



Fiscal Services Division

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Inside this Fiscal Research Brief

Summary

This *Fiscal Research Brief* provides an analysis of private attorneys accepting indigent defense appointments in Iowa. Also included is an overview of Iowa’s indigent defense system and funding information related to indigent defense.

Affected Agencies

Office of the State Public Defender
Judicial Branch

Iowa Code Authority

Iowa Code chapters [13B](#) and [815](#)

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State Public Defender Contract Attorneys

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Background

Overview of Iowa's Indigent Defense System

The United States Constitution and the [Iowa Constitution](#) require an indigent criminal justice defendant and indigent juveniles to be provided with legal counsel at no initial cost to the client. According to Iowa Code section [815.9](#), a person is deemed to be indigent if the person has:

- An income level at or below 125.0% of the United States poverty level, unless the court determines that the person is able to pay for an attorney.
- An income level greater than 125.0%, but at or below 200.0%, of the federal poverty level if the court makes a written finding that not appointing counsel would cause the person substantial hardship.
- An income level greater than 200.0% of the federal poverty level if the person is charged with a felony and the court makes a written finding that not appointing counsel would cause the person substantial hardship.

Prior to FY 1988, the costs of indigent defense were paid by counties, and local public defenders were county employees. The General Assembly transferred indigent legal counsel expenses to the State beginning in FY 1988. In FY 1988, funds were appropriated to the Judicial Branch for the costs of indigent defense, but the Program was transferred to the State Public Defender's Office in FY 1989. Iowa has provided indigent defense services through the Office of the State Public Defender since FY 1989.

The Office of the State Public Defender uses a hybrid system, including public defenders and contract attorneys, to provide legal counsel to indigent criminal justice defendants. Public defenders are employees of the State and are paid a salary. Contract attorneys are not State employees and are paid an hourly rate for their work on court-appointed cases. If a public defender is unable to take a case, the judge appoints a private attorney who has a contract with the Office of the State Public Defender to represent indigent individuals. If the court determines that no contract attorney is available, the court may appoint a noncontract attorney to represent the indigent defendant. For more information about this hybrid system and the differences between public defenders and contract attorneys, see the *Fiscal Topic [Public Defenders and Contract Attorneys](#)*.

As of FY 2023, the Office of the State Public Defender had approximately 234 employees, 162 of which are attorneys who are known as public defenders. The public defenders are located primarily in 18 local public defender offices in 13 cities across the State and handle cases in all 99 counties. These cities include Des Moines, Burlington, Cedar Rapids, Council Bluffs, Davenport, Dubuque, Iowa City, Marshalltown, Mason City, Nevada, Ottumwa, Sioux City, and Waterloo. As of September 2023, the Office of the State Public Defender has contracts with approximately 535 attorneys who handle cases across the State.

