

***Gideon* at 50:** **A Three-Part Examination of** **Indigent Defense in America**



Part I – Rationing Justice: The Underfunding of Assigned Counsel Systems



SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES: ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.



NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

March 2013

Supported by a grant from the Foundation for Criminal Justice.

COPYRIGHT © 2013 NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

This report is subject to a Creative Commons Attribution-Noncommercial-Nonderivative Work license (see www.creativecommons.org). It may be reproduced, provided that no charge is imposed, and the National Association of Criminal Defense Lawyers is acknowledged as the original publisher and the copyright holder. For any other form of reproduction, please contact NACDL for permission.

NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS

1660 L Street NW, 12th Floor

Washington, DC 20036

Phone: 202-872-8600

www.nacdl.org



Gideon at 50:

A Three-Part Examination of Indigent Defense in America

PART I

Rationing Justice: The Underfunding of Assigned Counsel Systems

A 50-State Survey of Trial Court Assigned Counsel Rates

By

JOHN P. GROSS

Indigent Defense Counsel
National Association of
Criminal Defense Lawyers

STEVEN D. BENJAMIN

President, NACDL
Richmond, VA

GERALD B. LEFCOURT

President, FCJ
New York, NY

NORMAN L. REIMER

Executive Director, NACDL
Washington, DC

KYLE O'DOWD

Associate Executive Director
For Policy, NACDL
Washington, DC

TABLE OF CONTENTS

ABOUT THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS	3
ABOUT THE FOUNDATION FOR CRIMINAL JUSTICE	4
ACKNOWLEDGEMENTS	5
FOREWORD	6
RATIONING JUSTICE: THE UNDERFUNDING OF ASSIGNED COUNSEL SYSTEMS	7
Introduction	7
HOW STATES SET THE RATE OF COMPENSATION FOR COURT-APPOINTED COUNSEL	9
Uniform Rates Set by Statute, Regulation or Rule	9
Maximum Fees	9
Rates Determined by the Trial Court	9
Rates Determined by Contract	9
Map of Assigned Counsel Compensation in the 50 States	10-11
Problematic Aspects of Current Appointed Counsel Compensation Systems	12
Unreasonably Low Hourly Rates	12
Unreasonably Low Maximum Fees	13
Flat Fees & Flat Fee Contracts	14
Judicial Control	15
RESULTING NEGATIVE IMPACT ON THE INDIGENT DEFENSE DELIVERY SYSTEM	15
CONCLUSION	18
ENDNOTES	19
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS 50-STATE SURVEY OF TRIAL COURT ASSIGNED COUNSEL RATES FOR 2013	20

ABOUT THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL's core mission is to: *Ensure justice and due process for persons accused of crime ... Foster the integrity, independence and expertise of the criminal defense profession ... Promote the proper and fair administration of criminal justice.*

Founded in 1958, NACDL has a rich history of promoting education and reform through steadfast support of America's criminal defense bar, *amicus curiae* advocacy, and myriad projects designed to safeguard due process rights and promote a rational and humane criminal justice system. NACDL's approximately 9,500 direct members — and more than 90 state, local and international affiliates with an additional 40,000 members — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to preserving fairness in America's criminal justice system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and best practices.

The research and publication of this report was made possible through the support of the Foundation for Criminal Justice and its contributors, including individuals, the Open Society Foundation and the Ford Foundation.

For more information contact:
**NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS**
1660 L Street NW, 12th Floor
Washington, DC 20036
202-872-8600
www.nacdl.org

This publication is available online at
<http://www.nacdl.org/gideonat50/>



ABOUT THE FOUNDATION FOR CRIMINAL JUSTICE

4

The Foundation for Criminal Justice (FCJ) is organized to preserve and promote the core values of America’s criminal justice system guaranteed by the Constitution — among them due process, freedom from unreasonable search and seizure, fair sentencing, and access to effective counsel. The FCJ pursues this goal by seeking grants and supporting programs to educate the public and the legal profession on the role of these rights and values in a free society and assist in their preservation throughout the United States and abroad.

The Foundation is incorporated in the District of Columbia as a non-profit, 501(c)(3) corporation. All contributions to the Foundation are tax-deductible. The affairs of the Foundation are managed by a Board of Trustees that possesses and exercises all powers granted to the Foundation under the DC Non-Profit Foundation Act, the Foundation’s own Articles of Incorporation and its Bylaws.

For more information contact:

FOUNDATION FOR CRIMINAL JUSTICE

1660 L Street NW, 12th Floor

Washington, DC 20036

202-872-8600

www.nacdl.org/foundation



This report was prepared by John P. Gross, Indigent Defense Counsel for the National Association of Criminal Defense Lawyers.

The author would like to thank the following NACDL staff for their careful editing and helpful suggestions: Norman Reimer, Executive Director; Kyle O’Dowd, Associate Executive Director for Policy; and Quintin Chatman, Editor of *The Champion* magazine. The author would also like to thank NACDL law clerk Melissa Baldwin for her legal research on assigned counsel compensation rates. The author wishes to acknowledge Cathy Zlomek, NACDL Art Director, for the design of the report.

The author also wishes to thank the members of NACDL’s Indigent Defense Committee for their support of this project.

The lack of adequate compensation for assigned counsel is a serious threat to our criminal justice system. Our adversarial system cannot function properly when defense attorneys are impeded from providing adequate representation. Low hourly wages combined with caps on fees undermine the right to counsel guaranteed by the Sixth Amendment.

Low hourly wages for assigned counsel in criminal cases reinforce the idea that we have two criminal justice systems, one for the wealthy and one for the poor. This disparity violates the principle that everyone in this country stands equal before the law. Statutory caps on the already low court-appointed fees are an additional impediment to the representation of the indigent accused. These caps result in attorneys earning less per hour the more they work on a client's case. This type of financial disincentive creates a conflict of interest for defense attorneys and undermines the confidence of the accused and the public in our criminal justice system. While the vast majority of assigned counsel zealously represents their clients, inadequate compensation substantially reduces the number of attorneys willing to represent indigent defendants and diminishes the overall quality of representation.

The provision of counsel at state expense is a necessary predicate to a lawful prosecution of an accused who cannot afford his own attorney. The attorneys who represent the indigent in our nation's criminal courts perform an invaluable service without which, the criminal justice system would collapse. Yet in many instances, states pay hourly wages that do not even cover the costs incurred by the attorneys during the course of representation. When states refuse to adequately compensate assigned counsel, they fail to discharge their constitutional obligation to the accused.

The right to counsel is a fundamental American right. When states fail to adequately compensate assigned counsel, they discourage the active participation of the private bar in indigent defense, which causes excessive caseloads for public defender organizations. NACDL's 50-State Survey of Assigned Counsel Rates documents the current funding levels for assigned counsel across the nation. It is a guide for the defense bar, assigned counsel plan administrators and government officials in all three branches who must determine compensation rates for assigned counsel. As we celebrate the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, the information contained in the survey should provide the impetus for the reform of our nation's assigned counsel systems so that every defendant stands equal before the law irrespective of financial status.

Steven D. Benjamin

President, NACDL



RATIONING JUSTICE: THE UNDERFUNDING OF ASSIGNED COUNSEL SYSTEMS

Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal courts are necessities, not luxuries.

Gideon v. Wainwright, 372 U.S. 335, 344 (1963)

Introduction

This 50-state survey of assigned counsel rates identifies the current hourly rates paid to private attorneys who represent the indigent in criminal cases as well as the maximum fee that can be earned by those attorneys.¹ The last comprehensive survey of assigned counsel rates was undertaken by the Spangenberg Group a decade ago and was limited to the rates of compensation paid in non-capital felony cases.² This survey includes data on assigned counsel rates for both misdemeanor and non-capital felony cases. While some jurisdictions rely primarily on public defender organizations to provide representation to the indigent, private assigned counsel plays a significant and critical role in the proper functioning of a public defense delivery system. The *ABA Ten Principles of a Public Delivery System* calls for the active participation of the private bar, even in areas where the

caseload is sufficiently high to warrant the establishment of a public defender's office. Private attorneys must be available to handle cases where the public defender's office has a conflict and to handle cases when public defender caseloads become excessive.³

8




Inadequate compensation for assigned counsel discourages the participation of the private bar and ultimately reduces the effectiveness of a public defense delivery system.

