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**Rates of Compensation Paid to Court-Appointed Counsel in
Non-Capital Felony Cases at Trial: A State-by-State Overview**

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Rates of Compensation for Court-Appointed Counsel in Non-Capital Felonies at Trial,
2007

Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, 2007

Introduction

Since 1997, The Spangenberg Group has periodically produced tables and narratives detailing compensation rates for court-appointed attorneys in non-capital felony cases at trial. The tables, which are prepared on behalf of the American Bar Association's Bar Information Program, provide state-by-state information concerning the hourly rates paid to assigned counsel and the authority for the rates. We receive repeated requests for the tables from attorneys, policy-makers and others. Frequent interest in this report is generated by a state legislature's consideration of changes to its attorney compensation rates.

The last comprehensive report was published in 2002. Since then, The Spangenberg Group has produced three reports which included selected updates in 2003, 2005 and 2006. In comparing statistics between the information that we gathered during our survey for this report and our last report, we will refer to the comprehensive report published in 2002.

It is not the purpose of this report to produce any type of assessment or evaluative ranking of the compensation rates reported in this article. First, many states have so-called "reasonable compensation" systems, in which the rates are set by the county or local judge and vary widely from county to county. Therefore no single rate can be defined for these states, making it impossible to place them in an ordinal ranking of rates paid to court-appointed counsel. Moreover, most of the "reasonable compensation" states do not maintain centralized records on the precise amounts court-appointed counsel are paid. To collect these data, we interviewed public defenders, court administrators, private counsel, or others familiar with the jurisdiction's indigent defense system. The numbers reflected in the accompanying table and/or narrative are representative of the limited information provided to us through these interviews.

Second, even if it were possible to rank all fifty states' compensation rates, such a ranking would be of limited significance. This is so because, in addition to paying attorneys in private practice an hourly rate, there are two other methods by which legal counsel is provided to defendants who cannot afford it. The three methods jurisdictions use to provide indigent defense are:

- The assigned counsel model: private attorneys are assigned to indigent criminal cases on either a systematic or ad hoc basis. Typically they are paid on an hourly basis or paid a flat fee per case.
- The contract model: a jurisdiction contracts with private attorneys, a group of attorneys, a bar association or a private, non-profit organization to provide representation in some

or all of the indigent cases in the jurisdiction.¹ In some jurisdictions, such as Delaware and Connecticut, the public defender agency contracts with private attorneys to handle most of the conflict of interest cases.

- The public defender model: a public or private non-profit organization with full or part-time staff attorneys and support personnel provides all or a percentage of the representation to indigent defendants in a jurisdiction. Employees of defender offices are paid a salary.

From these three models for the appointment of counsel, states and counties have developed indigent defense delivery systems, most of which employ some combination of the three. For example, even in states with a statewide public defender system, private attorneys are often appointed in conflict of interest cases and in some instances to alleviate burdensome caseloads. In other states where there is less uniformity, there may be contract counsel in one county, assigned counsel in a second county, and a public defender office in yet a third county. Maine is the only state in the country that relies exclusively on assigned counsel to represent indigent defendants at the trial level.

Because most jurisdictions use a combination of the above three models, it is inappropriate to conclude that one jurisdiction better funds its indigent defense system simply because it pays assigned counsel a higher rate of compensation than other jurisdictions. To determine the relative adequacy of funding of any state's indigent defense systems, one must look at many factors; the comparable rates of compensation for court-appointed counsel is only one of these factors.

Besides the hourly rate, there are other important factors that significantly affect assigned counsel compensation. For example, many states have set statutory limits on the amount that may be paid per case. However, in all states except for Mississippi, judges are statutorily permitted to authorize payment that exceeds the caps in extraordinary cases requiring additional time. Non-waivable fee caps have a potentially chilling effect on the adequacy of representation provided by appointed counsel in complicated cases.

Hourly assigned counsel compensation rates are often inadequate to pay attorney overhead costs. Litigation in Mississippi has resulted in court-appointed counsel being paid an hourly amount to cover overhead expenses on top of the hourly rate for compensation.² This hourly rate for overhead expenses in Mississippi has no cap. Similarly, in Alabama, the Alabama Supreme Court has interpreted state law to provide for overhead reimbursement on top

¹ For more on this method of compensating indigent defense providers see, R. SPANGENBERG & A. SPENCE. FINDINGS CONCERNING THE CONTRACTING FOR THE DELIVERY OF INDIGENT DEFENSE SERVICES. American Bar Association, Bar Information Program (July 1995).

