
ISSUE REVIEW

Fiscal Services Division

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515.281.3566

Indigent Defense — Overview and Funding History

ISSUE

This **Issue Review** provides an overview of the indigent defense program in Iowa and the historical funding and compensation levels for public defenders and contract attorneys. In addition, the **Issue Review** analyzes the rising cost of providing indigent defense in the State of Iowa.

AFFECTED AGENCIES

Office of the State Public Defender

Department of Inspections and Appeals

CODE AUTHORITY

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

Iowa Code section [232.141](#)

BACKGROUND

The United States and Iowa Constitutions require an indigent criminal justice defendant and indigent juveniles to be provided with legal counsel at no initial cost to the client.¹ A person is deemed to be indigent² when the person has:

- An income level at or below 125.0% of the United States poverty level as defined by the most recently revised poverty income guidelines published by the U.S. Department of Health and Human Services (HHS), unless the court determines that the person is able to pay for an attorney.³
- An income level greater than 125.0%, but at or below 200.0% of the poverty income guidelines, but only if the court makes a written finding that not appointing counsel on the pending case would cause the person substantial hardship.
- An income level greater than 200.0% of the poverty income guidelines, but only 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.

¹ Iowa Const. art. I, §7, U.S. Const. amend vi.

² Iowa Code §[815.9](#).

³ For a single person, 125.0% of the poverty level is \$15,613 and 200.0% of the poverty level is \$24,980 (as of 2019). U.S. Department of Health and Human Services, HHS Poverty Guidelines for 2019 (January 2019), aspe.hhs.gov/poverty-guidelines (last visited September 27, 2019).

A judge determines if a person is indigent, as defined by statute, and appoints representation. The determination is made using an affidavit of financial status submitted by the defendant at the time of the defendant's initial appearance or at the time a request for court appointment of counsel is made. In determining the person's ability to pay for the cost of an attorney, the court is required to consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments. The court is also required to consider the seriousness of the charge or the nature of the case.⁴ An indigent defendant is entitled to one attorney in all cases except Class A felonies, in which case the court may appoint two attorneys for the defendant.

Under Iowa law,⁵ representation is required to be provided to indigent persons in the following cases and proceedings:⁶

- Criminal proceedings, when the person is under arrest or charged with a crime and faces the possibility of imprisonment under the applicable criminal statute or ordinance. This includes any stage of the criminal proceeding such as appeals, postconviction relief, contempt, detention hearings, and competency hearings.
- Probation and parole revocation.
- Commitment hearings for sexually violent predators.
- Juvenile proceedings, e.g., guardian ad litem representation, delinquency petitions, child in need of assistance proceedings, judicial bypass proceedings, juvenile commitment, etc.
- Termination of parental rights under Iowa Code chapter [600A](#).

Iowa has two methods to provide legal counsel to indigent criminal justice defendants: public defenders and private attorneys. If a public defender is unable to take a case, the judge appoints a private attorney who has a contract with the State Public Defender to represent indigent defendants. If the court determines that no contract attorney is available, the court may appoint a noncontract attorney to represent the indigent defendant.

REIMBURSEMENT OF COSTS

Although the State is required to provide an attorney to an indigent person in specific circumstances at the time of the proceeding, the State may seek reimbursement for those costs from the indigent person, or in the case of juvenile proceedings, from the county in which the representation was provided.

Indigent Client — Court Costs

Under Iowa Code section [815.9\(3\)](#), an indigent defendant is required to reimburse the State for the total cost of legal assistance provided. "Legal assistance" includes the expense of the public defender or an appointed attorney, but also the cost for transcripts, witness fees expenses, and any other goods or services required by law to be provided to an indigent person.⁷

In a criminal case, the defendant is ordered to pay the total costs and fees incurred for legal assistance if the defendant is convicted.⁸ These costs are assessed against the defendant as a

⁴ Iowa Code [§815.9](#).