A public defense delivery system can take a number of forms: a full-time public defender's office, an assigned counsel plan, or contracts with individual attorneys. Whatever form it takes, a key component to the success of that system is adequate compensation for the attorneys who represent the indigent. While public defenders are typically full-time salaried employees, assigned counsel programs use private attorneys who represent indigent defendants but also maintain a private practice. Inadequate compensation for assigned counsel discourages the participation of the private bar and ultimately reduces the effectiveness of a public defense delivery system. In some cases, inadequate compensation may induce attorneys to accept more clients than they can effectively represent in order to maintain their practices.

States employ several different methods to compensate assigned counsel: hourly rates that can vary depending on the seriousness of the charge or whether the work is performed in or out of court; flat fees that vary based on the seriousness of the case; fees for specific events that take place such as a guilty plea, a hearing or a trial; or flat fee contracts that require the attorney to represent an entire class of defendants.

This survey reveals the staggeringly low rates of compensation for assigned counsel across the nation. A combination of low hourly wages combined with limits on the amount of compensation make it difficult, if not impossible, for members of the private bar to actively participate in assigned counsel systems. The average rate of compensation for felony cases in the 30 states that have established a statewide compensation rate is less than \$65 an hour, with some states paying as little as \$40 an hour. That rate of compensation does not take into account the various overhead costs associated with the practice of law, which include the costs of reference materials, office equipment, rent, travel, malpractice insurance and, for most young attorneys, student loans. The *2012 Survey of Law Firm Economics* by ALM Legal Intelligence estimates that over 50 percent of revenue generated by attorneys goes to pay overhead expenses.



The average rate of compensation for felony cases in the 30 states that have established a statewide compensation rate is less than \$65 an hour with some states paying as little as \$40 an hour.

How States Set the Rate of Compensation for Court-Appointed Counsel

Compensation rates for assigned counsel are set in one of three ways: (1) uniform rates set by statute, regulation or rule, (2) rates set at the discretion of the presiding judge on a case-by-case basis, or (3) through a contract between the state or a state agency and a private attorney. Determining the hourly rate of compensation becomes difficult when the discretion to award compensation rests in the hands of the trial judge. It is also difficult to determine an hourly rate of compensation when attorneys enter into flat fee contracts, since the number of cases handled during the length of that contract may vary considerably. Another obstacle to collecting accurate data on assigned counsel rates is that many states do not employ statewide indigent defense delivery systems but instead delegate the responsibility to individual counties. In these cases, assigned counsel rates may vary widely within a state. Despite these obstacles, a review of the existing statewide hourly rates as well as the limitations imposed on the amount of compensation reveals indigent defense delivery systems that fail to adequately compensate assigned counsel.

Uniform Rates Set by Statute, Regulation or Rule

Uniform hourly rates have been established in 30 states: Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin and Wyoming.

Maximum Fees

Maximum fees or caps have been established in 26 states: Alabama, Alaska, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Kansas, Maine, Maryland, Mississippi, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia and West Virginia.

Rates Determined by the Trial Court

In 9 states the trial court has discretion to award counsel reasonable fees: Arizona, California, Idaho, Michigan, Mississippi, Pennsylvania, Texas, Utah and Washington.

Rates Determined by Contract

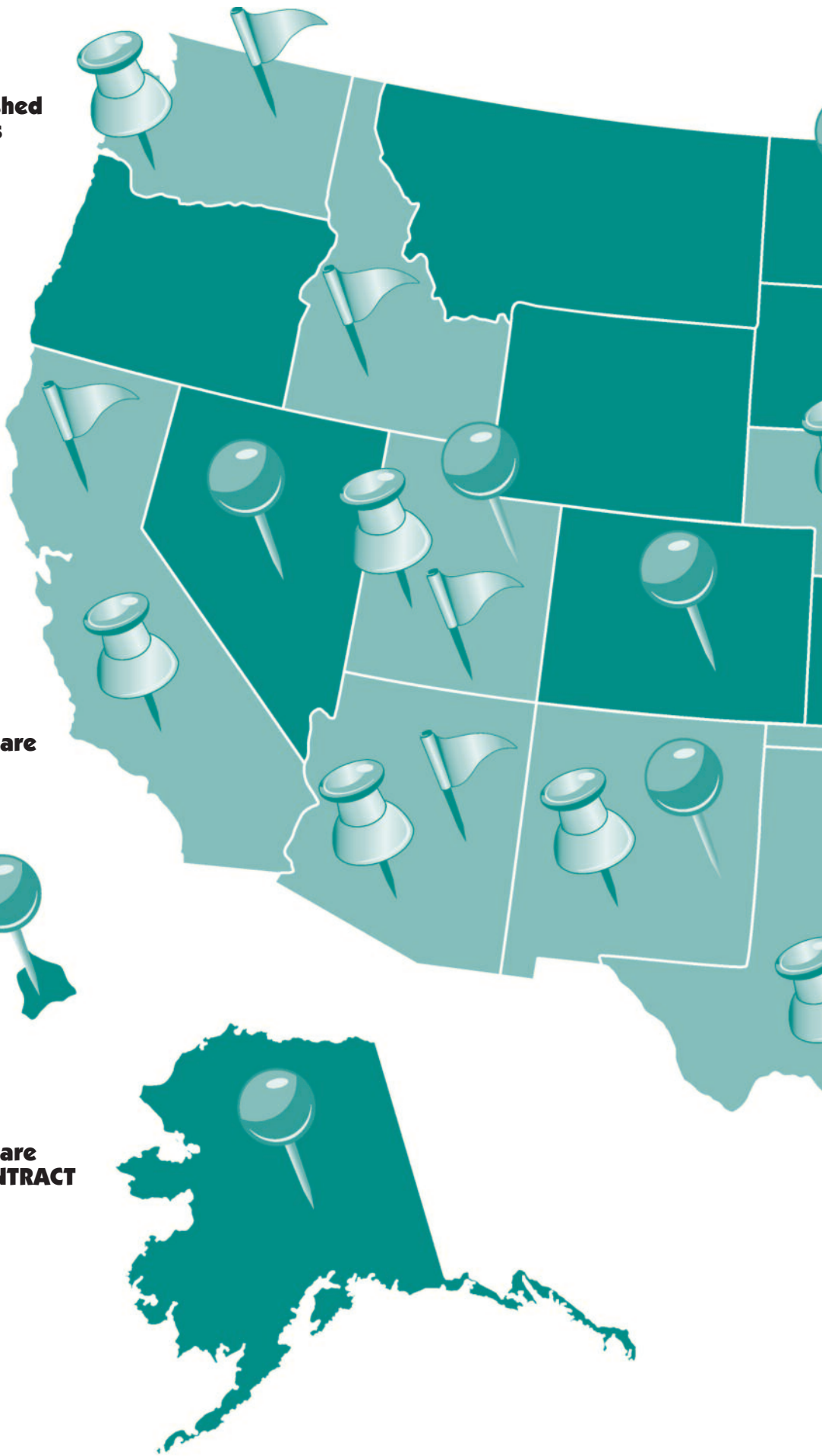
At least 20 states permit individual counties to enter into flat fee contracts with private attorneys: Arizona, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Pennsylvania, Texas, Utah and Washington.

A combination of low hourly rates, fee limitations and the use of flat fees discourages attorneys from providing zealous representation and can give rise to serious conflicts of interest.