² *Wilson v. State*, 574 So. 2d 1338 (Miss. 1990).

of hourly rates for court-appointed attorneys.³ In 2005, the Alabama Attorney General issued Opinion 2005-063, stating that overhead costs were not subject to reimbursement by Alabama law. Following the opinion, the state comptroller withheld overhead payments to court-appointed attorneys until the end of 2006, when the Alabama Supreme Court issued an opinion reinstating the payment of overhead expenses in *Wright v. Childree*.⁴

Finally, it is important to mention one concern with the court-appointed counsel compensation system, and that is the potential for a conflict of interest when judges approve the compensation and reimbursement claims of panel attorneys who appear before them. The *1992 Interim Report of the Committee to Review the Criminal Justice Act*⁵ pointed out that when a judge approves a fee that is less than the amount sought, counsel may - rightly or wrongly - perceive the reduction as an "admonition, rebuke or retaliation for defense tactics." Judges, however, sometimes feel justified in cutting vouchers they feel are excessive for the type of case handled, relying on their own view of "what a case is worth." Through our experience in examining indigent defense systems around the country, we have also observed judges who are unwilling to waive fee caps in extraordinary circumstances; do not authorize experts and investigators; and/or do not provide substantial funding for experts and investigators. These practices, if done routinely, effectively reduce the authorized hourly rate or per-case maximum and serve as a disincentive for attorneys to provide competent representation.

Different Approaches to Compensating Assigned Counsel

The following section discusses seven approaches taken by the state legislatures in determining compensation for court-appointed counsel.⁶ The approaches are broken down by the authority that sets the rates. These approaches are characterized as:

- C Statutory hourly rate
- C Administrative or court rule
- C State public defender
- C State commission on indigent defense
- C Reasonable compensation
- C Reasonable compensation, recommended rate
- C Combination approach.

³ *May v. State*, 672 So.2d 1307 (Ala. Crim. App. 1993), cert. denied *May v. State*, 672 So.2d 1310 (Ala. 1995).

⁴ *Wright v. Childree*, (CV-05-1544).

⁵ For more discussion of the Criminal Justice Act, see the Federal Model Section on page 16 of this report.

⁶ *Gideon v. Wainwright*, 372 U.S. 335 (1963) did not place indigent defense funding responsibility exclusively on state government. By statute, the state can transfer the responsibility for funding in whole or in part to county government. This is done in a number of states.

Statutory Hourly Rate

Ten states (Alabama, Florida, Hawaii, Iowa, Massachusetts, Nevada, New York, South Carolina, West Virginia and Wisconsin) reimburse court-appointed counsel according to state statute. The rates paid in the District of Columbia are also set by statute. Therefore, rate establishment for court-appointed attorneys is a legislative matter. All of the pertinent statutory sections and the rates appear in the accompanying table.

Alabama

Alabama statutory law sets compensation rates at \$40/hour for in-court work and \$60/hour for out-of-court work. The statute authorizing these rates states, “Counsel shall also be entitled to be reimbursed for any expenses reasonably incurred in such defense to be approved in advance by the trial court.” In *May v. State*, the Alabama Court of Criminal Appeals ordered the state to pay an additional amount for overhead as “expenses reasonably incurred.”⁷ The Alabama Attorney General issued an opinion against reimbursement of the fees, and the Alabama Comptroller Office withheld overhead fee payment starting in February 2005. However, in December of 2006 the Supreme Court of Alabama ruled that the Comptroller must pay overhead fees in *Wright v. Childree* retroactive to February 2005.⁸ The presumptive and average hourly rate for overhead fees in Alabama is \$30.

Florida

During Florida’s 2007 legislative session, the Florida General Assembly created five regional conflict counsel offices, which will begin operating in October 2007. The offices will handle cases that are conflicts for the public defender offices. The legislation provides that private, court-appointed attorneys will take secondary or tertiary conflict cases and earn a flat fee per case. The flat fees depend on the type of case and will be set annually by the legislature. The statutory ceilings on individual case payments in felony cases are \$2,500 for a non-capital, non-life felony and \$3,000 for a life felony. The maximums may be waived in cases that require “extraordinary and unusual effort.” Beginning in July 2007, the maximum flat fee schedule as specified in the General Appropriations Act is:

- Life Felony: \$2,500
- Punishable by Life Felony: \$2,000
- First Degree Felony: \$1,500
- Second Degree Felony: \$1,000
- Third Degree Felony: \$750

⁷ See *May v. State*, *supra* note 3, at 3.

