



FY 2020 ANNUAL REPORT



VIRGINIA DEFENDERS

INDIGENT DEFENSE COMMISSION

804-662-7249 | www.vadefenders.org | Richmond, Virginia

FY20 - COMMISSION MEMBERS AND APPOINTING AUTHORITIES

Chair

Carolyn Grady (Virginia State Bar)

Steven D. Benjamin (Senate of Virginia)

Henry Chambers (Governor)

The Honorable Christopher E. Collins (Virginia House of Delegates)

John G. Douglass (Virginia State Bar)

The Honorable Alan E. Rosenblatt (ret.) (Senate of Virginia)

Karl R. Hade, Executive Secretary of the Supreme Court

The Honorable Edward W. Hanson, Jr. (Senate of Virginia)

Adeola Ogunkeyede (Governor)

Guy W. Horsley (Speaker of the House)

Kristen Howard (Crime Commission, designee)

The Honorable Creigh Deeds (Senate of Virginia)

David D. Walker (Speaker of the House)

Carmen B. Williams (Speaker of the House)

COMMISSION STAFF

Executive Director

David J. Johnson

Deputy Director

Maria Jankowski

Information Technology Director

Jason Hodges

Human Resource Director

Donna Moore

Budget and Finance Director

Tomeka Smith

PUBLIC DEFENDER OFFICES

OFFICE	LOCALITIES SERVED	YEAR ESTABLISHED
Alexandria	City of Alexandria	1987
Arlington	County of Arlington and City of Falls Church	2005
Bedford	City/County of Bedford	1989
Capital Defender (Central)	Cities of Bedford, Charlottesville, Colonial Heights, Emporia, Hopewell, Lynchburg, Petersburg, Richmond, and Counties of Albemarle, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greensville, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Surry, Sussex, Westmoreland	2002
Capital Defender (North)	Cities of Alexandria, Fredericksburg, Winchester and Counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Harrisonburg, King George, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren	2003
Capital Defender (Southeast)	Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and Counties of Accomack, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, York	2003
Capital Defender (Western)	Cities of Bristol, Buena Vista, Covington, Danville, Galax, Lexington, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, Waynesboro and Counties of Alleghany, Augusta, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe	2003
Charlottesville	City of Charlottesville and County of Albemarle	1998
Chesapeake	City of Chesapeake	2005
Danville	City of Danville	1990
Fairfax	City and County of Fairfax	1987

Franklin	City of Franklin and Counties of Isle of Wight and Southampton	1989
Fredericksburg	City of Fredericksburg and Counties of King George, Stafford, and Spotsylvania	1990
Halifax	Counties of Halifax, Lunenburg, and Mecklenburg	1990
Hampton	City of Hampton	2005
Leesburg	Counties of Fauquier, Loudoun, and Rappahannock	1988
Lynchburg	City of Lynchburg	1991
Martinsville	City of Martinsville and Counties of Henry and Patrick	1992
Newport News	City of Newport News	2005
Norfolk	City of Norfolk	2002
Petersburg	City of Petersburg	1979
Portsmouth	City of Portsmouth	1986
Pulaski	City of Radford and the Counties of Bland, Pulaski, and Wythe	1988
Richmond	City of Richmond	1986
Roanoke	City of Roanoke	1976
Staunton	Cities of Buena Vista, Lexington, Staunton, and Waynesboro and the Counties of Augusta and Rockbridge	1972
Suffolk	City of Suffolk	1989
Virginia Beach	City of Virginia Beach	1973
Winchester	Counties of Clarke, Frederick, Page, Shenandoah, and Warren, and the City of Winchester	1989

VIRGINIA INDIGENT DEFENSE COMMISSION

MISSION STATEMENT

Dedicated to protecting and defending the rights and dignity of our clients through zealous, compassionate, high quality legal advocacy.

The Virginia Indigent Defense Commission (VIDC), in conjunction with court-appointed private attorneys, provides legal representation for indigent people accused of crimes for which the possible punishment is incarceration or death.¹

This year was unprecedented for the VIDC in many ways. The year started with a campaign to educate lawmakers about the agency, its mission, and needs. The primary focus was on attorney staffing and workloads. After almost four years of careful analysis of attorney workloads it was determined that the VIDC needed 59 new attorney positions to be spread among the 25 Public Defender field offices. Body worn cameras and other technological evidence, needs of mentally ill clients, Commonwealth Attorney staffing, travel and turnover were significant drivers of workload. VIDC administrative staff and Public Defender leaders across the Commonwealth met with lawmakers to explain the agency's needs. A request was submitted to the Governor for inclusion in the 2021-2022 budget for 59 new attorney positions, the first new attorney positions in over a decade. The Governor did include those positions in addition to the first new Public Defender office since 2005. These positions and the new office were fully supported by the General Assembly and were approved in both the final Senate and House Budgets. Sadly, the COVID-19 pandemic resulted in the new positions being unallotted. The acute need for greater staffing remains and the agency continues to engage both the

Governor's office and the General Assembly in the hopes that some of the new positions could be reallocated.

The new Public Defender Office remained in the 2021 budget. The Prince William Public Defender Office will serve Prince William County, Manassas, and Manassas Park. This was the result of significant work by local grassroots organizations and the urging of lawmakers serving the area.

This year the VIDC welcomed three new Chief Public Defenders. Tracey Lenox was selected to be the first Public Defender in the newly establish Prince William office. Tracey brings decades of criminal defense and community engagement experience.