 = States WITH established uniform hourly rates

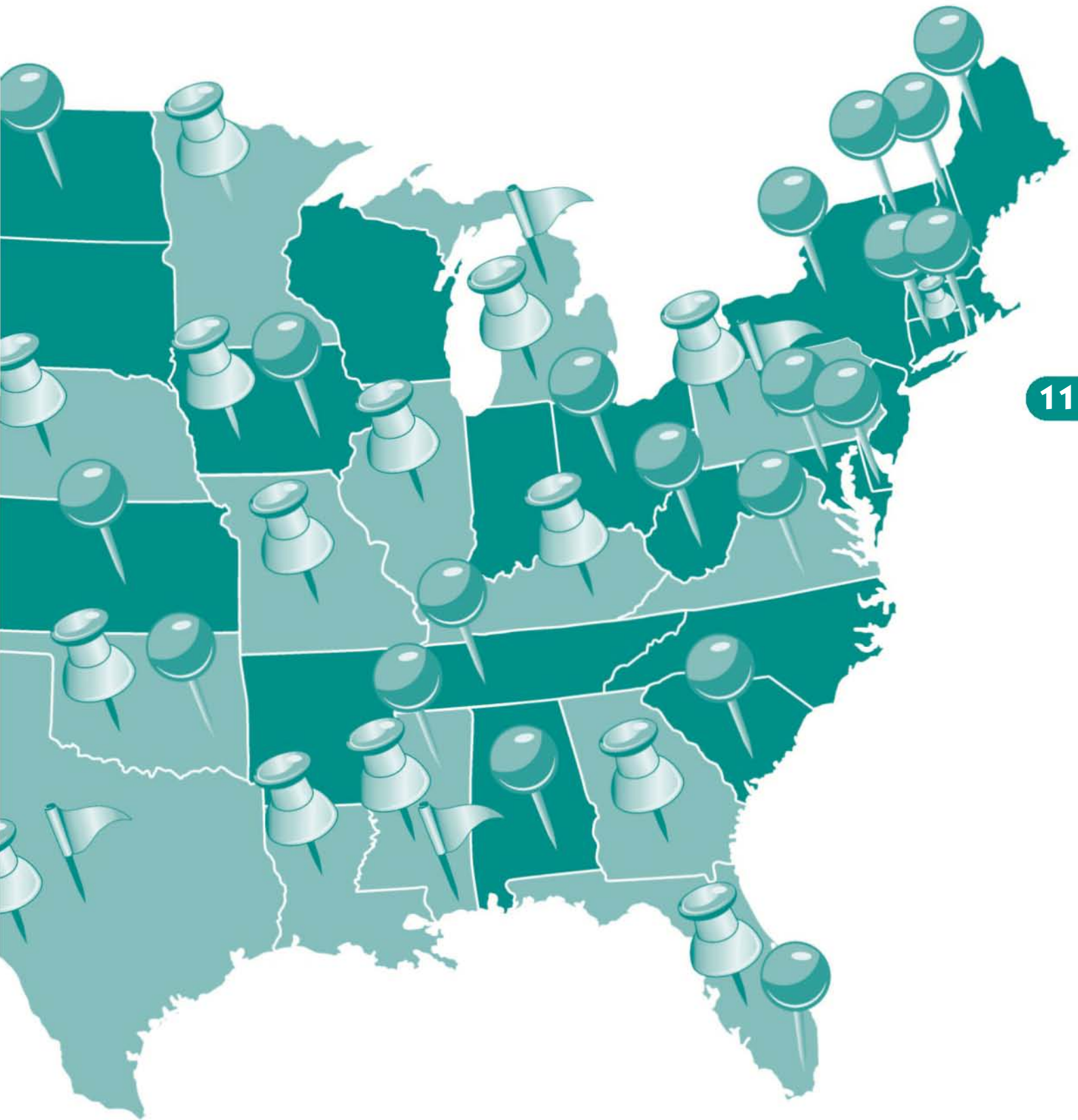
 = States WITHOUT established uniform hourly rates



 = States where rates are determined by the TRIAL COURT

 = States with established MAXIMUM FEES or CAPS

 = States where rates are determined by CONTRACT



MAP OF ASSIGNED COUNSEL COMPENSATION IN THE 50 STATES



No state comes close to matching the Federal CJA compensation rate.

Wisconsin has the lowest rate in the nation at \$40 an hour.

Problematic Aspects of Current Appointed Counsel Compensation Systems

There are a number of problems with the current systems used by states to compensate assigned counsel. These problems hinder or disincentivize appointed counsel from providing effective representation. A combination of low hourly rates, fee limitations and the use of flat fees discourages attorneys from providing zealous representation and can give rise to serious conflicts of interest.

Unreasonably Low Hourly Rates

The ABA Standards for Providing Defense Services call for “compensation at a reasonable hourly rate” as well as reimbursement for “reasonable out-of-pocket expenses.”⁴ The Federal Criminal Justice Act currently compensates attorneys representing indigent defendants in federal court at a rate of \$125 an hour and limits attorney compensation to \$9,700 in the case of non-capital felonies and \$2,800 in the case of misdemeanors.⁵ No state comes close to matching the Federal CJA compensation rate. The average hourly rate of compensation among the 30 states that have an established

statewide rate of compensation is below \$65 an hour. Wisconsin has the lowest rate in the nation at \$40 an hour. Oregon pays attorneys \$45 an hour for all non-capital cases, including cases where juveniles are charged with aggravated murder. Alaska, Connecticut, Maine, Maryland, Massachusetts, New Jersey, Ohio, Rhode Island, Tennessee and Vermont compensate assigned counsel at a rate of \$50 an hour for misdemeanor cases where a defendant is typically facing up to a year in jail if convicted.

A number of states — Alaska, New Jersey, Ohio, South Carolina, Tennessee and Virginia — pay a lower hourly rate for work done out of court. Over 80 years ago, the Supreme Court recognized that a defendant in a criminal case “requires the guiding hand of counsel at every step in the proceedings against him” and not merely at trial.⁶ Despite that fact, states continue to undervalue what are essential components of an adequate defense such as client and witness interviewing, legal research and the filing of discovery requests and motions. In Tennessee, attorneys are paid \$40 for work done outside of court, while court-appointed investigators are compensated at the higher rate of \$50 an hour.



In Tennessee, attorneys are paid \$40 for work done outside of court, while court-appointed investigators are compensated at the higher rate of \$50 an hour.

A decade ago, when declaring New York’s statutory scheme for compensating counsel to be unconstitutional, one court found that the unreasonably low rate paid to counsel, \$40 an hour for in-court work and \$25 an hour for out-of-court work, “resulted in less than meaningful and effective” representation.⁷ This was caused by the fact that attorneys did not “conduct a prompt and thorough interview of the defendant; consult with the defendant on a regular basis; examine the legal sufficiency of the complaint or indictment; seek the defendant’s prompt pre-trial release; retain investigators, social workers or other experts where appropriate; file pre-trial motions where appropriate; fully advise the defendant regarding any plea and only after conducting an investigation of the law and facts; prepare for trial and court appearances; and engage in appropriate presentencing advocacy, including seeking to obtain the defendant’s entry into any appropriate diversionary programs.”⁸

States continue to use hourly rates that have remained stagnant for years. Alaska has had the same rate since 1986, West Virginia since 1990, South Carolina since 1993 and Vermont since 1994. In Wisconsin, the hourly rate for assigned counsel has only increased by \$5 in the last 35 years. The hourly compensation rates for assigned counsel have remained the same over the last decade in 13 states: Alaska, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Ohio, South Carolina, Tennessee, Vermont and Wisconsin. To put that level of rate stagnation into perspective, the Bureau of Labor Statistics Consumer Price Index Calculator estimates that \$1.00 in 2003 has the same purchasing power as \$1.25 in 2013. Over the last decade, states would have needed to raise assigned counsel rates by 25 percent just to have kept pace with the increased costs of living.

Hourly rates for court-appointed counsel that have remained stagnant for a decade or longer simply fail to reflect current economic conditions. South Dakota provides an example of fees keeping pace with the changing economy: beginning in the year 2000, flat fees were abolished and an hourly rate of \$67 was established along with an order that each year the fees would increase in an amount equal to the cost of living increase that state employees received that year. Since the initial rate of \$67 an hour, the compensation rate has increased to \$84 an hour in 2013.

Over the last decade states would have needed to raise assigned counsel rates by 25 percent just to have kept pace with the increased costs of living.

