waiver of the right to counsel and waiver of the person's right to court appearance should never be coerced or encouraged.<sup>36</sup> Before a person may waive counsel, they must be provided a meaningful opportunity to confer with a defense lawyer who can explain the dangers and disadvantages of proceeding without counsel and, if relevant, the implications of pleading guilty, including the direct and collateral consequences of a conviction.<sup>37</sup>

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<sup>33</sup> Public defense user fees should be eliminated. See *ABA Ten Guidelines on Court Fines and Fees*, Commentary to Guideline 1 (2018) (recommending the elimination of user fees "because the justice system serves the entire public and should be entirely and sufficiently funded by general government revenue.").

<sup>34</sup> Pleas of guilty to criminal charges at first appearance or arraignment are disfavored. See *ABA Criminal Justice Standards: Defense Function*, Standard 4-6.1(b), (2015) ("In every criminal matter, defense counsel . . . should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed . . . Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.")

<sup>35</sup> To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where clients confer with defense counsel. See, e.g., *Williams v. Birkett*, 697 F. Supp. 2d 716 (U.S. Dist. Ct., E.D. Mich. 2010) ("To ensure the privacy essential for confidential communication between defense counsel and client, adequate facilities should be available for private discussions between counsel and accused.")

<sup>36</sup> See *ABA Criminal Justice Standards: Defense Function*, Standard 5-8.2(a) (2017) ("The accused's failure to request counsel or an announced intention to plead guilty should not of itself be construed to constitute a waiver of counsel in court. An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed before a judge and a thorough inquiry into the accused's comprehension of the offer and capacity to make the choice intelligently and understandingly has been made. No waiver of counsel should occur unless the accused understands the right and knowingly and intelligently relinquishes it. No waiver should be found to have been made where it appears that the accused is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors. A waiver of counsel should not be accepted unless it is in writing and of record.")

<sup>37</sup> See *ABA Ten Guidelines on Court Fines and Fees*, Guideline 8 ("Waiver of counsel must not be permitted unless the waiver is knowing, voluntary, and intelligent. In addition, the individual first has been offered a meaningful opportunity to confer with counsel capable of explaining the implications of pleading guilty, including collateral consequences."). See also *Faretta v. California*, 422 U.S. 806 (1975) ("Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is



### **PRINCIPLE 7: Experience, Training and Supervision**

A Public Defense Provider's plan for the assignment of lawyers should ensure that the experience, training, and supervision of the lawyer matches the complexity of the case.<sup>38</sup> Public Defense Providers should regularly supervise and systematically evaluate their lawyers to ensure the delivery of effective and competent representation free from discrimination or bias. In conducting evaluations, national, state, and local standards, including ethical obligations, should be considered. Lawyers and staff should be required to attend continuing education programs or other training to enhance their knowledge and skills. Public Defense Providers should provide training at no cost to attorneys, as well as to other staff.<sup>39</sup>

Public Defense Providers should ensure that attorneys and other staff have the necessary training, skills, knowledge, and awareness to effectively represent clients affected by poverty, racism, and other forms of discrimination in a culturally competent manner.<sup>40</sup> Public defense counsel should be specifically trained in raising legal challenges based on racial and other forms of discrimination.<sup>41</sup> Public defense counsel and other staff should also be trained to recognize biases within a diverse workplace.<sup>42</sup>

### **PRINCIPLE 8: Vertical Representation**

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made with eyes open.”) (citations omitted); *Padilla v. Kentucky*, 559 U.S. 356 (2010) (holding that counsel must advise their client on the potential immigration consequences of a criminal conviction).

<sup>38</sup> If the defense lawyer lacks the requisite experience or training for the case, the lawyer cannot provide effective and competent representation and is obligated to refuse appointment. See *ABA Model Rules of Professional Conduct*, Commentary to Rule 1.1 (“In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer’s general experience, the lawyer’s training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.”); *ABA Eight Guidelines of Public Defense Related to Excessive Workloads*.

<sup>39</sup> As with other aspects of an effective Public Defense System, and as described in Principle 2, Public Defense Providers should be adequately funded to provide such training.

<sup>40</sup> The ABA has endorsed similar requirements for attorneys providing civil legal aid services, Standards for the Provision of Civil Legal Aid 4.4, as well as for law students. 2022M300 (“A law school shall provide education to law students on bias, cross-cultural competency and racism[.]”).

<sup>41</sup> For instance, all counsel should be trained to effectively raise objections under *Batson v. Kentucky*, 476 U.S. 79 (1986).

<sup>42</sup> See, e.g., 2020A116G (urging that all legal and medical professionals “receive periodic training regarding implicit biases.”); The [ABA’s Diversity, Equity and Inclusion Center](#) has a number of resources and trainings available.

To develop and maintain a relationship of trust, the same defense lawyer should continuously represent the client from assignment<sup>43</sup> through disposition and sentencing in the trial court, which is known as “vertical” representation. Representation by the defense lawyer may be supplemented by specialty counsel, such as counsel with special expertise in forensic evidence, immigration, or mental health issues, as appropriate to the case.<sup>44</sup> The defense lawyer assigned to a direct appeal should represent the client throughout the direct appeal.

### **PRINCIPLE 9: Essential Components of Effective Representation**

Public Defense Providers should adopt a client-centered approach to representation based around understanding a client’s needs and working with them to achieve their goals.<sup>45</sup> Public Defense Providers should have the assistance of investigators, social workers, mitigation specialists, experts, and other specialized professionals necessary to meet public defense needs.<sup>46</sup> Such services should be provided and controlled by Public Defense Providers.<sup>47</sup> Additional contingency funding should be made available to support access to these services as needed.<sup>48</sup> Public Defense Providers should

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<sup>43</sup> In some jurisdictions, to facilitate prompt initial appearance, a specially trained duty lawyer or bail lawyer may represent an individual from arrest through initial appearance. Before or at initial appearance, defense counsel should be assigned. Procedures should be in place to ensure continuous representation and proper transition from initial appearance counsel to defense counsel.

<sup>44</sup> For instance, some public defense offices have established distinct units of attorneys with specialized skills to advise non-U.S. citizen clients on immigration matters relevant to their cases. See Carlos J. Martinez, George C. Palaidis & Sarah Wood Borak, *You Are the Last Lawyer They Will Ever See Before Exile: Padilla v. Kentucky and One Indigent Defender Office’s Account of Creating a Systematic Approach to Providing Immigration Advice in Times of Tight Budgets and High Caseloads*, 39 Fordham Urb. L.J. 121 (2012).

<sup>45</sup> See James M. Anderson, Maya Buenaventura & Paul Heaton, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 Harv. L. Rev. 819 (Jan. 2019) (assessing the benefits of a client-centered defense model in reducing the length of sentences).

<sup>46</sup> See Nat’l Ass’n for Public Defense, *Policy Statement on Public Defense Staffing*, May 2020, <https://www.publicdefenders.us/positionpapersstatements>.

<sup>47</sup> Under no circumstances should defense counsel be required to bear the cost of experts and other professionals. See *Wash. R. Professional Conduct* 1.8 (“A lawyer shall not . . . make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm . . . to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel.”).

<sup>48</sup> In Florida, for example, state funds, sometimes referred to as “due process funds for the defense,” are available for various defense services, such as investigators, experts, and other specialized public defense needs in addition to contingency funding. The funds also cover prosecution services. See *Florida Statutes* § 29.006, § 29.015, and § 29.018 (2018).

# 603

address civil and non-legal issues that are relevant to their clients' cases.<sup>49</sup> Public Defense Providers can offer direct assistance with such issues or establish collaborations with, or provide referrals to civil legal services organizations, social services providers, and other lawyers and non-lawyer professionals.<sup>50</sup>

## **PRINCIPLE 10: Public Defense as Legal System Partners**

Public Defense Providers should be included as equal participants in the legal system. Public Defense Providers are in a unique position to identify and challenge unlawful or harmful conditions adversely impacting their clients. Legislative or organizational changes or other legal system reforms should not be considered without soliciting input from representatives of the defense function and evaluating the impact of such changes on Public Defense Providers and their clients. To the extent any changes result in an increase in defender workload or responsibilities, adequate funding should be provided to Public Defense Providers to accommodate such changes.

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<sup>49</sup> In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the U.S. Supreme Court held that, in order to provide effective assistance of counsel, an attorney must provide advice on the potential immigration consequences of a client's criminal charge. Following *Padilla*, several courts have held that advice on other potential civil consequences of a criminal case is also required. See, e.g., *Bauder v. Department of Corrections*, 619 F.3d 1272, 1275 (11th Cir. 2010) (holding that the requirement of advice on non-criminal consequences extended beyond immigration to include civil commitment). Understanding a client's non-criminal legal issues, may be critical to understanding relevant arguments regarding sentencing, including the appropriateness of diversion or other programs available through the criminal case.

<sup>50</sup> See [2012AM107C](#) (urging defender organizations and criminal defense lawyers to create "linkages and collaborations with civil practitioners, civil legal services organizations, social service program providers and other non-lawyer professionals who can serve, or assist in serving, clients in criminal cases with civil legal and non-legal problems related to their criminal cases, including the hiring of such professionals as experts, or where infrastructure allows, as staff.") [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/indigent\\_defense\\_systems\\_improve/standards-and-policies/policies-and-guidelines/](https://www.americanbar.org/groups/legal_aid_indigent_defendants/indigent_defense_systems_improve/standards-and-policies/policies-and-guidelines/). For over 40 years, scholars have recognized the importance of having social workers in defender offices. See, e.g., Charles Silberman, *Criminal Violence, Criminal Justice* (New York: Random House, 1978).

## REPORT

### **Background of the ABA's Public Defense Standards**

After the U.S. Supreme Court's decision in *Gideon v. Wainwright*, 371 U.S. 335 (1963), guaranteeing the Sixth Amendment right to appointed counsel for persons charged with a felony, the American Bar Association quickly recognized the need for national standards for public defense services. In 1967, the ABA promulgated the *Standards for Criminal Justice, Providing Defense Service*, now in its third edition. Other entities soon followed suit. In 1973, President Nixon's National Advisory Commission on Criminal Justice Standards and Goals published *The Report of the Task Force on the Courts*, which included a chapter on defense standards. From 1974 to 1976, the National Legal Aid and Defender Association (NLADA) convened a 35-member National Study Commission on Defense Services, with support from the Law Enforcement Assistance Administration, which produced a report outlining several recommendations for the provision of indigent defense services. The ABA meanwhile continued to adopt additional standards governing the provision of defense services, such as the *ABA Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services* in 1985 and the *ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* in 1989. All these policies were passed with the aim of ensuring high-quality, effective, and independent criminal defense counsel for persons who cannot afford an attorney.

As policies became more numerous and detailed, the ABA saw the need to adopt a succinct policy that laid out the fundamental criteria for an effective public defense delivery system. Thus, the ABA House of Delegates adopted the original *Ten Principles of a Public Defense Delivery System* (the "Principles"), dated February 2002, "[T]o provide experts and non-experts alike with a quick and easy way to assess a public defense delivery system and communicate its needs to policy makers."<sup>1</sup> The Principles recognized the need for stronger standards in a variety of areas, including public defense independence, high caseloads, and unduly low salaries and reimbursement rates. The Principles have since been recognized as important national public defense standards by national media and public defense advocacy groups. Courts, legislatures, and state and local public defense agencies have looked to the Principles in developing decisions, laws, and policies. In 2010, Attorney General Eric Holder called the Principles "the building blocks of a well-functioning public defender system."<sup>2</sup>

### **The Need for Revised Principles**

In the 21 years since the Principles were adopted, significant changes in the delivery of public defense services have occurred, such as the emergence of voluminous digital discovery. Moreover, new information and, critically, more data, have allowed public defense experts to better understand how to provide high-quality indigent defense

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<sup>1</sup> 02M107.

<sup>2</sup> <https://www.justice.gov/opa/speech/attorney-general-eric-holder-addresses-department-justice-national-symposium-indigent>

# 603

representation effectively and efficiently. In 2018, the Standing Committee on Legal Aid and Indigent Defense (SCLAID) formed the Ten Principles Revision Committee, comprised of a diverse group of public defense leaders, academics, and experts. The Working Group set out to update the Principles based on their own experiences and the collective knowledge on public defense best practices that had been developed since 2002, while also ensuring that the Principles' core focus remained intact.

These new developments in public defense have been reflected in SCLAID's own work. SCLAID's *Eight Guidelines of Public Defense Related to Excessive Workloads* became ABA policy in 2009<sup>3</sup>. Then, between 2014 and 2022, SCLAID released comprehensive studies of public defender workloads in seven states: Missouri, Louisiana, Rhode Island, Colorado, Indiana, New Mexico, and Oregon. This work culminated in 2023 with the release of the *National Public Defense Workload Standards*, a meta-study published in conjunction with the RAND Corporation, the National Center for State Courts, and nationally recognized indigent defense expert Stephen F Hanlon. Studies such as these, which rely on hard data and the Delphi method<sup>4</sup> to analyze public defender workloads, were simply not available when the original Principles were adopted in 2002.<sup>5</sup> The Working Group also considered developments in public defense standards related to cultural competency, technology, and ancillary services.

In 2023, the Working Group solicited commentary on a draft of the revised Principles from four leading public defense advocacy groups: NLADA, the National Association of Criminal Defense Lawyers, the National Association for Public Defense, and the Sixth Amendment Center. Their input helped ensure that these revised Principles truly reflect the core best practices for public defense delivery in the modern age.

## Key Revisions in the New Principles

All the Principles have been revised to provide more detail and clarity to policymakers. Some of the 2002 Principles were consolidated to make room for additional principles, but all topics addressed in the 2002 Principles are directly addressed in this revision. The following changes are particularly notable:

- A new principle (Principle 4) was added to reflect the importance of data collection and transparency to ensure public defense systems are receiving adequate resources and are following these Principles.
- The principle on training and supervision (Principle 7) reflects a deeper understanding of the need for systematic evaluation of defense lawyers, as well as the need for specialized training and cultural competency.

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<sup>3</sup> 09M119.

<sup>4</sup> The Delphi method is a process for arriving at a group consensus by surveying a panel of experts. Experts respond to questionnaires, the results are aggregated and shared with the group, and the process continues until a consensus is reached.

<sup>5</sup> 02M107.

- A new principle (Principle 9) was added to reflect the importance of non-lawyer professionals, such as investigators, social workers, and experts, to the public defense function.
- The principle on public defense workloads (Principle 3) has been substantially revised to reflect the new information gleaned from the *National Public Defense Workload Standards* study and SCLAID's several state-based studies. Language has also been added on the duties of defenders who face unmanageable workloads.
- A new principle (Principle 10) was added to reinforce the important place public defense providers have in the legal system, especially in relation to any law or policy changes that are likely to affect their clients.

### **Use of the Principles**

As with the 2002 version of the Principles, these revised Principles are meant to provide policymakers and other stakeholders with easy-to-follow guidelines for assessing their jurisdiction's compliance with the core best practices for a public defense delivery system. They are not meant to serve as a comprehensive guide for public defense practices in every situation. However, each Principle is accompanied by extensive commentary to explain or illustrate the Principle, and to identify issues that might arise in its application. All jurisdictions should strive to bring their public defense systems into compliance with these Principles.

### **Conclusion**

The *Ten Principles of a Public Defense Delivery System* provide policymakers, public defense administrators, and other important stakeholders a critically important roadmap for providing effective indigent defense as required by the Sixth Amendment. In revising the Principles, the ABA ensures that this roadmap reflects the realities and best practices of public defense as of 2023, while maintaining its commitment to independent, well-managed, and well-resourced indigent defense systems.

Respectfully submitted,

Hon. Bryant Yang, Chair  
Standing Committee on Legal Aid and Indigent Defense

August 2023

## GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Legal Aid and Indigent Defense

Submitted By: Hon. Bryant Yang, Chair

1. Summary of the Resolution(s).

This Resolution seeks ABA adoption of the revised Ten Principles of a Public Defense Delivery System, dated August 2023, including black letter and commentary, which constitute the basic criteria for effective and efficient provision of indigent defense services to accused persons who cannot afford an attorney. This Resolution further recommends swift assessment by each jurisdiction of its compliance with the Ten Principles of a Public Defense Delivery System, dated August 2023, and implement any necessary legal and policy changes where deficiencies may exist.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

This Resolution advances all four of these goals. It serves our members who work in public defense by providing them with clear, up-to-date guidelines for effective public defense delivery. It similarly improves the profession by recommending improvements to the provision of public defense to the public. This Resolution also helps eliminate bias and enhance diversity by recommending that indigent defense counsel be trained to represent their clients in a culturally competent manner, and to recognize bias in the workplace. Finally, it advances the rule of law by helping to ensure that all criminal defense lawyers effectively represent their clients, thereby increasing the likelihood that cases will be decided fairly based on a full understanding of the facts and the law.

3. Approval by Submitting Entity.

The Standing Committee on Legal Aid and Indigent Defense approved submission of the revised Principles on May 8, 2023.

4. Has this or a similar resolution been submitted to the House or Board previously?

Yes, as noted above, the ABA approved a prior version of the Principles in 2002, 02M107

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?



This Resolution would replace the existing Ten Principles of a Public Defense Delivery System, adopted in 2002, 02M107. These new Principles largely strengthen and enhance the values of the original Principles.

This Resolution also refers to several ABA policies relating to the provision of criminal defense services:

- 90A101B, *ABA Standards for Criminal Justice: Providing Defense Services*, 3<sup>rd</sup> edition.
- 15M107D, *ABA Criminal Justice Standards: Defense Function*
- *ABA Model Rules of Professional Conduct*
- 09M119, *ABA Eight Guidelines of Public Defense Related to Excessive Workloads*
- 18A114, *ABA Ten Guidelines on Court Fines and Fees*
- 21A101, *ABA Standards for the Provision of Civil Legal Aid*
- ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441
- 21A504 (urging data collection by prosecution offices).
- 21A605 (urging demographic data collection on judiciary and government attorneys to improve diversity in the profession)
- 20A116G (urging implicit bias training)
- 12A107C (urging criminal defense lawyers to collaborate with civil lawyers and social service providers to assist their clients)

6. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

7. Status of Legislation. (If applicable)

There is no relevant pending legislation.

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Upon adoption, SCLAID will review the final approved version of the Principles, and then begin disseminating print and electronic versions of the Principles to public defender agencies, public defense advocacy groups, legal media, and other relevant entities. SCLAID will also promote the Principles through events such as webinars and work with ABA Media Relations to conduct media outreach.

9. Cost to the Association. (Both direct and indirect costs)

None.

# 603

## 10. Disclosure of Interest. (If applicable)

No members of the Standing Committee or of its task force of expert advisors would benefit from adoption of this resolution, nor do any members have any financial or other personal interests that would be affected by the resolution.

## 11. Referrals.

Judicial Division  
Standing Committee on Ethics and Professional Responsibility  
Criminal Justice Section  
Litigation Section  
Solo, Small Firm and General Practice

## 12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

Mark Pickett, Indigent Defense Counsel  
(202) 662-1584 Ext. 1584  
mark.pickett@americanbar.org

## 13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Hon. Bryant Yang, Chair  
byang@lacourt.org

**EXECUTIVE SUMMARY**1. Summary of the Resolution.

This Resolution seeks ABA adoption of the revised Ten Principles of a Public Defense Delivery System, dated August 2023, including black letter and commentary, which constitute the basic criteria for effective and efficient provision of indigent defense services to accused persons who cannot afford an attorney. This Resolution further recommends swift assessment by each jurisdiction of its compliance with the Ten Principles of a Public Defense Delivery System, dated August 2023, and implement any necessary legal and policy changes where deficiencies may exist.

2. Summary of the issue that the resolution addresses.

Since 2002, policymakers, public defense administrators, and the media have looked to the Ten Principles of a Public Defense Delivery System as the gold standard for evaluating how jurisdictions are providing indigent defense services. Thus, it is critically important for these Principles to reflect up-to-date data, standards, and practices.

3. Please explain how the proposed policy position will address the issue.

The Principles provide clear guidance to policymakers seeking to evaluate their jurisdiction's public defense services.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None.