In Alexandria, Paul Pepper replaced Melinda Douglas upon her retirement. Melinda served the VIDC for over 30 years. She founded the Alexandria Office and built it into the highly regarded institution it is today. Mr. Pepper was the long serving Deputy Public Defender.

Aaron Boone became the new Public Defender in Lynchburg. Mr. Boone was the long serving Deputy in Lynchburg. Both Mr. Pepper and Mr. Boone bring a wealth of trial, supervising and training experience.

Community and policy engagement continued in 2020. In addition to the tens of thousands of cases handled every year across the Commonwealth by the Public Defender offices, the Executive Director, Deputy Director, and many Public Defenders serve on various boards, commissions, committees, and other groups working toward improving the criminal justice system both statewide and in their communities. The VIDC appreciates the opportunity to engage with other stakeholders to ensure that the unique challenges facing indigent defendants in the Commonwealth are not overlooked.

A. VIRGINIA CODE § 19.2-163.01 - STATUTORY MANDATES

The sections of the Code of Virginia governing the VIDC include several statutory mandates most of which concern the duty to oversee court-appointed private attorneys. A summary of the recent actions taken and the mandate requiring such action follows.

1. VIRGINIA CODE § 19.2-163.01(A)(1) - Publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants.

The initial qualification requirements as well as the requalification requirements for attorneys seeking to represent indigent clients accused in criminal cases are enumerated in Virginia Code §19.2-163.03. A list of the qualification requirements can be found on the VIDC website at www.vadefenders.org. Applications for initial certification and re-certification are also available on the website. The Certification and Compliance Attorney or the Certification and Compliance Assistant receive applications for certification and re-certification for review and determine whether the qualification or requalification requirements have been met.

2. VIRGINIA CODE § 19.2-163.01(A)(2) - Develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.

The VIDC continues to offer live Initial Certification training for attorneys wanting to do court-appointed indigent criminal defense work. This training is offered three times a year. In FY2020 we held Initial Certification training in August, November, and March. We had 93 attendees at these trainings. This training is staffed with seasoned public defenders and other VIDC resource attorneys, including our Chief Appellate Counsel, Immigration Attorney, and Certification Attorney. In addition to content updates and improvements, valuable practice tips are provided throughout the program. This year all the materials were carefully reviewed by

multiple experienced attorneys both to ensure they were up-to-date and always with an eye for improvement. The VIDC attorney resource website and other free resources are highlighted for the attendees. Finally, the live format allows participants to ask questions and the faculty are available to provide answers and support to the attendees. In addition to the resource manual, this training consists of six hours of specialized criminal defense instruction, four additional hours of juvenile defense instruction and two hours of immigration training over a two-day period.

The VIDC continues to provide quality training, free of charge, to the private court-appointed attorneys. All VIDC trainings are MCLE (Mandatory Continuing Legal Education) approved by the Virginia State Bar. This year we offered over 89 hours of CLE to over 1,400 private court-appointed attorneys across the state. Much of this (35 hours) came in numerous webinars developed after in-person training became impossible as a result of the COVID-19 pandemic.

In July of 2019 we hosted Initial Capital Habeas Certification. This training was initially hosted in 2015, and at that time the Capital Qualification Standards Committee decided that all attorneys would “sunset” off this list every four years. This meant that every attorney on this list needed to either attend Initial Capital Habeas Certification or some other qualifying capital-specific training and complete a Sunset Application detailing their recent, relevant experience.

Furthering the goal of providing hands-on training, the VIDC, led by Chief Appellate Counsel, Catherine French Zagurskie, continued to partner with Judges from the Court of Appeals for our 6-hour Annual Introduction to Indigent Defense Appeals training on July 19, 2019. There were 52 court-appointed attorneys in attendance at this training.

All VIDC sponsored trainings are eligible to be used by attorneys to maintain their certification status for court appointments. Additionally, the VIDC reviews and approves legal education courses provided by other organizations to determine whether the courses satisfy the requirements for attorneys to maintain their eligibility for court appointments. A current list of Commission and MCLE-approved courses is provided on the VIDC website at <http://www.vadefenders.org/recertification/> and is updated as new courses are approved.

By statute, attorneys maintain their eligibility for court appointments for a period of two years from the date of their initial certification. Prior to the expiration of each two-year period, attorneys receive multiple expiration date notifications via e-mail along with instructions on where to find information about re-certification. Attorneys wishing to maintain certification for court-appointed work are required to complete the one-page re-certification form. Attorneys must include on the form the information verifying their completion of the statutorily required number of Commission and MCLE-approved continuing legal education credits.

3. **VIRGINIA CODE § 19.2-163.01(A)(3) - Maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards. Disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts.**

ACeS (Attorney Certification System) is an online system that allows attorneys to apply, renew and modify their certification status via the VIDC website. ACeS continually updates the certified counsel list located on the VIDC website and is accessible by court personnel to retrieve the names of certified attorneys by case type and judicial circuit/district.

As of July 25, 2020, the number of certified attorneys totaled 1,899 and the total attorneys certified by case type were as follows: (**NOTE: An attorney may be certified for more than one case type.**)

Case Type	Number of Certified Attorneys 7/2020	Number of Certified Attorneys 7/2019	Annual Change %
Capital Appellate	13	22	-41
Capital Habeas	9	10	-10
Capital Trial Co-Counsel	97	119	-18
Capital Trial Lead Counsel	47	64	-27
Felony	1578	1695	-7
Juvenile	847	939	-10
Misdemeanor	1794	1949	-8

A list is sent to the Office of the Executive Secretary every four months advising of attorneys who have not been re-certified or who have been removed from the certified counsel list for other reasons. The most recent list of ineligible attorneys was provided on June 1, 2020.