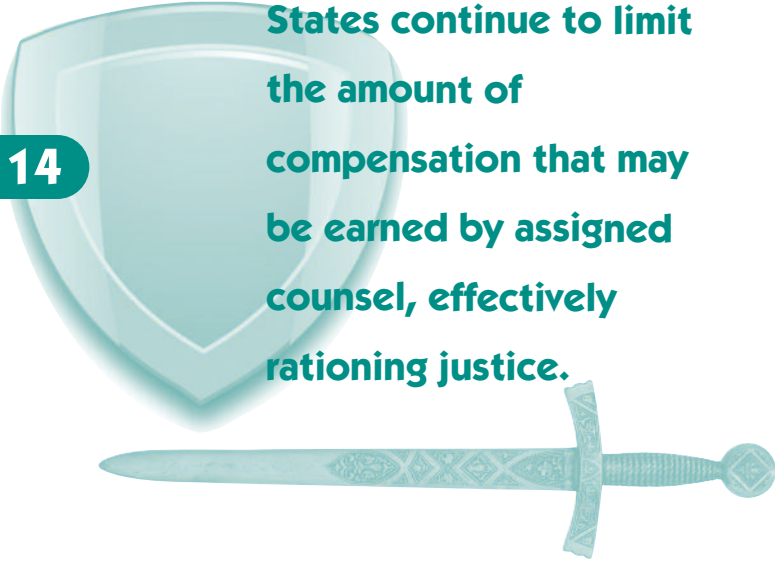


Unreasonably Low Maximum Fees

At least 26 states impose some cap or maximum fee on appointed counsel compensation even though the ABA Standards for Providing Defense Services recommend that assigned counsel “be compensated for all hours necessary to provide quality legal representation.”⁹ Fee caps have been the subject of litigation in many states over the years and have been invalidated on a number of grounds. Courts in Florida, Michigan, New Hampshire and Oklahoma have invalidated fee caps on the ground that they unduly invade the power of the courts to regulate the practice of law

and judicial proceedings.¹⁰ Courts in West Virginia¹¹ and Iowa¹² have pointed to the perverse economic incentives introduced into the criminal justice system by fee caps when declaring them invalid. At other times, courts have interpreted statutory limitations on fees as unenforceable, since strict adherence to them would not permit the effective assistance of counsel.¹³

14



States continue to limit the amount of compensation that may be earned by assigned counsel, effectively rationing justice.

Despite these cases, the majority of states continue to limit the amount of compensation that may be earned by assigned counsel, effectively rationing justice.¹⁴ The combination of hourly rates with fee limitations creates a finite amount of compensable time a lawyer can devote to a case. Any hours worked that are beyond the cap effectively reduce the hourly rate of compensation. It is important to recognize the relationship that exists between hourly rates and fee limitations: by dividing the hourly rate by the maximum fee we arrive at the maximum number of compensated hours available for assigned counsel.

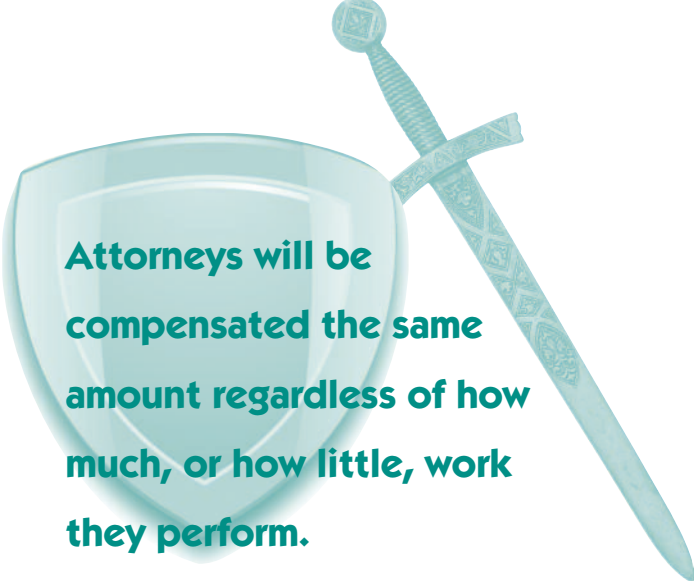
New York has an hourly rate of compensation for misdemeanors of \$60 and a fee limitation of \$2,400, which means there are 40 compensated hours available for assigned counsel.¹⁶ Alabama has an hourly rate of compensation for misdemeanors of \$70 but a fee limitation of \$1,500,

which means there are approximately 21.43 compensated hours available for assigned counsel. Colorado has an hourly rate of compensation for misdemeanors of \$65 and a fee limitation of \$1,000, which means there are 15.38 compensated hours available for assigned counsel. Nevada has an hourly rate of compensation for misdemeanors of \$100, the highest of all 50 states, but a fee limitation of \$750, which means there are only 7.5 compensated hours available for assigned counsel. What becomes clear is that relatively high hourly rates are no guarantee of effective representation if there are also unreasonably low fee limitations.

It should be noted that of the 26 states that impose a cap or maximum fee on assigned counsel compensation, 20 of them permit that maximum to be waived under special circumstances.¹⁶ However, even in those states where there is a “soft cap” on the level of attorney compensation, these fee limitations undoubtedly have an impact on the willingness of judges and assigned counsel program administrators to award additional compensation.

Flat Fees and Flat Fee Contracts

At least 20 states utilize flat fee contracts to provide indigent defense services or pay a flat rate to assigned counsel based on the seriousness of the charge. As previously noted, the use of flat fee contracts makes it difficult to determine the rate of assigned counsel compensation. These types of contracts typically do not include case-load limitations, which calls into question whether defense counsel’s workload can be controlled in order to ensure quality representation as required by the ABA *Ten Principles of a Public Delivery System*.



Attorneys will be compensated the same amount regardless of how much, or how little, work they perform.

They also create perverse economic incentives since attorneys will be compensated the same amount regardless of how much, or how little, work they perform. Despite this fact, states have increasingly relied on flat fee contracts or compensation schedules in order to control indigent defense costs. Some examples of current flat rates for misdemeanor representation: Florida \$400, Connecticut \$350, North Dakota \$300, New Mexico \$180 and Virginia \$158. The current compensation system for Wayne County, Michigan (Detroit), actually pays attorneys based on specific events that take place in court with attorneys being compensated \$200 more for a guilty plea than for a dismissal. In Florida, appointed counsel is paid a flat fee of \$2,500 when defending someone who could go to prison for life.

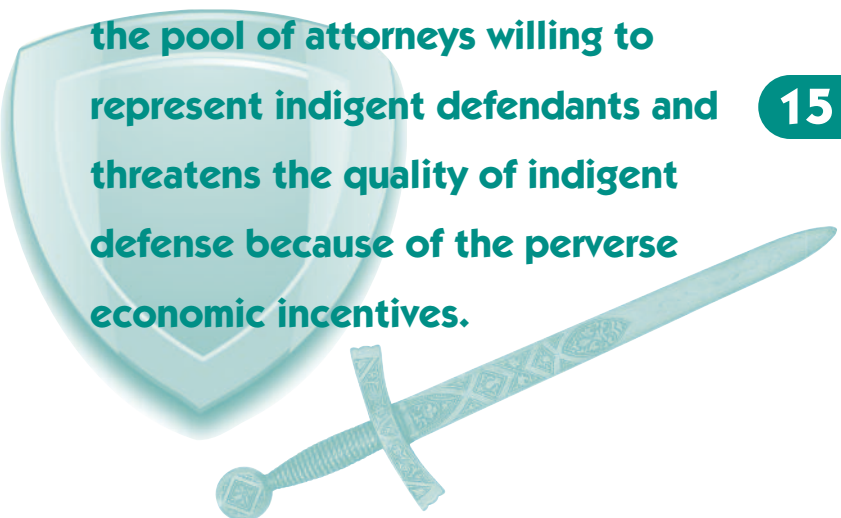


Current flat rates for misdemeanor representation:

Florida \$400, Connecticut \$350, North Dakota \$300, New Mexico \$180 and Virginia \$158.

Judicial Control

The first of the ABA's *Ten Principles of a Public Defense Delivery System* is that the selection and funding of assigned counsel be done independently from the judiciary. Despite that fact, at least 9 states rely primarily on the trial court judge to determine a reasonable amount of compensation for assigned counsel.