⁵ Iowa Code [§§13B.4](#) and [815.10](#).

⁶ Note: An indigent person still has the right to refuse counsel and may represent his or herself pro se (in one's own behalf).

⁷ Iowa Code [§815.9](#).

⁸ "Conviction" includes a finding of guilt, a plea of guilty, deferred judgment, deferred or suspended sentence, or adjudication of delinquency.

part of court costs and restitution ordered by the court. The court can only order the payment to the extent that the person is reasonably able to pay or may order the performance of community service in lieu of such payments.

If the indigent defendant is acquitted or is a party in a case other than a criminal case, the court is required to order the payment of all or a portion of the total costs and fees incurred for legal assistance, to the extent the defendant is reasonably able to pay, after the indigent defendant is given notice and reasonable opportunity to be heard on the matter.⁹

A juvenile granted a court-appointed attorney or guardian ad litem (GAL) in a juvenile proceeding cannot be ordered to reimburse costs and fees incurred for legal assistance unless the court determines the parent has the ability to pay for the legal assistance.¹⁰

Juvenile Court Expenses — County Base

Under Iowa Code sections [232.141](#)(2) and (3), counties are obligated to pay a portion of the juvenile court expenses incurred by an attorney appointed to serve as counsel to any party or to serve as a GAL for any child. These costs may include reasonable compensation for the attorney or GAL as well as the expenses for foreign language interpreters, costs of depositions and transcripts, fees and mileage of witnesses, and the expenses of officers serving notices and subpoenas incurred by the court-appointed attorney.

Claims for all expenses related to representation are submitted to the Office of the State Public Defender, which initially pays the expenses out of the Indigent Defense Fund. The county is required to reimburse the Indigent Defense Fund for these costs incurred up to the county's base amount each fiscal year. The county base amount formula is set out in Iowa Code section [232.141](#)(3)(a). In FY 2019, the three counties with the highest base were Polk (\$251,906), Woodbury (\$232,570), and Black Hawk (\$162,639). The lowest were Adair (\$246), Worth (\$411), and Wayne (\$434).

INDIGENT DEFENSE FUND

Iowa Code section [815.11](#) establishes the Indigent Defense Fund. The General Assembly appropriates funding to the Office of the State Public Defender for deposit in the Indigent Defense Fund. The Indigent Defense Fund is used to compensate contract attorneys for representing indigent defendants or indigent parties. The Fund also pays for expert witnesses, court reporters of depositions, private investigators, interpreters, and other service providers for the benefit of indigent defendants or indigent parties. The contract attorneys and other service providers must submit claims to the Fund to receive reimbursement for their service. The State is also required to pay for the costs incurred by a privately retained attorney who represents a client that a judge determines is indigent after the attorney has been retained.¹¹ The Indigent Defense Fund currently provides payment for these types of cases, and the District Court reviews the applications for payment from the Fund for these cases.

Contract Attorney Compensation

In FY 1993, the State Public Defender began the contract attorney program to provide representation to indigent persons in criminal cases. Unlike public defenders who are employed by the Office of the State Public Defender, contract attorneys receive compensation based on an hourly rate set by statute and are reimbursed through the Indigent Defense Fund. Although

⁹ Iowa Code [§815.9\(6\)](#).

¹⁰ Iowa Code [§815.9\(9\)](#).

¹¹ English v. Missildine, [311 N.W.2d 292 \(Iowa 1981\)](#).

the State Public Defender has authority to contract with providers at a rate different from the statutory rate, historically, the State Public Defender contracts with attorneys at the statutory rate in most circumstances.¹²

During the 2019 Legislative Session, [SF 615](#) (FY 2020 Justice System Appropriations Act) increased the hourly rates for contract attorneys based on case type. Prior to FY 2020, the last hourly rate increase occurred in FY 2007. **Table 1** shows the compensation levels for contract attorneys since FY 1999.