## **Appendix C:**

### Lawyer, Judge and County Official Survey Summary



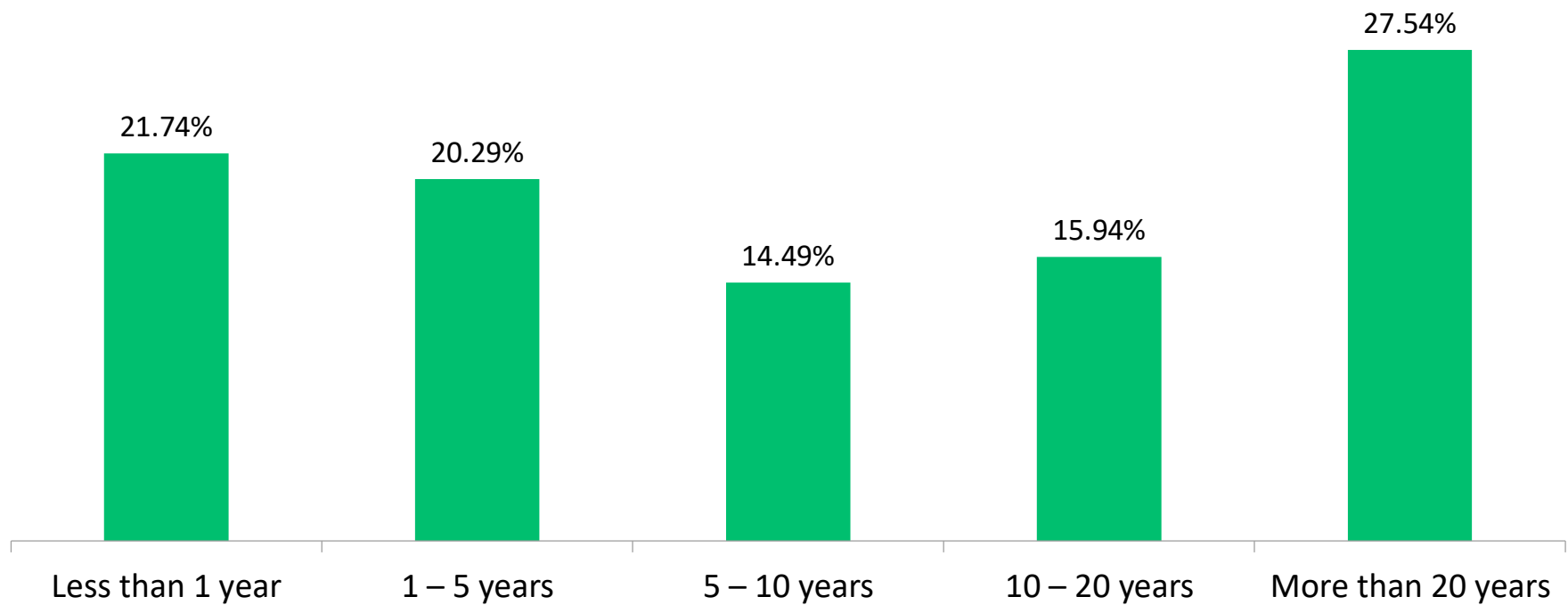
# Private Attorney Survey Results

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**Greg Sattizahn**

State Court Administrator

# How many years have you been practicing criminal defense law?

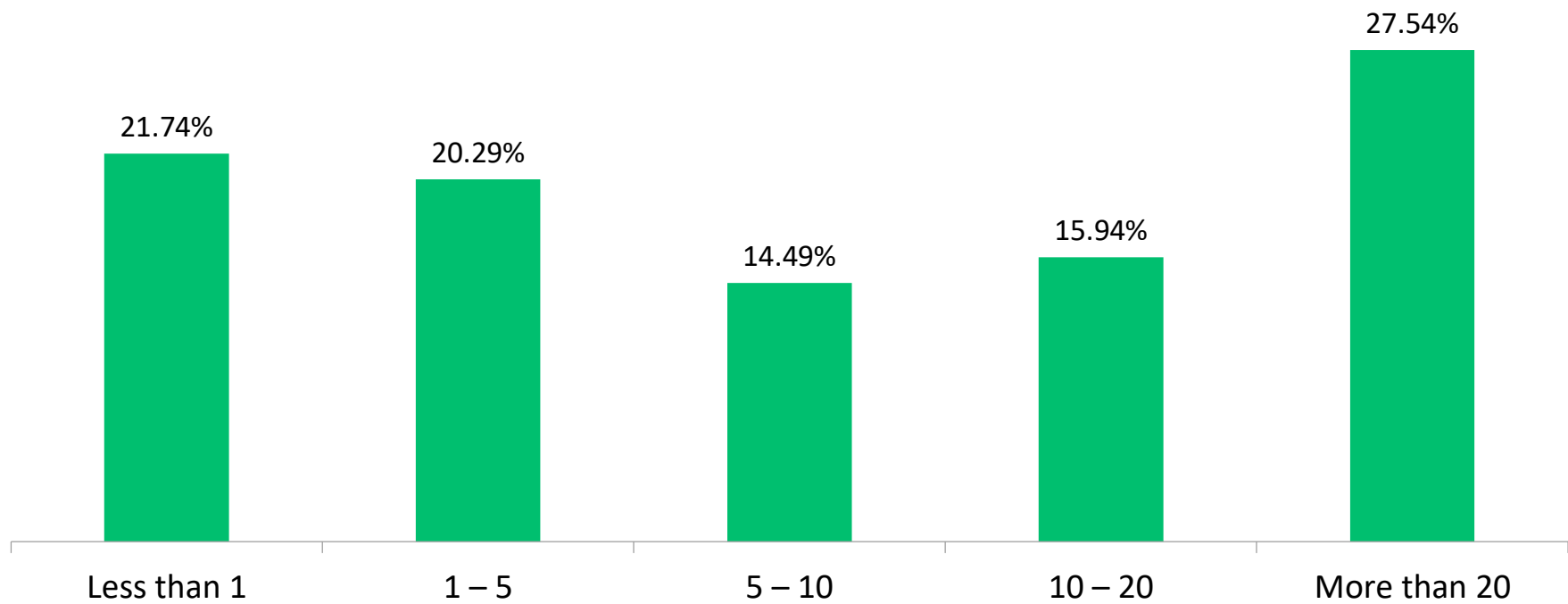


**Do you currently represent criminal defendants in South Dakota circuit courts in appointed cases?**

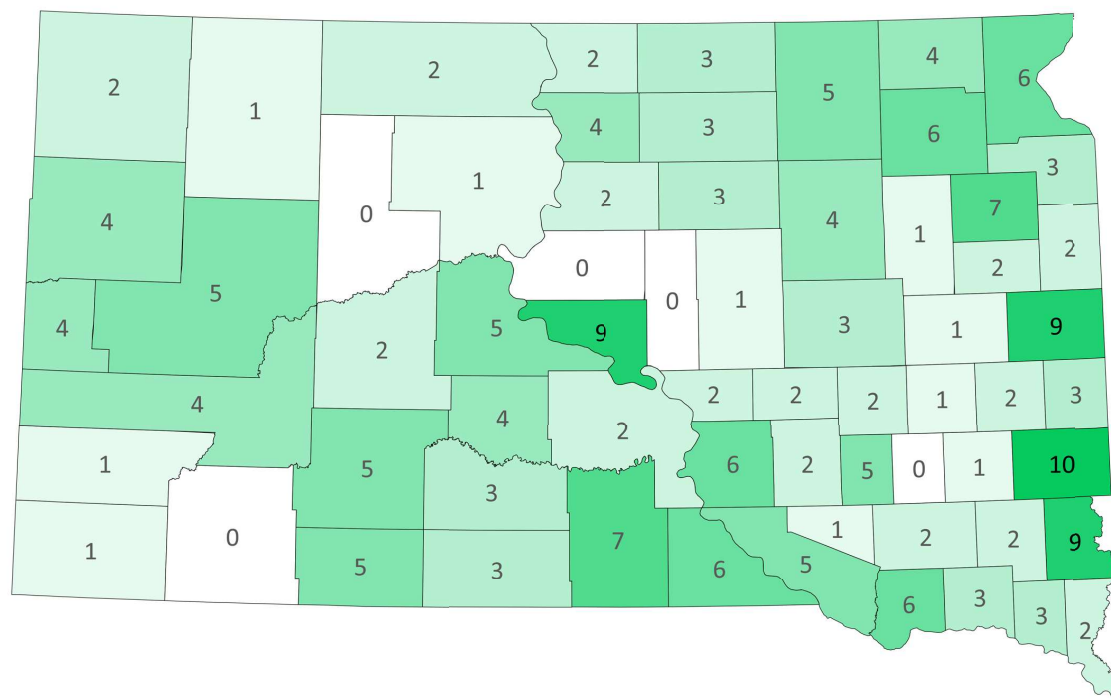




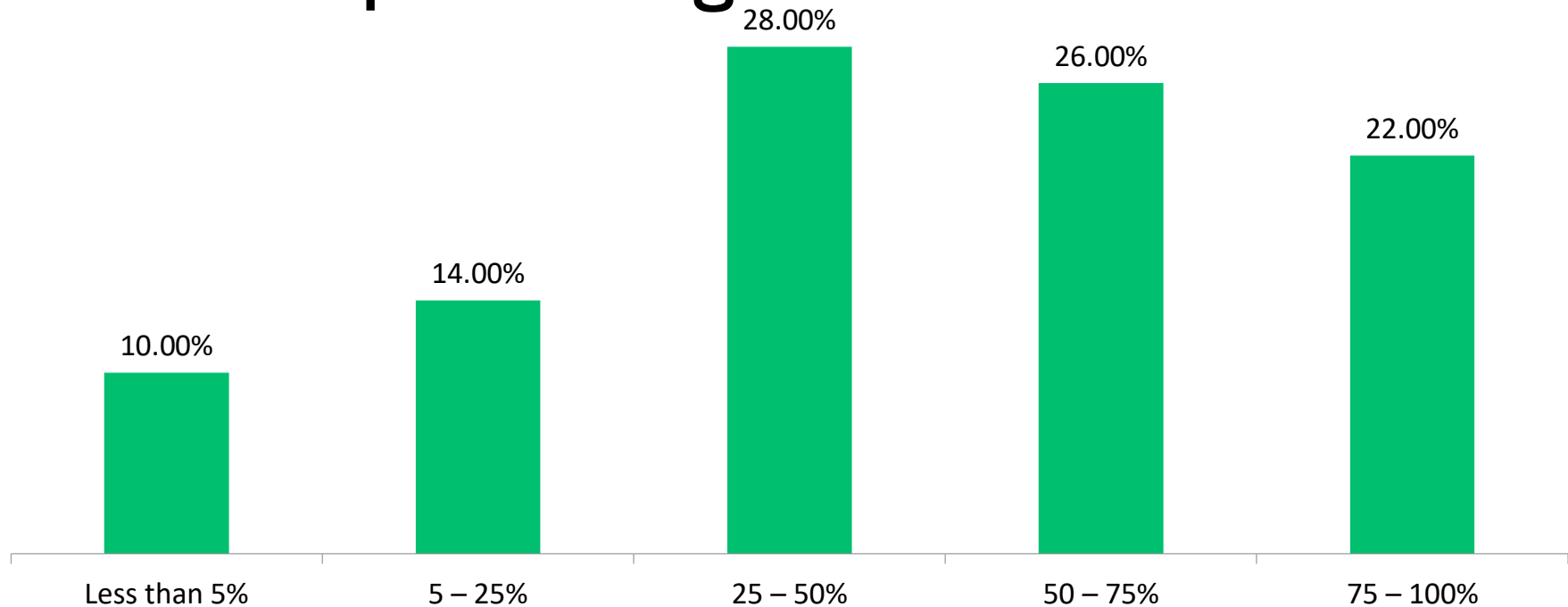
# How many counties do you accept court appointments in?



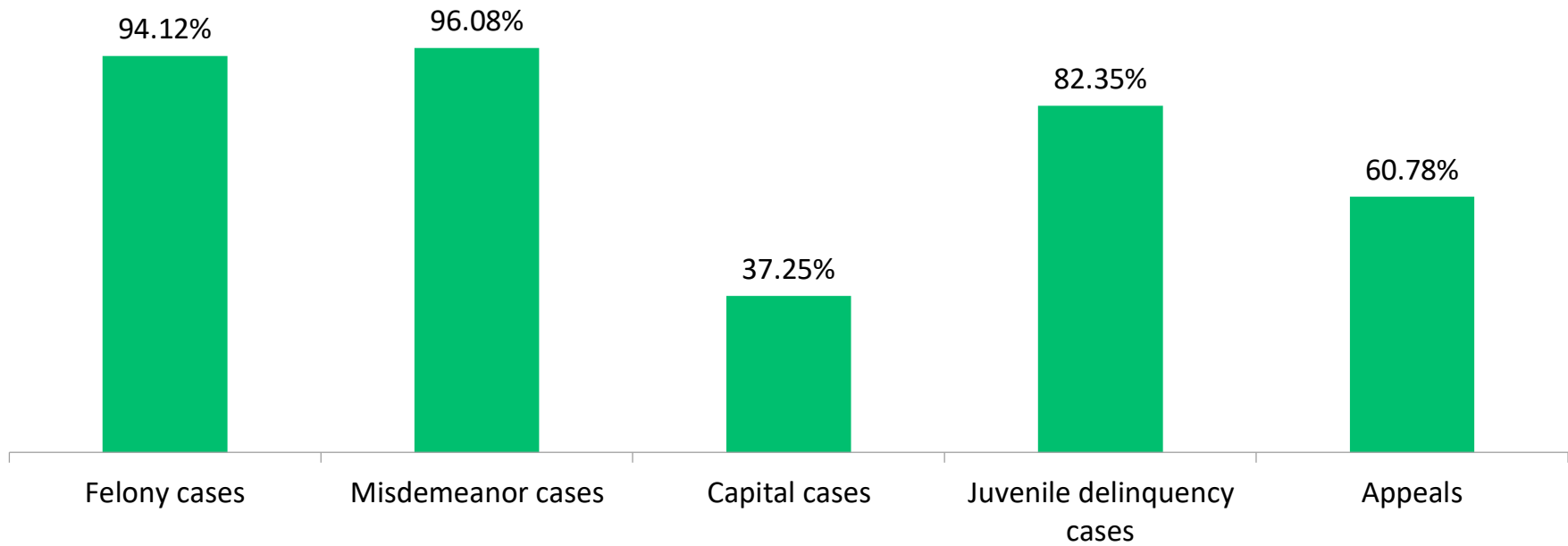
# Please indicate the counties where you accept court appointments:



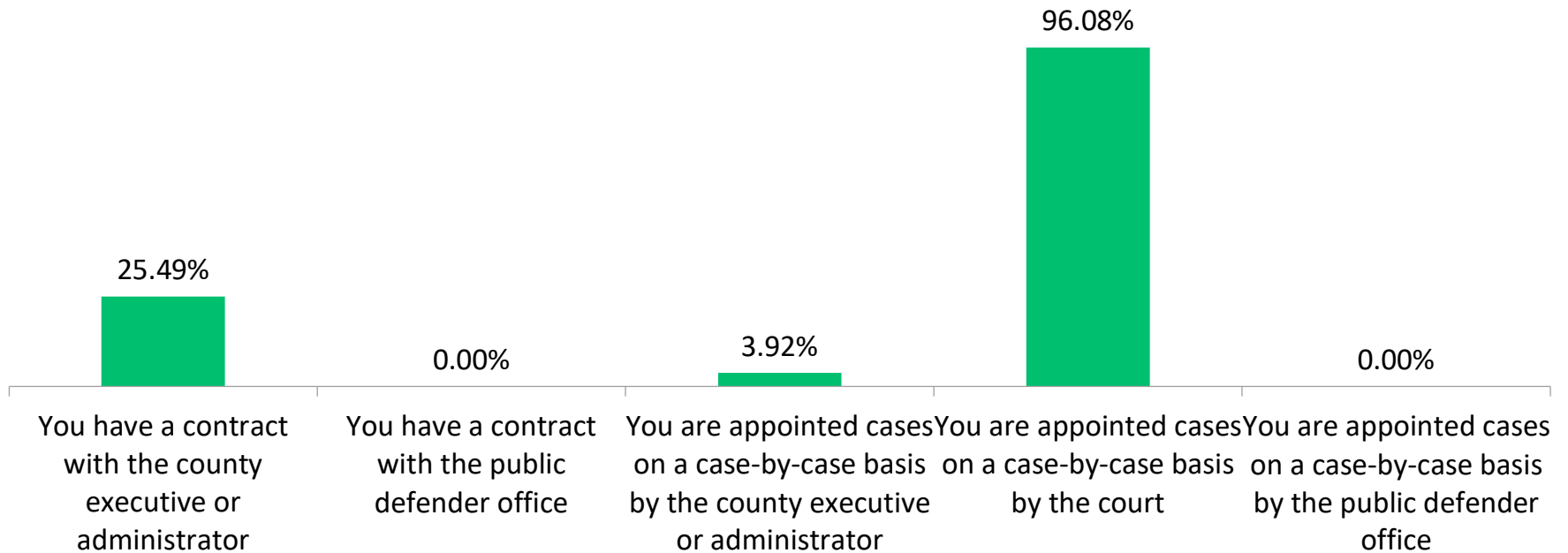
# Overall, what percentage of your practice involves representing criminal defendants?



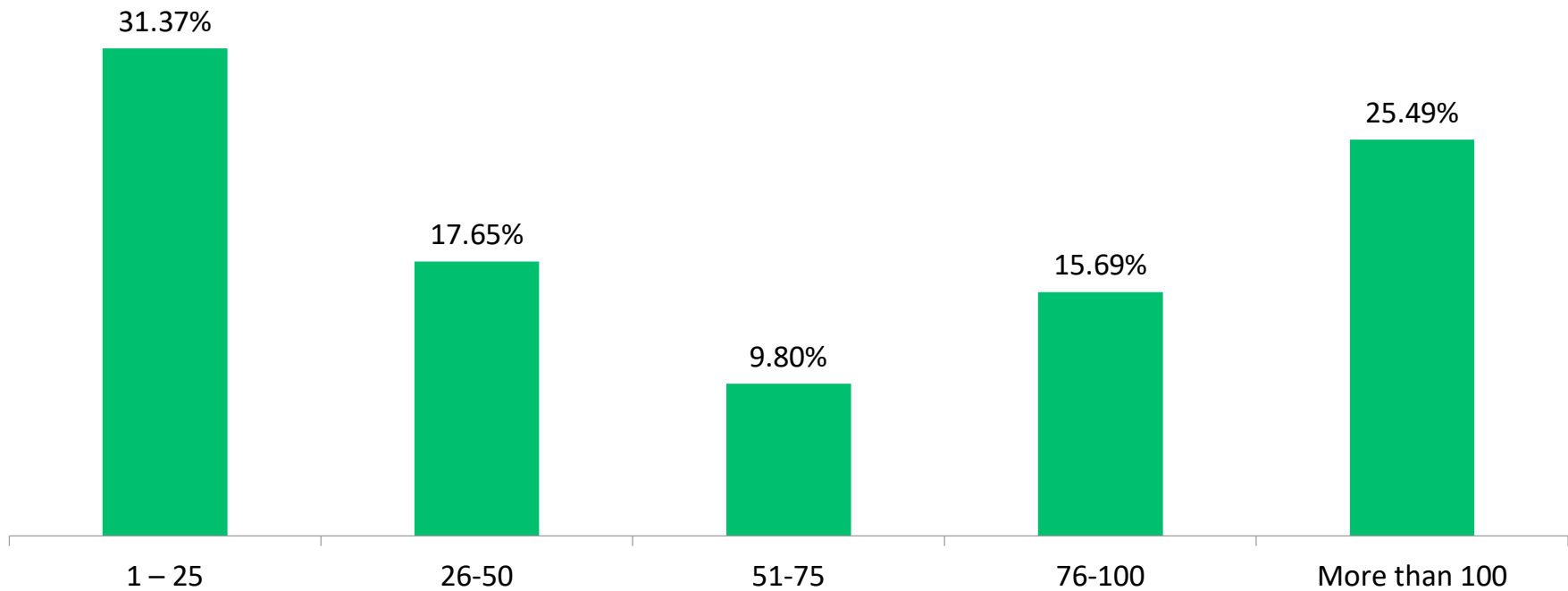
# You accept court appointments in:



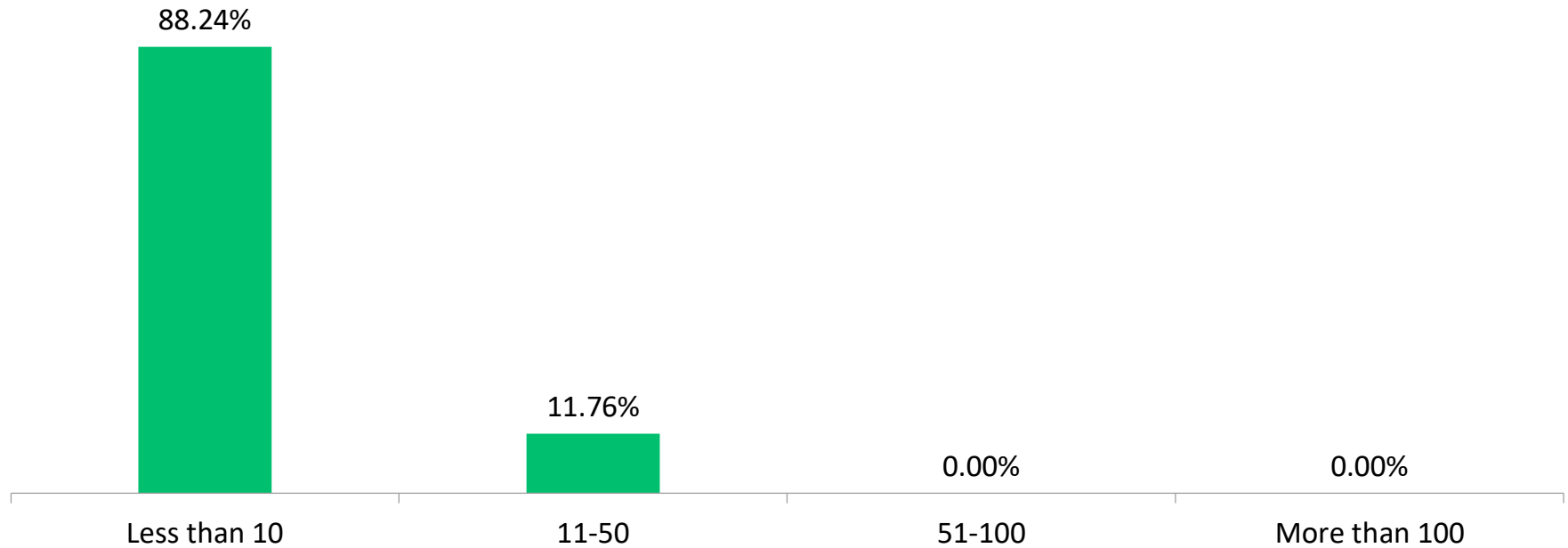
# How are you allowed to accept court appointments?



# How many court appointments do you accept in a year?

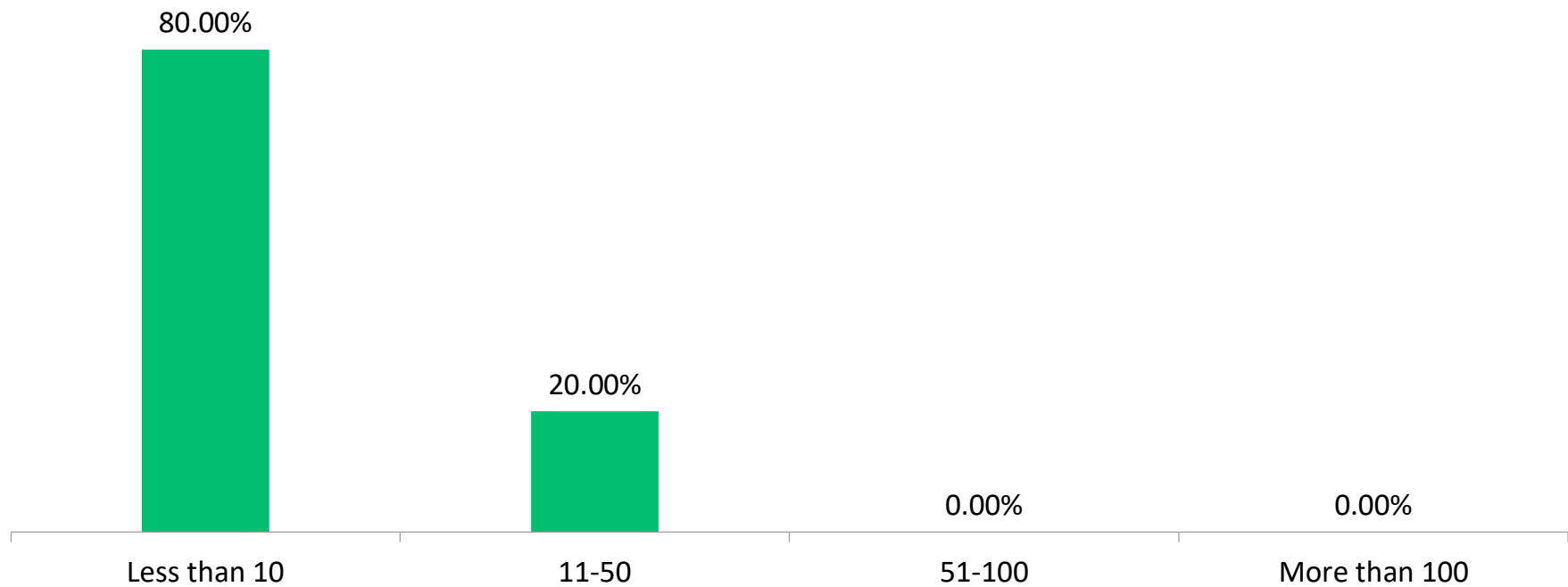


# How many times per year do you turn down court appointments?

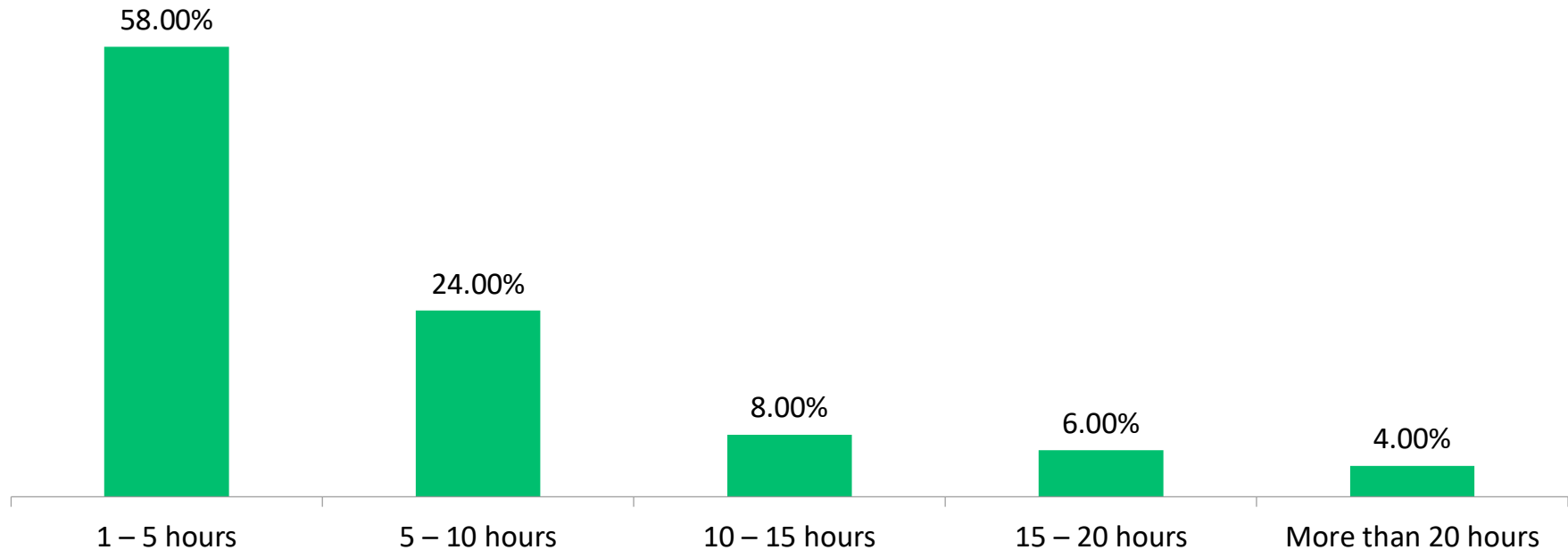




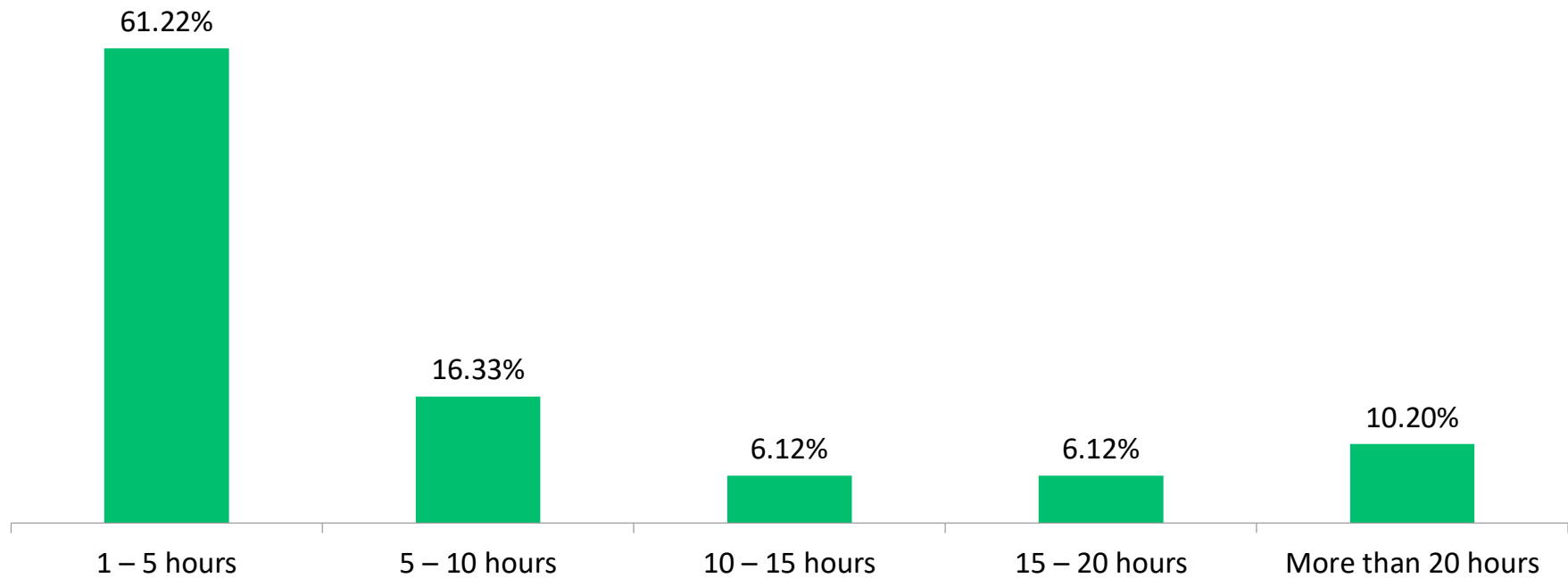
# How many times per year do you turn down non-indigent clients/cases to work on court appointments?