4. VIRGINIA CODE § 19.2-163.01(A)(4) - Establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients and guidelines for the removal of an attorney from the official list. Notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.

The Standards of Practice for Indigent Defense Counsel in non-capital cases are outlined on the VIDC website. The Standards of Practice complaint process and the complaint form are also located on the website. The Standards of Practice are highlighted in the live certification training and beginning in June 2018 the complete Standards of Practice were included in the manual provided to every attendee.

Previously implemented efforts to raise awareness of the Standards of Practice and the enforcement thereof have continued. Currently, VIDC training programs incorporate the Standards of Practice whenever applicable.

5. VIRGINIA CODE § 19.2-163.01(A)(5) - Develop initial training courses for public defenders and to review and certify legal education courses that satisfy the continuing requirements for public defenders to maintain their eligibility.

All public defenders must receive the same certification training as any attorney seeking to serve as court-appointed counsel. In keeping with the revised Standards of Practice, all public defenders must also complete a three-hour training on defending non-citizens. All public defenders serving as their office's appellate supervisor must attend a specialized appellate training and all public defenders must complete a two-part online appellate training once hired and before handling their first appeal. Finally, every public defender must attend the annual conference.

All newly hired attorneys must attend an intensive week-long "New Public Defender Boot Camp". This training emphasizes trial skills and addresses the rewards and challenges of public defense with the goal of developing a client-centered practice. The program remains staffed by experienced public defender leaders as well as Senior Trial Attorneys who specialize in training. The "Boot Camp" program is one part of an overall strategy to recruit, train, and retain quality attorneys who want to serve as public defenders.

The 2019 Annual Public Defender Conference was held October 10-11, 2019 in Williamsburg, Virginia. The annual conference provides all public defenders with the opportunity to earn half of the required continuing legal education credit and maintain eligibility. The VIDC strives to provide a wide range of topics using experienced attorneys from across the

Commonwealth as well as noted national experts. The conference provides specific ethics, appellate, and juvenile training.

The 2020 annual conference was scheduled to be held in Newport News in October, but was ultimately canceled due to the COVID-19 pandemic. In its place, the training team quickly pivoted and scheduled sixteen webinars providing approximately twenty hours of continuing legal education. The webcast series started in May when many courts had slowed down and will continue into the Fall. As a result of the new format, VIDC was able to make these trainings available for free to all certified court-appointed attorneys throughout Virginia.

6. VIRGINIA CODE § 19.2-163.01(A)(6) - Periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the caseload handled by each public defender office.

The VIDC counts cases by the number of individual clients represented, rather than by the number of charges defended. Many cases involve more than one charge. (See **Appendix A, VIDC FY20 Caseload and Charge Data**). These totals include appeals to both the Court of Appeals of Virginia and Supreme Court of Virginia. This year the VIDC saw a dramatic drop in caseloads from the end of March through the end of June. In previous years VIDC averaged over 7,000 new cases a month. Between April and June that dropped to approximately 3,000 per month. July case load data suggest that we are rapidly returning to pre COVID-19 caseload levels.

7. VIRGINIA CODE § 19.2-163.01(B) - Commission shall adopt Rules and Procedures for the conduct of its business.

The VIDC adopted its policies and procedures in November 2006. The policies and procedures are reviewed and updated as necessary, but no less than annually. This year the

Commission voted on a new remote access policy as well as formalizing the recognition leave policy. The remote access move was fortunate in that it became pivotal in the ability to respond quickly to the COVID-19 crisis. The policies are accessible electronically to all employees via the VIDC intranet and MOAT, the IT security training program. All employees must acknowledge receipt of the Policies as part of the annual IT security training.

8. VIRGINIA CODE § 19.2-163.01(A)(14) - Report annually on or before October 1 to the Virginia State Crime Commission, the House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the state of indigent criminal defense in the Commonwealth, including Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed pursuant to §19.2-159 or subdivision B2 of §16.1-266.

A 2005 ABA report, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, noted that Virginia's caps on court-appointed compensation placed its fees among the lowest in the nation.²

This report, specifically the ranking, sparked debate in Virginia, the result of which was an added requirement on the VIDC to report on Virginia's ranking among the fifty states for compensation of court-appointed counsel.

State-to-state comparisons are difficult because the structure and funding of indigent defense systems vary nationwide. Pursuant to Va. Code § 19.2-163, an attorney appointed to represent an indigent defendant in Virginia is compensated at an hourly rate set by the Supreme Court. The total amount or cap to be paid is set by statute and may not exceed \$120.00 for a misdemeanor in general district court, \$1,235.00 for a felony charge where the maximum period of confinement is more than 20 years, and \$445.00 for any other felony in circuit court. Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an

additional \$650). Felony charges with a penalty of 20 years or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155. With approval of the judge, Virginia also allows for a second level waiver in certain cases. These caps, even with the initial waiver, remain some of the lowest in the nation. For a comparative look at the states see (Appendix B, State Comparisons Chart).