Table 1 — Historical Hourly Rate for Contract Attorneys

Fiscal Year ¹³	Felony Type				Misdemeanors	All Other Cases ¹⁴
	Class A	Class B	Class C	Class D		
1999	\$60	\$55	\$50	\$50	\$50	\$50
2006	\$65	\$60	\$60	\$60	\$60	\$55
2007	\$70	\$65	\$60	\$60	\$60	\$60
2020	\$73	\$68	\$63	\$63	\$63	\$63

Pursuant to Iowa Code section [13B.2A](#), the State Public Defender is required to provide a report every three years on its recommendations related to the hourly rates paid to court-appointed counsel, the per case fee limitations, and other indigent defense matters. The latest [report](#) was filed in December 2017.¹⁵ The report did not recommend funding changes, noting that “there does not appear to be a problem finding counsel.”

Under Iowa Code section [13B.4\(4\)](#), the State Public Defender is required to set an attorney fee cap for each case.¹⁶ The attorney may exceed the fee limitation if, prior to submitting a claim, the attorney seeks authorization from the court. The claim may be authorized upon a finding of good cause by the court. The motions are routinely granted, often at the beginning of a case without any further limitation on fees.

Funding

History

Before July 1, 1987, indigent legal costs were paid by the 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. The program was transferred to the State Public Defender’s Office in FY 1989. **Chart 1** shows the appropriations to the State Public Defender and the Indigent Defense Fund since FY 1989.

¹² Office of the State Public Defender, [Report on Iowa’s Indigent Defense System](#) (December 2017), [spd.iowa.gov/about-us/spd-reports](#) (last visited September 27, 2019).

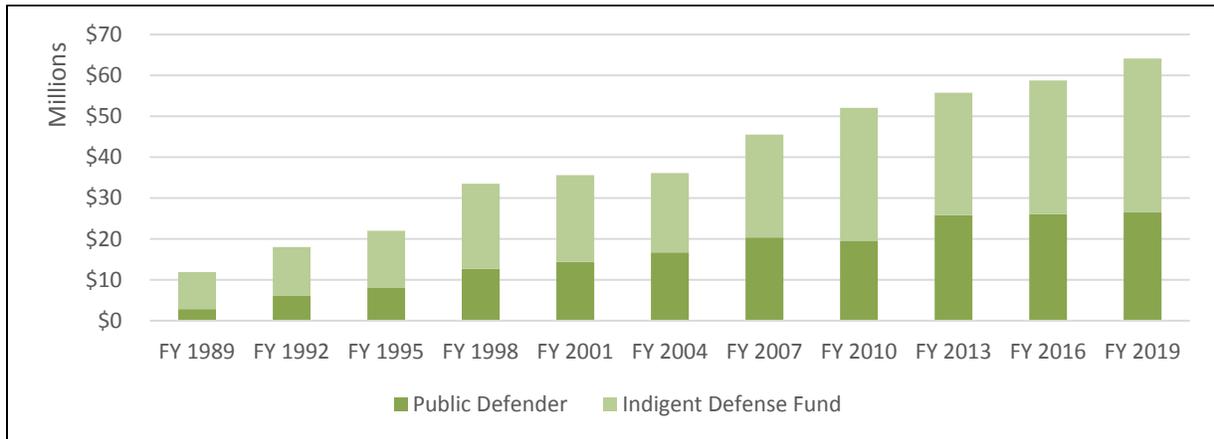
¹³ Applies to assignments made on or after July 1 of the fiscal year.

¹⁴ Appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings.

¹⁵ Office of the State Public Defender [2018 Report on Iowa’s Indigent Defense System](#) (December 2017), [spd.iowa.gov/about-us/spd-reports](#) (last visited September 27, 2019).

¹⁶ The current attorney fee cap is available on the State Public Defender website at [spd.iowa.gov/contract-attorneys/fee-claim-process](#).