Current Issue

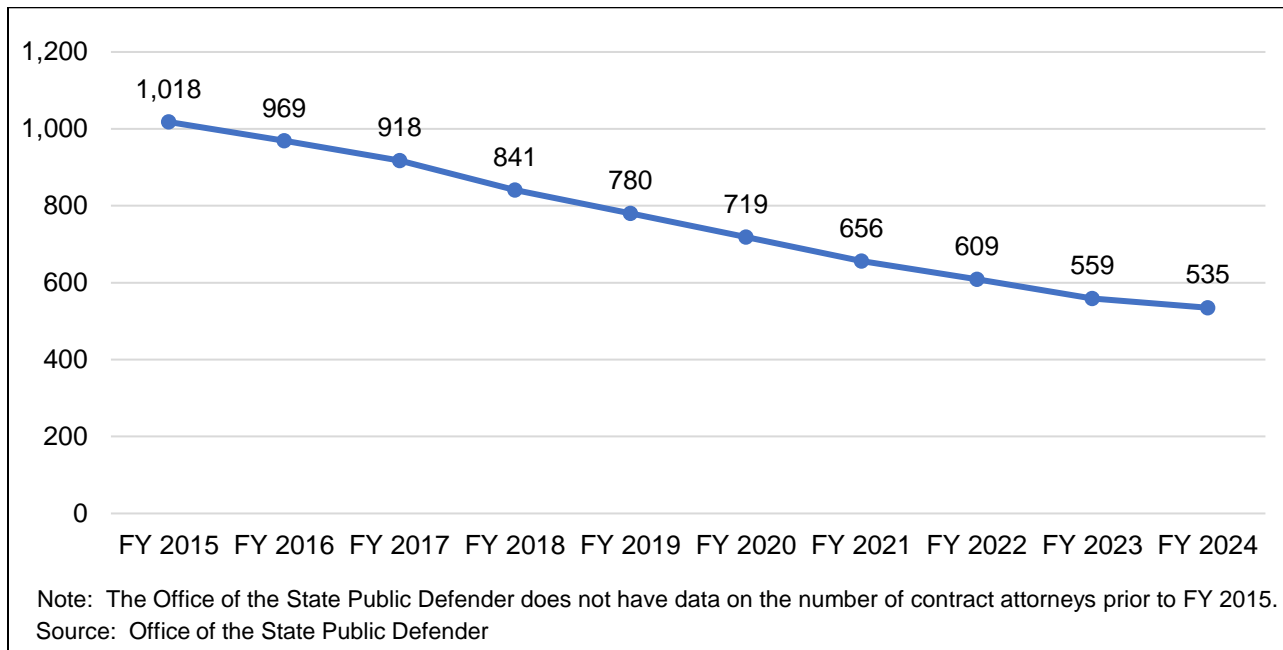
In recent years, there has been a significant decrease in the number of attorneys contracted with the Office of the State Public Defender. Fewer contract attorneys have accepted appointments, especially in rural areas. According to the Office of the State Public Defender, there are multiple areas of the State where it is difficult to find contract attorneys to take cases of all types. This issue is not limited to rural areas. Further, there are 32 counties in Iowa where public defenders take limited cases, and only four of these counties have an adequate number of contract attorneys.¹

¹ This is defined as a county having six or more contract attorneys for every 1,000 residents.

During the [2023 Condition of the Judiciary](#), Chief Justice Susan Christensen reported that the contract attorney shortage is one of the biggest issues facing the judicial system and can significantly delay criminal and juvenile court proceedings and the resolution of cases. According to the Chief Justice, the shortage of contract attorneys leads to scheduling difficulties and more driving time for existing contract attorneys.

Figure 1 shows the number of attorneys contracted with the Office of the State Public Defender from FY 2015 to FY 2024. The number of contract attorneys decreased every year during this time period. As of FY 2024, there are 535 contract attorneys, compared to 1,108 in FY 2015, a decrease of 51.7%.

Figure 1 — State Public Defender Contract Attorneys, FY 2015 to FY 2024



According to the Judicial Branch, there are approximately 5,000 full-time, actively practicing attorneys in Iowa who are eligible to take indigent defense cases as contract attorneys. With 535 of these attorneys currently accepting indigent defense appointments, that means approximately 10.7% of Iowa’s eligible attorneys are accepting indigent defense appointments.

Contract attorneys play a large role in Iowa’s indigent defense system, and they contribute in handling the caseload of the Office of the State Public Defender. In FY 2022, public defenders handled approximately 61,000 cases, and contract attorneys handled approximately 44,000 claims.² The use of contract attorneys to supplement the work of indigent defense allows a local public defender’s office to manage its caseload and prevent taking more cases than it is able to handle. It is also more economically efficient in some rural areas of the State to rely on the use of contract attorneys than to maintain a public defender’s office in that area. The use of contract attorneys also provides a mechanism to handle conflicts of interest, such as in situations of multiple codefendants and in postconviction relief proceedings when there are claims of ineffective assistance of counsel.