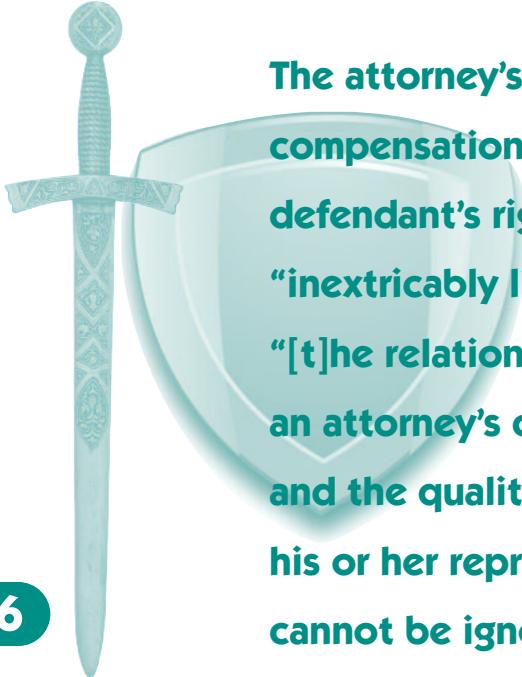


Inadequate compensation restricts the pool of attorneys willing to represent indigent defendants and threatens the quality of indigent defense because of the perverse economic incentives.

15

Resulting Negative Impact on the Indigent Defense Delivery System

The issues identified above have troubling implications for a public defense delivery system's ability to provide adequate representation. Inadequate compensation restricts the pool of attorneys willing to represent indigent defendants and threatens the quality of indigent defense because of perverse economic incentives.¹⁷ It creates conflicts of interest for attorneys by encouraging them to limit the amount of work they perform on a case for an indigent client. A stagnant hourly rate leads to a decrease in the overall number of attorneys willing to accept court appointments. More experienced attorneys refuse to participate in assigned counsel systems that pay hourly rates far below the market rate. Younger attorneys, who are often burdened by



The attorney's right to fair compensation and the defendant's rights are "inextricably linked" and "[t]he relationship between an attorney's compensation and the quality of his or her representation cannot be ignored.

student loans, never even consider joining the defense bar.¹⁸ Even more troubling is the possibility that low hourly rates will encourage some attorneys to accept more clients than they can effectively represent in order to make ends meet. The result is an inadequate, inexperienced, overworked and inherently conflicted pool of attorneys accepting court appointments in our criminal courts.

The National Legal Aid & Defender Association's *Standards for the Administration of Assigned Counsel Fees* makes it clear that there needs to be a reasonable rate of compensation in order to ensure the quality of an assigned counsel system. The American Bar Association's *Ten Principles of a Public Defense Delivery System* stresses the need for assigned counsel compensation to be "a reasonable fee in addition to actual overhead and expenses." Designation of an hourly rate, without consideration of overhead expenses, is a haphazard and flawed method of compensation. For example, in 1996 court-appointed counsel in Iowa were paid an hourly rate of \$45, but the mean overhead expenses for court-appointed counsel was \$36.75 an hour, resulting in an hourly rate of

\$8.75.¹⁹ In 2003, it was estimated that an attorney working in New York City had hourly overhead costs of \$42.88, but the rate for appointed counsel was only \$40 for in-court work and \$25 for out-of-court work. Attorneys actually lost money when handling assigned cases.²⁰ Altman Weil's 2008 *Survey of Law Firm Economics* reported that the annual overhead costs for small law firms, defined as those with 2 to 8 lawyers, were \$160,000 per lawyer. Assuming an attorney was able to bill for 2,000 hours of work in a year, that would result in an overhead rate of approximately \$80 an hour. Another survey by Altman Weil reported that law firm overhead has risen twice as fast as the consumer price index since 1985.²¹


Hourly rates combined with a maximum fee cap lead to perverse incentives and conflicts of interest. The consequence of setting a maximum fee is that it unintentionally establishes the number of hours a lawyer "should" work on the case. This creates a conflict of interest for lawyers once they have worked the maximum number of hours available for compensation. Several courts when adjudicating challenges to the adequacy of compensation for appointed counsel have recognized this conflict of interest. The Florida Supreme Court stated the attorney's right to fair compensation and the defendant's rights are "inextricably linked"²² and "[t]he relationship between an attorney's compensation and the quality of his or her representation cannot be ignored. It may be difficult for an attorney to disregard that he or she may not be reasonably compensated for the legal services provided due to the statutory fee limit."²³ The Supreme Court of Iowa stated that "low compensation pits a lawyer's economic interest...against the interest of the client in effective representation."²⁴

A study done on Virginia’s indigent defense system concluded that unreasonably low statutory fee caps encourages assigned counsel to put in as little effort as possible on individual cases and the low rate of compensation discourages many qualified, competent criminal defense lawyers from handling court-appointed cases.²⁵ A similar study of the indigent defense system in Pennsylvania concluded that flat fees paid to appointed counsel could be a disincentive to effective preparation and advocacy and that low compensation rates create little incentive to develop expertise in criminal defense.²⁶ A study which compared the effectiveness of defense counsel in Philadelphia concluded that low pay reduces the pool of attorneys willing to take appointments, makes doing preparation uneconomical and the use of a flat fee structure creates no marginal incentives to prepare for trial.²⁷

Even in the states where the maximum fee can be exceeded in special circumstances, the designation of a maximum fee still has an impact on the level of compensation. While the maximum fee may not be an accurate estimate of the amount of work required to provide adequate representation, it still represents the perceived maximum amount of compensation that can be earned. Attorneys wishing to be awarded additional compensation need to demonstrate that the specific facts and circumstances of their case justify additional compensation. In addition, there are transactional costs associated with seeking additional compensation. The time and effort needed to file a motion seeking additional compensation discourage attorneys from seeking additional compensation.

Providing indigent defense services through a system of flat fee contracts gives rise to the same concerns, but also creates the possibility of unreasonably high caseloads. There is often a lack of transparency with regard to the terms and conditions of the contract as well. Awarding a contract to provide indigent defense services to the lowest bidder led at least one court to conclude that the continued use of a flat fee contract to provide indigent defense services gives rise to the presumption of ineffective assistance of counsel.²⁸ Contracting terms and processes are often hidden and unavailable to the public. As a result, there is no way to exercise oversight and regulation of the indigent defense system to ensure that defendants are receiving effective representation.

Flat fee contracts are undoubtedly attractive to legislatures as a way to contain costs. However, a report by the Department of Justice found that “good contract systems cost more per case than do public defender or assigned counsel programs.”²⁹ While very few empirical studies have examined indigent defense contracting systems, the few available show troubling consequences for the quality of representation. One study in Clark County, Washington, found the contracting system decreased the quality of representation, the number of cases taken to jury trials, increased guilty pleas at first appearances, caused a decline



“Low compensation pits a lawyer’s economic interest...against the interest of the client in effective representation.”

in motions to suppress and requests for expert assistance, and an increase in complaints from defendants.³⁰ Another study found similar deficiencies in representation provided under a contracting system and concluded that, over the long term, contracting would cost the state more than an appointed counsel system.³¹

If a jurisdiction chooses to utilize a contracting system, several guiding criteria should be followed to ensure effective representation. The National Legal Aid & Defender Association's *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services* recommends the following contractual elements: specifications for minimum professional qualifications; provisions for support staff, forensic experts, and investigators; compensation commensurate with experience; an allowable caseload; ability to decline cases without penalty when the maximum caseload is reached; funds and staff to permit systematic and comprehensive training; a filing retention and management system; and others.³² A Department of Justice report affirmed the importance of many of these features.³³

It is also important to recognize that the Bureau of Justice Statistics estimates that over 80 percent of felony defendants have publically assigned counsel.³⁴ When we take into consideration that the vast

majority of criminal defendants are classified as indigent, it becomes clear that the rates paid to assigned counsel have a tremendous impact on the cost of legal services. Since lawyers tend to specialize, and since the field of criminal defense has become increasingly complex, it is safe to assume that the attorneys who participate in assigned counsel programs devote a significant portion, if not all of their practice, to criminal defense. If these attorneys are paid an unreasonable low hourly rate for their work as assigned counsel, the inescapable conclusion is that they will need to charge private clients significantly more. An unforeseen consequence of under-resourcing assigned counsel may be an increase in the cost of legal services for those defendants who are not classified as indigent.