Chart 1 — Indigent Defense Appropriations Since FY 1989



Funding provided for indigent defense has steadily increased since it was first appropriated to the Office of the State Public Defender in FY 1989, with an average annual increase of approximately \$1.8 million, or 6.4%.

Current Situation

The State Public Defender has 19 offices in 13 cities located around Iowa: Des Moines, Burlington, Cedar Rapids, Council Bluffs, Davenport, Dubuque, Iowa City, Marshalltown, Mason City, Nevada, Ottumwa, Sioux City, and Waterloo. Three of the offices have different divisions for adult and juvenile cases (Des Moines, Sioux City, and Waterloo). The appellate defender office and the special defense unit are also located in Des Moines.

Office of the State Public Defender — Statewide Office Locations

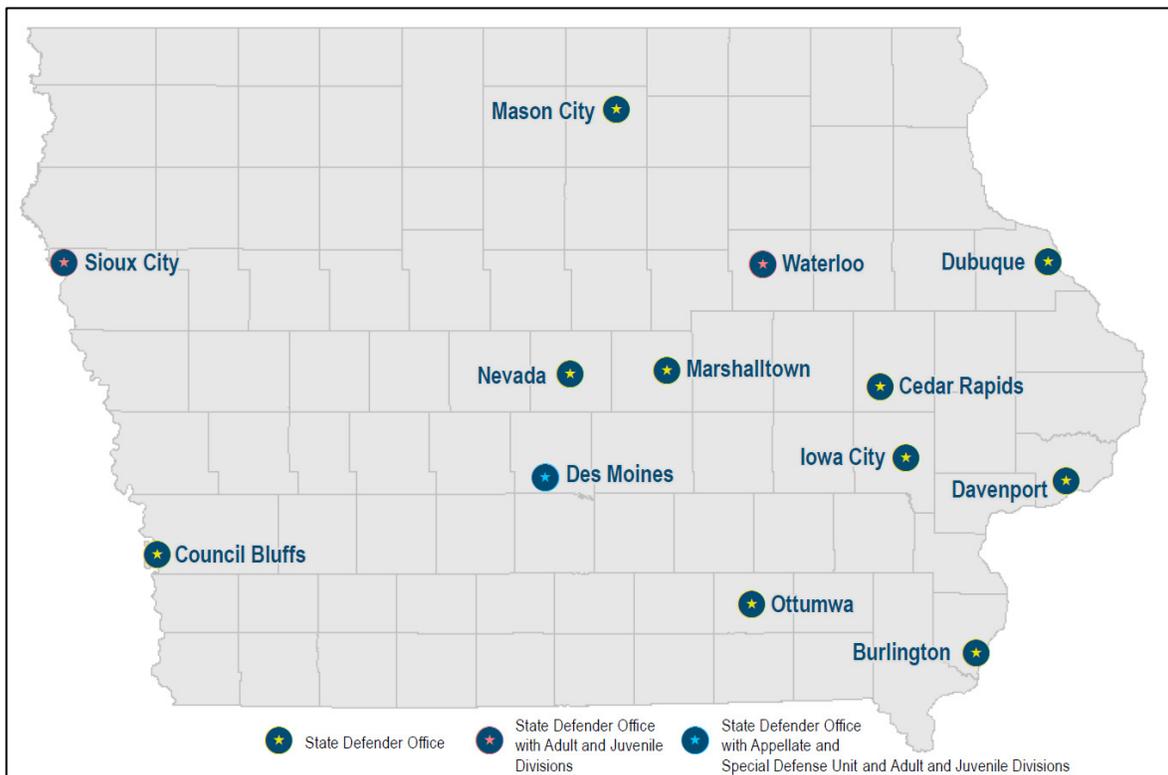
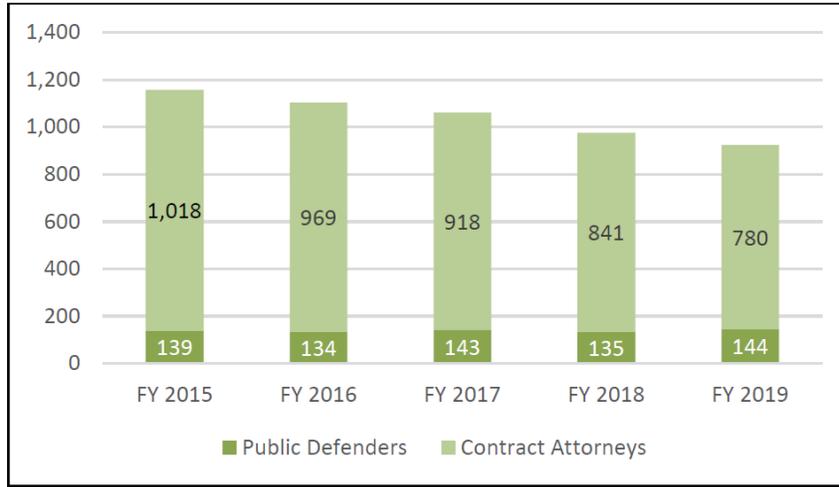