⁸ See *Wright v. Childree*, *supra* note 4, at 3.

Before the passage of the 2007 legislation, Florida law granted local circuit indigent services committees the authority to set compensation rates, and the rates varied from circuit to circuit. Some circuits set an hourly rate while others used a flat rate and/or fee schedule.

Iowa

Senate Filing 415, adopted in 1999 and codified in Iowa Code § 13B.2A in 2001, created a five-member Indigent Defense Advisory Commission to advise the General Assembly and the state public defender regarding hourly rates and per-case fee limitations. The bill also implemented a statutory hourly fee for cases handled by court-appointed counsel, which was codified in Iowa Code. The current statutory hourly rates for court-appointed attorneys are \$65 for Class A felonies and \$60 for all other felonies. While the state legislature sets the hourly rate for court-appointed attorneys in Iowa, the state public defender sets per case maximums pursuant to Iowa Code § 13B.4.

Massachusetts

From 1996 until 2004, the hourly compensation rates paid to court-appointed attorneys were \$54 for homicide cases, \$39 for Superior Court cases, and \$30 for all other cases. In 2004, two cases were filed in the Massachusetts Supreme Judicial Court that helped pave the way for an increase in court-appointed attorney rates, which increased both in 2004 and 2005. One petition, filed by the indigent defense oversight body in Massachusetts, the Committee for Public Counsel Services (CPCS), along with the ACLU, addressed the concerns of indigent defendants in Hampden County.⁹ In Hampden County (Springfield), a shortage of attorneys willing to work for the low rates provided by legislative appropriation led to indigent defendants being arraigned without counsel, some of whom remained in custody without being appointed counsel. In *Lavallee v. Justices in the Hampden Superior Court*, indigent defendants petitioned the Supreme Judicial Court (SJC), arguing that their constitutional right to counsel was being violated. Preceding the decision of the SJC in *Lavallee*, a second petition, *Arianna S. v. Commonwealth of Massachusetts*, was filed on behalf of indigent defendants statewide.¹⁰ The SJC granted the *Lavallee* plaintiffs relief by ordering the dismissal of charges without prejudice for those facing felony, misdemeanor, or municipal ordinance charges for more than 45 days without the appointment of counsel, and by ordering the release of inmates that had been detained for over seven days without assistance of counsel.¹¹ Faced with the *Lavallee* decision and the pending *Arianna* petition, in August 2004 the Massachusetts legislature raised the hourly rates across the board by \$7.50 per hour; they also established a statewide legislative commission to study the court-appointed defender system. Following the commission's recommendations, in July 2005, the legislature raised the rates again to the current hourly rates: \$100 for homicide cases, \$60 for

⁹ *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228 (2004).

¹⁰ *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, SJ 2004-0282 (2004).

¹¹ However, after several felony defendants were released, the SJC amended the order and allowed the trial judges to appoint private attorneys who the trial judges felt were competent to handle the case.

non-homicide Superior Court cases, and \$50 for all other cases. There is no maximum cap for court-appointed attorney fees in Massachusetts.

New York

Until 2004, the hourly rates in New York were the same as they were since 1986: \$25 out of court and \$40 in court with a \$1,200 maximum. In 2000, the New York County Lawyers' Association sued the City and State of New York, alleging that the statutory rate of compensation had resulted in the imminent danger of ineffective assistance of counsel for indigent defendants in criminal court in New York City. On February 5, 2003, Manhattan Supreme Court Justice Lucindo Suarez issued an order finding that the State of New York's failure to increase the rates of compensation for court-appointed lawyers in New York City violated constitutional and statutory rights to meaningful and effective representation and obstructs the judiciary's ability to function.¹² The order included a permanent injunction directing the State and City to compensate assigned counsel at \$90 per hour for both in-court and out-of-court work until the Legislature modified the statutes or upon further order of the Court. Following issuance of this order, the New York State General Assembly approved a rate of \$75 an hour in felony cases for all work, in or out of court, with a maximum of \$4,400. The \$4,400 cap may be waived upon showing of extraordinary circumstances.

