

Indigent Legal Services Task Force

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Overview of Indigent Legal Services System in South Dakota

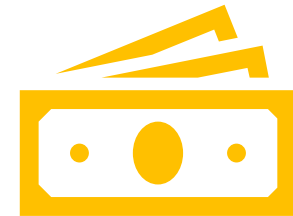
Overview



Relevant Indigent Counsel
Statutes



UJS Presiding Judge Policy



Funding of Indigent Legal
Services

Counsel for Indigent Parties to Legal Proceedings

SDCL 23A-40-6 creates the statutory right to counsel for any person accused in a criminal action or subject to probation revocation.

Regardless of ability to pay.

Counsel is appointed by the circuit court or magistrate.

However, if the case is a Class 2 Misdemeanor or ordinance violation and the defendant will not be deprived of their liberty and the defendant is not in custody they are not entitled to court appointed counsel.

Providing for Legal Representation in South Dakota

The Board of County Commissioners of each county and the governing body of a municipality are required by SDCL 23A-40-7 to provide for the representation of indigent persons.

They may do so in one of three ways:

Create an office of a public defender;

Arranging with the court to appoint attorneys on an equitable basis through a systemic, coordinated plan; or

Contract with any license attorney.

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).

How is South Dakota Providing Indigent Legal Representation?

Minnehaha, Pennington and Lawrence counties have public defender offices.

Remaining counties are either contract positions or court appointed from a list of attorneys.

The counties will also have to supplement this with ways to provide counsel in the event of a conflict with the public defender's office or contract attorney (Conflict Counsel).

This is a
big deal

Public Defender Offices

- SDCL Ch. 7-16A provides a framework for the establishment of public defender offices.
- This can be done on a county basis (Minnehaha, Pennington or Lawrence) or the county may “join with the board of county commissioners of one or more other counties to jointly establish and maintain an office of public defender.”
- The cost would be based on the population of each participating county (SDCL 7-16A-15).
- The public defender’s office shall be overseen by an advisory committee (SDCL 7-16A-4) that appoints the public defender.

Catastrophic Legal Expense Relief Program

SDCL chapter 7-16B establishes the county legal expense relief fund under the Association of County Commissioners.

County commission must pass a resolution to participate.

58 counties
participate

Meant to provide reimbursement if the county has incurred expenses of more than \$25,000 for one criminal proceeding.

If approved reimburse 90% of expenses incurred.

How are Court- Appointed Counsel Paid?

Counsel assigned shall be “paid by the county in which the action is brought, or in the case of a parole revocation, by the county from which the inmate was sentenced;”

A reasonable and just compensation.. In an amount fixed by a judge of the circuit or a magistrate judge “within the guidelines established by the presiding judge of the circuit.”

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/hr. beginning January 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 \$1.00/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.

Funding of Indigent Legal Services



Liquidated Costs



Court-Appointed
Attorney Fees Paid
by Indigents

Defendant's Financial Responsibility

§ 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.

Continued...

§ 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.

§ 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.

Liquidated Costs

§ 23-3-52 – Liquidated Costs levied

- Violation of state statutes or regulations having criminal penalties; or
- Violation of county or municipal ordinances

§ 23-3-53 – Collection by Clerk of Courts – Transmittal to Treasurer - \$50 fee broken out as follows:

- \$37.00 – Law Enforcement Officers Training Fund
- \$7.50 – Court Appointed Attorney and Public Defender Payment Fund
- \$2.00 – Court Appointed Special Advocates Fund
- \$2.50 – 911 Telecommunicator Training Fund
- \$1.00 – Abused and Neglected Child Defense Fund

§ 23A-40-20 and § 26-8A-19 – Annual Pro-Rata Distribution to Counties

Court Appointed Attorney and Public Defender Payment Fund

- **§ 23A-40-17** – Legislature created fund in 1982
- **§ 23A-40-20** - 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.