Chart 2 shows the number of public defenders and contract attorneys with the Office of the State Public Defender for the last five fiscal years.

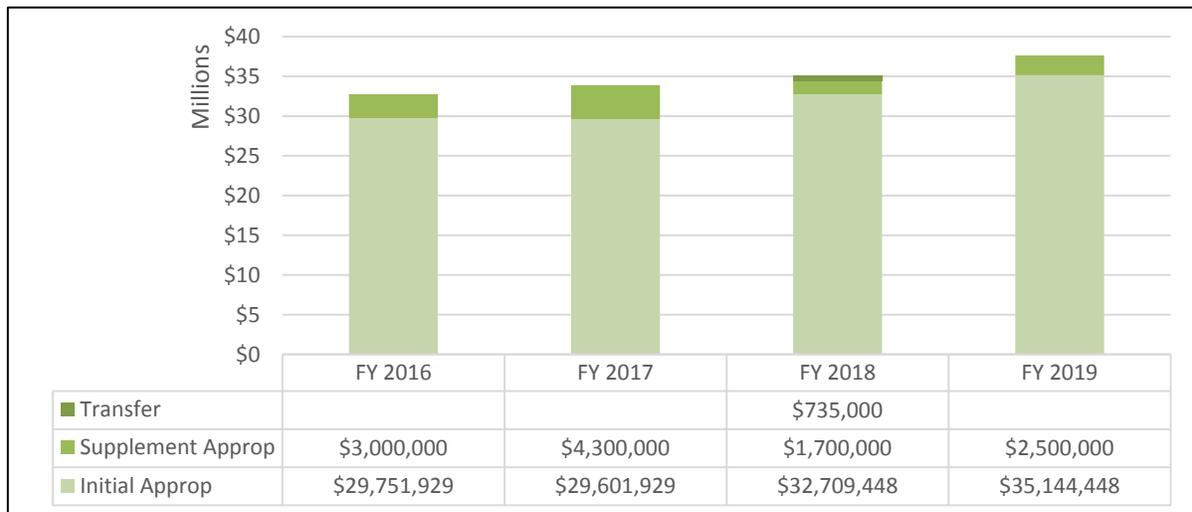
Chart 2 — Public Defenders and Contract Attorneys Since FY 2015



The data reflects the number of attorneys contracting with the State Public Defender at the end of the fiscal year. While there has been a substantial reduction in the number of contract attorneys over the last few years, there are many possible factors for the decline. The factors may include the complexity of cases, compensation levels, and a greater efficiency in the contracting process, which has eliminated the duplication of some data.