Hourly Rate Per Administrative or Court Rule

In ten states (Colorado, Delaware, Maine, New Hampshire, Rhode Island, South Dakota, Tennessee, Vermont, Virginia and Wyoming) uniform, statewide hourly rates are established either by executive administrative rule (such as a state Supreme Court order) or court rule, often as set forth by the state's rules of criminal procedure. The practices in several of these states warrant brief discussion.

Delaware

In Delaware, Rule 44 of the Rules of Criminal Procedure establishes a rate of \$60 per hour. In practice, however, contract attorneys handle cases that public defenders cannot take, and the courts contract with attorneys at a flat yearly rate of \$54,036. The rate established by the Rules of Criminal Procedure is used in Class A (serious) felonies when court-appointed attorneys are paid an additional \$60 per hour after they work beyond the contractual 25 hours per case. The maximum that an attorney can earn per case beyond their contracted amount is \$15,000. That amount can be waived in extraordinary circumstances.

¹² *New York County Lawyers' Ass'n. v. State of New York*, 196 Misc. 2d 761 (N.Y. Sup.Ct. 2003).

Vermont

In Vermont, 13 V.S.A. §5205(a) grants the Vermont Supreme Court the authority to set a reasonable rate for court-appointed attorneys that do not contract with the state public defender. In 1992, by Administrative Order of the Vermont Supreme Court, the hourly rate of \$25 was raised to \$50, effective FY 1993, with the following maximums: \$25,000 for felonies involving life imprisonment or the death penalty,¹³ \$5,000 for a major felony, and \$2,000 for a minor felony. However, a legislative override between 1992 and 1999 kept court-appointed attorney hourly rates at \$40. In July of 1999, Vermont began to adhere to the \$50 per hour rate.

Appointment of attorneys in felony cases has become exceedingly rare since 2001 when the Office of the Defender General set up a system of contract attorneys to handle homicide, life in prison, and death penalty cases. Contract attorneys in this system are paid \$103,000 per year. Vermont uses contract attorneys for other conflict cases as well. Therefore, in the past six years very few cases have been handled by attorneys who are paid the \$50 hourly rate.

Virginia

In Virginia, the state Supreme Court has established rates of \$90 per hour for all work in or out of court, but state statute restricts per-case payments to no more than \$1,235 to defend charges punishable for more than 20 years and \$445 to defend other felony charges. During the 2007 legislative session, the Virginia General Assembly passed legislation that would provide for waivers beyond the fee caps. Effective July 1, 2007, the maximum of \$1,235 to defend charges punishable by more than 20 years in prison can be waived up to an additional \$850; the maximum of \$445 to defend all other felony charges can be waived up to an additional \$155. The same legislation allows for counsel to request an additional waiver exceeding those amounts.

In the past, the Virginia Courts have scaled down the per-case maximum they will pay attorneys proportional to the funding the legislature has appropriated. The waiver amounts approved by the General Assembly are also subject to legislative funding. SB 1168 states, "If at any time the funds appropriated to pay for waivers under this section become insufficient ... no further waivers shall be approved." Since the waivers are dependent on legislative funding, without a significant appropriation, Virginia's relatively competitive hourly rates have little bearing.¹⁴

Wyoming

Rather than set a standard rate, the Rules of Criminal Procedure set a range and maximum hourly rate in Wyoming. For work performed out of court, the local court must

¹³ Vermont currently does not have the death penalty.

¹⁴ For FY 2007-2008, the Virginia General Assembly has appropriated an additional \$8.2 million for these waivers.

recommend a reasonable hourly rate between \$35 and \$60. Court-appointed attorneys cannot earn more than \$100 per hour for work performed in court.

Public Defender

In seven states (Alaska, Connecticut, Kentucky, Maryland, Minnesota, New Jersey, and New Mexico) hourly compensation rates for court-appointed attorneys are set by the state public defender office or its statewide equivalent and are subject to legislative appropriation.

Alaska

In Alaska, non-capital felony cases not handled by the statewide public defender are handled by one of three types of counsel: staff, contract and court-appointed attorneys. The Office of Public Advocacy (OPA) has staff lawyers who handle a limited number of conflict cases. The OPA contracts with other lawyers at rates ranging between \$65-\$100 per hour, depending on the experience of the lawyer and his or her location. Attorneys who take appointed cases and are not under contract are paid \$60 per hour for work in court and \$50 per hour for work out of court. With findings of extraordinary circumstances, however, these rates can be raised; therefore, the average rates of court-appointed attorneys range from \$60-\$85 per hour. These lawyers are appointed by the Public Advocate. There are different maximums for various types of cases for court-appointed lawyers. The outside maximum is \$4,000, but this can be waived in cases with extraordinary circumstances.