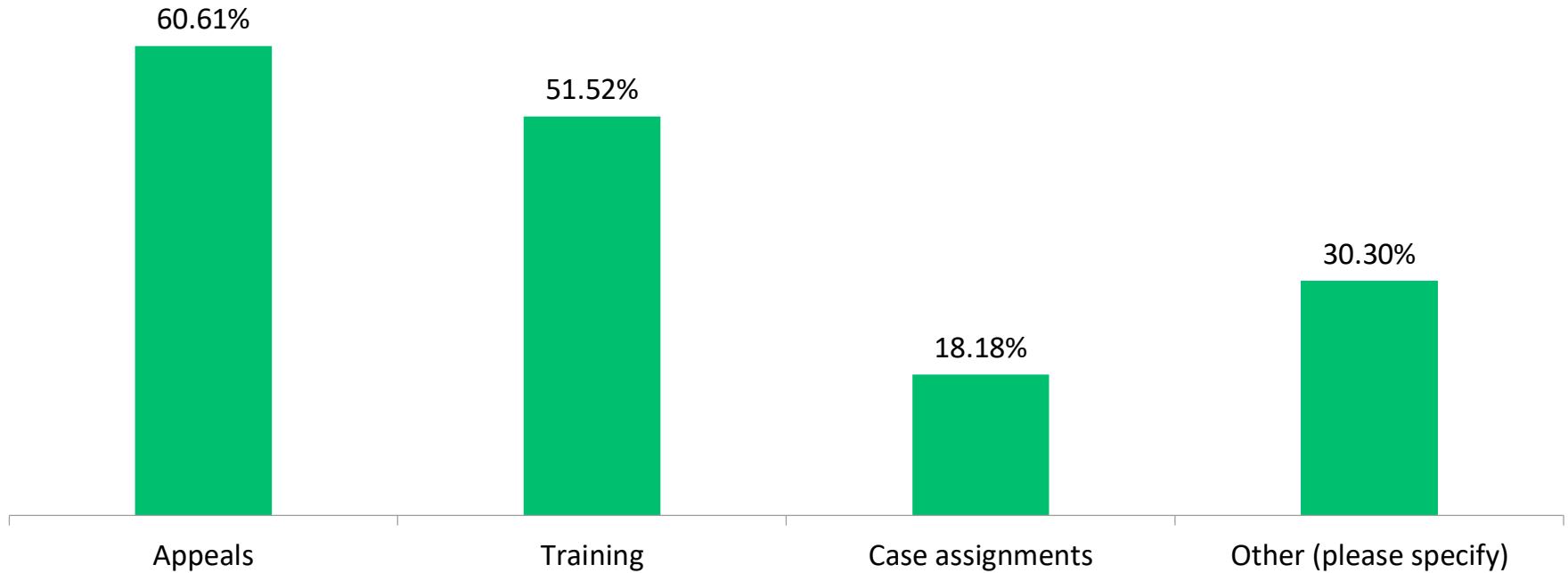
# How many hours of training do you complete per year that is related to your criminal defense practice?



**What is the average time that you (and your associates) travel to represent a court-appointed case (travel to court, crime scenes, client, view evidence, library, meet with witnesses)?**



# Could you benefit from centralized support for:

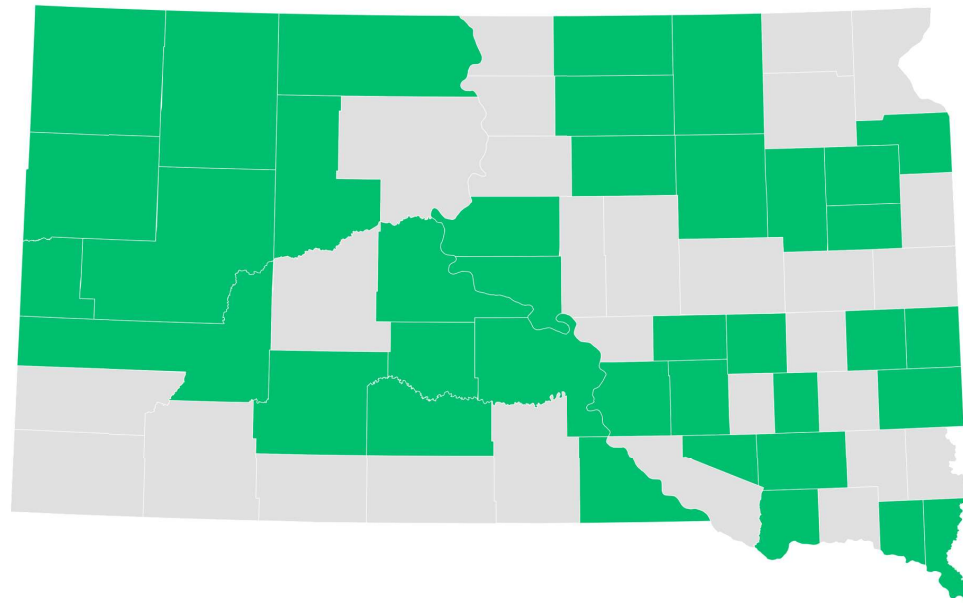




# County Administrator Survey Results

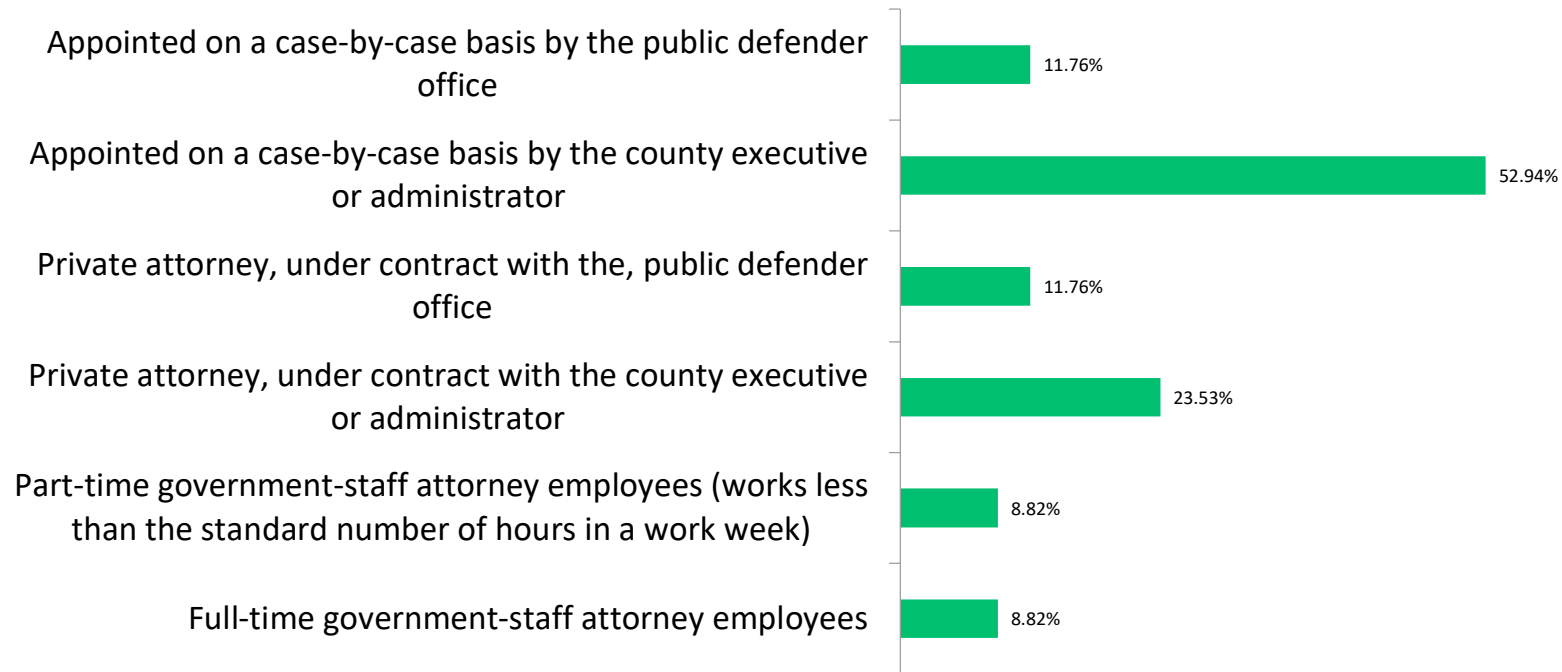
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# Which county do you work?



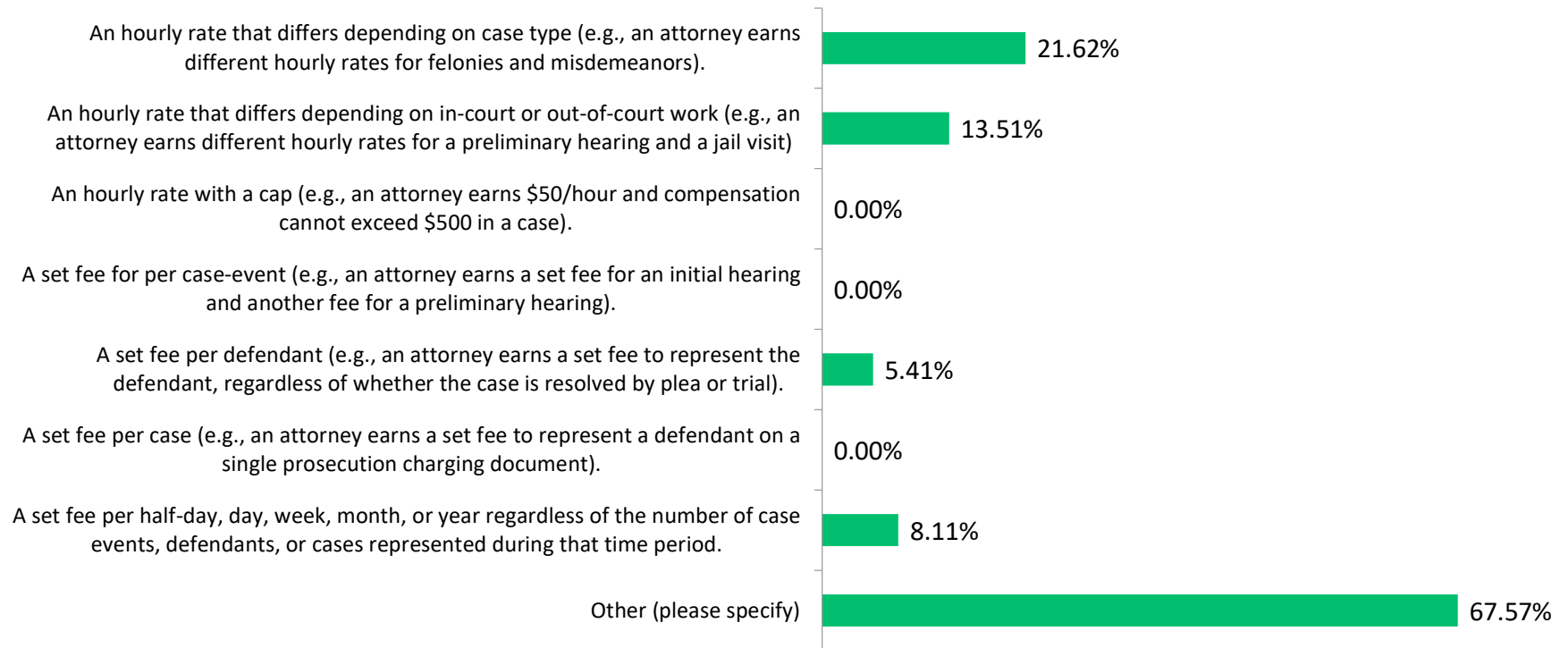
Powered by Bing  
© GeoNames, TomTom

# In fiscal year 2022, your county delivered indigent defense services using the following types of attorneys (please check all that apply):

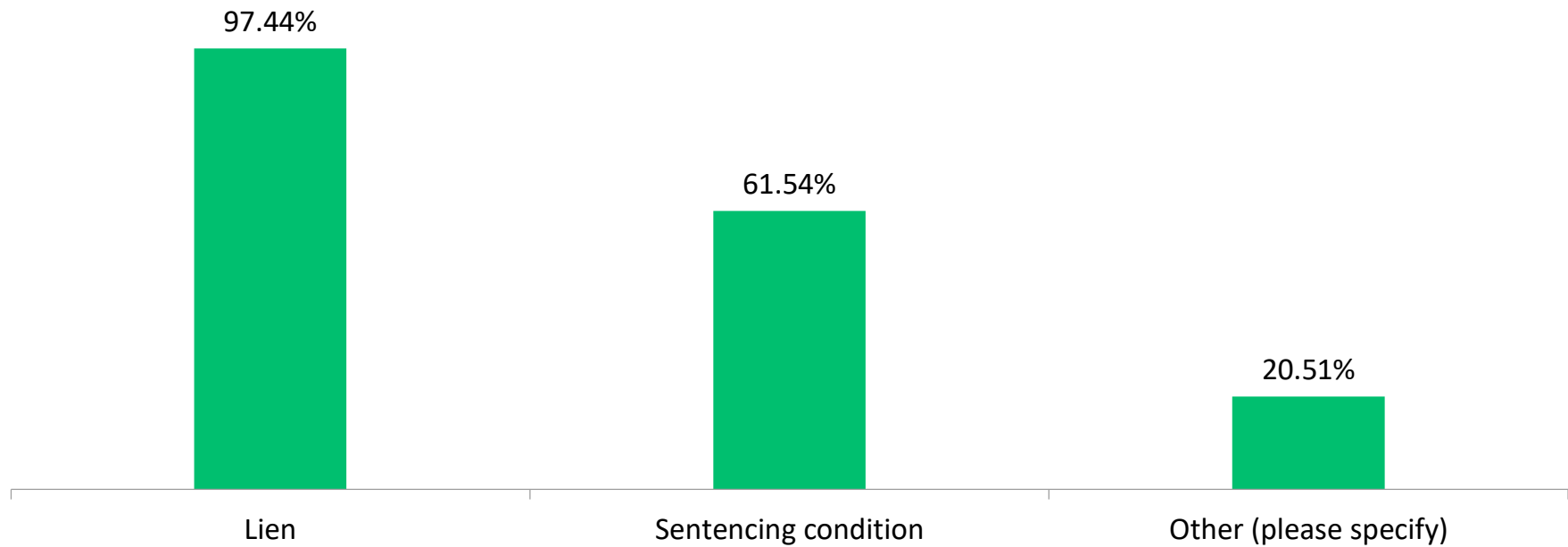




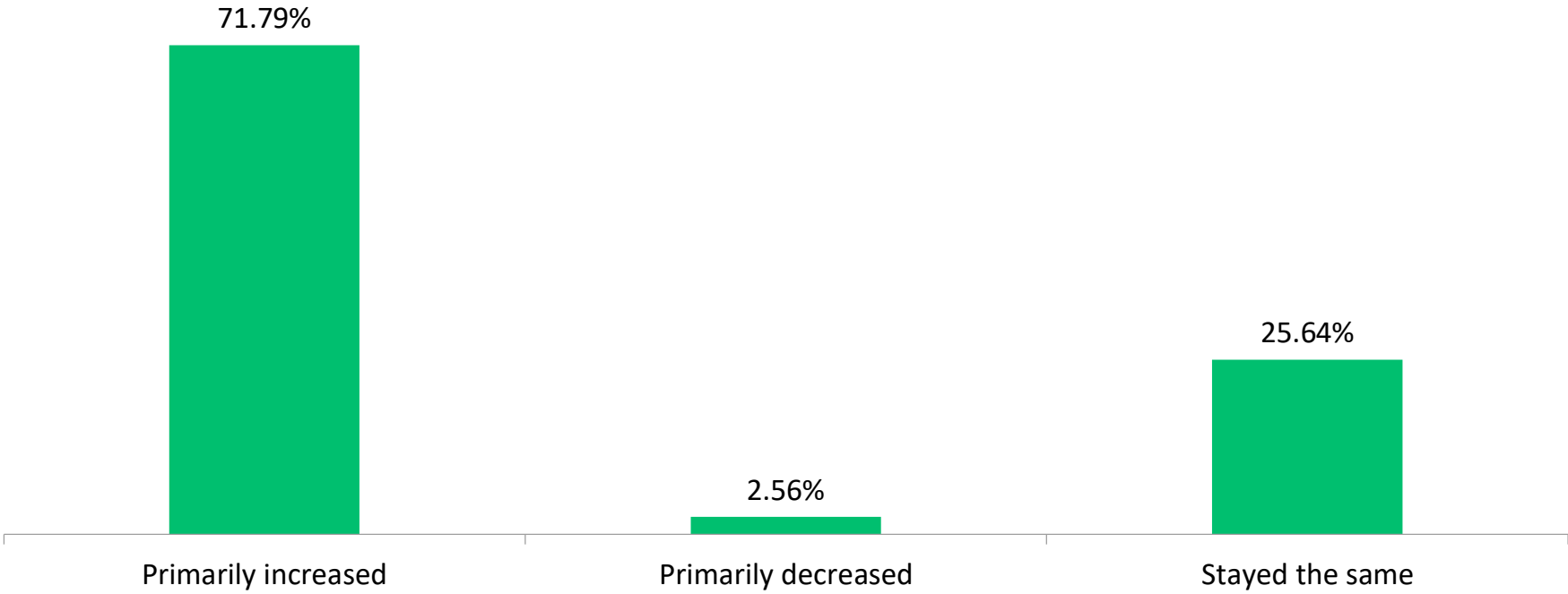
## In fiscal year 2022, private attorneys accepting court appointments in your county were paid in the following ways (please check all that apply):



## What efforts are taken to recover court-appointed attorney fees?



**Over the last five years, have indigent defense costs in your county:**

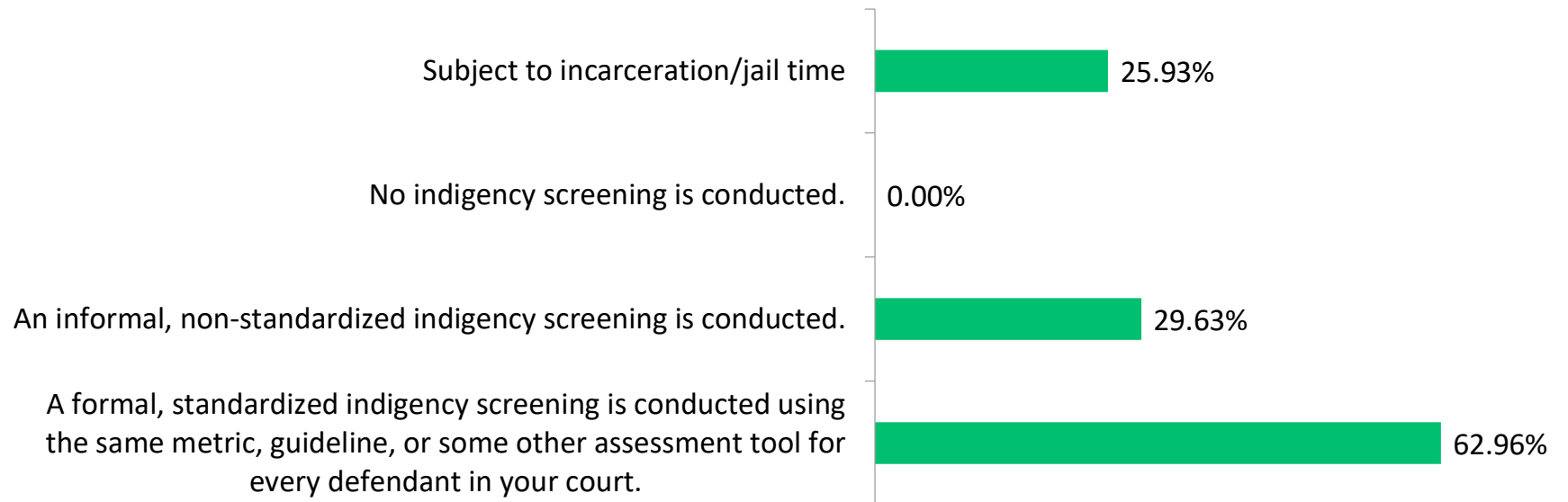




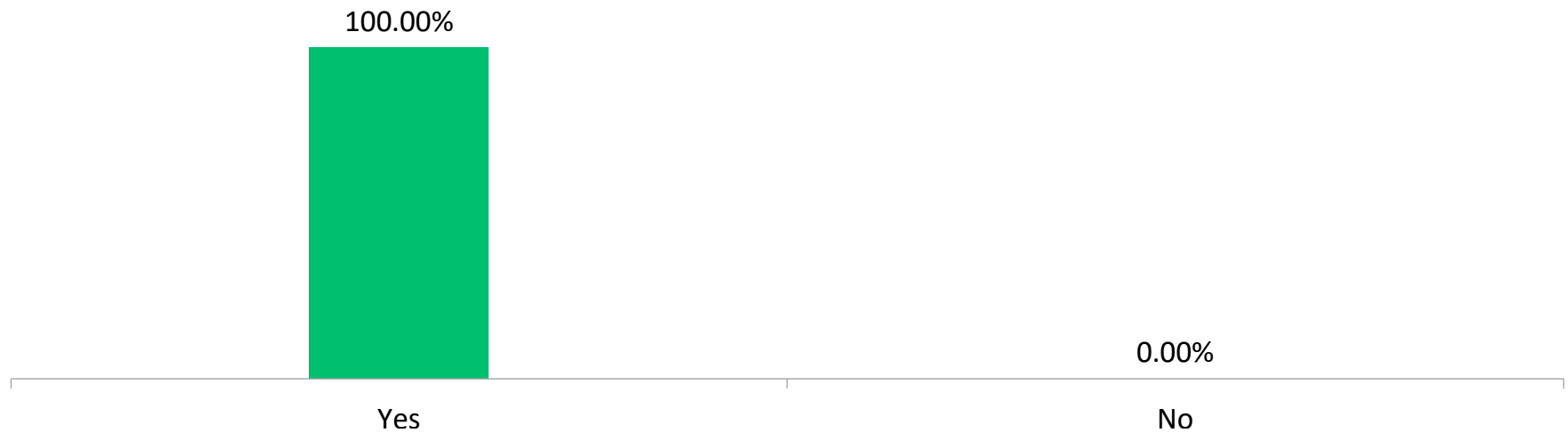
# Judges Survey Results

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# How does a defendant qualify for a court-appointed attorney in your case?