Compensation for court appointed counsel in Virginia on appeal is governed by Virginia Code §19.2-326 which provides in part:

In felony or misdemeanor case...the court which an appeal is taken shall order the payment of such attorneys' fees in an amount not less than \$300, cost or necessary expenses of such attorneys in an amount deemed reasonable by the court, by the Commonwealth out the appropriation for criminal charges. If the conviction is upheld on appeal, the attorney's fees, cost and necessary expenses of such attorney paid by the Commonwealth under provision hereof shall be assessed against the defendant.

According to the Supreme Court, during the writ stage each appeal is looked at on its own basis. Where there is a dismissal based on a procedural default the attorney receives nothing. Otherwise, generally, there is a minimum payment of \$400 and maximum of \$1200. In the case of a guilty plea, *Alford* plea, Anders petition, or probation violations there is a flat rate of \$400, whether or not there is oral argument. For other types of writ cases, there is a base rate of about \$400, where there is no oral argument. The attorney will receive \$400 if the petition is generally the same as the petition filed in the Court of Appeals. If there is a new petition, where the attorney substantively addresses the Court of Appeals in the argument sections, there will be a bump of, generally, \$100. If it is a complicated case, like a capital non-death or a case with voluminous transcripts, additional money may be considered. If there is an oral argument, whether before the panel of Justices or Chief Staff Attorney, there is another

bump of, generally, \$100. But, to get the \$100, it has to be more than just showing up for the argument and relying on brief. There are slight adjustments, downward, if the case is only a misdemeanor. What results in the difference between the range of \$400 and \$1200 is type of appeal; substantive oral argument; and whether there is a "new" petition in the Supreme Court. All this is only for the writ stage not for merit cases in the Supreme Court of Virginia.

In the Virginia Court of Appeals there is a clear fee structure as follows:

For writ stage if the case only involves misdemeanors the compensation is \$300 and if the appeal involves felony, \$400 and an extra \$100 if there is an oral argument. For the merit stage the total amounts which include writ and merit stages are as follows: If appeal only involves misdemeanors the compensation is \$625 and \$725 if the appeal involves a felony. If a rehearing en banc is granted the attorney is entitled to an extra \$200.

¹ U.S. Const. Amend. VI

² ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group (August 2005)

APPENDIX A: VIDC FY20 CASELOAD DATA

Office Caseload FY2020 (including Appeals)

Office	Total Cases	Charges
Alexandria	1503	2918
Arlington	1861	3253
Bedford	511	772
Charlottesville	1869	3409
Chesapeake	3425	7342
Danville	1697	2842
Fairfax	5577	9998
Franklin	939	2241
Fredericksburg	5394	11627
Halifax	1267	2190
Hampton	2825	4866
Leesburg	3631	5468
Lynchburg	2909	5016
Martinsville	1884	3188
Newport News	4921	9874
Norfolk	4591	9038
Petersburg	1602	2928
Portsmouth	2988	6286
Pulaski	1757	3139
Richmond	6697	12803
Roanoke	3448	5709
Staunton	3734	6734
Suffolk	1801	3924
Virginia Beach	7058	12048
Winchester	2589	4560

APPENDIX B: STATE COMPARISONS CHART

STATE	HOURLY RATE	CAPS	AUTHORITY/NOTES
Alabama	\$70	Capital Case: No cap Class A Felony: \$4,000 Class B Felony: \$3,000 Class C Felony: \$2,000 Juvenile: \$2,500 All Other Cases: \$1,500	Code of Ala §15-12-21 (2016) Counsel shall be entitled to reimbursement of non-overhead expenses, with expenses exceeding \$300 subject to advance approval by the trial court.
Alaska	\$60 in-court \$50 out-of-court	Misdemeanor - Guilty Plea, No Contest Plea, or Dismissal: \$400 Misdemeanor - Trial: \$800 Felony - Guilty Plea, No Contest Plea, or Dismissal: \$2,000 Felony - Trial: \$4,000 Probation Violation - Misdemeanor: \$350 Probation Violation - Felony: \$1,000	2 AAC 60.010 (1986) (Alaska Administrative Code)
Arizona	Varies	Varies (Judicial discretion)	A.R.S. § 13-4013 (2005) "Compensation for services rendered to the defendant shall be in an amount that the court in its discretion deems reasonable, considering the services performed."
Arkansas	\$90-\$110 - Capital \$70-\$90 - Homicide, Class Y or A Felonies \$60-\$80 - Other Felony \$50-\$80 - District, Juvenile, or Probate	N/A	A.C.A. § 16-87-211 (2001) Statute directs the Arkansas Public Defender Commission to set guidelines for court-appointed attorney compensation. Hourly rates provided by the Arkansas Public Defender Commission (2012).
California	Varies	Varies	Cal Pen Code § 987.2 (2002) Ca. Pen Code § 987.3 (1973) The court determines reasonable compensation.
Colorado	\$95 - Capital Cases \$85 - Type A Felony \$80 - Type B Felony, Juvenile \$75 - Misdemeanor, Traffic \$75 - Travel	Class 1 Felony & unclassified felonies where max. penalty is death, life, or 51+ years: \$30,000 (with trial), \$15,000 (without trial) Class 2 Felony, DF 1 felonies: \$13,000 (with trial), \$6,500 (without trial) Class 3-6 Felonies, DF 2-4 felonies: \$8,000 (with trial), \$4,000 (without trial) Misdemeanors, Traffic, & Petty Offenses: \$3,000 (with trial), \$1,500 (without trial) Juvenile: \$5,500 (trial)/ \$2,750 (without trial)	C.R.S. 21-2-101 (2007) C.R.S. 21-2-103 (2018) Describing when alternate defense counsel (as opposed to a public defender) would be appointed to represent an indigent defendant. Chief Justice Directive 04-04 (Amended July 2018) Provides alternate defense counsel hourly rates and fee caps.
Connecticut	\$75 - Felonies, serious Juvenile offenses, Habeas, appellate \$50 - Misdemeanor \$100 - Capital felony	Where flat rate compensation contracts are used, they are put in place by jurisdiction: Judicial District cases: \$1,000 Geographical Area cases: \$350 Juvenile Delinquency cases: \$350	Conn. Gen. Stat. § 51-291 (2012) By statute, the Chief Public Defender establishes the compensation for court-appointed attorneys. Division of Public Defender Services, Assigned Counsel Frequently Asked Questions (last visited July 2019) Cases are paid on an hourly rate or a flat fee and are assigned as such pursuant to the contract with the attorney. The bulk of case assignments are done through flat rate contract agreements.
Delaware	\$60 in Superior Court \$50 in Supreme Court	Felony: \$2,000 (per attorney) Misdemeanors: \$1,000 (per attorney)	Delaware Rules of Criminal Procedure, Rule 44 (2016) & Rules of the Supreme Court of the State of Delaware, Rule 26 (2019). Rules includes provisions for exceeding caps.
District of Columbia	\$60 - in-court \$40 - out-of-court Can seek up to \$75 in certain cases	Felony: \$7,000 (per attorney) Misdemeanor: \$2,000 (per attorney)	18 U.S.C. § 3006A (2010) "The compensation maximum amounts...shall increase simultaneously by the same percentage, rounded to the nearest multiple of \$100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for time expended since the case maximum amounts were last adjusted" - Statute includes provisions for exceeding caps.

