

# ISBA to seek periodic cost-of-living adjustments for indigent defense compensation

By James Carney and Doug Struyk, ISBA Legislative Counsel



Despite the very difficult state budget situation with virtually all agencies and departments being cut, the ISBA is dedicated to pursuing an increase in compensation for court-appointed attorneys and a periodic cost-of-living adjustment.

The State Public Defender's office makes a budget request each year. The last several years approximately \$30 million has been appropriated to the state public defender to operate its offices, and another \$30 million to fund court-appointed counsel. During the 2017 legislative session, an additional \$3 million of supplemental appropriations was made, to bring the total appropriation to \$33 million for indigent defense counsel payments.

to meet the requirement of the Iowa and United States Constitutions to provide legal representation at state expense to low-income persons accused of a crime that may result in incarceration. The state public defender either handles the matter or compensates attorneys who are on the court appointment list for handling the case. After cases are concluded, orders are entered requiring the indigent defendant to repay expenses to the state (recoupment) to the extent the defendant is reasonably able to do so. In recent years, the demands placed upon the state public defender's budget for indigent defense have continued to increase; however, for the past several years the state public defender's budget has been maintained at status quo levels.

States Constitution guarantees to all persons accused of a crime the right to counsel in their defense. The U.S. Supreme Court has interpreted the Sixth and 14th Amendments to the U.S. Constitution as requiring states to provide counsel to all indigents who are accused of crimes in their jurisdictions. In addition, the Iowa Constitution guarantees that in all criminal prosecutions, the accused shall have a right to the assistance of counsel. The Iowa Supreme Court has interpreted this constitutional provision as meaning the right to effective assistance of counsel.

Each state addresses the constitutional requirement to provide indigent defense in different ways. There is hardly any state that does it the same as another state. A large number of states still fund indigent defense on a city or county level with no state funding. Other states have state funding, but their public defender programs are very different. For example, Florida has state funding, but the public defenders must actually run for general election and have five years of experience in handling criminal cases. Iowa has a very balanced approach to providing indigent defense counsel by utilizing public defender offices and court-appointed counsel.

Under Iowa's current system there are three ways of providing legal representation to indigents. Legal representation is provided by public defenders, who are lawyers employed by the State Public Defenders Office; contract attorneys who are private attorneys who contract with the public defender to provide legal representation to indigents; or court-

## Issue

Indigent defense is a program designed

## ISBA position

The Iowa State Bar Association supports adequate compensation of court-appointed counsel in order to ensure that the state meets its constitutional obligation to provide competent assistance of counsel to indigent persons accused of crimes. The ISBA further supports amending Iowa law to mandate periodic cost-of-living adjustments in the hourly rate for such compensation. Additionally, the ISBA supports the appointment of a blue ribbon task force to recommend improvements to the indigent defense program, to include adequate compensation.