**A defendant must submit a written application to receive a court-appointed attorney:**

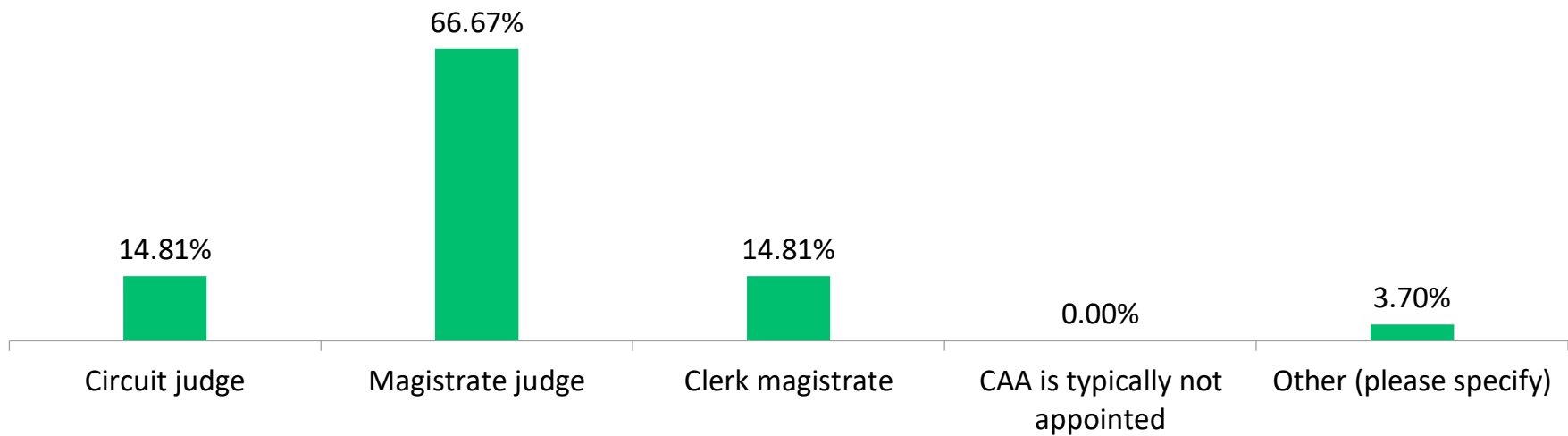


# A defendant must pay a fee upfront to receive a court-appointed attorney:

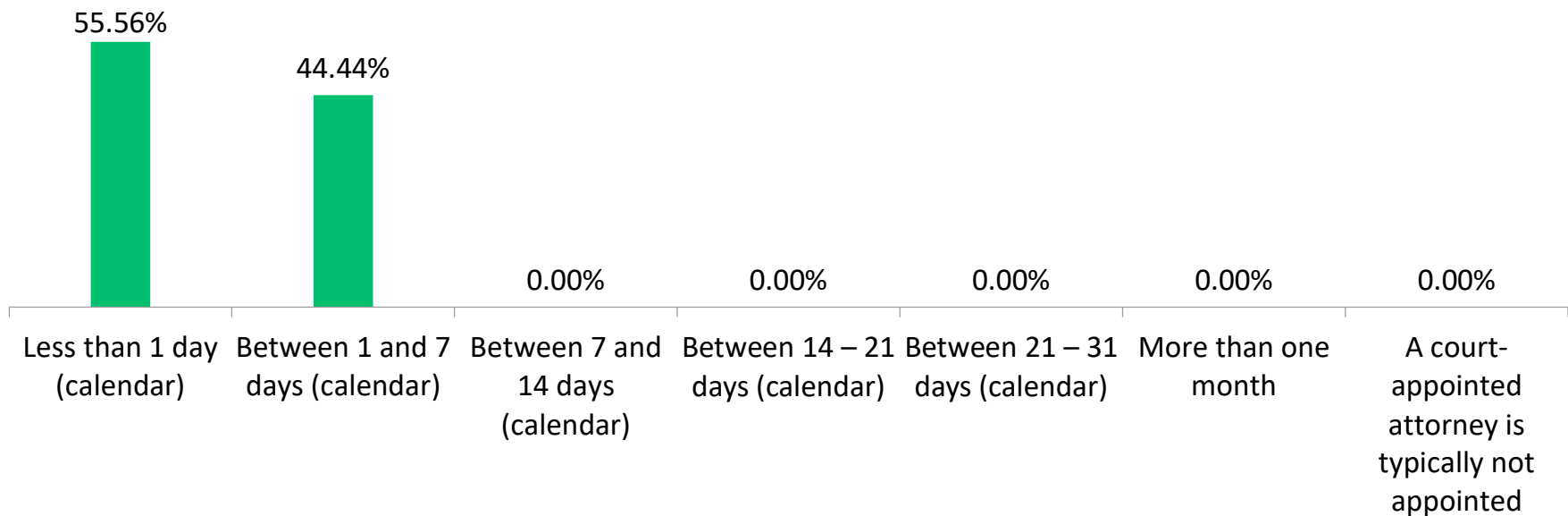




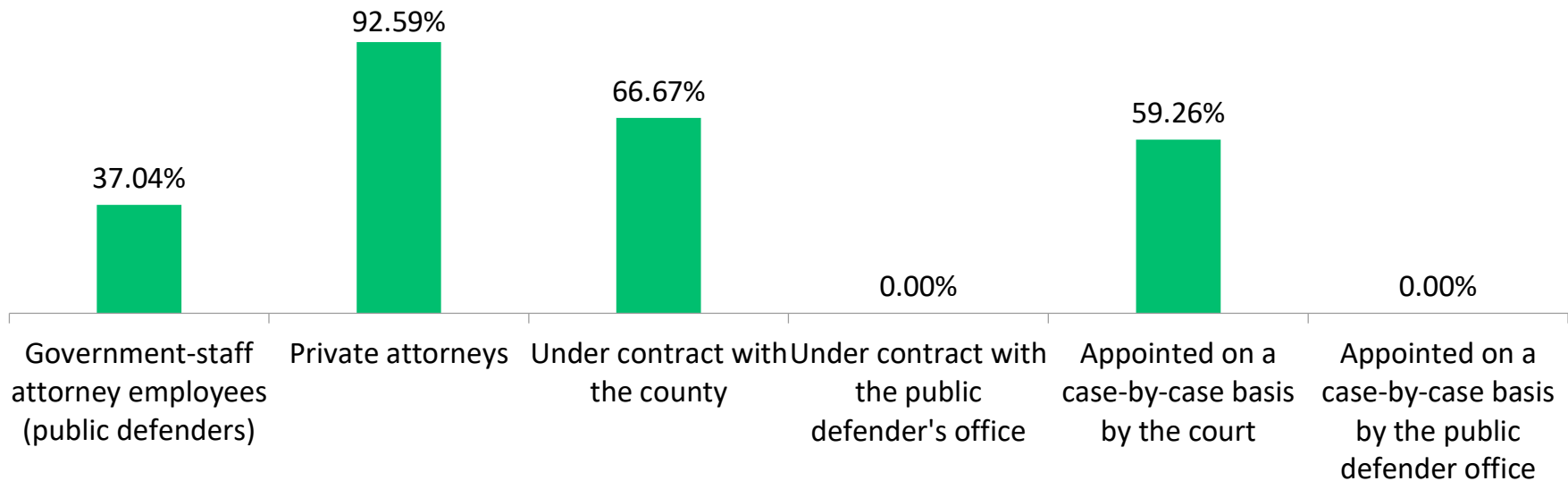
# Who typically appoints a court-appointed attorney in a felony case?



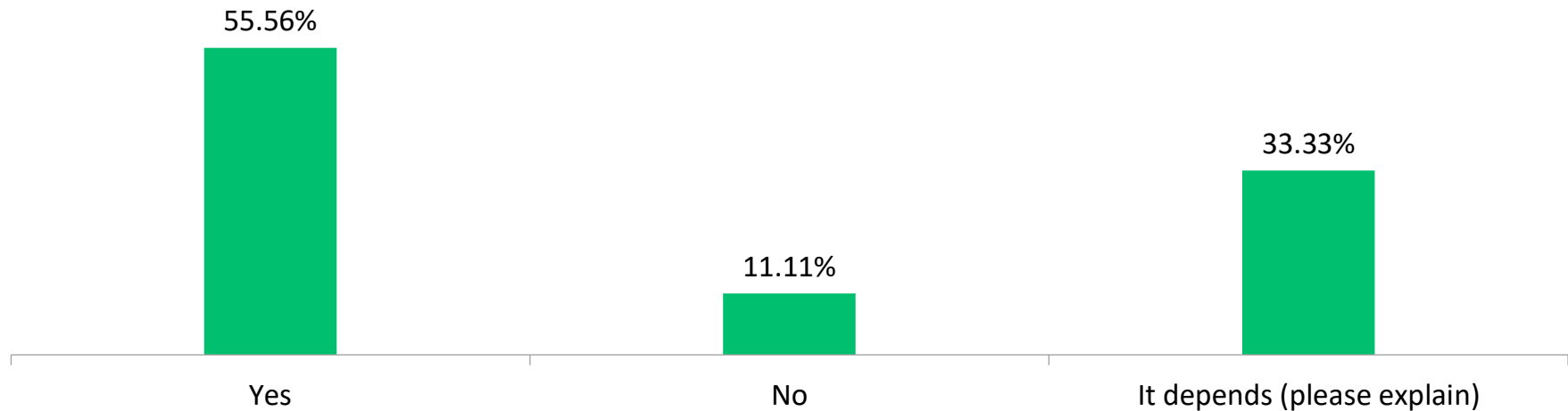
# A court-appointed attorney is typically appointed within days after the first court appearance before a judicial official in a felony case:



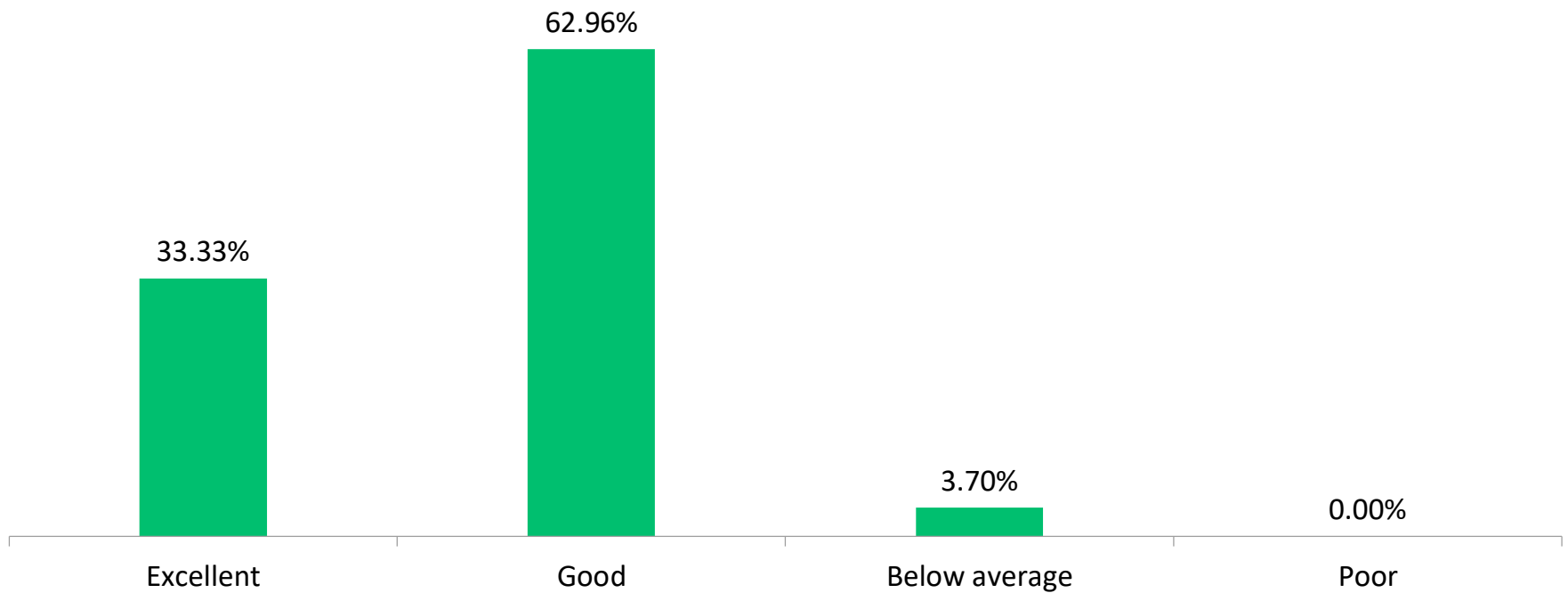
# The following type(s) of court-appointed attorneys provide indigent defense services in your court (please check all that apply):



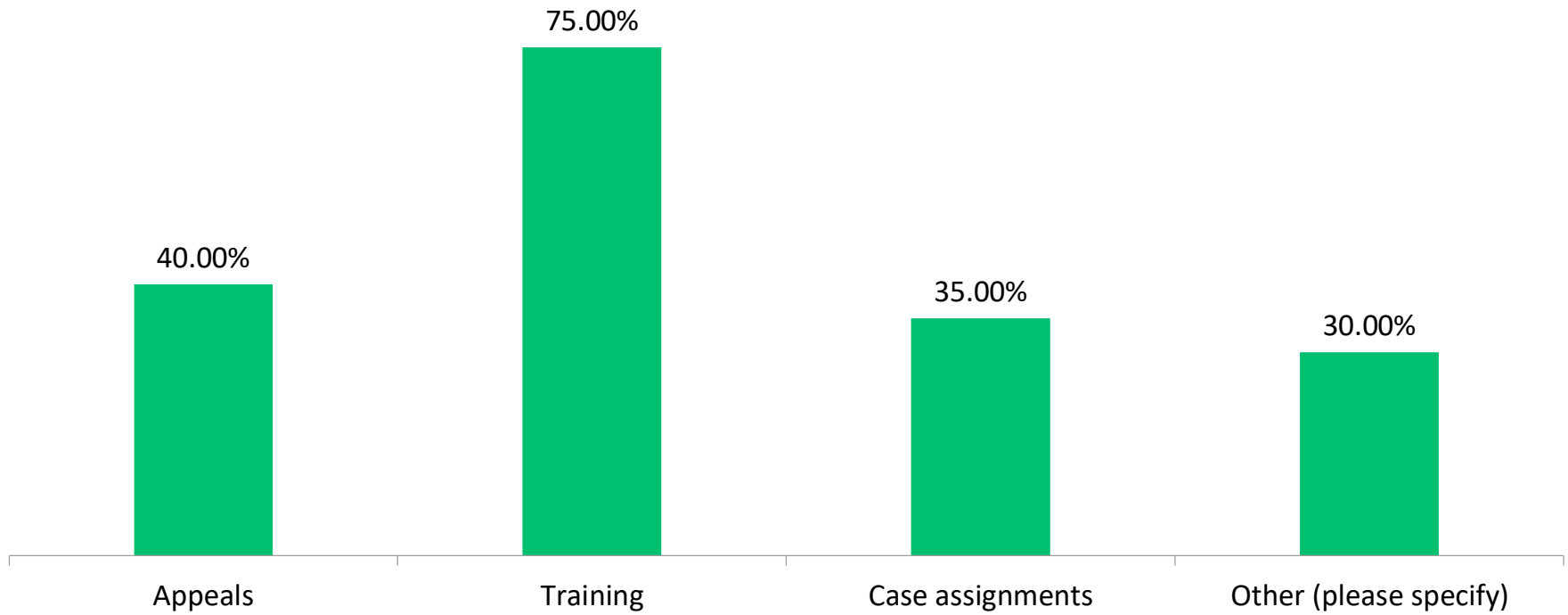
**If the court is made aware that a defendant has multiple cases currently occurring in different counties, is there an attempt to appoint the same attorney to represent all of the cases?**



# The overall quality of indigent defense in your circuit is:



## Could you benefit from centralized support for:





# Public Defender Survey Results

---

## Question 1: In which county do you work?

- Minnehaha: 20 responses
- Pennington: 5 responses
- Lawrence: 1 response



## Does your public defender's office contract with private attorneys to take court-appointed cases?

- Minnehaha: No
- Pennington: Yes, conflict and overflow cases
- Lawrence: No

## How many of the following professionals are on staff in your public defender's office?

	Minnehaha	Pennington	Lawrence
Investigators	0	1	0.5
Social Workers	0	2	0
Paralegals	6	2	0.5
Administrative Assistants	7	4	0
Receptionists	0	4	1
Interns	3-seasonal only	3	0

**What is the average time that your office travels to represent court-appointed cases each month (travel to court, crime scenes, client, view evidence, library, meet with witnesses)?**

- Minnehaha: Less than 20 hours
- Pennington: Less than 20 hours
- Lawrence: Less than 20 hours

## Could you benefit from centralized support for:

	Minnehaha	Pennington	Lawrence
Appeals	X	X	X
Training	X	X	X
Case Assignments	X		
Other (please specify)	X		

## **Appendix D:**

History of Court-Appointed Attorney and Abused  
and Neglected Reimbursement Fund and  
Expenditures by County

8000-2301011-3201

8000-2301111-3201

Abused & Neglected

County Name	CAA & PD Officer's Gross Expenditures Fiscal Year 2022		SDCL 23-A-40-20 Respective Allocation from CAA & PD Fund		Abused & Neglected Children Gross Expenditures Fiscal Year 2022		SDCL 26-8A-18 & 19 Respective Allocation from A & NCD Fund		Total Funds Allocated
		\$	\$	\$	\$	\$	\$		

Aurora	1	\$ 34,044.95	\$ 1,073.88	\$ -	\$ -	\$ 1,073.88
Beadle	2	\$ 134,557.02	\$ 4,244.30	\$ 24,056.53	\$ 1,745.65	\$ 5,989.95
Bennett	3	\$ 113,054.74	\$ 3,566.07	\$ 15,521.36	\$ 1,126.30	\$ 4,692.37
Bon Homme	4	\$ 81,615.85	\$ 2,574.40	\$ 3,487.28	\$ 253.05	\$ 2,827.45
Brookings	5	\$ 485,432.97	\$ 15,311.95	\$ 5,699.92	\$ 413.61	\$ 15,725.56
Brown	6	\$ 675,871.19	\$ 21,318.91	\$ 77.40	\$ 5.62	\$ 21,324.53
Brule	7	\$ 152,057.36	\$ 4,796.32	\$ 26,118.47	\$ 1,895.27	\$ 6,691.59
Buffalo	8	\$ 12,813.21	\$ 404.17	\$ -	\$ -	\$ 404.17
Butte	9	\$ 206,926.81	\$ 6,527.06	\$ 8,264.20	\$ 599.69	\$ 7,126.75
Campbell	10	\$ 11,100.76	\$ 350.15	\$ 982.50	\$ 71.29	\$ 421.44
Charles Mix	11	\$ 279,035.23	\$ 8,801.57	\$ 33,262.00	\$ 2,413.64	\$ 11,215.21
Clark	12	\$ 21,883.18	\$ 690.26	\$ -	\$ -	\$ 690.26
Clay	13	\$ 222,777.44	\$ 7,027.04	\$ 17,406.62	\$ 1,263.10	\$ 8,290.14
Codington	14	\$ 496,218.62	\$ 15,652.16	\$ -	\$ -	\$ 15,652.16
Corson	15	\$ 56,061.57	\$ 1,768.34	\$ 845.85	\$ 61.38	\$ 1,829.72
Custer	16	\$ 87,349.37	\$ 2,755.25	\$ 5,969.26	\$ 433.16	\$ 3,188.41
Davison	17	\$ 544,453.06	\$ 17,173.61	\$ 17,992.52	\$ 1,305.61	\$ 18,479.22
Day	18	\$ 76,418.86	\$ 2,410.47	\$ -	\$ -	\$ 2,410.47
Deuel	19	\$ 26,395.74	\$ 832.60	\$ -	\$ -	\$ 832.60
Dewey	20	\$ 8,886.26	\$ 280.30	\$ -	\$ -	\$ 280.30
Douglas	21	\$ 9,531.87	\$ 300.66	\$ -	\$ -	\$ 300.66
Edmunds	22	\$ 11,843.00	\$ 373.56	\$ -	\$ -	\$ 373.56
Fall River	23	\$ 209,366.82	\$ 6,604.03	\$ 27,975.95	\$ 2,030.06	\$ 8,634.09
Faulk	24	\$ 3,471.80	\$ 109.51	\$ -	\$ -	\$ 109.51
Grant	25	\$ 53,105.85	\$ 1,675.11	\$ 8,040.50	\$ 583.45	\$ 2,258.56
Gregory	26	\$ 51,973.92	\$ 1,639.41	\$ -	\$ -	\$ 1,639.41
Haakon	27	\$ 12,425.24	\$ 391.93	\$ 801.55	\$ 58.16	\$ 450.09
Hamlin	28	\$ 39,789.39	\$ 1,255.07	\$ -	\$ -	\$ 1,255.07
Hand	29	\$ 31,445.85	\$ 991.89	\$ 1,958.40	\$ 142.11	\$ 1,134.00
Hanson	30	\$ 52,847.24	\$ 1,666.95	\$ -	\$ -	\$ 1,666.95
Harding	31	\$ 2,989.68	\$ 94.30	\$ -	\$ -	\$ 94.30
Hughes	32	\$ 763,392.46	\$ 24,079.59	\$ 1,915.95	\$ 139.03	\$ 24,218.62
Hutchinson	33	\$ 29,871.75	\$ 942.24	\$ -	\$ -	\$ 942.24
Hyde	34	\$ 2,346.74	\$ 74.02	\$ -	\$ -	\$ 74.02
Jackson	35	\$ 37,203.75	\$ 1,173.51	\$ 1,685.85	\$ 122.33	\$ 1,295.84
Jerauld	36	\$ 16,419.90	\$ 517.93	\$ -	\$ -	\$ 517.93
Jones	37	\$ 21,385.57	\$ 674.56	\$ 981.70	\$ 71.24	\$ 745.80
Kingsbury	38	\$ 40,278.73	\$ 1,270.51	\$ -	\$ -	\$ 1,270.51
Lake	39	\$ 183,049.09	\$ 5,773.89	\$ 12,459.98	\$ 904.15	\$ 6,678.04
Lawrence	40	\$ 522,268.79	\$ 16,473.85	\$ 30,297.27	\$ 2,198.50	\$ 18,672.35
Lincoln	41	\$ 1,225,809.85	\$ 38,665.56	\$ 60,249.46	\$ 4,371.96	\$ 43,037.52
Lyman	42	\$ 75,206.91	\$ 2,372.24	\$ -	\$ -	\$ 2,372.24
Marshall	43	\$ 52,764.18	\$ 1,664.33	\$ -	\$ -	\$ 1,664.33
McCook	44	\$ 46,549.40	\$ 1,468.30	\$ -	\$ -	\$ 1,468.30
McPherson	45	\$ 11,029.98	\$ 347.92	\$ -	\$ -	\$ 347.92
Meade	46	\$ 462,244.28	\$ 14,580.51	\$ 21,598.79	\$ 1,567.30	\$ 16,147.81
Mellette	47	\$ 44,912.10	\$ 1,416.66	\$ 16,699.55	\$ 1,211.79	\$ 2,628.45
Miner	48	\$ 18,994.94	\$ 599.15	\$ 17,347.16	\$ 1,258.79	\$ 1,857.94
Minnehaha	49	\$ 6,343,802.36	\$ 200,101.71	\$ 395,964.14	\$ 28,732.87	\$ 228,834.58
Moody	50	\$ 162,934.24	\$ 5,139.41	\$ 9,890.76	\$ 717.72	\$ 5,857.13
Oglala Lakota	51	\$ 1,653.27	\$ 52.15	\$ -	\$ -	\$ 52.15
Pennington	52	\$ 4,470,784.40	\$ 141,021.35	\$ 416,553.22	\$ 30,226.91	\$ 171,248.26
Perkins	53	\$ 18,535.61	\$ 584.67	\$ 2,930.71	\$ 212.67	\$ 797.34
Potter	54	\$ 23,249.87	\$ 733.37	\$ -	\$ -	\$ 733.37
Roberts	55	\$ 202,896.52	\$ 6,399.94	\$ -	\$ -	\$ 6,399.94
Sanborn	56	\$ 25,364.79	\$ 800.08	\$ 425.70	\$ 30.89	\$ 830.97
Spink	57	\$ 73,224.43	\$ 2,309.71	\$ 505.30	\$ 36.67	\$ 2,346.38
Stanley	58	\$ 102,117.61	\$ 3,221.08	\$ -	\$ -	\$ 3,221.08
Sully	59	\$ 16,837.26	\$ 531.10	\$ -	\$ -	\$ 531.10
Todd	60	\$ 10,990.93	\$ 346.69	\$ -	\$ -	\$ 346.69
Tripp	61	\$ 58,570.10	\$ 1,847.47	\$ -	\$ -	\$ 1,847.47
Turner	62	\$ 88,878.92	\$ 2,803.50	\$ -	\$ -	\$ 2,803.50
Union	63	\$ 250,648.73	\$ 7,906.18	\$ -	\$ -	\$ 7,906.18
Walworth	64	\$ 176,612.08	\$ 5,570.85	\$ 50,684.93	\$ 3,677.92	\$ 9,248.77
Yankton	65	\$ 431,225.04	\$ 13,602.07	\$ 7,171.10	\$ 520.37	\$ 14,122.44
Ziebach	66	\$ 440.50	\$ 13.89	\$ 1,633.25	\$ 118.52	\$ 132.41
<b>TOTALS: 66</b>		<b>\$ 20,218,239.93</b>	<b>\$ 637,741.23</b>	<b>\$ 1,247,455.13</b>	<b>\$ 90,520.78</b>	<b>\$ 728,262.01</b>