Florida	Flat Fees	Capital: \$25,000 Life Felonies: \$9,000 Noncapital, Nonlife Felonies: \$6,000 Misdemeanors & Juveniles: \$1,000 Appeal: \$9,000	Fla. Stat. § 27.5304 (2018) Statute includes provisions for exceeding caps.
Georgia	By contract	By contract	O.C.G.A. § 17-12-22 (2011) Georgia Public Defender Standards Council contracts with individual attorneys for conflict appointment. State Bar of Georgia: Appointed Work for Attorneys. Certain localities which have opted out of the state system set their own compensation rates for court-appointed attorneys.
Hawaii	\$90	Felony: \$6,000 Misdemeanor (jury trial): \$3,000 Misdemeanor (jury waived): \$1,500 Petty Misdemeanor: \$900 Appeals: \$6,025.50	HRS § 802-5 (2015) Statute includes provisions for exceeding caps.
Idaho	Set by contract either by the local board of county commissioners or by the court	Set by contract either by the local board of county commissioners or by the court	Idaho Code § 19-859 (2014) Compensation varies by each locality, largely set by the board of county commissioners, but judges can set the compensation rates in individual cases.
Illinois	Reasonable Fee as set by the Court In Counties with populations greater than 2 million people: \$40 - in-court \$30 - out-of-court	Reasonable Fee as set by the Court In Counties with populations greater than 2 million people: Felony: \$1,250 Misdemeanor: \$150	725 ILCS 5/113-3 (2000) Statute includes provisions for exceeding caps.
Indiana	Set by the Court – per the Indiana IDC, hourly rates range from \$30-\$60, with the majority of counties going with \$40 for out-of-court time and \$50 for in-court time The Indiana Public Defender Commission requires a \$90/hour rate in all Commission counties (roughly 2/3 of counties in Indiana) \$124 - Death Penalty \$73 - Class A Felony \$68 - Class B Felony \$63 - All other cases	N/A	Burns Ind. Code Ann. § 33-40-8-2 (2004) states that “a judge shall establish the fee to be paid to an attorney or attorneys for providing services to poor people.” Indiana Public Defender Commission can recommend standards for indigent defense.
Iowa	\$73 - Class A Felony \$68 - Class B Felony \$63 - All other cases	Adult Cases: Class A Felony: \$18,000 Class B Felony: \$3,600 Class C Felony: \$1,800 Class D Felony: \$1,200 Aggravated Misdemeanors: \$1,200 Serious Misdemeanors: \$600 Simple Misdemeanors: \$300 Misdemeanor appeals to District Court: \$300 Contempt/Show Cause: \$300 Probation/Parole violations: \$300 Juvenile Cases : Delinquency: \$1,200 Juvenile Court Review: \$300 Judicial Bypass Hearings: \$180 Juvenile Commitment Hearings: \$180 Juvenile Petition on Appeal: \$600 Motion for Further Review after Petition on Appeal: \$300	Iowa Code § 13B.4 (2017) - Flat fee contracts Iowa Code § 815.7 (2019) - Hourly rates Iowa Code § 815.10A (2013) Statute includes provisions for exceeding caps. State Public Defender Administrative Rules Chapter 12.6 (2017) Provides the attorney fee caps.
Kansas	\$80 (Negotiable) \$75 - Assigned Attorneys	Non-tried cases - Felony 1-5: \$1,500 Felony 6-10: \$1,125 Probation Revocations: \$400 Tried cases - Felony 1-3, off-grid felony offenses, felony drug offenses level 1: \$7,500 Felony 4, felony drug offenses 2-5: \$3,000 Felony 5-10: \$2,4000	K.S.A. § 22-4507 (2007) The Court can negotiate a lower hourly rate with attorneys willing to accept court appointments. If appropriations for payments are insufficient, the state board of indigent’s defense services can establish a formula for pro rata payments. Kansas Administrative Regulations 105-5-2, -6, -7, -8. Provides generally for the hourly rates and caps, as well as provisions for exceeding caps. It appears that localities set caps for misdemeanor cases. See Douglas County Kansas Rules and Suggestions for Completing Misdemeanor Vouchers