Conclusion

The following table details the state of appointed counsel compensation in all 50 states. It is undeniable that the rate of compensation is directly linked to the quantity of attorneys willing to accept court appointments and the quality of their representation. While some states have made improvements throughout the years, too many states have neglected this essential element of their public defense delivery system. As a result, the current hourly rates and maximum fee caps do not reflect the reality of the legal marketplace. Without immediate reform, the supply of qualified attorneys willing to take appointments will dwindle and those attorneys who continue to accept appointments will find it almost impossible to provide effective representation.

The real issue is not that lawyers are not getting paid what they are worth. Rather, the issue is that they are being paid so little that they are no longer able to participate in our indigent defense systems. A dwindling supply of attorneys willing to partic-



ipate in assigned counsel programs exposes public defender organizations to ever-increasing case-loads. Only a reasonable rate of compensation can create an elastic supply of qualified private attorneys willing to be active members of the defense bar. Without their participation, our nation's indigent defense systems cannot guarantee that all defendants will receive equal justice under the law.

Endnotes

1. While some states permit fees in excess of statutory maximums under special circumstances, this report focuses on the maximum fee that can be earned under normal circumstances.

2. The Spangenberg Group, RATES OF COMPENSATION PAID TO COURT-APPOINTED COUNSEL IN NON-CAPITAL FELONY CASES AT TRIAL: A STATE-BY-STATE OVERVIEW (2003).

3. Norman Lefstein, Securing Reasonable Caseloads: Ethics and Law in Public Defense (2011).

4. See ABA STANDARDS FOR CRIMINAL JUSTICE PROVIDING DEFENSE SERVICES, STANDARD 5-2.4: COMPENSATION AND EXPENSES (1992).

5. The District of Columbia compensates assigned counsel at a rate of \$90 an hour and limits attorney compensation to \$7,000 for felonies and \$2,000 for misdemeanors.

6. *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932).

7. *New York County Lawyers' Association v. State*, 196 Misc2d 761, 763 N.Y.S.2d 397, 407 (2003).

8. *Id.* at 407.

9. See ABA STANDARDS FOR CRIMINAL JUSTICE PROVIDING DEFENSE SERVICES, STANDARD 5-2.4: COMPENSATION AND EXPENSES (1992).

10. See *White v. Board of County Commissioners*, 537 So.2d 1376, 1380 (Fla. 1989); *Makemson v. Martin County*, 491 So.2d 1109 (Fla. 1986); *In re Recorder's Court Bar Association*, 443 Mich. 110, 503 N.W.2d 885 (1993); *Smith v. State*, 118 N.H. 764, 394 A.2d 834 (1978); *State v. Lynch*, 796 P.2d 1150 (Okla. 1990).

11. *Jewell v. Maynard*, 181 W.Va. 571, 383 S.E.2d 536 (1989).

12. *Simmons v. State Defender*, 791 N.W.2d 69 (Iowa 2010).

13. *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (1992); *May v. State*, 672 So.2d 1307 (Ala. Crim. App. 1993).

14. "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." Judge Learned Hand, Remarks to the New York Legal Aid Society (16 February 1951).

15. *But see* New York County Law § 722-b(3) which permits compensation in excess of fee limitations in extraordinary circumstances.

16. Those states are: Alaska, Colorado, Delaware, Florida, Hawaii, Kansas, Maine, Nevada, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia and West Virginia.

17. See *Lavallee v. Hampden Superior Court*, 442 Mass. 228, 812 N.E.2d 895 (2004)(attributing a shortage of criminal defense attorneys to represent indigent defendants to the low rate of attorney compensation); see also Gershowitz, *Raise the Proof: A Default Rule for Indigent Defense*, 40 Conn. L. Rev. 85, 96 (2007)("Because funding for indigent defense is so low, competent lawyers usually refuse to take appointed cases.").

18. See Final Report of the ABA Commission on Loan Repayment and Forgiveness, LIFTING THE BURDEN: LAW SCHOOL DEBT AS A BARRIER TO PUBLIC SERVICE (2003).

19. Robert R. Rigg, *The Constitution, Compensation, and Competence: A Case Study*, 27 Am. J. Crim. L. 1, 25-26 (1999) (citing Iowa State Bar Association Indigent Defense Survey).

20. *New York County Lawyers' Association v. State*, 196 Misc2d 761, 763 N.Y.S.2d 397, 407 (2003).

21. See Altman Weil, SURVEY OF LAW FIRM ECONOMICS: TREND COMPARISON OF OVERHEAD EXPENSES (2003).

22. *Makemson v. Martin County*, 491 So.2d 1109, 1112 (1986).

23. *White v. Bd. of County Com'rs of Pinellas County*, 537 So.2d 1376, 1380 (1989).

24. *Simmons v. State Public Defender*, 791 N.W.2d 69, 88 (2010).

25. The Spangenberg Group, A COMPREHENSIVE REVIEW OF INDIGENT DEFENSE IN VIRGINIA 86 (2004).

26. Pennsylvania Supreme Court, FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUDICIAL SYSTEM 168 (2003).

27. James M. Anderson, Paul Heaton, MEASURING THE EFFECT OF DEFENSE COUNSEL ON HOMICIDE CASE OUTCOMES (2013) available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/241158.pdf>

28. *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984).

29. Bureau of Justice Assistance, Dep't of Justice, CONTRACTING FOR INDIGENT DEFENSE SERVICES 17 (April 2000) (noting several additional characteristics shared by effective contract systems, including independent oversight and monitoring, limitations on the practice of law outside the contract, guidelines on client contact and notification of appointment, and a mechanism for oversight and evaluation).

30. *Id.* at 10. (citing Lefstein, Norman, CRIMINAL DEFENSE SERVICES FOR THE POOR: METHODS AND PROGRAMS FOR PROVIDING LEGAL REPRESENTATION AND THE NEED FOR ADEQUATE FINANCING (1982)).

31. *Id.* (citing Houlden, Pauline, and Steven Balkin, QUALITY AND COST COMPARISONS OF PRIVATE BAR INDIGENT DEFENSE SYSTEMS: CONTRACT VS. ORDERED ASSIGNED COUNSEL, *Journal of Criminal Law and Criminology* 76:176 (1985)).

32. See NLADA, GUIDELINES FOR NEGOTIATING AND AWARDING GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES (1984).

33. Bureau of Justice Assistance, Dep't of Justice, CONTRACTING FOR INDIGENT DEFENSE SERVICES 16 (April 2000).

34. United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, DEFENSE COUNSEL IN CRIMINAL CASES (2000).

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS 50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
Alabama	\$70	Class A Felony: \$4,000 Class B Felony: \$3,000 Class C Felony: \$2,000 Misdemeanors: \$1,500	2011

Authority: Code of Alabama 1975 § 15-12-21

Alaska	\$60 in court \$50 out of court	<i>Felony Trial: \$4,000</i> <i>Felony disposition without trial: \$2,000</i> <i>Misdemeanor trial: \$800</i> <i>Misdemeanor Disposition without trial: \$400</i>	1986
--------	--	--	------

Authority: Alaska Administrative Code Title 2 § 60.010

Arizona	Varies by county Maricopa County (Phoenix) \$70 for major felonies (such as murder or manslaughter) Uses a flat fee for other charges Class 1,2,3 Felony: \$1,250 Class 4,5,6 Felony: \$900 Misdemeanor: \$400	None	2005
---------	---	------	------

Authority: Arizona Revised Statute § 13-4013(A):

Compensation for services rendered to the defendant shall be in an amount that the court in its discretion deems reasonable, considering the services performed.