Abused & Neglected

County Name		CAA & PD Officer's	SDCL 23-A-40-2c	Abused & Neglected	SDCL 26-8A-18 & 19	Total Funds
		Gross Expenditures	Respective Allocation	Children Gross	Respective Allocation	
		Fiscal Year 2021	from CAA & PD Fund	Expenditures	from A & NCD Fund	Allocated
				Fiscal Year 2021		
Aurora	1	\$ 27,831.90	\$ 694.38	\$ -	\$ -	\$ 694.38
Beadle	2	\$ 212,000.00	\$ 5,289.22	\$ -	\$ -	\$ 5,289.22
Bennett	3	\$ 112,987.66	\$ 2,818.95	\$ 30,995.15	\$ 1,904.18	\$ 4,723.13
Bon Homme	4	\$ 47,899.87	\$ 1,195.06	\$ 7,874.55	\$ 483.77	\$ 1,678.83
Brookings	5	\$ 431,802.57	\$ 10,773.12	\$ 7,615.53	\$ 467.86	\$ 11,240.98
Brown	6	\$ 792,658.54	\$ 19,776.17	\$ 33,837.10	\$ 2,078.77	\$ 21,854.94
Brule	7	\$ 127,238.53	\$ 3,174.50	\$ 20,896.45	\$ 1,283.77	\$ 4,458.27
Buffalo	8	\$ 3,243.65	\$ 80.93	\$ -	\$ -	\$ 80.93
Butte	9	\$ 226,716.20	\$ 5,656.38	\$ 34,363.94	\$ 2,111.14	\$ 7,767.52
Campbell	10	\$ 5,032.86	\$ 125.57	\$ 2,460.75	\$ 151.18	\$ 276.75
Charles Mix	11	\$ 223,607.03	\$ 5,578.81	\$ 32,557.45	\$ 2,000.16	\$ 7,578.97
Clark	12	\$ 16,411.05	\$ 409.44	\$ -	\$ -	\$ 409.44
Clay	13	\$ 165,334.28	\$ 4,124.95	\$ 26,923.80	\$ 1,654.06	\$ 5,779.01
Codington	14	\$ 445,118.32	\$ 11,105.33	\$ -	\$ -	\$ 11,105.33
Corson	15	\$ 67,130.77	\$ 1,674.86	\$ 1,133.06	\$ 69.61	\$ 1,744.47
Custer	16	\$ 102,895.31	\$ 2,567.15	\$ 4,945.15	\$ 303.80	\$ 2,870.95
Davison	17	\$ 467,572.51	\$ 11,665.55	\$ 33,392.52	\$ 2,051.46	\$ 13,717.01
Day	18	\$ 106,370.11	\$ 2,653.85	\$ -	\$ -	\$ 2,653.85
Deuel	19	\$ 13,267.20	\$ 331.01	\$ -	\$ -	\$ 331.01
Dewey	20	\$ 6,037.36	\$ 150.63	\$ -	\$ -	\$ 150.63
Douglas	21	\$ 5,410.80	\$ 134.99	\$ -	\$ -	\$ 134.99
Edmunds	22	\$ 18,181.29	\$ 453.61	\$ -	\$ -	\$ 453.61
Fall River	23	\$ 240,510.77	\$ 6,000.54	\$ 26,045.18	\$ 1,600.08	\$ 7,600.62
Faulk	24	\$ 14,472.16	\$ 361.07	\$ -	\$ -	\$ 361.07
Grant	25	\$ 54,346.74	\$ 1,355.91	\$ 289.93	\$ 17.81	\$ 1,373.72
Gregory	26	\$ 53,607.31	\$ 1,337.46	\$ 2,563.75	\$ 157.50	\$ 1,494.96
Haakon	27	\$ 20,330.95	\$ 507.24	\$ 12,547.70	\$ 770.86	\$ 1,278.10
Hamlin	28	\$ 20,979.79	\$ 523.43	\$ -	\$ -	\$ 523.43
Hand	29	\$ 36,166.98	\$ 902.34	\$ 2,088.41	\$ 128.30	\$ 1,030.64
Hanson	30	\$ 49,073.70	\$ 1,224.35	\$ -	\$ -	\$ 1,224.35
Harding	31	\$ 8,036.40	\$ 200.50	\$ -	\$ -	\$ 200.50
Hughes	32	\$ 661,770.19	\$ 16,510.62	\$ 26,127.84	\$ 1,605.16	\$ 18,115.78
Hutchinson	33	\$ 31,353.42	\$ 782.24	\$ -	\$ -	\$ 782.24
Hyde	34	\$ 955.20	\$ 23.83	\$ -	\$ -	\$ 23.83
Jackson	35	\$ 22,061.34	\$ 550.41	\$ 3,916.65	\$ 240.62	\$ 791.03
Jerauld	36	\$ 17,552.85	\$ 437.93	\$ -	\$ -	\$ 437.93
Jones	37	\$ 32,674.57	\$ 815.20	\$ -	\$ -	\$ 815.20
Kingsbury	38	\$ 17,771.52	\$ 443.38	\$ -	\$ -	\$ 443.38
Lake	39	\$ 237,017.24	\$ 5,913.38	\$ 17,828.72	\$ 1,095.30	\$ 7,008.68
Lawrence	40	\$ 456,859.96	\$ 11,398.28	\$ 42,012.08	\$ 2,581.00	\$ 13,979.28
Lincoln	41	\$ 1,091,614.85	\$ 27,234.89	\$ 79,729.69	\$ 4,898.17	\$ 32,133.06
Lyman	42	\$ 79,286.02	\$ 1,978.12	\$ -	\$ -	\$ 1,978.12
Marshall	43	\$ 43,762.17	\$ 1,091.83	\$ -	\$ -	\$ 1,091.83
McCook	44	\$ 19,430.92	\$ 484.79	\$ -	\$ -	\$ 484.79
McPherson	45	\$ 23,488.43	\$ 586.02	\$ -	\$ -	\$ 586.02
Meade	46	\$ 381,152.48	\$ 9,509.44	\$ 24,997.77	\$ 1,535.73	\$ 11,045.17
Mellette	47	\$ 43,333.90	\$ 1,081.14	\$ -	\$ -	\$ 1,081.14
Miner	48	\$ 10,418.40	\$ 259.93	\$ -	\$ -	\$ 259.93
Minnehaha	49	\$ 5,550,191.87	\$ 138,472.69	\$ 308,244.96	\$ 18,936.95	\$ 157,409.64
Moody	50	\$ 141,822.96	\$ 3,538.37	\$ 6,569.04	\$ 403.57	\$ 3,941.94
Oglala Lakota	51	\$ 4,396.71	\$ 109.69	\$ -	\$ -	\$ 109.69
Pennington	52	\$ 4,263,060.94	\$ 106,359.84	\$ 503,328.38	\$ 30,921.86	\$ 137,281.70
Perkins	53	\$ 15,433.13	\$ 385.04	\$ 2,039.60	\$ 125.30	\$ 510.34
Potter	54	\$ 13,316.78	\$ 332.24	\$ 199.32	\$ 12.25	\$ 344.49
Roberts	55	\$ 210,026.83	\$ 5,240.00	\$ -	\$ -	\$ 5,240.00
Sanborn	56	\$ 26,223.65	\$ 654.26	\$ -	\$ -	\$ 654.26
Spink	57	\$ 49,582.80	\$ 1,237.05	\$ -	\$ -	\$ 1,237.05
Stanley	58	\$ 81,465.73	\$ 2,032.50	\$ -	\$ -	\$ 2,032.50
Sully	59	\$ 6,639.75	\$ 165.66	\$ -	\$ -	\$ 165.66
Todd	60	\$ 9,355.10	\$ 233.40	\$ -	\$ -	\$ 233.40
Tripp	61	\$ 107,509.02	\$ 2,682.26	\$ 11,115.95	\$ 682.91	\$ 3,365.17
Turner	62	\$ 105,558.35	\$ 2,633.59	\$ -	\$ -	\$ 2,633.59
Union	63	\$ 193,420.90	\$ 4,825.69	\$ -	\$ -	\$ 4,825.69
Walworth	64	\$ 128,624.89	\$ 3,209.08	\$ 34,519.16	\$ 2,120.68	\$ 5,329.76
Yankton	65	\$ 286,719.92	\$ 7,153.42	\$ 23,567.25	\$ 1,447.85	\$ 8,601.27
Ziebach	66	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TOTALS: 66</b>		\$ 18,486,125.40	\$ 461,213.51	\$ 1,364,726.83	\$ 83,841.66	\$ 545,055.17

12/18/2020

County Name		CAA & PD Officer's Gross Expenditures Fiscal Year 2020	SDCL 23-A-40-20 Respective Allocation from CAA & PD Fund	Abused & Neglected Children Gross Expenditures Fiscal Year 2020	SDCL 26-8A-18 & 19 Respective Allocation from A & NCD Fund	Total Funds Allocated
Aurora	1	\$ 17,597.97	\$ 524.46	\$ -	\$ -	\$ 524.46
Beadle	2	\$ 212,000.00	\$ 6,318.03	\$ -	\$ -	\$ 6,318.03
Bennett	3	\$ 110,568.65	\$ 3,295.17	\$ 14,670.40	\$ 791.75	\$ 4,086.92
Bon Homme	4	\$ 60,633.17	\$ 1,806.99	\$ 13,935.54	\$ 752.09	\$ 2,559.08
Brookings	5	\$ 629,600.72	\$ 18,763.39	\$ 12,582.98	\$ 679.10	\$ 19,442.49
Brown	6	\$ 767,197.09	\$ 22,864.04	\$ 45,680.00	\$ 2,465.32	\$ 25,329.36
Brule	7	\$ 155,748.27	\$ 4,641.62	\$ 27,221.69	\$ 1,469.14	\$ 6,110.76
Buffalo	8	\$ 6,236.79	\$ 185.87	\$ -	\$ -	\$ 185.87
Butte	9	\$ 206,648.63	\$ 6,158.55	\$ 24,437.80	\$ 1,318.89	\$ 7,477.44
Campbell	10	\$ 7,174.10	\$ 213.80	\$ 2,240.20	\$ 120.90	\$ 334.70
Charles Mix	11	\$ 229,511.90	\$ 6,839.92	\$ 48,273.36	\$ 2,605.28	\$ 9,445.20
Clark	12	\$ 11,253.30	\$ 335.37	\$ -	\$ -	\$ 335.37
Clay	13	\$ 176,461.08	\$ 5,258.90	\$ 12,029.48	\$ 649.22	\$ 5,908.12
Codington	14	\$ 471,492.97	\$ 14,051.45	\$ -	\$ -	\$ 14,051.45
Corson	15	\$ 34,022.55	\$ 1,013.94	\$ 9,778.74	\$ 527.75	\$ 1,541.69
Custer	16	\$ 85,992.39	\$ 2,562.75	\$ 3,720.90	\$ 200.81	\$ 2,763.56
Davison	17	\$ 516,775.62	\$ 15,400.97	\$ 51,376.76	\$ 2,772.77	\$ 18,173.74
Day	18	\$ 2,303.75	\$ 68.66	\$ -	\$ -	\$ 68.66
Deuel	19	\$ 21,797.27	\$ 649.60	\$ 35.24	\$ 1.90	\$ 651.50
Dewey	20	\$ 602.00	\$ 17.94	\$ -	\$ -	\$ 17.94
Douglas	21	\$ 15,391.45	\$ 458.70	\$ -	\$ -	\$ 458.70
Edmunds	22	\$ 16,701.45	\$ 497.74	\$ -	\$ -	\$ 497.74
Fall River	23	\$ 222,289.52	\$ 6,624.68	\$ 51,716.61	\$ 2,791.11	\$ 9,415.79
Faulk	24	\$ 6,216.75	\$ 185.27	\$ -	\$ -	\$ 185.27
Grant	25	\$ 62,551.25	\$ 1,864.15	\$ 23.23	\$ 1.25	\$ 1,865.40
Gregory	26	\$ 91,309.21	\$ 2,721.20	\$ 1,602.00	\$ 86.46	\$ 2,807.66
Haakon	27	\$ 12,444.21	\$ 370.86	\$ 8,228.98	\$ 444.11	\$ 814.97
Hamlin	28	\$ 17,630.02	\$ 525.41	\$ -	\$ -	\$ 525.41
Hand	29	\$ 17,059.28	\$ 508.40	\$ 420.00	\$ 22.67	\$ 531.07
Hanson	30	\$ 37,462.06	\$ 1,116.45	\$ -	\$ -	\$ 1,116.45
Harding	31	\$ 1,198.60	\$ 35.72	\$ -	\$ -	\$ 35.72
Hughes	32	\$ 510,350.10	\$ 15,209.47	\$ 1,545.80	\$ 83.43	\$ 15,292.90
Hutchinson	33	\$ 36,575.34	\$ 1,090.02	\$ -	\$ -	\$ 1,090.02
Hyde	34	\$ 3,155.35	\$ 94.04	\$ -	\$ -	\$ 94.04
Jackson	35	\$ 22,937.75	\$ 683.59	\$ 2,686.70	\$ 145.00	\$ 828.59
Jerauld	36	\$ 9,640.42	\$ 287.30	\$ 1,682.15	\$ 90.78	\$ 378.08
Jones	37	\$ 34,373.35	\$ 1,024.40	\$ -	\$ -	\$ 1,024.40
Kingsbury	38	\$ 36,072.58	\$ 1,075.04	\$ 1,132.59	\$ 61.13	\$ 1,136.17
Lake	39	\$ 196,490.83	\$ 5,855.83	\$ 13,471.66	\$ 727.06	\$ 6,582.89
Lawrence	40	\$ 441,552.08	\$ 13,159.15	\$ 25,918.55	\$ 1,398.81	\$ 14,557.96
Lincoln	41	\$ 870,072.88	\$ 25,929.95	\$ 53,857.55	\$ 2,906.66	\$ 28,836.61
Lyman	42	\$ 79,444.76	\$ 2,367.62	\$ 539.25	\$ 29.10	\$ 2,396.72
Marshall	43	\$ 78,138.10	\$ 2,328.67	\$ -	\$ -	\$ 2,328.67
McCook	44	\$ 36,754.70	\$ 1,095.37	\$ 5,351.25	\$ 288.80	\$ 1,384.17
McPherson	45	\$ 21,593.22	\$ 643.52	\$ -	\$ -	\$ 643.52
Meade	46	\$ 539,335.04	\$ 16,073.28	\$ 45,722.21	\$ 2,467.60	\$ 18,540.88
Mellette	47	\$ 66,033.18	\$ 1,967.92	\$ -	\$ -	\$ 1,967.92
Miner	48	\$ 17,071.49	\$ 508.77	\$ -	\$ -	\$ 508.77
Minnehaha	49	\$ 5,386,044.29	\$ 160,515.11	\$ 427,957.60	\$ 23,096.61	\$ 183,611.72
Moody	50	\$ 147,405.45	\$ 4,392.98	\$ 7,278.96	\$ 392.84	\$ 4,785.82
Oglala Lakota	51	\$ 2,987.74	\$ 89.04	\$ -	\$ -	\$ 89.04
Pennington	52	\$ 4,291,248.68	\$ 127,887.96	\$ 525,424.83	\$ 28,356.86	\$ 156,244.82
Perkins	53	\$ 16,520.17	\$ 492.33	\$ 6,783.55	\$ 366.10	\$ 858.43
Potter	54	\$ 3,106.20	\$ 92.57	\$ -	\$ -	\$ 92.57
Roberts	55	\$ 181,716.07	\$ 5,415.51	\$ -	\$ -	\$ 5,415.51
Sanborn	56	\$ 13,398.83	\$ 399.31	\$ -	\$ -	\$ 399.31
Spink	57	\$ 87,641.87	\$ 2,611.91	\$ 849.60	\$ 45.85	\$ 2,657.76
Stanley	58	\$ 67,506.66	\$ 2,011.84	\$ -	\$ -	\$ 2,011.84
Stoll	59	\$ 25,410.46	\$ 757.28	\$ -	\$ -	\$ 757.28
Todd	60	\$ 8,522.15	\$ 253.98	\$ -	\$ -	\$ 253.98
Tripp	61	\$ 100,642.08	\$ 2,999.34	\$ 18,387.85	\$ 992.38	\$ 3,991.72
Turner	62	\$ 86,474.45	\$ 2,577.11	\$ -	\$ -	\$ 2,577.11
Union	63	\$ 200,478.35	\$ 5,974.66	\$ -	\$ -	\$ 5,974.66
Walworth	64	\$ 140,046.15	\$ 4,173.66	\$ 29,541.32	\$ 1,594.33	\$ 5,767.99
Yankton	65	\$ 340,896.03	\$ 10,159.40	\$ 61,775.43	\$ 3,333.99	\$ 13,493.39
Ziebach	66	\$ 2,043.20	\$ 60.90	\$ -	\$ -	\$ 60.90
<b>TOTALS: 66</b>		<b>\$ 18,325,552.02</b>	<b>\$ 546,138.83</b>	<b>\$ 1,557,880.76</b>	<b>\$ 84,077.85</b>	<b>\$ 630,216.68</b>
			<b>\$ 546,138.83</b>		<b>\$ 84,077.85</b>	



<u>County Name</u>	<u>CAA &amp; PD Officer's Gross Expenditures Fiscal Year 2019</u>	<u>SDCL 23-A-40-20 Respective Allocation from CAA &amp; PD Fund</u>	<u>Abused &amp; Neglected Children Gross Expenditures Fiscal Year 2019</u>	<u>SDCL 26-8A-18 &amp; 19 Respective Allocation from A &amp; NCD Fund</u>	<u>Total Due</u>
Aurora	\$28,436.96	\$877.78	\$0.00	\$0.00	\$877.78
Beadle	\$130,695.00	\$4,034.24	\$11,813.49	\$597.90	\$4,632.14
Bennett	\$169,752.29	\$5,239.84	\$13,204.04	\$668.28	\$5,908.12
Bon Homme	\$119,785.66	\$3,697.50	\$3,816.20	\$193.15	\$3,890.65
Brookings	\$494,499.98	\$15,264.02	\$19,816.43	\$1,002.95	\$16,266.97
Brown	\$946,694.26	\$29,222.17	\$85,223.72	\$4,313.34	\$33,535.51
Brule	\$178,109.15	\$5,497.80	\$17,668.32	\$894.23	\$6,392.03
Buffalo	\$1,018.02	\$31.42	\$0.00	\$0.00	\$31.42
Butte	\$240,822.31	\$7,433.61	\$17,188.01	\$869.92	\$8,303.53
Campbell	\$949.10	\$29.30	\$5,579.25	\$282.38	\$311.68
Charles Mix	\$157,593.00	\$4,864.52	\$30,496.13	\$1,543.47	\$6,407.99
Clark	\$23,126.47	\$713.86	\$0.00	\$0.00	\$713.86
Clay	\$163,634.73	\$5,051.01	\$12,920.91	\$653.95	\$5,704.96
Codington	\$433,841.66	\$13,391.65	\$470.00	\$23.79	\$13,415.44
Corson	\$62,069.52	\$1,915.94	\$15,055.24	\$761.98	\$2,677.92
Custer	\$88,936.71	\$2,745.26	\$8,255.56	\$417.83	\$3,163.09
Davison	\$686,989.74	\$21,205.72	\$46,816.49	\$2,369.47	\$23,575.19
Day	\$224,843.32	\$6,940.37	\$2,448.50	\$123.92	\$7,064.29
Deuel	\$16,003.44	\$493.99	\$0.00	\$0.00	\$493.99
Dewey	\$10,753.44	\$331.93	\$0.00	\$0.00	\$331.93
Douglas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Edmunds	\$10,452.43	\$322.64	\$7,533.60	\$381.29	\$703.93
Fall River	\$263,186.80	\$8,123.94	\$33,035.11	\$1,671.97	\$9,795.91
Faulk	\$858.30	\$26.49	\$0.00	\$0.00	\$26.49
Grant	\$63,363.93	\$1,955.89	\$2,654.14	\$134.33	\$2,090.22
Gregory	\$126,456.94	\$3,903.42	\$0.00	\$0.00	\$3,903.42
Haakon	\$39,660.08	\$1,224.21	\$12,412.65	\$628.23	\$1,852.44
Hamlin	\$40,534.56	\$1,251.20	\$0.00	\$0.00	\$1,251.20
Hand	\$22,156.70	\$683.92	\$329.00	\$16.65	\$700.57
Hanson	\$29,547.07	\$912.05	\$0.00	\$0.00	\$912.05
Harding	\$7,696.92	\$237.59	\$0.00	\$0.00	\$237.59
Hughes	\$220,723.53	\$6,813.20	\$3,470.85	\$175.67	\$6,988.87
Hutchinson	\$62,572.76	\$1,931.47	\$0.00	\$0.00	\$1,931.47
Hyde	\$2,040.74	\$62.99	\$0.00	\$0.00	\$62.99
Jackson	\$31,992.47	\$987.53	\$0.00	\$0.00	\$987.53
Jerauld	\$13,135.31	\$405.46	\$841.35	\$42.58	\$448.04
Jones	\$9,863.12	\$304.45	\$12,614.01	\$638.42	\$942.87
Kingsbury	\$41,767.80	\$1,289.27	\$920.00	\$46.56	\$1,335.83
Lake	\$227,329.13	\$7,017.10	\$15,486.57	\$783.81	\$7,800.91
Lawrence	\$404,414.81	\$12,483.31	\$64,701.93	\$3,274.69	\$15,758.00
Lincoln	\$912,586.47	\$28,169.35	\$36,840.27	\$1,864.56	\$30,033.91
Lyman	\$107,489.15	\$3,317.93	\$2,037.69	\$103.13	\$3,421.06
Marshall	\$75,931.02	\$2,343.81	\$0.00	\$0.00	\$2,343.81
McCook	\$42,875.00	\$1,323.45	\$0.00	\$0.00	\$1,323.45
McPherson	\$10,101.82	\$311.82	\$0.00	\$0.00	\$311.82
Meade	\$557,502.77	\$17,208.77	\$52,556.63	\$2,659.99	\$19,868.76
Mellette	\$52,926.45	\$1,633.71	\$5,551.35	\$280.96	\$1,914.67
Miner	\$15,676.55	\$483.90	\$0.00	\$0.00	\$483.90
Minnehaha	\$5,019,612.13	\$154,943.35	\$740,295.39	\$37,467.81	\$192,411.16
Moody	\$135,127.68	\$4,171.07	\$9,597.86	\$485.77	\$4,656.84
Oglala Lakota	\$6,112.57	\$188.68	\$0.00	\$0.00	\$188.68
Pennington	\$3,954,957.88	\$122,080.03	\$448,706.02	\$22,709.90	\$144,789.93
Perkins	\$28,331.85	\$874.54	\$5,735.70	\$290.30	\$1,164.84
Potter	\$1,704.59	\$52.62	\$0.00	\$0.00	\$52.62
Roberts	\$219,712.15	\$6,781.99	\$0.00	\$0.00	\$6,781.99
Sanborn	\$7,487.40	\$231.12	\$0.00	\$0.00	\$231.12
Spink	\$46,002.54	\$1,419.99	\$0.00	\$0.00	\$1,419.99
Stanley	\$68,733.96	\$2,121.65	\$0.00	\$0.00	\$2,121.65
Sully	\$11,199.68	\$345.71	\$0.00	\$0.00	\$345.71
Todd	\$16,578.97	\$511.75	\$0.00	\$0.00	\$511.75
Tripp	\$110,837.04	\$3,421.27	\$17,117.87	\$866.37	\$4,287.64
Turner	\$86,171.93	\$2,659.92	\$5,620.95	\$284.49	\$2,944.41
Union	\$110,634.00	\$3,415.01	\$0.00	\$0.00	\$3,415.01
Walworth	\$199,724.50	\$6,165.01	\$33,072.21	\$1,673.85	\$7,838.86
Yankton	\$287,588.41	\$8,877.16	\$23,951.10	\$1,212.21	\$10,089.37
Ziebach	\$469.02	\$14.48	\$0.00	\$0.00	\$14.48
<b>TOTALS: 66</b>	<b>\$17,882,383.69</b>	<b>\$551,986.16</b>	<b>\$1,825,854.54</b>	<b>\$92,410.10</b>	<b>\$644,396.25</b>
	\$17,882,383.69	\$551,986.15	\$1,825,854.54	\$92,410.10	

