

# OFFICE OF THE STATE PUBLIC DEFENDER



## REPORT ON IOWA'S INDIGENT DEFENSE SYSTEM

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## **INTRODUCTION**

The State Public Defender's Office continues to be served by dedicated professionals. We are committed to protecting the constitutional rights of indigent persons involved, or at risk of becoming involved with, the Iowa justice system.

Approximately 240 employees of the State Public Defender (SPD) System efficiently provide high-quality representation. In FY 2023, SPD offices closed cases involving more than 90,803 charges. There was a finding of ineffective assistance of counsel in less than .001% of these charges. Additionally, more than 500 contract attorneys continue to provide high-quality representation throughout Iowa's 99 counties. In FY 2023, 71,482 claims were submitted to the Indigent Defense Fund, at an average cost per claim of \$549.

At this time, the State Public Defender cannot assert that changes in the statutory rates for court-appointed counsel or adjustments to the per case fee limitations will increase the number of attorneys willing to handle cases for indigent clients. There are issues surrounding the availability of contract attorneys in many parts of the state which need to be addressed. The State Public Defender's Office is actively engaged in working with attorneys and other stakeholders to address this issue. In 2023, the State Public Defender's Office held more than fifteen town hall meetings, provided over 152 hours of continuing legal education, improved efficiencies in the office, and maintained constant communication with prosecutors, the Judicial Branch, the Department of Corrections, and the Department of Health and Human Services.

## **BACKGROUND**

This report is submitted pursuant to Iowa Code § 13B.2A, which provides:

1. The state public defender shall file a written report every three years with the governor and the general assembly by January 1 of a year in which a report is due relating to the recommendations and activities of the state public defender relating to the state indigent defense system. The first such report shall be due on January 1, 2012.
2. The report shall contain recommendations to the general assembly regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

Prior to the enactment of the current version of the statute, the now-disbanded Indigent Defense Advisory Commission was required to issue a report every three years making “recommendations to the legislature and state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations.” Iowa Code § 13B.2A (2009). The commission issued four such reports, on December 9, 2002, December 15, 2003, December 6, 2006, and November 30, 2007.

### **HOURLY RATES PAID TO COURT-APPOINTED COUNSEL**

Hourly rates for fees to court-appointed counsel for indigents in criminal prosecutions, juvenile court cases, and other authorized proceedings are set by Iowa Code § 815.7. The State Public Defender has authority to contract with providers at rates different than the statutory rate, *see* Iowa Code §§ 13B.4(3), 815.7(1), historically the State Public Defender contracts with attorneys at the statutory rates except for a few special circumstances.<sup>[1]</sup>

For appointments made on or after July 1, 2023, the statutory rates are \$83 per hour for Class A felonies, \$78 per hour for Class B felonies, and \$73 per hour for all other cases. For appointments made on or after July 1, 2022, the statutory rates are \$78 per hour for Class A felonies, \$73 per hour for Class B felonies, and \$68 per hour for all other cases. For appointments made on or after July 1, 2021, the statutory rates are \$76 per hour for Class A felonies, \$71 per hour for Class B felonies, and \$66 per hour for all other cases. For appointments made on or after July 1, 2019, the statutory rates are \$73 per hour for Class A felonies, \$68 per hour for Class B felonies, and \$63 per hour for all other cases. For appointments made on or after July 1, 2007, the statutory rates are \$70 per hour for Class A felonies, \$65 per hour for Class B felonies, and \$60 per hour for all other cases. For appointments between July 1, 2006, and June 30, 2007, the rates were \$65 per hour for Class A felonies, \$60 per hour for Class B felonies, and \$55 per hour for all other cases. For appointments between July 1, 1999, and June 30, 2006, the rates were \$60 per hour for Class A felonies, \$55 for Class B felonies, and \$50 per hour for all other cases.

There has been a steady decline in the number of contract attorneys since the last report. However, in conjunction with this decline, there has been an increase in the statutory hourly rate. The State Public Defender believes this increase has slowed the decline in the number of contract attorneys, but there is currently no evidence to suggest a raise in the hourly rate will increase the overall number of attorneys contracted with the Office of the State Public Defender. At this time, the State Public Defender cannot affirmatively state that a change in the statutory rates will have any effect on the decline in contract attorneys. This decline is discussed in greater detail below.