For estimated FY 2020, the State General Fund appropriations to the Office of the State Public Defender and the Indigent Defense Fund total approximately \$67.8 million. This is an increase of \$3.6 million compared to estimated net FY 2019. Of that total, the Indigent Defense Fund received \$40.8 million and the State Public Defender received \$27.0 million. The county base funding is added into the Indigent Defense Fund budget. Since FY 2016, the Indigent Defense Fund has annually required a supplemental appropriation to cover the claims against the Fund for the fiscal year. There are several factors contributing to this cost increase, including an increase in caseloads and the complexity of cases. **Chart 3** shows the supplemental appropriations and transfers to the Indigent Defense Fund since FY 2016.

Chart 3 — Supplemental Indigent Defense Fund Appropriations

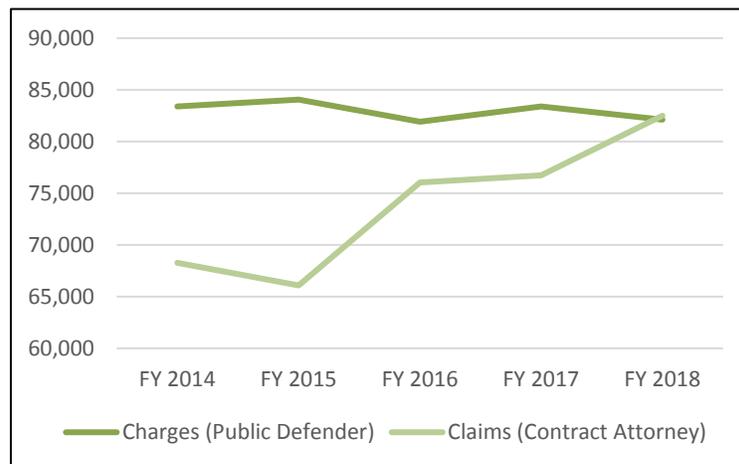


COST TRENDS

Caseload

One contributing factor to the rising costs of indigent defense is increasing caseloads. Higher caseloads create a greater demand for public defenders and contract attorneys, resulting in increased costs to the State Public Defender budget and more claims to the Indigent Defense Fund. **Chart 4** shows the annual charges for public defenders and the annual claims to the Indigent Defense Fund from contract attorneys. It is important to note that the workload for public defenders is measured by the annual individual charges filed against a client that are closed and the workload for private attorneys is measured by annual claims filed, which include all the charges that arise out of a single case.

Chart 4 — Annual Charges and Claims



As shown by **Chart 4**, the number of annual charges handled by public defenders has remained consistent. Any variances in charges closed annually is likely due to fluctuations in public defender positions filled during the fiscal year as well as crime levels (see **Chart 1** for public defender appropriation information). During this same period, the workload for contract attorneys has dramatically increased, especially since FY 2017. Over this time period, claims to the Indigent Defense Fund increased by approximately 7.5%. This increase is largely due to the Iowa Supreme Court ruling in [State v. Young](#).¹⁷ The ruling expanded a defendant's right to an attorney, stating that a misdemeanor defendant has a right to counsel when the defendant faces a possibility of imprisonment. Public defenders were not required in these cases previously and as a result, the State Public Defender has experienced an increased demand for public defenders in simple misdemeanor cases and an increase in fee claims to the Indigent Defense Fund.

Case Types

In recent fiscal years, there has been an increase in more serious cases, including felonies. Representation and legal assistance in serious cases tend to be more expensive due to the complex nature and longer duration of the cases. Attorneys will spend more time on these cases, resulting in higher claims to the Indigent Defense Fund. More serious cases may also prevent public defenders from taking on as many cases, therefore creating a greater reliance on contract attorneys.

¹⁷ [863 N.W.2d 249 \(Iowa 2015\)](#).