**South Dakota State Treasurer  
2018 Annual Distribution Report  
Court Appointed Attorney and Public Defender Fund/Abused and Neglected Child Defense Fund  
SDCL 23-3-52 - 53/Determination of Pro Rata Payment to Counties**

County Name	CAA & PD Officer's		Abused & Neglected		Total Funds Allocated
	Gross Expenditures Fiscal Year 2018	SDCL 23-A-40-20 Respective Allocation from CAA & PD Fund	Children Gross Expenditures Fiscal Year 2018	SDCL 26-8A-18 & 19 Respective Allocation from A & NCD Fund	
Aurora	\$ 18,208.30	\$ 669.20	\$ -	\$ -	\$ 669.20
Beadle	\$ 147,367.31	\$ 5,416.10	\$ 19,885.63	\$ 1,106.86	\$ 6,522.96
Bennett	\$ 179,496.18	\$ 6,596.92	\$ 7,918.89	\$ 440.78	\$ 7,037.70
Bon Homme	\$ 49,232.33	\$ 1,809.41	\$ 1,297.20	\$ 72.20	\$ 1,881.61
Brookings	\$ 547,380.04	\$ 20,117.54	\$ 19,982.81	\$ 1,112.27	\$ 21,229.81
Brown	\$ 666,020.45	\$ 24,477.86	\$ 119,609.66	\$ 6,657.63	\$ 31,135.49
Brule	\$ 31,912.69	\$ 1,172.87	\$ 5,155.59	\$ 286.97	\$ 1,459.84
Buffalo	\$ 851.39	\$ 31.29	\$ -	\$ -	\$ 31.29
Butte	\$ 285,000.09	\$ 10,474.44	\$ 43,872.73	\$ 2,442.02	\$ 12,916.46
Campbell	\$ 3,487.20	\$ 128.16	\$ 8,339.40	\$ 464.18	\$ 592.34
Charles Mix	\$ 258,709.26	\$ 9,508.19	\$ 43,696.05	\$ 2,432.18	\$ 11,940.37
Clark	\$ 18,203.69	\$ 669.03	\$ -	\$ -	\$ 669.03
Clay	\$ 111,106.11	\$ 4,083.42	\$ 10,463.62	\$ 582.42	\$ 4,665.84
Codington	\$ 399,962.66	\$ 14,699.59	\$ 479.40	\$ 26.68	\$ 14,726.27
Corson	\$ 26,679.11	\$ 980.52	\$ 1,009.10	\$ 56.17	\$ 1,036.69
Custer	\$ 104,496.09	\$ 3,840.48	\$ 19,316.93	\$ 1,075.21	\$ 4,915.69
Davison	\$ 396,324.40	\$ 14,565.88	\$ 40,959.52	\$ 2,279.86	\$ 16,845.74
Day	\$ 135,628.67	\$ 4,984.68	\$ -	\$ -	\$ 4,984.68
Deuel	\$ 23,994.80	\$ 881.87	\$ 1,448.60	\$ 80.63	\$ 962.50
Dewey	\$ 14,925.72	\$ 548.56	\$ -	\$ -	\$ 548.56
Douglas	\$ 17,515.72	\$ 643.75	\$ -	\$ -	\$ 643.75
Edmunds	\$ 14,341.76	\$ 527.09	\$ -	\$ -	\$ 527.09
Fall River	\$ 199,742.78	\$ 7,341.03	\$ 30,418.11	\$ 1,693.11	\$ 9,034.14
Faulk	\$ 944.01	\$ 34.69	\$ -	\$ -	\$ 34.69
Grant	\$ 139,851.52	\$ 5,139.88	\$ 4,580.57	\$ 254.96	\$ 5,394.84
Gregory	\$ 85,124.32	\$ 3,128.52	\$ -	\$ -	\$ 3,128.52
Haakon	\$ 9,566.35	\$ 351.59	\$ 126.20	\$ 7.02	\$ 358.61
Hamlin	\$ 54,408.98	\$ 1,999.66	\$ -	\$ -	\$ 1,999.66
Hand	\$ 15,601.89	\$ 573.41	\$ 477.40	\$ 26.57	\$ 599.98
Hanson	\$ 26,354.70	\$ 968.60	\$ -	\$ -	\$ 968.60
Harding	\$ 10,804.43	\$ 397.09	\$ -	\$ -	\$ 397.09
Hughes	\$ 550,062.21	\$ 20,216.12	\$ 2,217.42	\$ 123.42	\$ 20,339.54
Hutchinson	\$ 44,518.14	\$ 1,636.15	\$ -	\$ -	\$ 1,636.15
Hyde	\$ 6,353.57	\$ 233.51	\$ -	\$ -	\$ 233.51
Jackson	\$ 41,728.89	\$ 1,533.64	\$ -	\$ -	\$ 1,533.64
Jerauld	\$ 16,965.44	\$ 623.52	\$ 4,382.58	\$ 243.94	\$ 867.46
Jones	\$ 24,051.18	\$ 883.94	\$ 1,471.73	\$ 81.92	\$ 965.86
Kingsbury	\$ 37,039.04	\$ 1,361.27	\$ 3,218.80	\$ 179.16	\$ 1,540.43
Lake	\$ 201,197.12	\$ 7,394.48	\$ 4,299.84	\$ 239.33	\$ 7,633.81
Lawrence	\$ 453,071.36	\$ 16,651.47	\$ 60,019.13	\$ 3,340.75	\$ 19,992.22
Lincoln	\$ 623,912.59	\$ 22,930.29	\$ 60,653.11	\$ 3,376.03	\$ 26,306.32
Lyman	\$ 91,265.99	\$ 3,354.25	\$ 3,846.45	\$ 214.10	\$ 3,568.35
Marshall	\$ 74,236.27	\$ 2,728.36	\$ -	\$ -	\$ 2,728.36
McCook	\$ 63,049.52	\$ 2,317.22	\$ 2,313.99	\$ 128.80	\$ 2,446.02
McPherson	\$ 17,168.52	\$ 630.98	\$ -	\$ -	\$ 630.98
Meade	\$ 383,578.95	\$ 14,097.45	\$ 34,691.69	\$ 1,930.99	\$ 16,028.44
Mellette	\$ 52,508.40	\$ 1,929.81	\$ 4,602.88	\$ 256.20	\$ 2,186.01
Miner	\$ 18,003.20	\$ 661.66	\$ -	\$ -	\$ 661.66
Minnehaha	\$ 4,618,065.27	\$ 169,725.06	\$ 838,114.81	\$ 46,650.61	\$ 216,375.67
Moody	\$ 151,964.46	\$ 5,585.06	\$ 8,279.32	\$ 460.84	\$ 6,045.90
Oglala Lakota	\$ 5,600.18	\$ 205.82	\$ -	\$ -	\$ 205.82
Pennington	\$ 3,737,529.57	\$ 137,363.24	\$ 370,476.38	\$ 20,621.21	\$ 157,984.45
Perkins	\$ 24,701.52	\$ 907.84	\$ 6,525.25	\$ 363.20	\$ 1,271.04
Potter	\$ 19,332.87	\$ 710.53	\$ 1,347.20	\$ 74.99	\$ 785.52
Roberts	\$ 183,931.77	\$ 6,759.94	\$ -	\$ -	\$ 6,759.94
Sanborn	\$ 23,738.25	\$ 872.44	\$ -	\$ -	\$ 872.44
Spink	\$ 56,943.26	\$ 2,092.80	\$ 940.80	\$ 52.37	\$ 2,145.17
Stanley	\$ 44,377.10	\$ 1,630.97	\$ -	\$ -	\$ 1,630.97
Sully	\$ 26,212.90	\$ 963.39	\$ -	\$ -	\$ 963.39
Todd	\$ 28,260.81	\$ 1,038.65	\$ -	\$ -	\$ 1,038.65
Tripp	\$ 126,976.30	\$ 4,666.69	\$ -	\$ -	\$ 4,666.69
Turner	\$ 93,179.56	\$ 3,424.57	\$ 2,411.10	\$ 134.21	\$ 3,558.78
Union	\$ 152,940.90	\$ 5,620.95	\$ -	\$ -	\$ 5,620.95
Walworth	\$ 108,852.15	\$ 4,000.58	\$ 14,727.09	\$ 819.73	\$ 4,820.31
Yankton	\$ 298,639.37	\$ 10,975.72	\$ 978.60	\$ 54.47	\$ 11,030.19
Ziebach	\$ 2,493.27	\$ 91.63	\$ -	\$ -	\$ 91.63
<b>TOTALS: 66</b>	<b>\$ 16,395,692.85</b>	<b>\$ 602,581.32</b>	<b>\$ 1,804,555.58</b>	<b>\$ 100,443.99</b>	<b>\$ 703,025.31</b>

Richard L. Sattgast  
South Dakota State Treasurer  
State Capitol Bldg., Suite 212  
500 E. Capitol Avenue  
Pierre, SD 57501-5070

## **Appendix E:**

Map of Listening Sessions Held by the Task Force

# Indigent Legal Services Task Force Listening Sessions

The Unified Judicial System will be hosting public listening sessions across the State to discuss the provision of legal services to indigent parties.

The goal of the Indigent Legal Services Task Force is to study and make recommendations on how South Dakota provides, funds and ensures competent representation for indigent criminal defendants, parties in abuse and neglect cases and juvenile proceedings.



## SCHEDULED SESSIONS

Location:	Date:
Brown County Courthouse Community Room, Aberdeen	May 17 10am-Noon
Roberts County Courthouse, Sisseton	May 17 2pm-4pm
Hot Springs Civic Center	May 19 10am-Noon
Meade County Courthouse, Sturgis	May 22 10am-Noon
Oacoma, Cedar Shores	May 24 10am-Noon
Dewey County Courthouse, Timber Lake	May 31 10am-Noon
Pierre, Capitol Lake Visitor Center	June 1 10am-Noon
USD Knudson School of Law, Vermillion	June 6 10am-noon
Huron Crossroads Hotel and Event Center	June 12 10am-Noon
Virtual Meeting: <a href="https://us06web.zoom.us/j/89232563204?pwd=bG9PM1VHbWZoTWICWERoOEJSNk54QT09">https://us06web.zoom.us/j/89232563204?pwd=bG9PM1VHbWZoTWICWERoOEJSNk54QT09</a>	June 13 3pm- 5pm

For further information contact Greg Sattizahn via email at [greg.sattizahn@uj.s.state.sd.us](mailto:greg.sattizahn@uj.s.state.sd.us) or 605-773-8458.

## **Appendix F:**

# South Dakota Federal Court Plan for Adequate Representation of Defendants

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA



PLAN FOR THE ADEQUATE  
REPRESENTATION  
OF DEFENDANTS PURSUANT TO THE  
CRIMINAL JUSTICE ACT OF 1964,  
AS AMENDED

2021

TABLE OF CONTENTS

Page

AUTHORITY..... 1

PROVISION OF REPRESENTATION..... 1

    Mandatory..... 1

    Discretionary..... 2

    Ancillary Matters..... 3

APPOINTMENT OF COUNSEL..... 3

    Appointments in General..... 3

        Right to Court-Appointed Counsel..... 3

        Determining Financial Eligibility..... 3

        Retroactive Appointment..... 3

        Separate Counsel..... 3

        Additional Counsel..... 3

        Continued Right to Counsel..... 3

        Timely Appointment of Counsel..... 3

    Federal Capital Prosecutions..... 4

        Number of Counsel..... 4

        Standards for Representation in Capital Cases..... 4

    Habeas Corpus Proceedings..... 4

RESPONSIBILITIES UNDER THIS PLAN..... 4

    Federal Public Defender..... 4

        Establishment..... 4

        Supervision of the Defender Organization..... 5

        Coordination With the CJA Panel..... 5

    CJA Panel Attorney Representative..... 5

        Terms..... 5

        How Panel Attorney District Representatives are Chosen..... 5

        Responsibilities of the CJA Panel Representative..... 6

    Clerk of Court..... 7

        Administration..... 7

        Application Forms..... 7

        Management of Attorney List..... 7

        CJA Forms and Voucher Processing..... 7

        Reports..... 7

        Deposit of Funds..... 7

SELECTION OF COUNSEL; PANEL OF ATTORNEYS..... 7

Establishment of a CJA Panel.....	<u>7</u>
Appointments.....	<u>7</u>
Composition of CJA Panel.....	<u>8</u>
Approval.....	<u>8</u>
Size.....	<u>8</u>
Eligibility.....	<u>8</u>
Quality of Representation.....	<u>8</u>
Continuing Education.....	<u>8</u>
Equal Opportunity.....	<u>8</u>
Special Appointment Panel.....	<u>9</u>
Application.....	<u>9</u>
Mandatory Removal from CJA Panel.....	<u>9</u>
Discretionary Removal.....	<u>9</u>
Panel Selection Committee.....	<u>10</u>
Membership.....	<u>10</u>
Committee Chair.....	<u>10</u>
Duties.....	<u>10</u>
Panel Oversight.....	<u>10</u>
Selection for Appointment.....	<u>11</u>
Maintenance of CJA Panel and Distribution of Appointments.....	<u>11</u>
Method of Selection.....	<u>11</u>
Special Consideration.....	<u>11</u>
DURATION AND SUBSTITUTION OF APPOINTMENTS.....	<u>12</u>
Duration and Substitution.....	<u>12</u>
Appeals.....	<u>12</u>
Change in Defendant’s Financial Eligibility.....	<u>12</u>
PAYMENT FOR REPRESENTATION BY PANEL ATTORNEYS.....	<u>12</u>
Compensation.....	<u>12</u>
Rates.....	<u>13</u>
Case Budgeting.....	<u>13</u>
Services Other Than Counsel.....	<u>13</u>
Changes to Defendant’s Eligibility for Service.....	<u>13</u>
Claims.....	<u>14</u>
Reductions and Review Process.....	<u>14</u>
Excess.....	<u>15</u>
Expenses.....	<u>15</u>
Record Keeping.....	<u>15</u>
Reports; Vouchers and Claims for Payment; Forms.....	<u>15</u>
Reports.....	<u>15</u>
Vouchers and Claims for Payment.....	<u>16</u>
Forms.....	<u>16</u>



PLAN FOR THE ADEQUATE REPRESENTATION  
OF DEFENDANTS PURSUANT TO THE  
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

I. AUTHORITY.

- A. Pursuant to the provisions of the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended (CJA), and the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), Volume 7, *Guide to Judiciary Policy*, the United States District Court for the District of South Dakota adopts the following plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with the CJA.
- B. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan will be administered so that those accused of a crime or otherwise eligible for services pursuant to the CJA shall be provided effective representation necessary to an adequate defense even though they are financially unable to pay.

II. PROVISION OF REPRESENTATION.

- A. Mandatory. Representation must be provided to an applicant found to be financially eligible and who:
  - 1. is charged with a felony or with a Class A misdemeanor;
  - 2. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
  - 3. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
  - 4. is under arrest, when such representation is required by law;
  - 5. is entitled to appointment of counsel in parole proceedings;
  - 6. is charged with a violation of supervised release or faces modification or enlargement of a condition, or extension or revocation of a term of supervised release (unless the modification sought is favorable to the releasee and the government has not objected to the proposed change);

7. is subject to a mental condition hearing under 18 U.S.C. §§ 4241-4248;
8. is in custody as a material witness;
9. is seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255;
10. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
11. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
12. is faced with loss of liberty in a case and federal law requires the appointment of counsel.

B. Discretionary. Representation may be provided whenever the court determines that the interests of justice so require representation for any financially eligible person who:

1. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
2. is seeking relief, other than to set aside or vacate a death sentence under 28 U.S.C. §§ 2241, 2254, or 2255;
3. is charged with civil or criminal contempt and who faces loss of liberty;
4. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission that has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
5. is proposed by the United States Attorney for processing under a pretrial diversion program;
6. is held for international extradition under 18 U.S.C. §§ 3181-3196;
7. has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute and who has been represented by counsel appointed under 18 U.S.C. § 3006A in connection with a related criminal case.

- C. Ancillary Matters. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to 18 U.S.C. § 3006A. Examples of ancillary proceedings can be found in the CJA Guidelines, § 210.20.30.

### III. APPOINTMENT OF COUNSEL.

#### A. Appointments in General.

1. Right to Court-Appointed Counsel. Unless a person entitled to court-appointed counsel waives representation, the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, must appoint counsel to represent the person.
2. Determining Financial Eligibility. In determining whether the defendant is financially unable to obtain counsel, the court may act upon statements made by the defendant (a) under oath in open court, (b) by sworn affidavit, or (c) other information the court deems reliable. The personal appearance of the defendant is not required.
3. Retroactive Appointment. An appointment may be made retroactive to include any appropriate representation furnished prior to appointment.
4. Separate Counsel. The court must appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.
5. Additional Counsel. The court may appoint more than one counsel to represent a defendant when good cause is shown.
6. Continued Right to Counsel. A judicial officer may at any time, if satisfied after appropriate inquiry that a defendant is financially unable to obtain counsel, appoint counsel to represent the defendant, even though the defendant has previously waived appointment of counsel.
7. Timely Appointment of Counsel. Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a United States magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a United States magistrate judge or judge otherwise considers

appointment of counsel appropriate under the CJA, whichever occurs earliest.

B. Federal Capital Prosecutions.

1. Number of Counsel. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom must be learned in the law applicable to capital cases. Under 18 U.S.C. § 3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case. In federal capital prosecutions, the court will consider the recommendation of the Federal Public Defender.
2. Standards for Representation in Capital Cases. In the representation of clients in federal capital cases and in federal capital habeas cases, appointed counsel should (1) use as a guide the February 2003 ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases and the 2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, and (2) consult with the Federal Death Penalty Resource Counsel Project or with the Federal Capital Habeas Project (2255 Project), or with the Habeas Assistance and Training Counsel Project available through the Office of Defender Services, Administrative Office of the United States Courts.

- C. Habeas Corpus Proceedings. Under 18 U.S.C. § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

IV. RESPONSIBILITIES UNDER THIS PLAN.

A. Federal Public Defender.

1. Establishment. The Federal Public Defender's Office for the District of South Dakota has been established under the CJA and is recognized as the Federal Public Defender

organization for this district. The Federal Public Defender organization will be capable of providing high quality legal services throughout the district and will maintain offices in Rapid City, Pierre, and Sioux Falls, South Dakota.

2. Supervision of the Defender Organization. The Federal Public Defender will be responsible for the supervision and management of the Federal Public Defender organization. The Federal Public Defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.
3. Coordination With the CJA Panel.
  - a. The Federal Public Defender will provide training sessions for members of the CJA panel at least annually.
  - b. The Federal Public Defender or a designee will serve on the Panel Selection Committee in each division of the district.
  - c. The Federal Public Defender will assist the court, the clerk of court's office, and the CJA Panel Representative in implementing the provisions of the CJA plan.
  - d. The Federal Public Defender will assist the CJA Panel Representative in fulfilling the responsibilities described in Section IV(B) of the CJA plan.

B. CJA Panel Attorney Representative.

1. Terms. The Panel Representative will serve a three-year term and may serve additional terms if the representative is willing to continue to serve and to play an active role as the representative.
2. How Panel Representative is Chosen. The Federal Defender advises the Chief District Judge when a local panel attorney should be appointed as the district's Panel Representative, or that the term of the current Panel

Representative may be extended. The Chief District Judge selects and appoints a Panel Representative or extends the term of the current Panel Representative. The Federal Defender provides the name and contact information of the Panel Representative to the Office of Defender Services, Administrative Office of the United States Courts.

3. Responsibilities of the Panel Representative. The Panel Representative will:
  - a. Attend the National Conference of CJA Panel Attorney District Representatives and be an active participant in the conference.
  - b. Serve as a liaison between the CJA panel and
    - (i) the Federal Defender organization;
    - (ii) the court in this district; and
    - (iii) the Office of Defender Services, Administrative Office of the United States Courts.
  - c. Actively participate in panel attorney matters in the district by:
    - (i) communicating regularly with local panel attorneys about panel attorney issues, training needs, and case administration;
    - (ii) communicating regularly with the district court and the Federal Public Defender about local panel attorney issues and following up on action items arising from the annual CJA Panel Representative conferences;
    - (iii) communicating regularly with the assigned Defender Services Advisory Group (DSAG) Panel Representative about national panel attorney issues and needs;
    - (iv) assisting in the planning for training events for the district's CJA panel attorneys; and
    - (v) serving on or recommending a local panel attorney to serve on the Panel Selection Committee in each division, the district's Federal Practice Committee and committees in the district affecting the operation of the CJA plan.
  - d. Work generally toward improvement of the quality of representation as well as the conditions under which panel attorneys provide representation.

C. Clerk of Court.

1. Administration. The clerk of court is responsible for the administration and maintenance of the CJA Panel List.
2. Application Forms. The clerk of court will make application forms for membership on the CJA Panel available upon request.
3. Management of Attorney List. The clerk of court will maintain a current list of all attorneys included on the panel, in addition to maintaining a record of case assignments to the CJA Panel.
4. CJA Forms and Voucher Processing. The clerk of court is responsible for reviewing all CJA payment voucher forms for accuracy prior to submission to a judicial officer for approval.
  - a. The clerk of court must promptly process for payment all CJA vouchers submitted for reimbursement.
  - b. The clerk of court must notify counsel of all errors or omissions on any CJA voucher so corrections can be made in a timely manner.
5. Reports. The clerk of court must maintain records and produce such reports as required by the Administrative Office of the United States Courts, the district court, and the Panel Selection Committee for each division.
6. Deposit of Funds. The clerk of court must promptly deposit into the Treasury any amount a defendant tenders as ordered by the court for reimbursement of CJA representation.