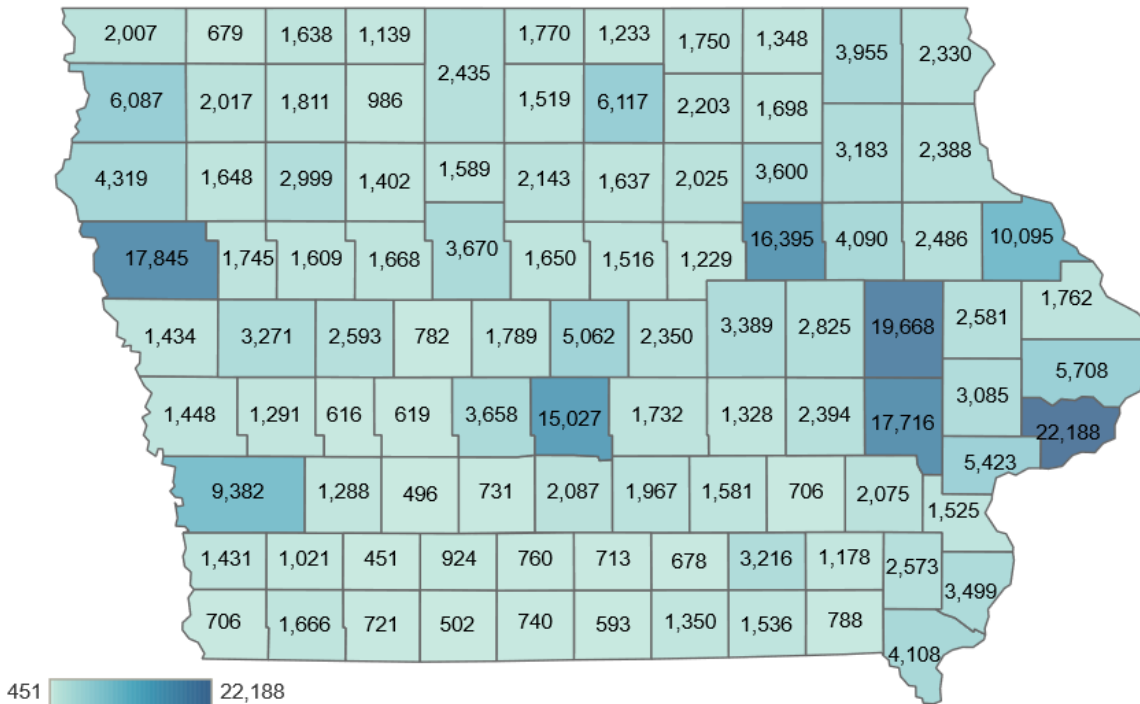
² A case for a public defender and a claim for a contract attorney are comparable, but they are not the same. Due to differences in the way data is tracked for the work of public defenders and contract attorneys, it is not possible for the comparison to be exact.

There are a variety of potential reasons for the contract attorney shortage in Iowa. One frequently cited reason is the hourly rate paid to contract attorneys compared to what they could be making practicing as an attorney in other disciplines³. For example, in calendar year (CY) 2022, the average hourly rate billed by attorneys in Iowa was \$251, while \$76 was the contract attorney rate in the State.⁴ Another reason that has been cited by Iowa Supreme Court Chief Justice Susan Christensen is that representing indigent defendants is difficult and can lead to burnout.⁵ The fact that fewer attorneys are living and working in certain areas of the State may be contributing to this issue as well.

Figure 2 displays the ratio of one contract attorney available for Class A cases by the population in each county. This figure was determined by calculating the number of contract attorneys available by the 2023 population of each county. Two contract attorneys are listed as a contact for every county in the State and as such may not be available for several counties. The following cities have State Public Defender office locations, which can help alleviate the burden of the contract attorney shortage:

- Des Moines, Burlington, Cedar Rapids, Council Bluffs, Davenport, Des Moines, Dubuque, Iowa City, Marshalltown, Mason City, Nevada, Ottumwa, Sioux City, and Waterloo.

