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## FISCAL TOPICS

Fiscal Services Division

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## Public Defenders and Contract Attorneys

### Background and History

The Office of the State Public Defender uses a hybrid system to provide legal counsel to indigent criminal justice defendants that includes both public defenders and contract attorneys. Public defenders are employees of the State of Iowa, while contract attorneys are not. 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 defendants. Public defenders are funded from the State Public Defender operating budget, and contract attorneys are funded from the Indigent Defense Fund. Both receive a General Fund appropriation in the annual Justice System Appropriations Act. See the [\*Issue Review Indigent Defense — Overview and Funding History\*](#) for more information about the indigent defense program in Iowa and the costs of providing indigent defense.

The Office of the State Public Defender currently has approximately 234 employees, 162 of which are attorneys. 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. The Office of the State Public Defender currently contracts with approximately 618 attorneys who handle cases across the State.

In recent years, there has been a significant decrease in the number of attorneys contracted by the Office of the State Public Defender. In FY 2015, the Office of the State Public Defender contracted with 1,018 attorneys; however, that number has decreased to 618 attorneys in FY 2022. There are multiple factors that may have contributed to this decline, including the complexity of cases, compensation levels, and a greater efficiency in the contracting process, which has eliminated the duplication of some data. However, it is apparent that in recent years, fewer contract attorneys have been accepting 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. Additionally, of the 32 counties in Iowa where public defenders take limited cases, only four have a relatively adequate density of contract attorneys.

During the 2021 Legislative Session, [House File 861](#) (FY 2022 Justice System Appropriations Act) moved \$900,000 from the Indigent Defense Fund to the State Public Defender operating budget and increased the State Public Defender's number of full-time equivalent (FTE) positions by 10.0, with the purpose of funding 10 new public defenders to be placed in areas of need. In order to serve rural areas without a sufficient number of contract attorneys, these new public defenders were placed in county courthouses in those rural areas instead of a local public defender's office.

### Compensation

Public defenders are State employees and are paid salaries, while contract attorneys receive compensation based on an hourly rate set by statute in Iowa Code section [815.7](#). The current hourly rates were established during the 2022 Legislative Session and apply to appointments made on or after

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### More Information

Office of the State Public Defender: [spd.iowa.gov](http://spd.iowa.gov)  
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July 1, 2022. **Table 1** shows the compensation levels for contract attorneys since FY 2000. Under Iowa Code section [13B.4\(4\)](#), the Office of the State Public Defender is required to set an attorney fee cap for each case. The contract attorney may exceed the fee limitation if, prior to submitting a claim, the attorney seeks authorization from the court upon a finding of good cause. These motions are routinely granted, often at the beginning of a case without any further limitation on fees.

**Table 1 — Historical Hourly Rate for Contract Attorneys**

Fiscal Year <sup>1</sup>	Class A Felony	Class B Felony	Class C Felony	Class D Felony	Misdemeanors	All Other Cases <sup>2</sup>
2000	\$60	\$55	\$50	\$50	\$50	\$50
2007	\$65	\$60	\$60	\$60	\$60	\$55
2008	\$70	\$65	\$60	\$60	\$60	\$60
2020	\$73	\$68	\$63	\$63	\$63	\$63
2022	\$76	\$71	\$66	\$66	\$66	\$66
2023	\$78	\$73	\$68	\$68	\$68	\$68

### Comparison

Both public defenders and contract attorneys provide legal counsel to indigent defendants, but certain circumstances dictate when each is used, and there are differences in the types of cases generally handled by each. Local public defender offices are designated by the Office of the State Public Defender to take certain case types in specific geographic areas. Public defenders are appointed to handle cases based on these designations. When it is not possible for a public defender to handle a case, a contract attorney is appointed.

There are multiple reasons that a contract attorney may be appointed to a case, including when there is no public defender in that geographic area for that case type, when the designated local public defender office has a conflict, or when the Office of the State Public Defender's caseload is too full to take the case. When these limitations occur, the Office of the State Public Defender utilizes contract attorneys.

Additionally, public defenders tend to take cases that are more difficult or are related to higher-level felonies. Depending on caseloads, public defenders also take lower-level felony cases and misdemeanor cases, but they rarely take simple misdemeanor cases. Different regions of the State may make different decisions about how best to allocate cases between public defenders and contract attorneys to manage caseloads.

Public defenders and contract attorneys generally serve different purposes, and each have advantages. According to the Office of the State Public Defender, the use of local public defender offices is valuable because they are able to specialize, they accrue expertise, they can be more efficient, and their size provides economies of scale. There are also many benefits to the use of contract attorneys, including the following:

- 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 more economically efficient to substantially rely on the use of contract attorneys for providing indigent defense in some rural areas of the State than to have a public defender's office in that area.
- The use of contract attorneys provides a mechanism to handle conflicts of interest, such as in situations with multiple co-defendants and in postconviction relief proceedings when there are claims of ineffective assistance of counsel.

Both public defenders and contract attorneys contribute significantly to handling the caseload of the Office of the State Public Defender. In FY 2022, public defenders closed approximately 61,000 cases, and

<sup>1</sup> Applies to assignments made on or after July 1 of the fiscal year.

<sup>2</sup> Appeals, juvenile cases, contempt actions, representation of material witnesses, probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings.

contract attorneys had approximately 44,000 claims. During this period, the average cost per case for a public defender was approximately \$465, and the average cost per claim for a contract attorney was approximately \$528.<sup>3</sup>

**Related Statutes**

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

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<sup>3</sup> 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.