V. SELECTION OF COUNSEL; PANEL OF ATTORNEYS.

- A. Establishment of a CJA Panel. The existing, previously established CJA panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA will serve pending selection of an updated panel by the CJA Panel Selection Committee in each division.
  1. Appointments. Private attorneys from the CJA panel will be appointed to a substantial proportion of the cases in which the defendant is determined by the court to be financially eligible for representation under the CJA. "Substantial" is

defined as approximately 25 percent of the appointments under the CJA annually throughout the district.

2. Composition of CJA Panel.

- a. Approval. The court in each division will establish a panel of private attorneys who are eligible and willing to be appointed to provide representation under the Criminal Justice Act.
- b. Size. Subject to review by the court, the size of the panel will be determined by the Panel Selection Committee (Committee) for each division. The Committee is established pursuant to Section V(B) of this Plan. The panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work. An attorney who seeks to be added to the CJA panel must complete an application, which is available from the clerk of court.
- c. Eligibility. Attorneys who serve on the CJA panel must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the local rules of this court, standard operating procedures, and federal sentencing law, including the advisory Sentencing Guidelines.
  - (i) Quality of Representation. Attorneys must demonstrate a commitment to provide high quality representation to those individuals eligible for their services, commensurate with those services rendered when counsel is privately employed.
  - (ii) Continuing Education. Attorneys are encouraged to attend a minimum of four hours of continuing legal education programs on federal criminal law every two years. Attorneys are encouraged to attend the annual CLE conducted by the Federal Public Defender's Office.
- d. Equal Opportunity. All qualified attorneys are encouraged to serve on and will be eligible for



- membership on the CJA panel without regard to an attorney's race, ethnicity, gender, age, or disability.
- e. Special Appointment Panel. The court in each division will establish a list of highly experienced attorneys who are willing to serve as CJA counsel on complex, difficult, or multi-defendant cases to supplement the depth of the panel. The Special Appointment Panel will be comprised of attorneys who are not part of the regular rotation of CJA appointments but who are willing to serve the court on cases requiring specific experience and expertise.
  - f. Application. Application forms for membership on the CJA panel will be made available, upon request, by the clerk of court. Completed applications must be submitted to the clerk of court, who will transmit these materials to the Chair of the Panel Selection Committee in the division where the applicant practices.
  - g. Mandatory Removal from CJA Panel. A member whose license to practice law in the state has been suspended or revoked or whose good standing in the bar of the federal district court has been suspended or revoked will be automatically removed from the panel.
  - h. Discretionary Removal. The court in each division has the authority to monitor the performance of panel attorneys and to remove a member from the panel when the quality of legal representation being provided is deemed by the court to be unsatisfactory. The court may remove an attorney from the panel for unsatisfactory representation, a violation of the local rules of the court, an ethical violation, or other appropriate reason. If the court determines that an attorney should be removed from the panel, the attorney should be provided (a) prior notice of the removal with a brief oral or written statement of the reason(s) for it, and  
(b) an opportunity for counsel to address the matter. The court in its discretion may remove an attorney from the panel without prior notice if circumstances require immediate removal.

B. Panel Selection Committee.

1. Membership. The court, through a judicial officer in active service in each division of the district, will establish a Panel Selection Committee for each division consisting of no less than two nor more than six attorneys and at least one judicial officer in active service.
2. Committee Chair. Each Committee will annually select its own chair. The chair will report the Committee's activities to the court as needed or as requested by the court.
3. Duties.
  - a. The Committee in each division will
    - (i) Panel Oversight.
      - (a) Create an application process and application form for distribution by the clerk of court.
      - (b) Annually evaluate and report its views to the Chief District Judge.
      - (c) At least twice a year, evaluate new applications for membership, and make recommendations to the Chief District Judge to ensure that applicants meet the criteria for membership on the CJA panel.
      - (d) Annually furnish information to the Chief District Judge regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Section V(A)(2)(d) of this plan.
    - (ii) Work with the Federal Public Defender and the CJA Panel Representative to:
      - (a) Provide training programs for the CJA panel attorneys and other members of the criminal defense bar;
      - (b) Recruit and train less experienced attorneys as potential panel members;
      - (c) Develop policies for the internal governance of the CJA panel in each division as requested by the court.
    - (iii) Receive, review, and make recommendations to the court concerning any comments or complaints regarding:

- (a) The performance of CJA panel attorneys in the division;
  - (b) The fairness or functioning of the CJA panel appointment process; and
  - (c) The processing and payment of CJA vouchers.
- b. Any time the number of vacancies significantly decreases the size of the CJA panel in a division, such that it affects the ability of the panel to provide adequate representation to indigent defendants under the CJA, the Committee may solicit applications to fill the vacancies, convene a special meeting to review the qualifications of the applicants, and recommend prospective panel members to the court for approval.

C. Selection for Appointment.

1. Maintenance of CJA Panel and Distribution of Appointments. The clerk of court must maintain a list or automated program which contains pertinent data for all attorneys included on the CJA panel in each division. Panel members are responsible for keeping all contact information current. The clerk of court will maintain a record of CJA panel attorney appointments by division and statistical data reflecting the number of total appointments, appointments by attorney name, and allocation of appointments between the Federal Public Defender's Office and the CJA panel in each division.
2. Method of Selection. Attorneys from the CJA panel in each division will be selected by the court for appointment as counsel based upon considerations of availability, experience, continuity of representation, judicial economy, equal distribution of workload among the panel members, and other factors. The goal of this procedure is a fairly balanced distribution of appointments and compensation among the members of the CJA panel in the division, and a high quality of representation for each CJA defendant.
3. Special Consideration. If the need arises in any case, the court may consider appointing qualified counsel from outside the division or the district.

VI. DURATION AND SUBSTITUTION OF APPOINTMENTS.

- A. Duration and Substitution. Counsel appointed for a defendant must represent the defendant at every stage of the proceedings from the time of initial appointment through appeal, including ancillary matters appropriate to the proceedings, unless the appointment is terminated by the district court or by any appellate court in which an appeal is pending. The court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.
- B. Appeals. In the event a defendant is convicted by guilty plea or at trial, counsel must advise the defendant of the right to appeal and of the right to counsel on appeal. If requested to do so by the defendant, counsel must file a timely notice of appeal and must continue to represent the defendant unless, or until, relieved by the appellate court.
- C. Change in Defendant's Financial Eligibility.
1. If at any stage of the proceedings the court finds that the defendant is financially unable to pay counsel who had been retained, the court may appoint an attorney to represent the defendant in the interests of justice.
  2. If at any time after the appointment of counsel the court finds that the defendant is financially able to obtain counsel or to make partial payment for the representation, the court may terminate the appointment of counsel or direct payment by the defendant in an amount fixed by the court to the clerk of court for deposit in the Treasury as reimbursement for the cost of CJA representation. No appointed attorney may request or accept any payment or promise of payment for the representation of a CJA client.

VII. PAYMENT FOR REPRESENTATION BY PANEL ATTORNEYS.

Compensation. A panel attorney appointed to represent a defendant will be compensated at the rate allowed for the time reasonably expended on the representation and will be reimbursed for actual expenses reasonably incurred consistent with the applicable rules, regulations, or statutes.

- A. The court will look to the *CJA Guidelines* for guidance in matters of attorney compensation, expenses, and the cost of experts and outside services.
1. Rates. Except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, the designated hourly rates of compensation are maximum rates established under the Criminal Justice Act. In fixing fair compensation, the court will consider the nature, duration and complexity of the case, and the difficulties encountered in providing high quality representation. Charges in excess of the statutory maximum may only be sought in complex or extended cases.
  2. Case Budgeting. A case budget must be submitted through eVoucher to the court, *ex parte*, in representations that appear likely to become extraordinary in terms of potential cost. “Extraordinary” means a representation in which attorney hours are expected to exceed 300 hours or total expenditures for counsel and services in addition to counsel (e.g., experts, interpreters, investigators, travel expenses) are expected to exceed \$45,000 on behalf of an individual CJA defendant. Reviewing judges should give due weight to the case-budgeting attorney’s recommendations in reviewing vouchers and requests for expert services and must articulate their reasons for departing from those recommendations.
  3. Services Other Than Counsel. Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an *ex parte* application through eVoucher. Upon finding that the services are necessary, and that the defendant is financially unable to obtain them, the court will authorize counsel to obtain the services. The court will, in each instance, determine the reasonable compensation for the services and direct payment to the organization or person who rendered them. Authority to exceed the statutory maximum for services other than counsel must be obtained before the services are rendered.
  4. Changes to Defendant’s Eligibility for Service. If at any time after counsel has been authorized to obtain investigative, expert or other necessary services for a defendant the court finds that the defendant is financially able to obtain such services or to make partial payment therefore, the court may terminate the authorization of such services or authorize or

direct payment by the defendant in an amount fixed by the court, either to the person or organization who rendered such services, or to the clerk of court for deposit in the Treasury as reimbursement of CJA services. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for assisting in the representation of a defendant.

5. Claims. A claim for compensation and reimbursement must be made within 45 days after the conclusion of the CJA appointment unless good cause is shown for a later submission. Each claim must be made following the instructions in the *CJA eVoucher User Guide*. Duplicate claims for time spent in common on more than one CJA representation must not be submitted. The court will, in each instance, fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished exclusively before a United States Magistrate Judge, the claim must be submitted to the magistrate judge who will fix the compensation and reimbursement to be paid. In all other cases, claims will be submitted to the district judge or appellate court that presided in the matter.
6. Reductions and Independent Review Process
  - (a) When contemplating a voucher reduction, the court will provide to appointed counsel a prior notice of the proposed reduction with a brief oral or written statement of the reason(s) for it. However, notice need not be given to appointed counsel where the reduction is based on mathematical or technical errors.
  - (b) If counsel indicates that the reduction is not contested, or if no response is received within ten days, the reduced voucher will be processed.
  - (c) If counsel responds and provides information justifying the claimed time or expense, the voucher will be approved as submitted.
  - (d) If after reviewing counsel's response submitted pursuant to subsection (c), the presiding judge reduces the voucher, counsel may seek review of the reduction to the Chief District Judge or his or her designee within ten days. If the Chief District Judge or his or her designee is the presiding judge who reduced the voucher, counsel may seek review by the Senior Active District Judge or his or

her designee within 10 days. Deadline extensions may be granted for good cause shown.

(e) If the reviewing judge or his or her designee finds the request for review to be meritorious, the voucher will be processed for the appropriate amount.

7. Excess. Claims for payment in excess of the statutory maximum for extended or complex representation must be supported by a written request from counsel setting forth the reasons justifying excess payment. After review, the court will certify to the Chief Judge of the Circuit that an amount of excess payment is necessary to provide fair compensation. Claims for payment above the maximum amount must be approved by the Chief Judge of the Court of Appeals for the Eighth Circuit or his or her designee. There is neither a statutory case compensation maximum for appointed counsel nor provision for review and approval by the chief judge of the circuit of the case compensation amount in capital cases.
8. Expenses. With regard to the payment of certain expenses, counsel must comply with the provisions of FED. R. CRIM. P. 17(b) regarding the issuance of subpoenas. Counsel must receive court approval for transcripts, investigative, expert or other services by submission of an eVoucher authorization request. With regard to mileage expenses, the number of miles and the origination and destination of travel must be submitted as part of the supporting documentation. Copies of receipts must be provided for all travel expenses and other expenses in excess of \$50. Overnight travel outside of the District of South Dakota must be preapproved by the court.
9. Record Keeping. Appointed counsel must maintain contemporaneous time records for all work performed, including work performed by associates, partners, and support staff, as well as expense records, for all vouchers and claims for compensation and reimbursement submitted to the district court or any appellate court. Such records, which may be subject to audit, must be retained for seven years after approval of the final voucher for an appointment.

B. Reports; Vouchers and Claims for Payment; Forms.

1. Reports. The clerk of court must submit a report of every appointment of counsel and authorization of other services

in this district to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify.

2. Vouchers and Claims for Payment. Upon approval by the court, all electronic vouchers and claims for compensation and reimbursement of expenses must be promptly processed for payment and information retained in this district for filing purposes.
3. Forms. The court may use, where appropriate, such standard appointment and electronic voucher forms as may be prescribed by the Director of the Administrative Office of the United States Courts.



**United States Courts**  
*Judicial Council of the Eighth Circuit*  
Thomas F. Eagleton United States Courthouse  
111 South 10th Street – Suite 26.325  
St. Louis, Missouri 63102-1116

Millie B. Adams  
*Circuit Executive*


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Fax (314) 244-2605  
[www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)

**EIGHTH CIRCUIT JUDICIAL COUNCIL**

**O R D E R**

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I hereby certify that the Eighth Circuit Judicial Council has approved the amended Criminal Justice Act Plan for the District of South Dakota which was adopted by the court on September 19, 2019.

  
Millie B. Adams  
Circuit Executive

St. Louis, Missouri  
August 25, 2021

cc: Judicial Council Members  
Chief Judge Roberto Lange  
Matthew Thelen, Clerk of Court  
Jason Tupman, Acting Federal Public Defender  
Administrative Office

Approval was given by the Defender Services Committee (CJA).

JCO 3198

**District Judges:**

Roberto A. Lange  
Chief District Judge  
225 S. Pierre Street, Room 413  
Pierre, SD 57501

Charles B. Kornmann  
District Judge  
102 Fourth Avenue, SE, Room 408  
Aberdeen, SD 57401

Lawrence L. Piersol  
District Judge  
400 South Phillips Avenue, Room 202  
Sioux Falls, SD 57104

Karen E. Schreier  
Senior Active District Judge  
400 South Phillips Avenue, Room 233  
Sioux Falls, SD 57104

Jeffrey L. Viken  
District Judge  
Andrew W. Bogue Federal Building and United States Courthouse  
515 Ninth Street, Room 318  
Rapid City, SD 57701

**Magistrate Judges:**

Veronica L. Duffy  
United States Magistrate Judge  
400 South Phillips Ave., Room 119  
Sioux Falls, SD 57104

Mark A. Moreno  
United States Magistrate Judge  
225 S. Pierre Street, Room 419  
Pierre, SD 57501

Daneta Wollmann  
United States Magistrate Judge  
Andrew W. Bogue Federal Building and United States Courthouse  
515 Ninth Street, Room 244  
Rapid City, SD 57701

**Clerk of Court:**

Matthew W. Thelen  
400 South Phillips Avenue, Room 128  
Sioux Falls, SD 57104  
605-330-6600

## **Appendix G:**

State Primers Considered by Task Force for  
Comparative Analysis



The U.S. Supreme Court determined that the Sixth Amendment right to counsel is a state – not local – government obligation through the Fourteenth Amendment. The U.S. Supreme Court has never been asked whether it is constitutional for the state to pass its obligation onto local governments. However, when a state chooses to delegate its right to counsel responsibilities to local governments, the state must guarantee not only that those local governments and officials are able to provide effective representation, but that they are in fact doing so.

There is currently no constitutional requirement as to how public defense services must be funded and administered. Some states pass on the entirety of their obligations to local governments, while other states delegate no responsibility at all. A significant number of other states strike a balance by sharing their constitutional duty with local governments. Because states have chosen a myriad of ways to fund and administer the right to counsel, 6AC uses the following terminology for clarity.

## Terms

**Administration of public defense services** is the government entity authorized to determine and operate the structure of indigent defense services, including the responsibility to decide the selection, qualification, compensation, training, and supervision of attorneys representing indigent defendants. A **public defender** is a government-employed attorney who provides indigent defense services. A public defender may be part-time or full-time and compensated by the hour, salary, or any other method. A **private attorney** is not a government-employed attorney but is appointed to provide indigent defense services. A private attorney can provide indigent defense services under contract or on a case-by-case basis. A private attorney who represents indigent defendants on a case-by-case basis is typically called **assigned counsel**.

There is no constitutional requirement as to the indigent defense delivery model that a government must employ.

**Oversight of public defense services** is the government entity authorized to ensure that the state's constitutional obligation to provide effective representation is met, regardless of whether services are administered by the state or local government.

The state is responsible for ensuring uniform quality statewide. A state government is able to oversee representation in all case types in all courts by creating either an indigent defense commission to oversee a centralized office, or a centralized state government indigent defense office, that manages daily operations and carries out the duties of the commission or office.

**Funding of public defense services** is the way that government pays for indigent defense services. Funding can come through a state government appropriation; a local government appropriation; a hybrid of state and local government appropriation; or some alternative funding source. An **alternative funding source** is any means of funding indigent defense that is not a state or local government appropriation (e.g., court filing fees, reimbursement of costs by defendants, traffic ticket revenue, etc.).

The American Bar Association calls for state government funding because local jurisdictions most in need of indigent defense services are often the ones least able to afford them. A government that primarily relies on an alternative funding source to fund indigent defense is not sustainable because there is no predictability or correlation between the resources necessary to ensure effective representation and the revenue raised through the alternative funding source.

## Overview

### Funding

State government funding	Colorado, Idaho, Maine, Minnesota, Montana
Local government funding	
Hybrid government funding	Nebraska, North Dakota, Wyoming

### Administration

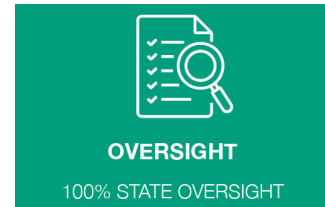
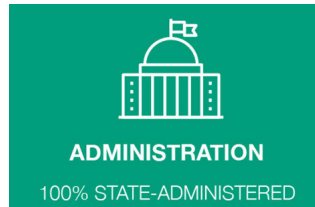
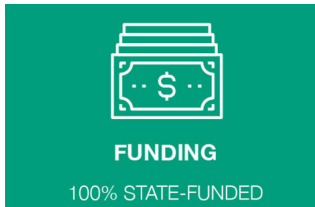
State government administration	Colorado, Idaho, Maine, Minnesota, Montana
Local government administration	
Hybrid government administration	Nebraska, North Dakota, Wyoming

### Oversight

Statewide oversight	Colorado, Maine, Minnesota
No statewide oversight	
Limited statewide oversight	Idaho, Montana, Nebraska, North Dakota, Wyoming

## Colorado

Indigent defense services are funded and administered by the state in some courts, and by local governments in other courts. Two state judicial branch commissions, the Public Defender Commission and Alternate Defense Commission, oversee state-administered services.



The state funds and administers indigent defense services in every court, except in municipal courts. The state administers services through two agencies: the Office of the Colorado State Public Defender provides primary services in adult and juvenile cases through regional public defender offices, and the Office of the Alternate Defense Counsel provides conflict services in adult and juvenile cases through contracts with private attorneys paid on an hourly basis.

Cities fund and administer indigent defense services in municipal courts and cannot contract with either state agency to provide these services. However, the Office of the Alternate Defense Counsel offers an evaluation program at no cost to the municipalities to support municipalities in providing indigent defense services in municipal courts.

The Public Defender Commission, composed of five members appointed by the chief justice of the state supreme court, oversees the Office of the Colorado State Public Defender and appoints the state public defender. The Alternate Defense Commission, composed of nine members appointed by the chief justice of the state supreme court, oversees the Alternate Defense Counsel and appoints its director.

## Idaho

Indigent defense services are funded and administered by the state. Two state executive branch agencies, one for appellate services and one for trial-level services, are housed in the Department of Self-Governing Agencies.

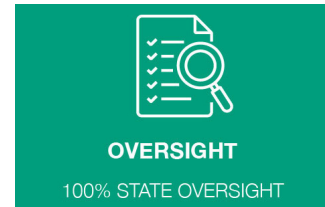
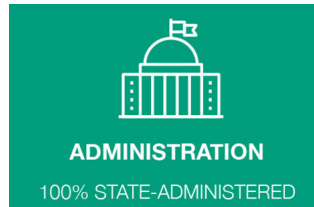
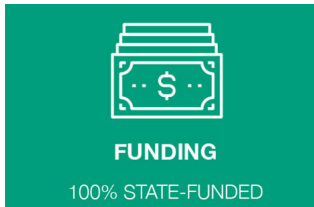


The State Appellate Public Defender is appointed by the governor, with the advice and consent of the senate, for a four-year term and is removable only for good cause. The State Appellate Public Defender has full-time state-employed attorneys to handle the majority of cases, and contracts with private attorneys to provide representation as needed on a case-by-case basis.

In March of 2023, the Idaho legislature enacted statutory measures that changed trial-level services from a hybrid state and county system to a full statewide system. The statewide trial-level indigent defense system will be overseen by a Chief Public Defender appointed directly by the governor, with the advice and consent of the senate, for a four-year term and is removable only for good cause. The new legislation envisions that the Chief Public Defender will oversee a regional public defender system of state-employed attorneys in 16 regional offices covering the state's 44 counties. The Chief Public Defender will also oversee conflict services provided by private attorneys paid hourly or under contract. Flat fee contracting is banned in Idaho.

## Maine

Indigent defense services are funded and administered by the state. A state judicial branch commission, the Maine Commission on Indigent Legal Services, oversees indigent defense services statewide.



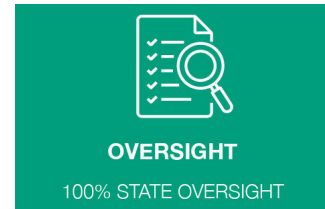
The state funds and administers indigent defense services statewide. The Maine Commission on Indigent Legal Services provides representation in all adult and juvenile cases. The commission administers indigent defense services mainly through private attorneys paid on an hourly basis. The commission provides courts with its list of private attorneys and judges assign cases to individual attorneys. The commission also employs a small number of full-time state-employee public defenders to provide indigent defense services in rural areas.

The Maine Commission on Indigent Legal Services is composed of nine members appointed by the governor from recommendations by various groups and only seven of the nine members have voting power. The commission appoints an executive director, who manages daily operations, and sets and enforces the commission's standards.



## Minnesota

Indigent defense services are funded and administered by the state. A state judicial branch commission, the Minnesota Board of Public Defense, oversees all indigent defense services statewide.

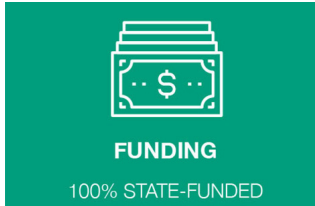


The state funds all indigent defense statewide and administers services through a regionalized system: in each of the state's ten judicial districts, a chief district public defender delivers services through public defender offices and private attorney assigned counsel panels. The state also contracts with non-profit corporations to provide indigent defense services to Native American populations and supplement services in urban areas. The Minnesota Board of Public Defense is funded 100% at the state level. All indigent defense services is funded by the state, with the exception of the Fourth Judicial District (Hennepin County), which is required to partly fund indigent defense in the county.

The Minnesota Board of Public Defense is composed of seven members that are appointed by the state supreme court and governor. The commission appoints a state public defender and the ten chief district public defenders. The state public defender manages daily operations, sets standards, and supervises all ten districts.

## Montana

Indigent defense services are funded and administered by the state. A state executive branch agency, the Office of the State Public Defender, oversees all indigent defense services statewide.

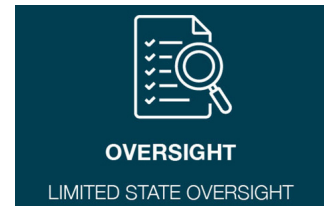


The Office of the State Public Defender delivers indigent defense services in all courts statewide. Public defender offices, grouped into three regions, provide primary services. Conflict public defender offices, also grouped into three regions, represent conflict cases. Overflow cases are represented by private attorneys under contract with the Office of the State Public Defender and are paid on an hourly or flat fee basis.

The Office of the State Public Defender is headed by the Director who is appointed by the Department of Administration's Director, a governor-appointee. The Director sets standards, appoints and supervises division heads, and oversees indigent defense statewide. The state does not have a commission that oversees the Director.

## Nebraska

Indigent defense services are funded and administered by local governments for some case types and by the state for other case types. A state executive branch commission, the Nebraska Commission on Public Advocacy, oversees only state-administered services. The commission has no oversight of local indigent defense services.



The state delegates funding and administration of indigent defense services in all trial-level adult criminal cases to its counties, except for some capital and serious felony cases where the state is appointed at county request. State law requires Nebraska's largest counties to have a public defender office with an elected public defender; other counties can choose to have an office (in which case they must also elect their public defender) or contract with private attorneys.