Figure 2 — Number of County Residents Represented by One Contract Attorney



Source: Office of the State Public Defender

³ Indigent Defense in Iowa, Iowa State Bar Association, www.iowabar.org/?pg=IowaLawyerMagazine&pubAction=viewIssue&pubIssueID=25725&pubIssueItemID=130978

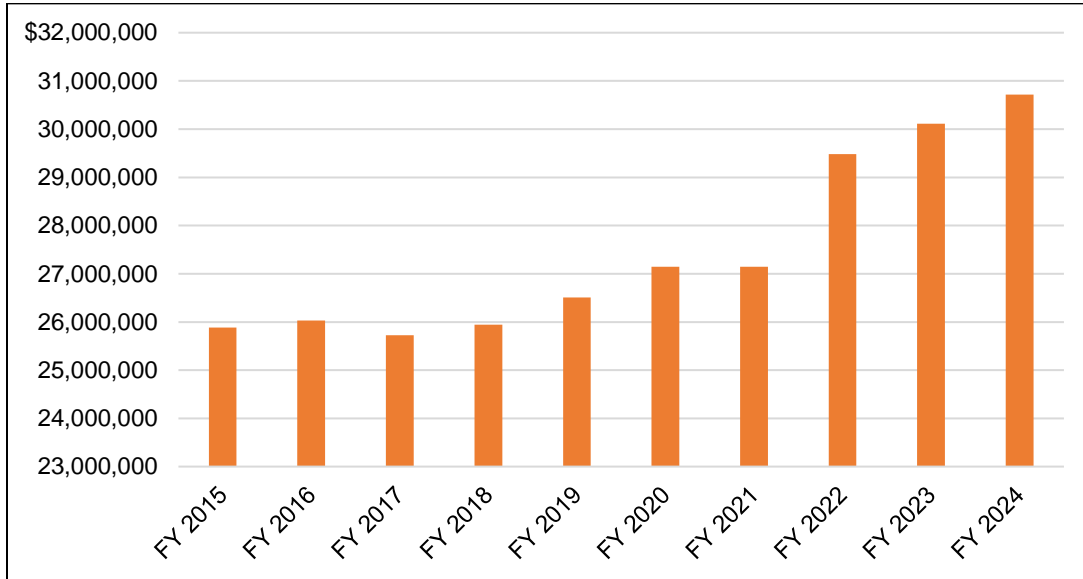
⁴ Lawyer Hourly Rate and Fees by State, Law Pay, www.lawpay.com/about/blog/lawyer-hourly-rate-by-state

⁵ "Shortages of court reporters, contract lawyers challenging Iowa's courts," The Gazette, www.thegazette.com/state-government/shortages-of-court-reporters-contract-attorneys-haunt-iowas-courts

Funding

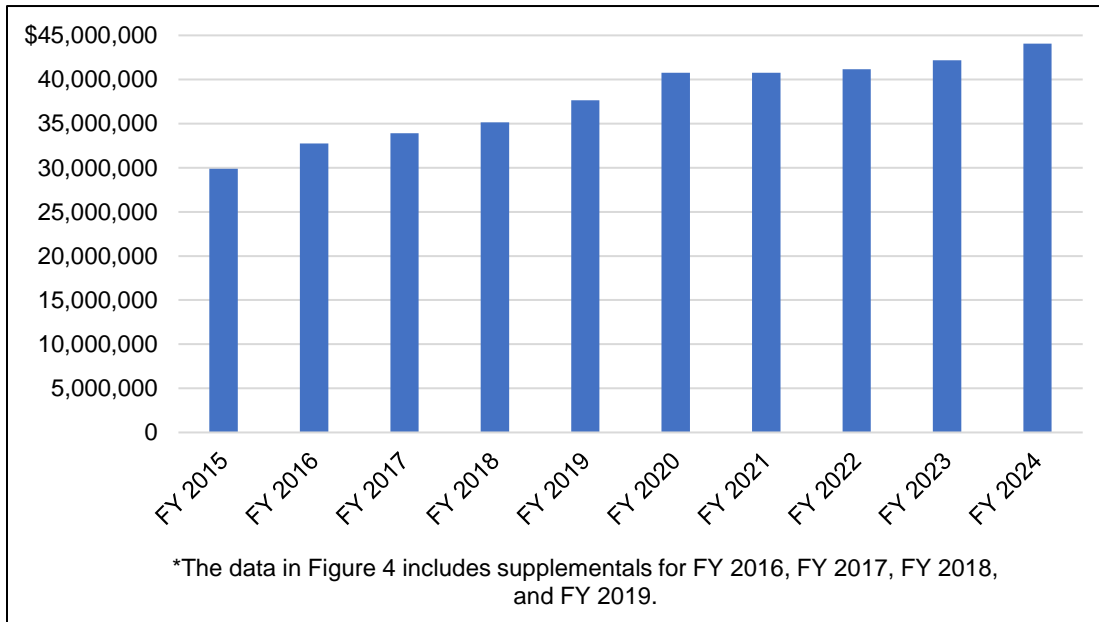
The Office of the State Public Defender receives separate appropriations for cases handled by its public defender employees and contract attorneys. The cases that public defender offices take are funded through a General Fund appropriation for the Public Defender. **Figure 3** shows the funding levels for this appropriation from FY 2015 to FY 2024.