Arkansas	Class A or Y Felony: \$70 - \$90 Other felony: \$60 - \$80 Misdemeanor: \$50 - \$80	None	2012
----------	---	------	------

Travel hours paid at ½ hourly rate

Authority: Arkansas Code Annotated § 16-87-211(b)(2)2001

Directs the Arkansas Public Defender Commission to establish rates

Payment & Expense Reimbursement Guidelines.....2012

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
California	Varies by county	None	1951
	<p>San Francisco Superior Court Indigent Defense Administration: Serious felonies: \$106 Felonies: \$89 Misdemeanors: \$66</p> <hr/> <p>Authority: California Penal Code § 987.2: Assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court</p>		
Colorado	Type A Felony: \$68	<i>Class 1 Felonies with trial / without trial:</i>	2008
		<i>\$24,000 / \$12,000</i>	
	Type B Felony: \$65	<i>Class 2 Felonies with trial / without trial:</i>	
		<i>\$10,000 / \$5,000</i>	
Misdemeanors: \$65	<i>Class 3 - 6 Felonies with trial / without trial:</i>		
	<i>\$6,000 / \$3,000</i>		
	<i>Misdemeanors with trial / without trial:</i>		
	<i>\$2,000 / \$1,000</i>		
<hr/> <p>Authority: Chief Justice Directive 04-04</p>			
Connecticut	Felony: \$75	Most cases are handled through	2013
	Misdemeanor: \$50	flat rate contracts: Class A and B Felonies: \$1,000 per case Class C Felony and Misdemeanor: \$350 per case	
<hr/> <p>Authority: Connecticut Public Defender Services Commission</p>			
Delaware	\$60 maximum	<i>Felonies: \$2,000</i> <i>Misdemeanors: \$1,000</i>	2012
<hr/> <p>Authority: Rules of Criminal Procedure for the Superior Court of the State of Delaware Rule 44(c)(1)</p>			

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
Florida	Flat rate which varies depending on the offense charged	<i>Statutory Maximums</i> <i>Life felony: \$3,000</i> <i>Felony: \$2,500</i> <i>Misdemeanor: \$1,000</i> <i>Flat Rates</i> <i>Life felony: \$2,500</i> <i>Felony: \$750 to \$1,500</i> <i>Misdemeanor: \$400</i>	2003
Authority: Florida Statute Annotated § 27.5304 (sets maximum compensation) & Annual General Appropriations Act (sets flat rate)			
Georgia	Georgia Public Defender Standards Council contracts with individual attorneys	Flat fee structure authorized by statute	2011
Authority: Code of Georgia Annotated § 17-12-22			
Hawaii	\$90	<i>Felony: \$6,000</i> <i>Misdemeanor jury trial: \$3,000</i> <i>Misdemeanor: \$1,500</i> <i>Petty Misdemeanor: \$900</i>	2005
Authority: Hawaii Revised Statute § 802-5			
Idaho	The court shall prescribe a reasonable rate of compensation	None	1998
Authority: Idaho Official Code § 19-860(b)			
Illinois	For Cook County \$40 in court \$30 out of court All other counties establish rates independently	<i>For Cook County</i> <i>Felony: \$1,250</i> <i>Misdemeanor: \$150</i>	2000
Authority: 725 Illinois Compiled Statutes § 5/113-3			

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
Indiana	Determined by court	None	2012
	Indiana Public Defender Commission Standards: Not less than \$70		
	Authority: Indiana Code 33-40-8-2 &2004 Indiana Public Defender Commission Standards for Indigent Defense Services in Non-Capital Cases2012		
Iowa	State Public Defender authorized to use flat fee contracts	State Public Defender has established fee limitations Class A Felony: \$18,000 Class B Felony: \$3,600	2007
	If not under contract then Class A Felony: \$70 Class B Felony: \$65 All other charges: \$60	Class C & D Felonies and Aggravated Misdemeanors: \$1,200 Serious Misdemeanors: \$600 Simple Misdemeanors: \$300	
	Authority: Iowa Code Annotated § 13B.4 (flat fee contracts) & Iowa Code Annotated § 815.7 (hourly rates)		
Kansas	\$80 an hour but can be lowered by the Chief Judge of any Judicial District or the Kansas Board of Indigent Defense Services	<i>Kansas Board of Indigent Defense Services sets maximum fees for some felonies: Varies from \$930 to \$1,240</i>	2007
	Rate set by Board: \$62		
	Authority: Kansas Statutes Annotated § 22-4507 & Kansas Administrative Regulations 105-5-2, 105-5-6		
Kentucky	Department of Public Advocacy uses mostly flat fee contracts but has proposed hourly rates of \$100 for felonies and \$75 for misdemeanors	Department of Public Advocacy uses mostly flat fee contracts but has proposed caps ranging from \$2,500 for class A felonies to \$375 for misdemeanors in non-trial cases	2002
	Authority: Kentucky Revised Statutes Annotated § 31.235		

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
Louisiana	Uses flat fee Contracts	None	2007
Authority: Louisiana Revised Statutes Annotated § 15:147			
Maine	\$50	<i>Class A Crime (max. sentence of 30 years): \$2,500</i> <i>Class B & C Crimes against a person (max. sentence of 10 & 5 years respectively): \$1,875</i> <i>Class B & C Crimes against property (max. sentence of 10 & 5 years respectively): \$1,250</i> <i>Class D & E Crimes against a person (max. sentence of 1 year & 6 months respectively): \$625 in Superior Court or \$450 in District Court</i>	2012
Authority: Code of Maine Rules § 94-649, Chapter 301			
Maryland	Maryland Administrative Code calls for the same hourly rate as federal panel attorneys “as the annual budget permits” Current rate: \$50	Felonies: \$3,000 Misdemeanors: \$750	2008
Authority: Maryland Code of Criminal Procedure § 16-207 Maryland Administrative Code 14.06.02.06			
Massachusetts	\$60 in Superior Court \$50 in District Court	None+	2011
Authority: Massachusetts General Laws Annotated 211D § 11			

+There is no per case maximum but there is an annual cap on billable hours of 1,650.

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
Michigan	<p>Varies by County: Reasonable compensation as determined by the chief judge</p> <p>In Wayne County (Detroit) attorneys are initially paid a flat fee based on the possible sentence and are then paid by the “event.”</p> <p>Initial flat fee for case with potential sentence of 5 years: \$250 5 - 10 years: \$300 10 - 20 years: \$350</p> <p>For a “Disposition Conference” that results in: a dismissal \$130 a guilty plea \$350</p> <p>Sentencing: \$60 Evidentiary Hearing: \$80 Jury Trial ½ day: \$90</p>	<p>Counties often use flat fee contracts</p>	1981
Authority: Michigan Compiled Law Annotated 775.16 § 11			
Minnesota	<p>State Board of Public Defense determines compensation rates but relies on flat fee contracts</p>	<p>Relies on flat fee contracts</p>	1991
Authority: Minnesota Statutes Annotated § 611.215			
Mississippi	<p>Judge approves amount of compensation</p>	<p>\$1,000 in Circuit Court \$200 if the case does not originate in a court of record</p>	1971
Authority: Mississippi Code Annotated § 99-15-17			

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
Missouri	<p>Public Defender Commission uses flat fee contracts with individual attorneys</p> <p>Class A or B Felony \$750 to \$2,000</p> <p>Class C or D Felony \$750 to \$1,500</p> <p>Misdemeanor \$375</p>	<p>Additional compensation is provided if the case goes to trial</p>	1982
<hr/> Authority: Missouri Revised Statutes § 600.042 <hr/>			
Montana	<p>\$60</p> <p>Plus an additional office stipend of \$25 per month</p>	None	2012
<hr/> Authority: Montana Code Annotated § 47-1-2162005 The Montana Public Defender Commission has the authority to set rates of compensation Office of State Public Defender Administrative Policy 130: Fee Schedule 20122012 <hr/>			
Nebraska	<p>Varies by county</p> <p>Lancaster County (Lincoln): \$75 District Court \$50 County Court</p>	None	1995
<hr/> Authority: Revised Statutes of Nebraska § 29-3927 Empowers the Commission on Public Advocacy to set rates <hr/>			
Nevada	\$100	<i>Felony or Gross Misdemeanor: \$2,500 Misdemeanor: \$750</i>	2003
<hr/> Authority: Nevada Revised Statutes Annotated § 7.125 <hr/>			