## Facts regarding indigent defense

The Sixth Amendment to the United

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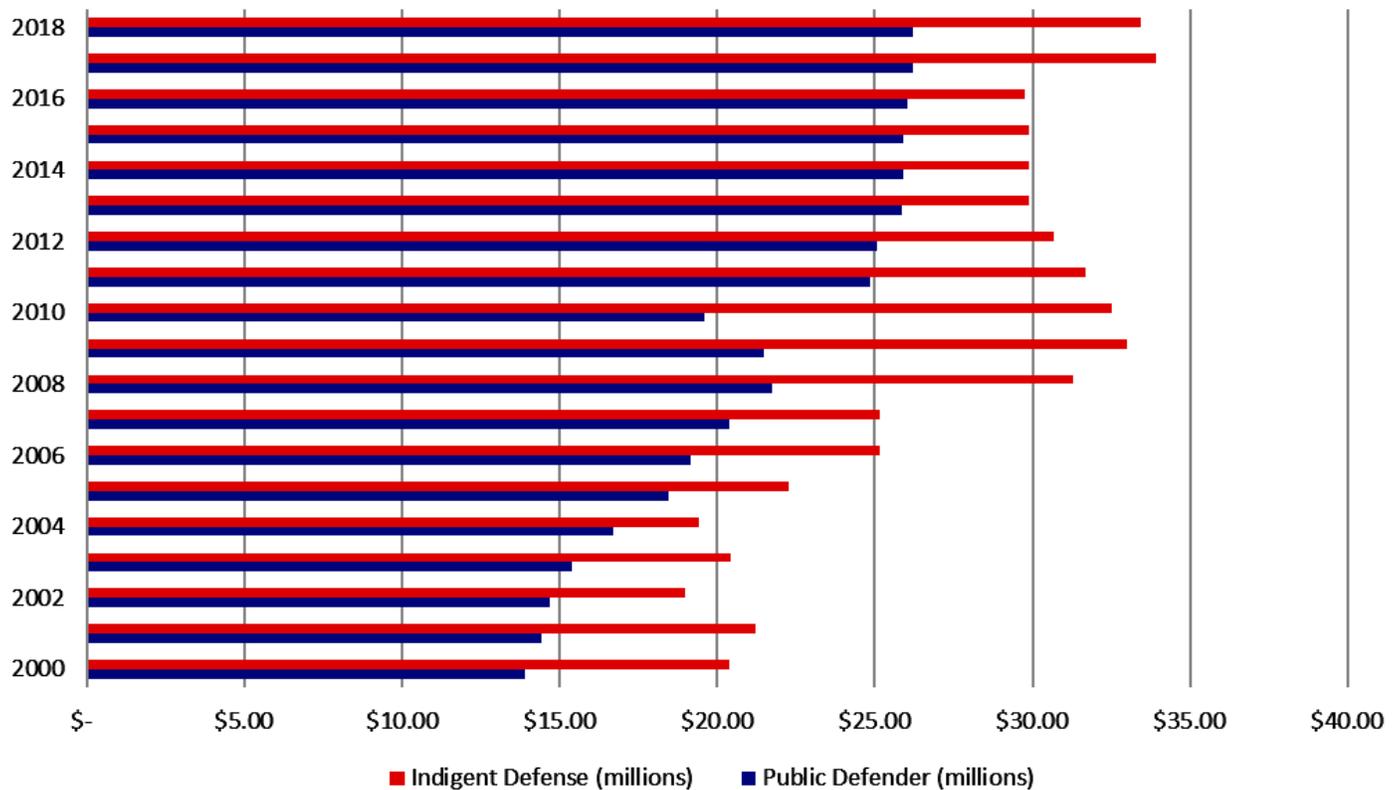
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## INDIGENT DEFENSE BY THE NUMBERS

- Approximately 832 Iowa lawyers handle indigent cases. This is down from approximately 1,100 in 2013.
- Approximately 183 lawyers handle indigent defense appeals.
- Approximately \$33 million per year is appropriated to pay 75,992 claims for attorney fees. This is an increase from 62,000 claims in 2013.
- The average claim by an Iowa attorney is just over \$468.
- The State Public Defender's Office reviews all claims and approves approximately \$135,000 per day in claims, or approximately 300 claims per day.
- Approximately \$30 million is appropriated per year to staff 19 public defender offices in 14 Iowa cities. (The SPD has recently closed its Fort Dodge office).
- Approximately 41 percent of all claims paid relate to juvenile court proceedings.

## Indigent Defense and Public Defender Appropriations FY 2000-2018



appointed attorneys in private practice who are not employed by or under contract with the public defender, but are appointed to represent an indigent person on a case-by-case basis.

A recent ISBA survey of Iowa lawyers who provide criminal defense services found that on average, criminal law practitioners providing these services have practiced law for 13.4 years. Seventy-five percent of Iowa lawyers who do criminal defense work practice on their own as solo practitioners, or in an office with only one other lawyer. Ninety-seven percent of Iowa lawyers doing criminal defense work practice in a firm with five or fewer lawyers. On the average, 29 percent of their total law practices involves criminal work. According to the most current ISBA economic survey in 2015, the average overhead costs of operating a law office in Iowa is over \$75 per hour.