Figure 3 — General Fund Appropriations for the Public Defender, FY 2015 to FY 2024



The Office of the State Public Defender’s contract attorney program is funded through a General Fund appropriation to the Indigent Defense Fund. **Figure 4** shows the funding levels for the Indigent Defense Fund from FY 2015 to FY 2024. During this period, the annual appropriation to the Indigent Defense Fund increased from \$29.9 million to \$44.0 million, which is a 47.2% increase.

Figure 4 — General Fund Appropriations to the Indigent Defense Fund, FY 2015 to FY 2024



On multiple occasions during the last 10 fiscal years, the General Assembly made a supplemental appropriation to the Indigent Defense Fund to cover claims against the Fund made in that fiscal year. These supplemental appropriations were made for FY 2016, FY 2017, FY 2018, and FY 2019. There are several factors that contributed to these cost increases to the Indigent Defense Fund, including an increase in caseloads and the complexity of cases. These supplemental appropriations are included in the appropriation amounts in **Figure 4**.

Contract attorneys are paid an hourly rate that is set by statute in Iowa Code section [815.7](#). There are different hourly rates for different case types. Higher hourly rates are paid for case types with a higher charge. According to the Office of the State Public Defender, in FY 2024, each \$1 increase in the hourly rate increases annual costs to the Indigent Defense Fund by approximately \$516,000. **Figure 5** shows the compensation levels for contract attorneys from FY 2000 to FY 2024. Since FY 2000, the General Assembly has increased the hourly rates for contract attorneys six times.

Figure 5 — Hourly Rates for Contract Attorneys, FY 2000 to FY 2024

Fiscal Year*	Class A Felony	Class B Felony	Class C Felony	Class D Felony	Misdemeanor	All Other Cases**
2000 - 2006	\$60	\$55	\$50	\$50	\$50	\$50
2007	\$65	\$60	\$60	\$60	\$60	\$55
2008 - 2019	\$70	\$65	\$60	\$60	\$60	\$60
2020 - 2021	\$73	\$68	\$63	\$63	\$63	\$63
2022	\$76	\$71	\$66	\$66	\$66	\$66
2023	\$78	\$73	\$68	\$68	\$68	\$68
2024	\$83	\$78	\$73	\$73	\$73	\$73

*Applies to assignments made on or after July 1 of the fiscal year.
 **Appeals, juvenile cases, contempt actions, representation of material witnesses, probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings.

Recent Action Taken

Legislative Action

In recent years, the General Assembly has increased the hourly rate paid to contract attorneys and instituted paid travel time. Since the 2019 Legislative Session, the rates for contract attorneys have been increased four times for a total increase of \$13 per hour. Prior to this, the most recent rate increase occurred in FY 2008. From FY 2008 to FY 2024, the rate paid for a Class A felony increased from \$70 to \$83, which is an 18.6% increase. The largest increase occurred during the 2023 Legislative Session, when the General Assembly raised rates for all case types by \$5 per hour.