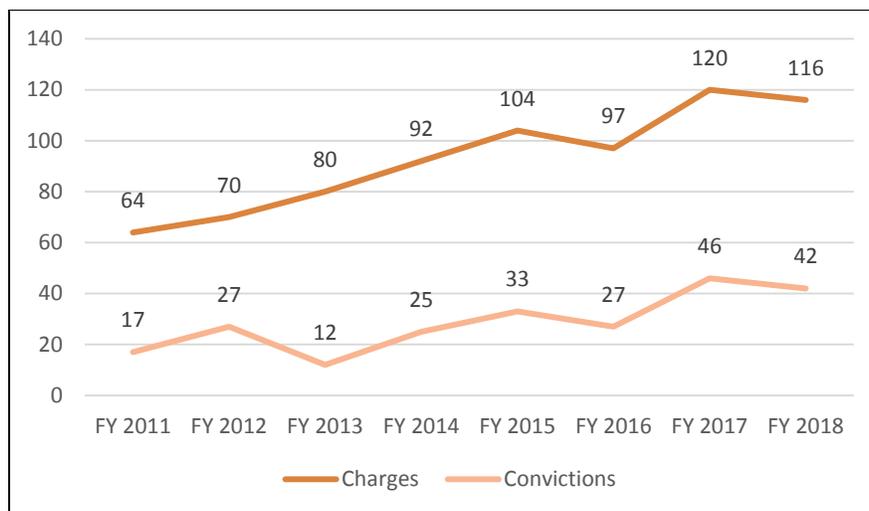
As referenced in the **Contract Attorney Compensation** section, the State Public Defender sets an attorney fee limitation by case type. **Table 2** shows the fee limit for each criminal case type, which includes both attorney and paralegal time.¹⁸ Although routinely waived by the court, the attorney fee limitations demonstrate the differences in cost between each criminal case type.

Table 2 — Attorney Fee Limit per Case Type

Case Type	Attorney Fee Limit
Class A Felony	\$18,000
Class B Felony	\$3,600
Class C Felony	\$1,800
Class D Felony	\$1,200
Aggravated Misdemeanor	\$1,200
Serious Misdemeanor	\$600
Simple Misdemeanor	\$300

As shown in **Chart 5**, there has been a large increase in Class A felony charges, with an 81.0% increase in charges since FY 2011 and an average increase in charges of approximately 9.0% annually.¹⁹ Class A felonies are the most serious offenses under Iowa law and are punishable only by a mandatory life sentence, without possibility for parole or probation.²⁰ The court may appoint two attorneys to an indigent defendant charged with a Class A felony, which further increases the cost required to provide representation.

Chart 5 — Class A Felony Charges and Convictions



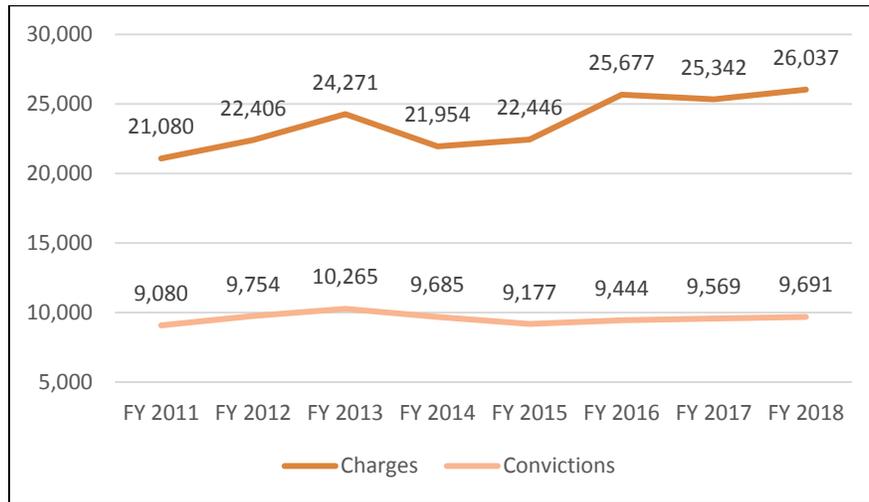
¹⁸ Office of the State Public Defender.

¹⁹ Justice Data Warehouse.