The Nebraska Commission on Public Advocacy, composed of nine members that are appointed by the governor, appoints a chief counsel to manage daily operations with a staff. The commission does not oversee local indigent defense services and it is funded entirely through court fees.

## North Dakota

Indigent defense services are funded and administered by the state in some courts and by local governments in other courts. A state executive branch commission, the North Dakota Commission on Legal Counsel for Indigents, oversees only state-administered indigent defense services.

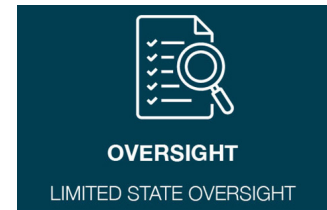


The state funds and administers all indigent defense services, except for violations of county ordinances and some municipal matters. The state provides services through public defender offices and monthly contracts with private attorneys. Local governments may request the state to provide services in cases for which the local governments are responsible, but the localities must still pay for the services received.

The North Dakota Commission on Legal Counsel for Indigents oversees all state-administered indigent defense services. The commission, composed of seven members appointed by all three branches of government, appoints a director who is responsible for setting standards. The commission does not oversee local-administered services unless a locality has chosen to contract with the state for services.

## Wyoming

Indigent defense services are funded and administered by the state in some courts and by local governments in other courts. A state executive branch agency, the Office of the State Public Defender, oversees only state-administered indigent defense services.



Indigent defense services are administered by the state in district and circuit courts, and by municipalities in municipal courts. State-administered services must be funded 85% by the state and 15% by the county. The state appropriates all necessary funding and then bills each county for its prorated share. Municipalities must fund all representation in the municipal courts.

The Office of the State Public Defender provides trial-level adult criminal representation through public defender offices primarily and private attorneys under contract in conflict cases. Overflow cases are represented by private attorneys appointed by local judges.

The state public defender, who is a governor-appointed, heads the state agency and oversees all state-administered services. The state agency does not oversee municipal representation. The state does not have a commission to oversee the state public defender.



## Colorado

**Counties.** 64

**Indigent defense system.** Colorado is the only state with two state commissions that oversee trial-level indigent defense statewide: the Public Defender Commission (primary) and the Alternate Defense Commission (conflict).

The Public Defender Commission was statutorily created in 1979 and is comprised of five members who are appointed by the Chief Justice of the Colorado Supreme Court: three members are attorneys who cannot be from the same political party and two members are public members. The commission oversees the Office of the Colorado State Public Defender and appoints the state public defender for a five-year term. The Office of the Colorado State Public Defender administers 21 regional defender offices across the state (some branch offices cover multiple counties), and an Appellate Division that serves all counties. Each regional defender office is staffed with full-time salaried attorneys and support staff who are government employees. All administrative and support functions for these regional offices are handled by a central administrative office in Denver.

The Alternative Defense Commission is a separate, statutorily created nine-member commission – all appointed by the Chief Justice of the Colorado Supreme Court – that oversees the Office of the Alternate Defense Counsel (OADC). The OADC provides representation to indigent defendants in criminal and juvenile delinquency cases in which the Office of the Colorado State Public Defender has a conflict of interest. Representation is provided through private attorneys that contract with OADC and are paid a rate of \$80/hour.

*Municipal court representation.* State law requires each municipality to provide counsel to an indigent defendant charged with a municipal ordinance violation for which there is a possible sentence of incarceration. The cities of Denver and Aurora created public defender offices to provide representation in municipal courts. Municipalities can also meet this requirement by contracting with OADC lawyers directly, requesting a list of OADC lawyers who can provide these services, using a law school clinic, or ensuring that the selection of court-appointed counsel is independent through an OADC evaluation or other independent evaluation. The OADC evaluates municipal courts at no cost to municipalities to determine whether the selection of counsel is transparent and merit-based; counsel is free from political and judicial influence; and counsel meets minimum qualifications and provides effective representation.

*Indigency determination.* The state public defender determines indigency, subject to review by the court. When someone requests a public defender, they are given an application that they must sign under oath. There is a non-refundable \$25 processing fee, which the defendant must pay at sentencing, adjudication, or other final disposition of the case. The court may waive the fee if it

finds that the person does not have the financial means to pay \$25.

The Office of the Colorado State Public Defender and the Alternate Defense Counsel are funded 100% at the state level.

## Idaho

### Counties. 44

**Indigent defense system.** Idaho has two separate indigent defense systems: one for appellate services and another for trial-level services.

*Appellate.* The State Appellate Defender's Office (SAPD) is an executive branch agency in the Department of Self-Governing Agencies. Under Idaho's constitution, this means that although the commission is housed in the executive branch, it does not answer directly to the Governor. The head of SAPD is appointed by the governor, with the advice and consent of the senate, for a four-year term and is removable only for good cause. SAPD has full-time state-employed public defenders to represent most cases, and contracts with private attorneys to represent cases on an as-needed basis.

For most of its existence, the SAPD provided representation of indigent defendants convicted at the trial level (felonies only), in state post-conviction proceedings (felonies only), in state habeas corpus cases (felonies only), and in petitions for post-conviction relief in capital cases. In 2020, SAPD expanded its mission to include misdemeanor and juvenile appeals. The SAPD can only provide representation to indigent defendants convicted in counties that participate in the state capital crimes defense fund, which is essentially an insurance fund for participating counties. Currently, all counties participate except Jefferson County (population of approximately 32,000).

*Trial Level, pre-2022.* Until very recent changes enacted in the 2023 legislative session, trial-level indigent defense services had primarily been a county obligation. The board of county commissioners in each county decided how its county would provide trial-level services, choosing either to maintain a public defender office (individually, or jointly with one or more other counties) or to contract with a private attorney or private law firm. Statutorily, counties are banned from employing flat fee contracts. As of 2022, Idaho has 12 public defender offices serving 14 counties; the remaining 30 counties contract with private attorneys or private law firms to provide trial-level indigent defense services.

The county systems were overseen by the Idaho Public Defender Commission (PDC), also a state-level executive-branch agency within the Department of Self-Governing Agencies. The nine members of the commission were appointed by diverse authorities, and no member was allowed to be a current prosecutor or employee of a law enforcement agency.

PDC had the authority to hire an executive director. PDC was responsible for promulgating statewide standards in seven primary areas: (1) providing the effective right to counsel to indigent people; (2) implementing and enforcing standards in all indigent defense systems and evaluating compliance with standards; (3) training and education for public attorneys and systems to promote competency and consistency; (4) uniform data reporting requirements and model forms that counties can use to annually report at least caseloads, workloads, and expenditures; (5) model contracts that counties can use to contract for the provision of services



and comply with standards; (6) procedures and forms for counties to apply for state grant funds, overseen and distributed by the commission; and (7) procedures for administrative review and fair hearings.

PDC was authorized to make grants to each county of up to \$25,000 or 15% of the average the county spent on indigent defense services in the first three of the five years preceding a grant application – whichever was the greater amount. For example, if a small rural county spent on average \$50,000 annually on right to counsel services, that county could get a grant for \$25,000 (or 50% of its spending). Meanwhile, a large county that spent \$3 million annually on indigent defense could receive up to \$450,000 from the state (15% of its three-year average spending). Importantly, state grants could only augment, and could not supplant, existing local funding.

*Trial Level, post-2022.* In 2022, the state legislature passed legislation to take over 100% of all indigent defense funding (appellate, trial, capital, etc.). This ended the state capital crimes defense fund. In 2023, the state legislature enacted statutory language to remove the responsibility of administering indigent defense from county government. The new statutes terminate the PDC and replace it with a statewide public defender system that is administered by a Chief Public Defender who is appointed by the governor, with the advice and consent of the senate, for a four-year term removable only for good cause. The new system anticipates 16 regional public defender offices covering the state's 44 counties.

## Maine

### Counties. 16

**Indigent defense system.** The Maine Commission on Indigent Legal Services (MCILS) is comprised of nine members who are appointed by the Governor and confirmed by the legislature. Seven of the nine commission members have voting power; one must have administration and finance experience; one must have child protection proceeding experience; and five must be chosen from a list of recommendations by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Judicial Court. The two non-voting members are attorneys who primarily provide indigent legal services: one must be chosen from a list of recommendations by the Maine State Bar Association President, and the second must be chosen by the president of a different statewide organization representing criminal defense attorneys.

MCILS is statutorily obligated to (1) provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants, and children and parents in child protective cases, (2) ensure delivery of indigent legal services by qualified and competent counsel in a manner that is consistent throughout the state, and (3) ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

MCILS oversees indigent defense services by creating and enforcing standards. These standards include: governing eligibility for indigent legal services; prescribing minimum experience, training, and other qualifications for contract and assigned counsel; maximum caseloads; evaluation of assigned and contract counsel; independent, quality, and efficient representation of clients whose cases present conflicts of interest; and reimbursement of expenses incurred by assigned and contract counsel. MCILS' Executive Director is appointed by the commission and manages daily operations.

If an attorney fails to comply with a standard, the MCILS Executive Director may remove indefinitely or suspend that attorney from its roster. The maximum compensation a private attorney can be paid for each case is capped based on the type of case, which can be waived by the MCILS Executive Director. MCILS may fund the use of experts, investigators, travel, and non-routine expenses. Finally, MCILS operates a program to provide representation at the 48-hour hearing for in-custody defendants and the initial appearance for out-of-custody defendants.

Until recently, Maine was the only state in the country that provided all indigent defense services through private attorneys. In 2022, Maine hired full-time state-employee public defenders to provide representation in its most rural counties and in appellate cases.

*Indigency determination.* MCILS determines indigency to assess whether to appoint counsel to a defendant. If the “cash assets” of the defendant and their family are more than a specified amount based on the most serious crime with which the defendant is charged, MCILS automatically

recommends the defendant be denied an appointed attorney (\$1,000 for class D or E; \$2,000 for class C, \$3,000 for class B, and \$4,000 for class A).

The Maine Commission on Indigent Legal Services is funded 100% at the state level.

## Minnesota

### Counties. 87

**Indigent defense system.** A state judicial branch commission, the Minnesota Board of Public Defense (MBPD), oversees all indigent defense services statewide. Indigent defense services are directly administered by a chief district public defender in each of Minnesota's ten judicial districts through public defender offices and private attorney assigned counsel panels. The state also contracts with non-profit corporations to provide indigent defense services to Native American populations (Regional Native Public Defender Corporation and Duluth Indian Legal Assistance Program) and supplement services in urban areas (Neighborhood Justice Center and Legal Rights Center).

The MBPD is composed of seven members: the Minnesota Supreme Court appoints four members who must be attorneys familiar with indigent defense but not employed as prosecutors, and the Governor appoints three public members. Judges cannot be appointed to the board. The MBPD is responsible for (1) appointing the state public defender to a four-year term, (2) selecting a district chief public defender for each of the ten judicial districts and a chief appellate defender, (3) distributing appropriations from the legislature to state and district public defenders, and (4) setting standards for the delivery of indigent defense services across the state. The MBPD also appoints a chief administrator who is responsible, among other things, for policy development, fiscal management, and information systems.

The state public defender creates and enforces standards, which must include standards on attorney qualification, training, size of legal and support staff, caseload, contracting, indigency, conflicts of interest, and data recording/reporting. The state public defender is also responsible for supervising, evaluating, and training the district chief public defenders and chief appellate defender; representing the board at the Legislature, in the media, with the courts, and in various committees and task forces; resolving client complaints; and developing statewide training programs.

The MBPD, with the advice of the state public defender, appoints a chief public defender for each of the ten judicial districts. The chief public defender manages all public defense services within that district, including hiring and firing assistant public defenders, and is responsible for complying with MBPD policies. The chief public defender is permitted, subject to board approval, to use independent contract attorneys to handle direct services. When a person qualifies for counsel in an adult criminal case, the court appoints the chief district public defender of that judicial district, who then assigns the case to an assistant district public defender. If no district public defender can handle the case, the chief district public defender can, subject to the state public defender's approval, appoint other counsel. Appointed counsel must document the time worked and expenses incurred and will be paid with funds from the county aid program received from the MBPD.

*Indigency determination and recoupment.* A person accused of a crime is automatically considered "financially unable to obtain counsel" if they, or any dependent who resides in the same household "receives means-tested governmental benefits." Otherwise, it is the court's determination. Upon disposition of the case, an individual who has received public defender

services shall pay the court a \$75 co-payment for representation provided by a public defender, unless the co-payment has been reduced or waived by the court. The court may also determine that a defendant should partially pay or reimburse legal costs.

The Minnesota Board of Public Defense is funded 100% at the state level. All indigent defense services is funded by the state, with the exception of the Fourth Judicial District (Hennepin County), which is required to partly fund indigent defense in the county.

## Montana

### Counties. 56

**Indigent defense system.** Montana has a state executive branch agency, the Office of the State Public Defender (OPD), that oversees and delivers indigent defense services in all courts statewide, including the supreme, district, youth, justice, municipal, and city courts. OPD is headed by the Director who is appointed by the Department of Administration's Director, a governor appointee. The Director may be removed by the Director of the Department of Administration only for cause. The statute does not preclude a non-lawyer from holding the position of OPD Director.

OPD has four divisions: Public Defender Division, Appellate Defender Division, Conflict Defender Division, and Central Service Division. The OPD Director is charged with appointing an administrator to oversee each division; establishing the qualifications, duties, and compensation for each position; and regularly evaluating the performance of all four administrators. The Director must also (1) construct statewide standards that apply to full-time government employees and contracted private attorneys, including standards for early appointment of counsel, attorney qualification and training, attorney workloads, and attorney performance, and (2) review and approve each administrator's strategic, operational plan and proposed budgets.

Services are primarily provided by public defender offices staffed with full-time state employees (Public Defender Division). Conflict cases are handled by conflict offices, also staffed with full-time state employees, but generally smaller in size (Conflict Defender Division). Both public defender and conflict offices are divided into three regions, with a Regional Deputy Public Defender overseeing public defender offices, and a Managing Public Defender overseeing conflict offices. Overflow cases are handled by private attorneys through contracts with OPD (Central Services Division). Generally, public defender offices represent most cases, especially serious felonies, while contracted private attorneys handle misdemeanors, municipal court cases, and justice court cases.

OPD mostly contracts on an hourly rate basis with private attorneys. As of December 2022, the hourly rate is \$71 per hour (\$45 for travel, and \$25 for administrative support work, with a 150-hour monthly cap, which can be waived). Prospective contractors must apply to OPD and will be certified only for specific cases and region(s). Attorney performance is evaluated every two years. OPD has some flat-fee contracts with private attorneys for municipal and justice courts (valued at approximately \$215 – \$400 per case), and sometimes to reduce backlogs, it will bundle misdemeanor cases and contract them out to a private attorney for a flat fee.

*Indigency determination.* A defendant is indigent if: “(a) the applicant’s gross household income is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or (b) the disposable income and assets of the applicant and the members of the applicant’s household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant’s household.” In establishing the eligibility determination process, OPD has

promulgated a policy creating a presumption of eligibility for an individual who is a current verified or documented recipient of a state or federally administered public assistance.

The Office of the State Public Defender is funded 100% at the state level.

## Nebraska

### Counties. 93

**Indigent Defense System.** A state executive branch commission, the Nebraska Commission on Public Advocacy (NCPA), provides direct services at state expense only in capital trials, some serious felonies, and appeals. Almost all defense services are administered, overseen, and funded at the county level.

The NCPA is comprised of nine members, all appointed by the governor from a list of attorneys prepared by the Nebraska Bar Association. The commission appoints a Chief Counsel, who hires and supervises attorneys and support staff to provide services in five divisions: capital litigation division, violent crime and drug defense division, appellate division, DNA testing division, and the major case resource center (which provide training and resources to indigent defense attorneys across the state). The NCPA must be appointed to all DNA testing cases whereas its appointment to other cases depends on local rules. All divisions are subject to the commission's caseload standards. In FY 2019-2020, NCPA's six lawyers represented 20 first-degree murder cases, 27 violent crime and drug defense cases, 11 appeals, and 4 DNA testing cases. The direct services provided by NCPA are at no cost to counties.

The commission is also required to adopt standards and guidelines for county indigent defense systems on the expenditure of funds appropriated by the legislature to counties that qualify for reimbursement, attorney qualifications, attorney compensation, caseloads, the appointment of counsel, awarding defense contracts, reimbursing defense expenses, conflicts of interest, training and continued legal education, and availability of expert witnesses and supportive services. Standards are only binding on counties that choose to opt into the commission's reimbursement program.

In 2003, NCPA became entirely funded through alternative revenues, specifically, money remitted through the indigent defense fee (\$3 for each case filed in the county court or district court, and for each appeal). In FY 2019-2020, NCPA received \$839,313.22 from indigent defense fees. Since 2008, case filings have steadily decreased, thus reducing NCPA's budget.

*County systems.* Nebraska delegates the provision of the right to counsel to its counties. Counties provide representation through public defender offices and contracts with private attorneys. In total, 22 counties have public defender offices.

Counties with more than 100,000 residents must establish a public defender office, and the chief public defender of that county must be elected. Only three counties are in this category: Sarpy (Omaha suburbs), Lancaster (Lincoln), and Douglas (Omaha) counties.

Counties with fewer than 100,000 residents may choose to establish a public defender office; if the county chooses to, the chief public defender must be elected. Nineteen counties (not including the three counties required to have a public defender office) have chosen to create a public defender office. Public defender offices must represent all indigent defendants charged with a felony, a jailable misdemeanor offense, and where a petition has been filed against an indigent defendant by the mental health board. County boards set the compensation and budget



of their respective county public defender office.

In all counties with fewer than 100,000 residents that also elect not to have a public defender office, the county board contracts with an attorney to serve as the county “public defender.” Counties must form a policy board (two attorneys and one layperson) to ensure the independence of the “public defender” and provide the county board with expertise. The policy board reviews applications for the “public defender” and forwards qualified applicants to the county board. The policy board also recommends compensation rates and specific contract provisions, and monitors compliance with the contract. The contract between the county board and “public defender” must be for at least two years, must specify which cases are covered, and must include a maximum caseload (either for full-time or part-time work).

Counties must fund their county indigent defense systems. There exists in state statute a reimbursement program where counties could get up to 25% of the costs associated with defending felonies reimbursed by the state if they comply with NCPA’s standards. However, this program has never been funded by the legislature and thus has never been operational.

Nebraska law allows judges of one or multiple districts to establish judicial district public defenders (subject to the Governor’s approval). 6AC is not aware of any such judicial district public defender in Nebraska, but if this ever occurs, any county public defender offices within the judicial district would be automatically abolished.

*Indigency determination and reimbursement.* There is no statutory or uniform standard for determining whether an individual qualifies for indigent defense services. “Indigent” is defined under state law as “the inability to retain legal counsel without prejudicing one’s financial ability to provide economic necessities for one’s self or one’s family.” The court may order that a defendant reimburse some or all the reasonable costs of representation, but only if the court determines that the defendant was never, or no longer is, indigent.

## North Dakota

### Counties. 53

**Indigent defense system.** The North Dakota Commission on Legal Counsel for Indigents (CLCI) is an executive branch commission that administers and oversees nearly all indigent defense services statewide.

CLCI, statutorily created in 2005, is governed by a seven-member board whose members serve staggered terms and are appointed by: the chief justice (two members, one from a county with a population of not more than 10,000), the legislature (two members, one from each house), the governor (two members, one from a county with a population of not more than 10,000), and the state bar association (one member). CLCI is responsible for creating standards, including standards for indigency determination, management of public defender offices, attorney qualifications, caseloads, performance, and conflicts.

The commission appoints a director, who oversees the delivery of indigent defense services and supervises compliance with commission standards. All indigent defense services are provided by public defender offices or private attorneys under monthly flat-fee contracts with the commission. The number of contracts entered each month is based on the number of case assignments in a judicial district. CLCI contracts provide that private attorneys agree to act in accordance with the performance standards promulgated by CLCI. Although CLCI has the authority to enforce this provision and monitor contractor performance, the commission does not exercise this authority.

CLCI has an assignment team of three staffers who assign cases across the state. Public defenders and full-time private attorneys (contracted to take around 24 cases per month) are considered primary providers and will follow a specific judge to reduce calendar conflicts. Part-time private attorneys (contracted to take around 8-10 cases per month) will handle overflow and conflict cases. As of November 2022, the commission has seven public defender offices staffed by twenty full-time state-employed attorneys, and contracts with 70 private attorneys.

*Indigency determination and recoupment.* Defendants automatically qualify for CLCI representation if they are receiving TANF (Temporary Aid to Needy Families), SSI (Supplemental Security Income), or Medical Assistance for the Elderly. A defendant will generally be considered indigent if their income is less than 125% of the federal poverty guidelines and their assets do not exceed \$20,000. To secure services from CLCI, a prospective client must submit an application with a \$35 fee to the court, which can be waived. At the conclusion of a case, the court may order a defendant to pay some or all the costs of representation, with flat rates ranging depending on the type of case (from \$300 for a misdemeanor case to \$2,250 for an appeal case).

Indigent defense services provided by the commission are 100% state funded. Approximately 10% of CLCI's 21-million-dollar budget in FY21-23 consists of fees (court administration fee, which can be waived for indigent defendants, and an indigent defense fee, addressed below). Expenses necessary for indigent defense services in violation of a county ordinance must be paid by the county, and expenses necessary for the defense of an indigent person prosecuted in

municipal court must be paid by the city in which the offense took place. However, a county or city may request that the commission provide indigent defense services in these cases. Under such an agreement, the locality would pay the commission for the services provided.

## Wyoming

### Counties. 23

**Indigent defense system.** Trial-level indigent defense services are provided in one of three ways: administered and funded by the state (majority of cases in district and circuits courts); administered by local judges and funded by the state (cases in district and circuits courts when the state agency is unavailable); or administered and funded by municipalities (in municipal courts). Wyoming does not have an indigent defense commission.

*State system.* The Office of the State Public Defender (OSPD) is a state executive agency that delivers indigent defense services to adult indigent defendants in district and circuit courts. OSPD is led by the state public defender, who is directly appointed by the governor. The state public defender administers the public defender program of the state, which consists of a primary public defender system and a secondary conflict system. For FY2021, the office had 90 authorized positions (including 16 part-time positions) for its primary public defender system and contracted with 25 mostly part-time contract private attorneys for its secondary conflict system.

Primary services are provided by state-employee OSPD attorneys in twelve public defender offices, or “field offices.” Some field offices serve more than one county; others have satellite offices. For conflict representation, OSPD contracts with private attorneys in each of its field offices or may hire a conflict attorney on an as-needed basis. If OSPD’s primary and secondary systems are unavailable, the court can appoint private counsel to the case. As of 2022, the rates are no more than \$100 per hour for in-court work and between \$35 and \$60 per hour for out-of-court work. Payment for private counsel assigned by OSPD is made by OSPD and no court approval is required. Payment for private attorneys appointed by the court must be approved by the court before being submitted to OSPD for payment.

Funding for indigent defense services must be shared by the state and counties, with 85% of the total appropriation coming from state general fund and 15% from counties. OSPD advocates at the state legislature for the entirety of the budget needed to provide all services. OSPD then bills each individual county for its prorated share of that statewide budget, based on an equitable formula that considers factors such as population, property valuation, and level of serious crime. This funding scheme eliminates the need for budgetary advocacy on multiple fronts (at the state legislature and in every county) and instead allows a single consideration of budgeting needs at the state level.

*Local system.* OSPD does not provide representation in municipal courts. Unless otherwise provided by ordinance, municipal courts must appoint private counsel to be paid by the municipality.

*Indigency determination and reimbursement.* A person is indigent when their annual gross income is less than 125% of the current federally established poverty level for his immediate family unit. If the income is between 125% and 218%, the person *may* be deemed indigent. If the income is greater than 218%, the person “shall not be deemed” indigent. There are two exceptions to this three-part test: (1) if the person is charged with a felony and the court finds

that there are extraordinary circumstances such that the person is entitled to representation; or (2) a person is presumed needy if they receive at least one six listed types of public assistance; *or* reside in a public mental health facility, is serving a sentence, or is in custody in county jail and has no available funds or liquid assets. Indigent defendants may be ordered to reimburse the state for the costs associated with the legal representation if the court finds that they have the ability to do so.