Kentucky	Set by contract by the Department of Public Advocacy	Set by contract by the Department of Public Advocacy	KRS § 31.235 (2002) The court shall pay reasonable and necessary fees but not in excess of fees established by the Department of Public Advocacy.
Louisiana	Flat fee contracts	Flat fee contracts	La. R.S. 15:147(C)(1) (2017) The Louisiana Public Defender Board enters into contracts with attorneys to provide indigent defense services.
Maine	\$60	Murder: Fee set by Executive Director Class A: \$3,000 Class B and C (against person): \$2,250 Class B and C (against property): \$1,500 Class D and E (Superior or Unified Criminal Court): \$750 Class D and E (District Court): \$540 Probation Revocations: \$540 Juvenile: \$540	15 M.R.S. § 810 (2018) 4 M.R.S. § 1804(3)(F) (2019) The Maine Commission on Indigent Legal Services sets the rate for court appointed counsel. Code of Maine Rules § 94-649, Chapter 301 (2011). Provides the hourly rates and caps.
Maryland	Same hourly rate as federal panel attorneys. Panel attorneys are paid \$50 for most cases and \$75 cases involving potential life sentence	District Court - federal misdemeanor Circuit Court - federal felony Juvenile Court - federal felony	Md. Criminal Procedure Code Ann. § 16-207 (2008) The Public Defender prepares schedules for fees and expenses for panel attorneys. Code of Maryland Regulations 14.06.02.06 (2018). Attorneys are compensated at the same hourly rate as federal panel attorneys.
Massachusetts	\$100 - Homicide \$68 - Superior Court non-homicide \$50 - District Court \$53 - Children/Family Law, Sex Offender, Mental Health	Annual cap on billable hours: 1,650	ALM Gl ch. 211D, §11 (2018) <u>Note: Counsel may not accept new appointments or assignments after billing 1,350 billable hours, except in homicide cases. Care and Protection cases which are handled by Children and Family Law division are paid \$55/hr, while Children in Need of Services are paid at the \$53/hr. there is a waiver provision allowing the Chief Counsel to increase the annual hours to 1,800 in Care and Protection cases.</u>
Michigan	Set by the Court	Set by the Court	MCLS § 775.16 (2013) The statute covers appointment of counsel, but the case law notes following the statute state that the court sets the rates.
Minnesota	State Board of Public Defense determines rates	State Board of Public Defense determines rates	Minn. Stat. §611.215(2)(c)(3) (2007) State Board of Public Defense responsible for appointment of counsel and collection of costs. Minn. Stat. §611.27 (2014). The state's obligation for the costs of the public defender services (including court-appointed attorney fees) is limited to the appropriations made to the Board of Public Defense.
Mississippi	Set by the Court	Circuit Court: \$1,000 Court not of record: \$200 Capital Cases: \$2,000 Appeals to State Supreme Court: \$1,000	Miss. Code Ann. §99-15-17 (1980)
Missouri	Flat fee contracts Jury Trial - \$1,500 for 1 st day, \$750 for each additional day (partial days) Bench Trial - \$750/day, prorated	Murder first degree: \$10,000 Other homicide: \$6,000 Felony Class A/B - Drugs: \$750 Felony Class A/B - Other: \$1,500 Felony Class A/B - Sex: \$2,000 Felony Class C/D/E - Drugs: \$750 Felony Class C/D/E - Other: \$750 Felony Class C/D/E - Sex: \$1,500 Misdemeanor: \$375 Juvenile - Non-violent offense: \$500 Juvenile - Violent offense: \$750 Probation Violation: \$375 Direct Appeal: \$3,750	§600.042 R.S.Mo. (2019) The state Public Defender contracts with private attorneys for legal services. §600.021 R.S.Mo. (1986) The commission contracts with private attorneys to provide defense services. Missouri State Public Defender Website – https://publicdefender.mo.gov/private-counsel-opportunities/mspd-contracting/panel-rates/
Montana	Non-Capital - \$56	Statute allows for fixed fee contracts	47-1-121, MCA (2019) The Public Defender Commission adopts rules to provide reasonable compensation to contract attorneys.
Nebraska	Set by Court or Public Defender Commission	N/A	R.R.S. Neb. §29-3927 (2014) Public Defender Commission is responsible for determining compensation rates for contracting attorneys and court-appointed attorneys. R.R.S. Neb §29-3905 (1990) Allows the court to fix reasonable expenses and fees.