During the 2023 Legislative Session, the General Assembly established pay for travel time for contract attorneys in Iowa Code section [815.7A](#). Prior to this, contract attorneys were generally not paid for the time they spent traveling to courthouses for cases and only received mileage reimbursement. The General Assembly appropriated an additional \$1.3 million to the Indigent Defense Fund for FY 2024 to pay for travel time. Contract attorneys now receive \$35 per hour for time spent traveling outside the attorney’s county of domicile when the travel is reasonable and necessary to represent an indigent client. However, if the travel is for a court proceeding other than a trial or other contested proceeding, the contract attorney can only receive compensation if the attorney files a motion for a remote hearing and the motion is denied. If the motion is denied, the Judicial Branch is responsible for reimbursing the Indigent Defense Fund for the travel time payment.

The General Assembly appropriated an additional \$250,000 to the Judicial Branch for FY 2024 for this purpose.

During the 2021 Legislative Session, the General Assembly transferred \$900,000 from the Indigent Defense Fund appropriation to the Public Defender appropriation and increased the State Public Defender's number of full-time equivalent (FTE) positions by 10.0 for FY 2022. The new FTE positions allowed 10.0 new public defenders to be placed in rural areas without a sufficient number of contract attorneys. These new public defenders are housed in county courthouses in those rural areas instead of a local public defender's office.

For FY 2024, the General Assembly transferred \$650,000 from the Indigent Defense Fund appropriation to the Public Defender appropriation and increased the State Public Defender's number of FTE positions by 7.0. The purpose of this funding shift was for a Wrongful Conviction Unit within the Office of the State Public Defender to allow Office attorneys to take on more postconviction relief cases. This was done to address the low number of contract attorneys available to accept these cases and an expected increase in postconviction relief cases.

State Public Defender Actions

In addition to the actions taken by the General Assembly in recent years, the Office of the State Public Defender has been undertaking various strategies to address the contract attorney shortage. These strategies include the following:

- Expanding free and easily accessible attorney training opportunities across the State, with the aim of helping attorneys become more knowledgeable and willing to contract with the Office.
- Increasing recruitment efforts for students to become contract attorneys.
- Reducing barriers to entry for recent law school graduates to become contract attorneys.
- Offering free continuing legal education opportunities to contract attorneys.
- Offering weekly online mentoring sessions for less experienced contract attorneys to learn from more experienced contract attorneys.
- Participating in local meetings across the State with judges and attorneys to discuss the specific coverage issues and other problems occurring in these local areas.
- Making the claims and payment process for contract attorneys faster and easier to complete.
- Increasing the efficiency of contract attorneys by encouraging the use of remote judicial proceedings for uncontested matters.

Other States

Iowa is not alone in facing declining contract attorney availability. Some other states have experienced similar issues in recent years, including Wisconsin and North Carolina.

Wisconsin

According to the Wisconsin Bar Association, fewer private attorneys have agreed to be available for indigent defense appointments in recent years. The number of private attorneys certified with the Office of the Wisconsin State Public Defender decreased by 18.0% from January 2019 to August 2022. Further, this issue is occurring concurrently with the additional issue of vacancies and staff shortages at State Public Defender offices in Wisconsin.

The Wisconsin Legislature increased rates paid to private attorneys taking indigent defense cases during the 2023 Legislative Session. For FY 2024, the rate paid to contract attorneys is \$100 per hour. From CY 2020 to FY 2023, the rate paid to contract attorneys was \$70 per hour. Before this, the rate paid to contract attorneys was \$40 per hour, which was the rate established in 1995.

Wisconsin also pays contract attorneys for travel time. This includes time spent traveling for a case if any portion of the trip is outside the county in which the attorney's principal office is located or if the trip requires traveling a distance of more than 30 miles, one way, from the attorney's principal office. For FY 2024, this rate is \$50 per hour. Prior to FY 2024, the rate was \$25 per hour. Contract attorneys working on indigent defense cases have been paid for travel time since at least 1992.

North Carolina

North Carolina has been experiencing a significant decline in private attorneys willing to accept indigent defense appointments. From CY 2010 to CY 2020, the number of private attorneys accepting indigent defense appointments in North Carolina decreased by 25.0%. In many rural areas of the state, there are no private attorneys currently accepting these appointments. With the decline of these attorneys, the attorneys who are taking these appointments are often responsible for heavier workloads.