The state's cost of providing indigent defense is increasing because the number of criminal cases is increasing. In the past decade, the total number of indictable criminal filings has more than doubled. In addition, a large percentage of criminal cases involve indigent criminal defendants. Estimates indicate that approximately 70 to 80 percent of all criminal cases involved indigent defendants. Whenever

the number of indictable criminal filings increases, the number of indigent criminal defendant appointments will correspondingly increase.

Historically, in an effort to reduce the state's budget, the rates were reduced for indigent defense cases in 1996 by \$5 per hour. Legislation adopted in 1999 restored the 1996 cut by increasing pay rates by \$5 per hour. In the 2006 legislative session the ISBA requested a \$10-per-hour increase. The fees were increased by \$5 per hour in 2006 and another \$5 per hour in 2007.

Today, attorneys handling Class A felony cases may now be paid \$70 per hour; attorneys handling Class B felony cases may be paid \$65 per hour; and attorneys in all other cases will be paid \$60 per hour. Over three decades ago, in 1986, the Iowa Supreme Court adopted guidelines for costs of court-appointed counsel, which authorized payment of \$40 to \$60 per hour. Many attorneys who began practice in the 1970's remember being paid between \$50 and \$60 per hour to handle indigent defense cases. As a comparison, the current federal indigent defense program currently pays \$132 per hour for non-capital cases and \$185 per hour for capital cases. Over the past 30 years, there has been approximately a 10 percent increase in indigent defense fees, and yet

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law office overhead has increased by almost 200 percent.

Iowa attorneys are proud of their continuing tradition of providing low-cost or pro-bono services to those who cannot otherwise afford legal representation. However, all attorneys are entitled to fair compensation for services provided. A system that pays those who represent the poor less than one third the usual and customary rate charged those who are not indigent, runs the risk of providing a lower quality of justice for the poor.

### Cost savings and efficiencies

There are cost savings that can be explored and implemented in order to more efficiently utilize state resources.

The ISBA has worked with the Public Defender's Office to implement cost-savings measures. The public defender is increasing the use of special contacts that provide for payment of attorney services based on a fixed fee for representation in a specified number of cases, or some other basis for attorney compensation rather than an hourly basis. Additionally, we believe retaining experienced and efficient lawyers in the program by increasing the hourly rate will result in significant cost savings.

The State Public Defender's Office has recently upgraded its claims review software to enable attorneys to electronically submit their claims. The average number of days for claims

processing has been reduced from approximately 50 days to 18 days. This is a significant improvement in the claims payment process. This also allows that office, for the first time, to track in real time the hours and expenses that an attorney is billing on particular days. It gives the office a valuable tool to detect and prevent the inappropriate billing practices identified in a recent state audit. The Iowa State Bar Association supports honest billing and supports the indigent defense program being as efficient as possible.

### Do you want increased compensation?

We know that the answer to that question is yes, of course. If you do, we need your help! In a down budget year with all state agencies and departments having their budgets reduced, increasing indigent defense compensation is a "heavy lift."

Iowa lawyers need to act back home to make this happen!!! The only way this can be accomplished is if all 150 legislators hear from their constituents back home that an increase in the hourly rate is badly needed and justified. Call or write your local legislators today. Meet with them back home and explain the cost of operating a law office and the expense involved in the practice of law. It requires more compensation than \$60, \$65 or \$70 per hour.

Provide legislators with a copy of the ISBA position paper on indigent defense and encourage them to talk with ISBA lobbyists. The ISBA position paper is available on the association's website. From the home page, click on the "Legislative" tab, then on "Affirmative Legislative Program" and finally on "Indigent Defense." Politely ask legislators for their commitment to increase the hourly rate of compensation and thank them for their service.

If all 832 lawyers who accept indigent defense cases were to contact their legislators, that would be fantastic. If another 832 bar members who care about their profession would contact their legislators, that would be even better. "All Politics Is Local" – and you are the local in politics. If you write or email your legislators, please copy legislative counsel at [carney@carneyappleby.com](mailto:carney@carneyappleby.com) and/or [struyk@carneyappleby.com](mailto:struyk@carneyappleby.com). Please help us help you by contacting your legislators now!

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