There are approximately 500 attorneys with active contracts to represent indigent persons in Iowa courts, covering all 99 counties. Prior to the 2017 Report on Iowa's Indigent Defense System, changes in the qualifications requirements for contracting led to a decrease in the number of active contract attorneys statewide. Since then, a decrease in the total number of available attorneys across the state, attorney burnout, and the difficulty of criminal defense work (and moreover, public service in this context) have all had a direct impact on the number of active contract attorneys.

It remains vitally important to ensure that the Indigent Defense Fund, from which the court-appointed attorney fees are paid, is appropriately funded for the estimated expenditures each fiscal year. For many attorneys, their indigent defense work is a sizable portion of their practice. Delays in payment can cause significant hardship. The Public Defender's Office is working tirelessly to decrease payment delays for contract attorneys. In 2014, the State Public Defender processed claims in an average of 35.3 days. In 2015, the State Public Defender processed claims in an average of 28 days. In 2020, the State Public Defender processed them in an average of 18.9 days. By 2023, the State Public Defender processes claims in an average of 7.3 days eliminating any avoidable delays in payment.

### **DECLINING NUMBER OF CONTRACT ATTORNEYS**

There has been a steady decline in the number of attorneys taking indigent defense contract appointments. This decline is at a critical stage. Counties are unable to find defense attorneys to represent indigent defendants consistently. The State Public Defender's Office foresaw this problem, and over the course of the last four and one-half years has taken a proactive approach to understanding how to address it. Regular meetings with stakeholders across the state, town halls with attorneys, meetings with judges and prosecutors, and statewide trainings to assist attorneys in their ability to better represent indigent clients are all actions which have been taken by the Public Defender's Office to alleviate this issue.

A myriad of factors contributed to the problem and a variety of solutions will need to be implemented to stabilize the system. It is erroneous to suggest a simple solution would be an hourly rate increase. While an hourly rate increase could potentially assist the existing contract attorneys with a difficult financial decision, there is no evidence to lead the State Public Defender's Office to conclude, a moderate increase would significantly affect the number of contract attorneys. Instead, the solution lies in a multifaceted approach including cooperation and collaboration with the judicial branch and prosecutors, and incentives for attorneys who are willing to provide services to indigent clients. It will be important to include in any potential solution to the diminishing number of contract attorneys: continued outreach and support to contract attorneys, a movement toward more virtual hearings, and financial incentives for their dedication to public service.

The State Public Defender's Office is working with stakeholders including the judicial branch, national organizations who are providing support, prosecutors, and the contract attorneys to address potential solutions. At this time, no specific legislative action is being recommended. However, programs providing incentives to attorneys representing indigent clients could provide some relief to the system. The State Public Defender is proactively approaching this problem, creating solutions available under its authority. Additional solutions can likely be found within the authority held by the judicial branch.

### **Continuing Legal Education**

In 2023, the State Public Defender's Office provided 152 total hours of Continuing Legal Education. In an effort to increase the number of contract attorneys the State Public Defender's Office provided many of these trainings regionally making it easier for attorneys to attend. In-person trainings were offered in each judicial district, and local criminal law experts were used to teach each section. Over the course of the last several years, the State Public Defender's Office has also assured many of these hours were provided in an on-demand, web-based format and were available statewide. This is an essential service for both our SPD direct attorneys and our contracts attorneys. We will continue providing updated programming online and on demand to all Iowa attorneys.

### **ADMINISTRATIVE RULE CHANGE**

In the past, all fee claims were subject to fee limitations based on the total dollar amount that could be billed without judicial review and approval as defined in Iowa Admin. Code §493-12.6. This created an issue when the legislature changed the pay rate for contract attorneys because a subsequent rule change was necessary to update the fee limitations. The State Public Defender's Office addressed this issue by changing the formula used to determine the limitation to a number of hours instead of a total dollar amount. This change will prevent the need for future amendments to the administrative code should the legislature decide to amend the pay rate for contract attorneys in the future. *See* Iowa Admin. Code § 493-12.6(1-5)

## **PER CASE FEE LIMITATIONS**

The State Public Defender is required by Iowa Code § 13B.4(4)(a) to “establish fee limitations for particular categories of cases.” Accordingly, the State Public Defender has adopted administrative rules establishing attorney fee limitations for adult cases, juvenile cases, and appellate cases. *See* Iowa Admin. Code § 493.12.6. A claim by an attorney in excess of the attorney fee limitations established by the State Public Defender will not be paid unless the attorney seeks and obtains prior authorization from the appointing court to exceed the attorney fee limitations. *See* Iowa Code § 815.10A(3); Iowa Admin. Code § 493-12.6(4). Such motions are routinely granted, often at the beginning of a case without any further limitation on fees.