In CY 2019, the North Carolina Office of Indigent Defense Services (IDS) published a [report](#) about the rates paid to contract attorneys. The IDS reported that many attorneys left indigent defense work from CY 2011 to CY 2019, after a decrease in rates that occurred in CY 2011. In CY 2011, the base level district court rate decreased from \$75 per hour to \$55 per hour. Additionally, the IDS's survey found that from CY 2016 to CY 2019, 50.0% of respondents who were private attorneys who were taking indigent defense cases either took a decreased number of indigent defense cases or stopped taking any of these cases. The primary reason reported by these attorneys was that they were unable to afford taking the cases at the current rate. According to the IDS, the decreased number of private attorneys willing to take indigent defense cases has contributed to court inefficiencies, delays, and continuances.

In CY 2021, the North Carolina General Assembly increased funding for the IDS, which allowed the base level district court rate to increase to \$65 per hour starting in CY 2022. During the 2023 Legislative Session, the IDS requested additional funds for FY 2024 to raise rates to a minimum of \$75 per hour. The current rates are still lower than the rates pre-2011.

During the 2023 Legislative Session, the IDS also requested funding for a public defender office expansion that would create 8 to 10 additional public defender offices and add 126.0 FTE positions. The purpose would be to alleviate some of the burden on private attorneys to provide indigent defense services. This request would also transfer some funding from the private attorney fund to the public defender fund to help accomplish the expansion.

Additional Approaches

The contract attorney shortage has been a highly publicized national issue, and other states have attempted approaches outside the scope of simple pay increases. Minnesota (along with New Hampshire) for example, is considering allowing nonlawyers to provide legal advice. In CY 2020, Minnesota started a pilot program that allows paralegals to represent clients in housing and family law. The Supreme Court of Minnesota extended the program on a trial basis.

Other states, such as Utah, Arizona, Colorado, and Oregon, have implemented programs that allow nonattorneys with certain licenses to assist with family law, debt collections, and housing legal issues. In Alaska, a similar program was approved for community justice workers to offer limited legal services.

Many of these programs are still in the first stages of experimentation, and the success of the approaches is not yet known. Much of the discourse stems around what areas nonlawyers should be able to practice and how much supervision is necessary by a licensed attorney. Other states such as California and Florida rejected proposals for similar trial programs. The Supreme Court of

Washington, which approved the first nonlawyer assistance program in 2012, decided not to renew the program, citing that the interest in the program was outweighed by the costs.⁶

Summary

The Office of the State Public Defender utilizes private attorneys contracted with the State to supplement the constitutionally required work of indigent defense. The use of contract attorneys in the State's hybrid indigent defense system provides for caseload management, economic efficiency, and a mechanism to handle conflicts of interest.

In recent years, the State has experienced a reduction in contract attorneys, with only 535 attorneys currently accepting indigent defense appointments compared to 1,018 in FY 2015. There are likely many factors that have contributed to this issue, and there are also multiple strategies that have been undertaken to address it. The General Assembly has increased hourly rates paid to contract attorneys four times since the 2019 Legislative Session. Additionally, during the 2023 Legislation Session, the General Assembly established pay for time that contract attorneys spend traveling for cases. In the last few years, the Office of the State Public Defender has increased its recruitment efforts for contract attorneys, offered additional training and continuing legal education opportunities, and simplified its payment process so that contract attorneys face fewer barriers to getting paid.

Sources

[Iowa Office of the State Public Defender](#)

[Iowa Judicial Branch](#)

[Iowa Bar Association](#)

[Wisconsin State Public Defender](#)

[Wisconsin State Legislature](#)

[State Bar of Wisconsin](#)

[North Carolina Judicial Branch](#)

[North Carolina Office of Indigent Defense Services](#)

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⁶ States Look to Unconventional Fix for Attorney Shortages: Nonlawyers, The Wall Street Journal, www.wsj.com/articles/states-look-to-unconventional-fix-for-attorney-shortages-nonlawyers-c066872f