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
New Hampshire	\$60	<i>Felonies: \$4,100</i>	2008
		<i>Misdemeanors: \$1,400</i>	
Authority: Superior Court Rules, Rule 47			
New Jersey	\$60 in court	None [≠]	2012
	\$50 out of court		
Authority: New Jersey Statutes Annotated § 2A:158A-71967 Empowers the Public Defender to establish rates			
Office of the Public Defender Pool Attorney Application Process.....2012			
New Mexico	New Mexico Public Defender Department uses flat fee contracts	Flat fee based on seriousness of the offense	2012
		Felonies 1st Degree: \$700 2nd Degree: \$650 3rd Degree: \$595 4th Degree: \$540 Misdemeanor: \$180	
Authority: New Mexico Statutes Annotated § 31-15-7(11)1978 Empowers the New Mexico Public Defender Department to establish rates			
Contract Counsel Legal Services Requests for Proposals.....2012			
New York	Felony: \$75	<i>Felony: \$4,400</i>	2003
	Misdemeanor: \$60	<i>Misdemeanor: \$2,400</i>	
Authority: New York County Law § 722-b			

[≠]Attorneys may only bill up to 9 hours on any given day.

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
North Carolina	Class A – D Felonies: \$70 All other cases in District Court: \$55	None	2012
	Authority: General Statutes of North Carolina § 7A-498.5		2001
	Office of Indigent Defense Services sets rates		
	Private Assigned Counsel Rates		2012
North Dakota	\$75	<i>Presumed rates</i> <i>Felony: \$525 (7 hours worked)</i> <i>Misdemeanor: \$300 (4 hours worked)</i>	2012
	Authority: North Dakota Century Code § 29-07-0.1.1		2005
	The Commission on Legal Counsel for Indigents sets rates		
	Presumed Rate for Attorney Fee Reimbursement		2012
Ohio	\$60 in court \$50 out of court	<i>Felonies</i> <i>1st to 3rd Degree: \$3,000</i> <i>4th and 5th Degree: \$2,500</i> <i>Misdemeanors: \$1,000</i>	2003
	Authority: Ohio Revised Code § 120.041975		1975
	Ohio Public Defender sets assigned counsel rates and maximum levels of compensation		
	Standards & Guidelines for Appointed Counsel Reimbursement		2000
State Maximum Fee Schedule		2003	
Oklahoma	Oklahoma Indigent Defense System uses flat fee contracts	<i>Felony: \$3,500</i> <i>Misdemeanor: \$800</i>	1993
	Authority: Oklahoma Statutes Title 22 § 1355.8		

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
Oregon	\$45	None	2013
<hr/>			
Authority: Oregon Revised Statutes § 151.216.....2001			
Oregon Public Defense Services Commission sets rates			
Public Defense Payment Policies and Procedures.....2013			
<hr/>			
Pennsylvania	Varies by county Judge determines reasonable compensation	Some counties use flat fee schedules Allegheny County (Pittsburgh) Preparation for Serious felonies (rape, robbery, child abuse): \$1,500 All other cases: \$500 Preliminary hearings: \$250 Trial ½ day: \$250 Trial full day: \$500	1969
<hr/>			
Authority: 16 Pennsylvania Consolidated Statutes § 9960.7			
<hr/>			
Rhode Island	Class 1 Felony: \$90 Class 2 Felony: \$60 Misdemeanor: \$50	<i>Class 1 Felony: \$10,00</i> <i>Class 2 Felony: \$5,000</i> <i>Misdemeanor: \$1,500</i>	2012
<hr/>			
Authority: General Laws of Rhode Island § 8-15-2.....1956			
Chief Justice of the Supreme Court has authority to set rates			
Supreme Court Executive Order No. 2016-062012			
<hr/>			
South Carolina	\$60 in court \$40 out of court	<i>Felony: \$3,500</i> <i>Misdemeanor: \$1,000</i>	1993
<hr/>			
Authority: Code of Laws of South Carolina § 17-3-50			
<hr/>			

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
South Dakota	\$84	None	2013
<p>Authority: South Dakota Codified Laws § 23A-40-81983 Judge has authority to set rates Unified Judicial System Policy regarding court appointed attorney fees2013</p>			
Tennessee	\$50 in court \$40 out of court	<i>Felony: \$1,500</i> <i>Misdemeanor: \$1,000</i>	2005
<p>Authority: Tennessee Supreme Court Rule 13</p>			
Texas	Varies by county Average payment to defense counsel in the five largest counties (Harris, Dallas, Tarrant, Bexar & Travis) Felony: \$653 Misdemeanor: \$120**	Varies by county	2011
<p>Authority: Texas Code of Criminal Procedure Article 26.05 County judges authorized to set rates</p>			
Utah	Counties often use flat fee contracts Average attorney compensation for felony cases: \$400++	<i>Felony: \$3,500</i> <i>Misdemeanor: \$1,000</i>	1997
<p>Authority: Utah Code Annotated § 77-32-304.5 Trial judge sets rates, subject to statutory maximums</p>			

§ State of South Dakota Unified Judicial System policy is to increase court appointed attorney fees in an amount equal to any cost of living increase for state employees approved by the legislature.

**"Harris County Public Defender Preliminary Report on Operations and Outcomes" prepared by the Council of State Governments Justice Center (2012)

++"Failing Gideon: Utah's Flawed County by County Public Defender System" American Civil Liberty Union of Utah (2011)

*Maximum fees listed in italics are subject to waiver under special circumstances.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
Vermont	\$50	<i>Major Felony: \$5,000</i>	1994
		<i>Minor Felony: \$2,000</i>	
		<i>Misdemeanor: \$1,000</i>	
	Authority: 13 Vermont Statutes Annotated Title 13 § 5205		1981
	Courts set rates		
	Supreme Court Administrative Order No. 4.....	1994	
<hr/> <hr/>			
Virginia	Attorneys are paid a statutory fee based on the charge	<i>District Court \$240</i>	2013
	District Court \$120	<i>Circuit Court Felony punishable by more than 20 years: \$2,085</i>	
	Circuit Court Felony punishable by more than 20 years: \$1,235	<i>All other felonies: \$600</i>	
	All other felonies: \$445	<i>Misdemeanors punishable by jail: \$158</i>	
	Misdemeanors punishable by jail: \$158		
	Authority: Code of Virginia Annotated § 19.2-163		2007
	Court sets rates, subject to statutory limits		
Supreme Court of Virginia Chart of Allowances 2013.....		2013	
<hr/> <hr/>			
Washington	Varies by county	Varies by county	1984
	King County (Seattle)	Many counties use flat fee contracts	
	Class A Felony: \$70		
	Class B/C Felony: \$55		
Misdemeanor: \$50			
Authority: Revised Code of Washington Annotated § 36.26.090			
Court awards reasonable compensation			
<hr/> <hr/>			

*Maximum fees listed in italics are subject to waiver under special circumstances.

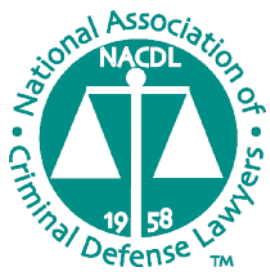
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

50-State Survey of Trial Court Assigned Counsel Rates for 2013

STATE	HOURLY RATE	MAXIMUM FEE*	YEAR ENACTED
West Virginia	\$65 in court	<i>\$3,000</i>	1990
	\$45 out of court		
Authority: West Virginia Code § 29-21-13(a)			
<hr/>			
Wisconsin	\$40	None	1995
Authority: Wisconsin Statutes § 977.08			
<hr/>			
Wyoming	\$100 in court Maximum	None	2007
	Minimum \$30 and Maximum \$60 for out of court		
Authority: Wyoming Rules of Criminal Procedure Rule 44(e)			

*Maximum fees listed in italics are subject to waiver under special circumstances.

This publication is available online at www.nacdl.org/gideonat50/



NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

1660 L Street NW, 12th Floor

Washington, DC 20036

Phone: 202-872-8600

www.nacdl.org