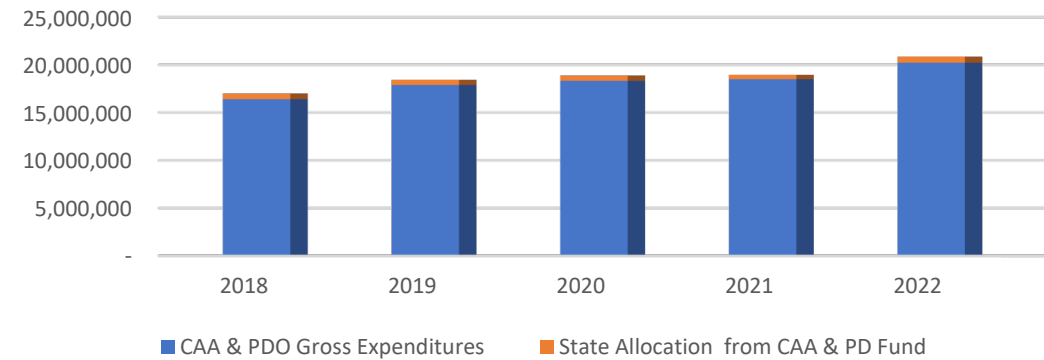
Abused and Neglected Child Defense Fund

- **§ 26-8A-19** - Legislature created fund in 1982 - There is hereby created in the office of the state treasurer an abused and neglected child defense fund. All moneys in the abused and neglected child defense 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 the representation of abused and neglected children. 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 the representation of abused and neglected children. That percentage ratio shall then be applied to each county's expenditure for the representation of abused and neglected children to determine its respective payment from the fund.

History of County Expenditures and State Allocation

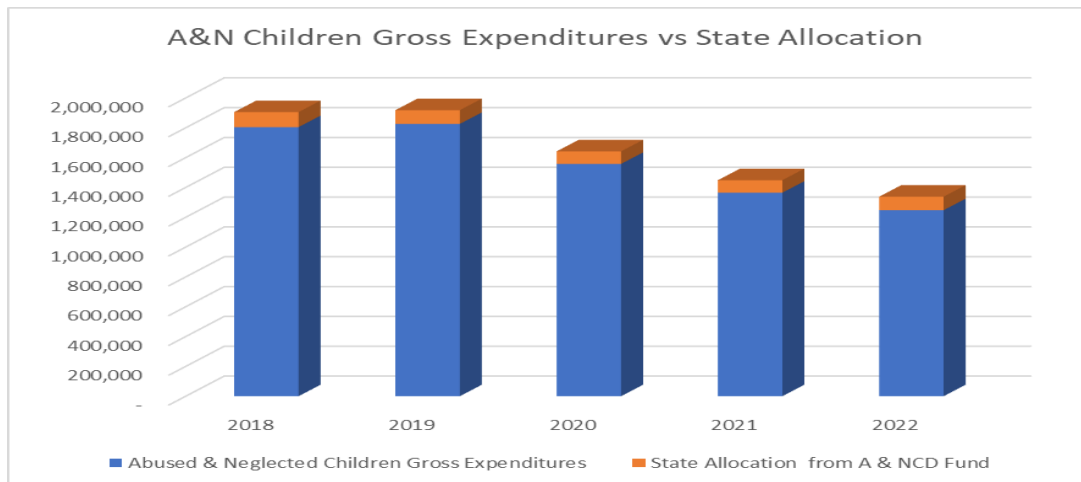
	CAA & PDO	State Allocation	Percentage
Fiscal Year	Gross Expenditures	from CAA & PD Fund	of Expenditures
2018	16,395,692.85	602,581.32	3.68%
2019	17,882,383.69	551,986.16	3.09%
2020	18,325,552.02	546,138.83	2.98%
2021	18,486,125.40	461,213.51	2.49%
2022	20,218,239.93	637,741.23	3.15%

CAA & PDO Gross Expenditures vs State Allocation



	Abused & Neglected		
Fiscal Year	Children Gross Expenditures	State Allocation from A & NCD Fund	Percentage of Expenditures
2018	1,804,555.58	100,443.99	5.57%
2019	1,825,854.54	92,410.10	5.06%
2020	1,557,880.76	84,077.85	5.40%
2021	1,364,726.83	83,841.66	6.14%
2022	1,247,455.13	90,520.78	7.26%

A&N Children Gross Expenditures vs State Allocation



Total County Expenditures vs State Allocation

	Total County	Total State	Percentage
Fiscal Year	Gross Expenditures	Allocation	of Expenditures
2018	18,200,248.43	703,025.31	3.86%
2019	19,708,238.23	644,396.26	3.27%
2020	19,883,432.78	630,216.68	3.17%
2021	19,850,852.23	545,055.17	2.75%
2022	21,465,695.06	728,262.01	3.39%