Nevada	\$125 - Capital cases \$100 - all other cases	Capital, or life case: \$20,000 Felony not punishable by death or life in prison or a gross misdemeanor: \$2,500 Misdemeanor: \$750 Gross Misdemeanor or Felony Appeal: \$2,500 Misdemeanor Appeals: \$750	Nev. Rev. Stat. Ann. §7.125 (2013) Statute includes provisions for exceeding caps.
New Hampshire	\$100 – Major Crimes \$60 – all others	Homicides under RSA 630:1-2 (per co-counsel): \$20,000 Felony – Sexual Assault: \$8,000 Felony: \$4,100 Misdemeanor: \$1,400 Supreme Court Appeals: \$2,000	Rules of the Supreme Court of the State of New Hampshire, Rule 47 (2015) Rule includes provisions for exceeding caps.
New Jersey	\$60 - in-court \$50 - out-of-court \$252 - full day (per diem) \$60 – in-court (appellate cases) \$50 – out-of-court (appellate cases) \$250 – oral argument (appellate cases)	N/A	N.J. Stat. §2A:158A-7 (1994) Public Defender establishes compensation with contract attorneys. OPD Pool Attorney Application Process (2019) These guidelines set the current rates.
New Mexico	Flat-fee contracts generally First degree murder and first degree felonies – \$85 \$42.50 travel time	Can vary by district 1 st Degree Murder: \$5,400 1 st Degree Felony (Life Imprisonment): \$5,400 1 st Degree Felony: \$800 or \$750 2 nd Degree Felony: \$780 or \$700 3 rd Degree Felony: \$750 or \$645 4 th Degree Felony: \$650 or \$540 Juvenile: \$350 or \$300 Misdemeanor Trial: \$180 Retrial: Half the Original Fee	N.M. Stat. Ann. §31-15-7 (2014) Public Defender to establish fee schedule for court appointed counsel. Public Defender Contract Counsel Sample Contract (2018) Lists flat fee schedules on pages 19-20.
New York	\$75 – Felony both in and out of court \$60 – Misdemeanor both in and out of court	Felony: \$4,400 Misdemeanor: \$2,400	NY CLS County §722-b (2004) Statute includes provisions for exceeding caps.
North Carolina	\$90 - Capital Cases, Appeals, & post-conviction \$75 - Class A-D felony \$60 – Class E-I felony \$55 - All other cases resolved in District court \$60 - All other cases resolved in Superior Court \$60 - Parole and post-release revocation hearings \$55 – Competency Cases \$75 – Non-Capital Appeals and Post-Conviction (A-D Felony) \$60 – All other Non-Capital Appeals and Post-Conviction	No caps in general Capital – cannot bill more than \$35,000 pre-trial, \$10,000 for mitigation, or \$10,000 for investigation	N.C. Gen. Stat. § 7A-498.5 (2015) Office of Indigent Defense Services responsible for setting rates. Private Assigned Counsel Rates were updated December 1, 2018.
North Dakota	By contract, either using a flat fee or hourly rates According to Commission office, standard monthly contract rate is \$75/hr.	Felony - \$2,000 Misdemeanor - \$850 Juvenile - \$850 Post-conviction - \$500 Appeal - \$2,000	N.D. Cent. Code, § 54-61-02 (2017) Commission on Legal Counsel has authority to set fees. N.D. Cent. Code, § 29-07-01.1 (2013) Lawyers representing indigent persons must be compensated at a reasonable rate determined by the commission on legal counsel for indigents. Presumed Rate for Attorney Fee Reimbursement (2019) Provides the presumed rates for cases as determined by the Commission. Policy on Payment of Extraordinary Attorney Fees (last viewed 2019) Provides policy for exceeding caps, as well as the caps themselves.

Ohio	<p>\$75 - in-court or out-of-court \$125 - death penalty cases, both in-court and out-of-court</p>	<p>Adult Aggravated Murder (w/ specs) - no fee maximum Aggravated Murder (w/o specs) - \$15,000/1 attorney, \$25,000/2 attorneys Murder - \$10,000 Felony with Possible Life Sentence/Repeat Violent Offender/Major Drug Offender: \$10,000 Felony (degrees 1-2) - \$8,000 Felony (degree 3) - \$5,000 Felony (degrees 4-5) - \$3,500 Misdemeanor (degrees 1-4) - \$2,000 Misdemeanor OVI/BAC - \$2,500 Contempt - \$500 Probation violations - \$750 Preliminary Hearings - \$300 Sex Offender - \$750</p> <p>Juvenile Aggravated Murder (w/ specs) - no fee maximum Aggravated Murder (w/o specs) - \$7,500/1 attorney, \$12,500/2 attorneys Murder - \$6,000 Felony (degrees 1-2) - \$5,000 Felony (degrees 3-5) - \$3,500 Misdemeanor - \$2,000 Misdemeanor OVI/BAC - \$2,500 Contempt - \$500 Probation violations - \$750 Sex Offender - \$750</p> <p>Appellate Level Proceedings Death Sentence - no fee maximum Cumulative Minimum Sentence exceeds 25 years - \$8,000 Felony (degrees 1-2) - \$5,000 Felony (degree 3) - \$3,500 Felony (degrees 4-5) - \$2,500 Felony Plea - \$1,500 Misdemeanors - \$2,000 Felony: \$3,500 Misdemeanor, Juvenile, Traffic: \$800</p>	<p>ORC Ann. 120.33 (2017) The Board of County Commissioners shall establish a schedule of fees by case or an hourly basis. The County must file an up-to-date fee schedule with the Ohio Public Defender, who then will reimburse up to the maximum set by the Ohio Public Defender State Maximum Fee Schedule. Statute includes provisions for exceeding caps. Ohio Public Defender Standards and Guidelines for Appointed Counsel Reimbursement (2019). Manual on Ohio Public Defender's website that provides the hourly rates and caps. https://analytics.das.ohio.gov/t/PUBPUB/views/OhioFeeSchedulesStory3/Story1?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:render=true</p>
Oklahoma	Flat-fee contracts		<p>22 Okl. St. §1355.8 (2001) Statute includes provisions for exceeding caps.</p>
Oregon	<p>\$61 - Capital lead counsel \$46 - Capital co-counsel \$46 - Non-capital cases</p>	N/A	<p>ORS §151.216 (2018) The Public Defense Services Commission adopts guidelines regarding the fair compensation of appointed counsel. Public Defense Payment Policy and Procedures (2019)- Provides guidelines for obtaining an increase in the set hourly rates (section 2.2). Also sets out the hourly rates (Exhibit 2).</p>
Pennsylvania	Set by the Court	Set by the Court	<p>16 P.S. §9960.7 (1969) Attorney to be rewarded reasonable compensation to be fixed by the Court.</p>
Rhode Island	<p>\$100 - Murder \$90 - Class 1 Felony \$60 - Class 2 Felony \$50 - Misdemeanor Appeal (Superior Court) \$30 - Violation of Court Order (non-payment of fines, costs) \$85 – Criminal Appeal \$85 – Misc. Appeals & Petitions Some courts provide \$200/day or \$300/day for certain case types Family Court: \$30 – Dependency/Neglect/Abuse/Arrest \$50 – DUI \$50 – Misdemeanor</p>	<p>Murder: \$30,000 Class 1 Felony: \$10,000 Class 2 Felony: \$5,000 Misdemeanor Appeal (Superior Court): \$1,500 Violation of Court Order (non-payment of fines, costs): \$1,500 Criminal Appeal: \$5,200 Misc. Appeals & Petitions: \$5,200 Family Court Dependency/etc.: \$1,000 DUI: \$2,500 Misdemeanor: \$1,500</p>	<p>General Laws of Rhode Island §8-15-2 (1969) Statute cited in Executive Order (see below) which provides chief justice of the court to ensure that court-appointed attorneys are paid in a fair and equitable fashion. Supreme Court Executive Order re Indigent Defense Service Payment Rates (2019) - Provides the hourly rates and caps. Additional case types included beyond those listed.</p>