²⁰ Iowa Code §902.1(1). Note: Class A felons can be released from the custody and control of the Iowa Department of Corrections only through a pardon or commutation of the felon's sentence to a term of years by the Governor.

Chart 6 shows the overall felony charges and convictions since FY 2011.

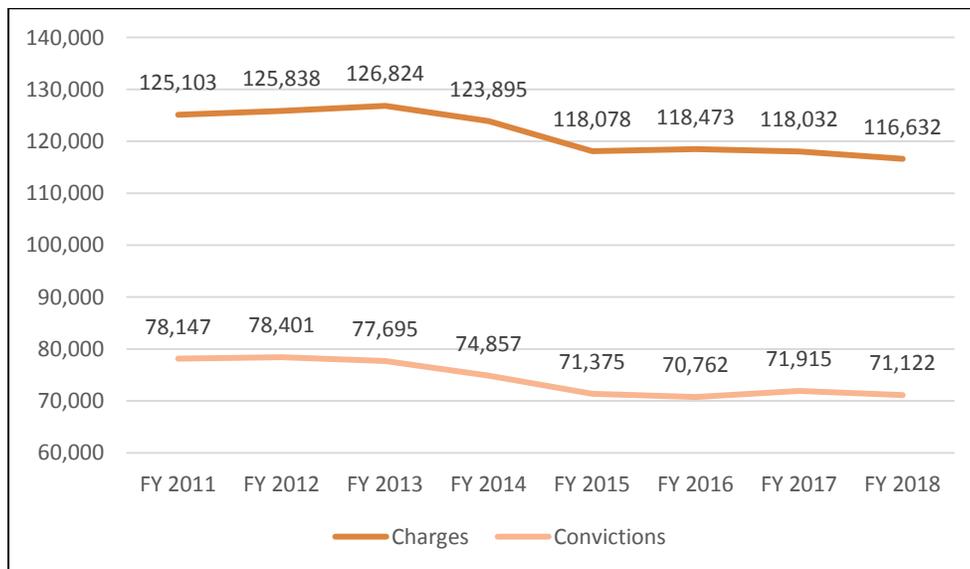
Chart 6 — Total Felony Charges and Convictions²¹



As shown in **Chart 6**, the highest number of felony charges in the eight-year period was in FY 2018. The highest number of felony charges over the eight-year period occurred in FY 2016, FY 2017, and FY 2018 and all exceeded 25,000. Since FY 2011, the total number of felony charges has increased by approximately 24.0%. The increasing number of felony charges has contributed to the increasing caseload and time spent on cases for public defenders and contract attorneys.

Chart 7 shows the overall misdemeanor charges and convictions since FY 2011.²² The data includes simple, serious, and aggravated misdemeanors.

Chart 7 — Total Misdemeanor Charges and Convictions



²¹ Iowa Department of Human Rights, [CJJP Prison Population Forecast](#) (December 2018) (last visited September 27, 2019).

²² Justice Data Warehouse.

As shown in **Chart 7**, the number of misdemeanor charges has decreased by approximately 6.8% since FY 2011. Despite the decrease in misdemeanor offenses, costs to the Indigent Defense Fund continue to grow due to the increased number of felony charges during that same time period.

CONCLUSION

The cost of providing indigent defense in Iowa has steadily increased since the indigent defense program began in FY 1989 and will likely continue to increase. The increasing caseload and complexity of cases are contributing factors to the higher cost. In addition, the hourly rate increase for contract attorneys passed by the General Assembly during the 2019 Legislative Session will likely have an impact on the Fund in FY 2020.²³ Monitoring of caseloads and claims to the Fund will need to continue to provide adequate funding to cover claims and maintain the State's ability to provide counsel to indigent defendants throughout the State.

LSA Staff Contact: Laura Book (515.205.9275) laura.book@legis.iowa.gov

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²³ 2019 Iowa Acts, ch. [163](#).