The State Public Defender does not make any further recommendations to the General Assembly regarding the fee limitations at this time. The current limits appear appropriate in light of the fee rates and the number of hours typically spent on a particular type of case, and the State Public Defender will continue to evaluate the appropriateness of the limitations and will exercise the current statutory authority to adjust the limitations through revisions to the administrative rules if necessary. No further legislative action is necessary at this time. The current fee limitations established by the State Public Defender are set forth in the charts below:

### **Adult Cases**

<b>Type of Case</b>	<b>Fee Limitation in Hours</b>
Class A Felonies	258
Class B Felonies	56
Class C Felonies	30
Class D Felonies	20
Aggravated Misdemeanors	20

Serious Misdemeanors	10
Simple Misdemeanors	5
Simple Misdemeanor appeals to district court	5
Contempt/Show Cause Proceedings	5
Chapter 229A Proceedings (civil commitments of sexually violent predators)	167
Probation Violation	5
Parole Violation	5
Extradition	5
Post-conviction relief	17 hours or ½ of the fee limitation for the conviction from which relief is sought

**Juvenile Cases**

<b>Type of Case</b>	<b>Fee Limitation</b>
Delinquency (through disposition)	20

Child in Need of Assistance (CINA) (through disposition)	20
Termination of parental rights (TPR) (through disposition)	30
Juvenile court review and other post-dispositional court hearings	8
Judicial bypass hearings	3
Juvenile commitment hearings	3
Juvenile petition on appeal	10
Motion for further review after petition on appeal	5

## **ADDITIONAL DEVELOPMENTS**

### **Technology Upgrade**

In January of 2020, the State Public Defender’s Office completed a technology overhaul. This project completely modernized the State Public Defender’s Office by transitioning data from old style onsite servers to a new cloud-based system allowing attorneys to access files from anywhere they have an internet connection. The acquisition of modern mobile devices help attorneys and investigators be more efficient and effective while representing their clients. The technology upgrade allows SPD offices to move to a paperless system, which has been essential in providing our staff access as they transitioned to work from home status during the majority of 2020. This provides not only savings to the State, but also provides a better, more flexible work environment for our staff as we explore ways of retaining experienced personnel during this difficult time of recruiting and retaining quality employees. This project was a necessary change as the Department takes a modern approach to providing essential services. It should be noted that while the timing of this project was fortunate with regard to the pandemic, it was not completely happenstance. The previous condition of the State Public Defender’s office made it



vulnerable to a number of potential dangers and the problem needed to be addressed immediately. In doing so the State Public Defender not only protected the system, but also made it more efficient. By providing attorneys with better technology, the office is able to handle cases more efficiently. This creates savings to the office and the taxpayers in Iowa. The State Public Defender's Office is now in a position to be proactive regarding technology changes and is in a solid position for the foreseeable future.

### **Pre-Filing Representation Pilot Project**

In 2020, the Legislature passed Senate File 2182, allowing the development of a pre-filing representation project in juvenile court. This program originally was to be implemented in six counties and is designed to study innovative ways to assist families in the child welfare system. The project is still in the early stages of execution, but is already garnering national attention and finding success. It is a first in the nation approach to improving child welfare and will be instrumental in stopping the cycle of children who move from the child welfare system to the criminal justice system. The State Public Defender's office has received assistance from the National Association of Counsel for Children in developing measures for assessing the project's usefulness. In 2023, the legislature allowed the office to expand to additional counties. Several counties have been added to the project already and the State Public Defender's Office is currently evaluating where the project can be expanded to have the greatest impact.

### **CONCLUSION**

The Office of the State Public Defender will continue to strive toward its mission: to ensure that all indigent persons in Iowa are provided high-quality legal representation in criminal, juvenile, and other eligible proceedings in the most efficient and fiscally responsible manner. The State Public Defender will continue to improve the quality of legal representation and achieve efficiencies to enable the State of Iowa to use its limited resources for indigent defense in the most cost-effective manner.

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[1] Currently, the State Public Defender contracts with several nonprofit organizations at alternative rates, including the Drake Legal Clinic, Youth Law Center, and Linn County Advocate. The State Public Defender also contracts with individual attorneys in certain counties to handle specialized representation, such as drug court and mental health programs.