South Carolina	\$60 - in-court \$40 - out-of-court	Felony: \$3,500 Misdemeanor: \$1,000	S.C. Code Ann. §17-3-50 (2007) Includes provisions for exceeding hourly rates and caps. In 2013 SC created a contract program which contracts with private attorneys to handle non-capital criminal conflict cases for a flat fee. Therefore the hourly rates and caps are rarely if ever apply anymore.
South Dakota	\$97	N/A	S.D. Codified Laws § 23A-40-8 (1983) Reasonable amount to be paid based upon guidelines established by the presiding judge of the circuit court. Office of the State Court Administrator re 2019 Court-Appointed Attorney Fees and Mileage Provides the hourly rate. https://ujs.sd.gov/uploads/docs/CourtAppointedAttorneyGuidelines.pdf
Tennessee	<i>Non-Capital Cases</i> \$50 - in and out of court <i>Capital Cases</i> Lead Counsel: \$100 Co-Counsel: \$80 Post-conviction: \$80	First Degree Murder or Class A or B felony in trial court: \$6,000 Felony other than First Degree Murder or Class A or B felony: \$4,000 Preliminary hearings for felonies, juvenile charged w/non-capital felony: \$1,500 Misdemeanor, probation violation: \$1,000 Contempt of Court, parole revocation: \$500	Tennessee Supreme Court Rule 13 (checked 2019) Rule includes provisions for exceeding caps (see specifically section 2(e)(1)).
Texas	Court sets rate	Court sets fee	Texas Code of Criminal Procedure Article 26.05 (2019) Counsel to be paid a reasonable fee as set by the court.
Utah	Rate per guidelines set by the county or municipality	Rate per guidelines set by the county or municipality	Utah Code Ann. § 78B-22-302 (2019) Utah Code Ann. § 78B-22-203 (2019) Attorney shall be paid reasonable compensation by the court.
Vermont	\$50	Felony with possible life sentence or death penalty: \$25,000 Other major felony: \$5,000 Minor felony or Juvenile: \$2,000 Misdemeanors & all other proceedings: \$1,000 Appeals: \$2,000	13 V.S.A. § 5205 (1982) The Supreme Court shall set reasonable rates of compensation. Vt. A.O. 4 § 6 (1993) Administrative Order of the Supreme Court. Provides the hourly rates and caps, as well as provisions for exceeding the caps.
Virginia	\$90	Felony with 20 years or more sentence (resolved in district court or circuit court): \$1,235 Other felony (resolved in district court or circuit court): \$445 Misdemeanor in Circuit Court: \$158 District Court cases (misdemeanors, felony preliminary hearings where the felony was not resolved in district court): \$120	Va. Code § 19.2-163 (2009) Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an additional \$650). Felony charges with a penalty of 20 year or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155. With approval of the judge, Virginia also allows for a second level waiver in certain cases.
Washington	Set by Court	Set by Court	Rev. Code Wash. (ARCW) §36.26.090 (1969) The court shall provide reasonable compensation to a court-appointed attorney.
West Virginia	\$80 - in-court \$60 - out-of-court	Felony offenses with possibility of life in prison: court discretion All other cases: \$3,000	W. Va. Code §29-21-13a (2019) Statute includes provisions for exceeding caps.
Wisconsin	\$70 - in-court and out-of-court.	N/A	Wis. Stat. § 977.08 (2018)
Wyoming	\$100 - in court \$35-\$60 - out-of-court	N/A	Wyoming Rules of Criminal Procedure Rule 44(e) (2019)