Connecticut

In Connecticut, “special public defenders” serve on either a contractual or a non-contractual basis to handle conflict of interest cases in which no public defender is available. Those appointed on a non-contractual basis are paid \$65 per hour for both in- and out-of-court work. Special public defenders that enter into contracts with the Connecticut Public Defender earn a flat rate depending on the court in which the case is heard. For work in Judicial District Courts, attorneys are paid a flat rate of \$1,000 per case. In the lower courts, the Geographical Area Courts, attorneys are paid a flat rate of \$325 per case. In cases with extraordinary circumstances, the attorneys may be paid beyond the flat rates.

Kentucky

In Kentucky, the Department of Public Advocacy runs its statewide indigent defense system. Very few court-appointed cases go to private lawyers in Kentucky. Each of the 30 Department of Public Advocacy offices across the state has “conflict contracts” which reflect how private attorneys are compensated. In some cases, attorneys are paid a flat fee per case or a trial bonus. When the private attorneys are paid on an hourly basis, they earn \$40 per hour for non-violent felonies and \$50 per hour for violent felonies. The rates are capped according to the type of felony and whether the case goes to trial. (See table.)

Minnesota

In Minnesota, it is exceedingly rare to appoint counsel on an hourly basis. The State Board of Public Defense employs a mix of full-time and part-time public defenders. The part-time public defenders have private offices and handle most of the conflict of interest cases of the full-time public defenders.

New Mexico

New Mexico uses a request for proposals contract system in which attorneys are awarded cases on a rotating basis. All attorneys within the contract system earn flat rates that vary according to the degree of the felony and the judicial district. For example, in the Second Judicial District (Albuquerque), counsel earn \$650 for a first degree felony, \$600 for a second degree felony, \$550 for a third degree felony, and \$500 for a fourth degree felony. The rates earned in the Second Judicial District are typical across the state. For non-capital first degree murder cases, attorneys earn a flat rate of \$5,000. All of the flat rates can be waived if the contractor incurs “extraordinary expenses.”

State Commission on Indigent Defense

In eight states (Arkansas, Georgia, Kansas, Missouri, Montana, North Carolina, North Dakota, and Oregon) the rates paid to court appointed counsel are set by statewide public defender commissions or boards.

Missouri

According to statute, the Missouri Public Defender Commission has the authority to set compensation rates for court-appointed attorneys, but it is extremely rare to appoint an attorney from outside of the public defender program to a conflict case. Approximately 75 percent of conflict of interest cases are handled by transferring the case from the branch office where the conflict was identified to another branch office. For cases not handled by public defender branch offices, the public defender appoints an attorney under a flat fee range agreement (e.g., \$500-\$750, depending on time and work needed). The attorney can request additional funds, and if those funds are granted, the hourly rate beyond the flat fee is \$50.

North Carolina

In August 2000, the North Carolina General Assembly passed the Indigent Defense Services Act of 2000, which created the Office of Indigent Defense Services and charged it with the responsibility of overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law. Included in its responsibilities is the power to set the rates of compensation paid to assigned counsel. In 2007 the rates for assigned counsel

in felony cases at trial were \$65 an hour with no per-case maximum. This same rate applies to court-appointed attorneys in all non-capital cases.

North Dakota

As of January 1, 2006, the Commission on Legal Counsel for Indigents, which was created in the 2005 legislative session, assumed responsibility for establishing a statewide reasonable rate of compensation for appointed counsel. Before the establishment of the North Dakota Commission on Legal Counsel for Indigents, attorneys were paid under two-year contracts with judges in the state's seven judicial districts. Now, in areas without public defender offices, private attorneys contract with the commission. In conflict cases, court-appointed attorneys are paid a \$65 per hour rate set by the commission with a maximum per case of \$2,000 for felonies. However, that maximum may be waived in extraordinary circumstances.

Reasonable Compensation

In eleven states (Arizona, California, Idaho, Louisiana, Michigan, Mississippi, Nebraska, Pennsylvania, Texas, Utah and Washington) the state legislatures have determined that compensation for court-appointed attorneys is left up to the locality, the county, a local judge or a combination of the two. In these states, the rates paid and the use of a maximum vary considerably from county to county, from district to district, and sometimes from judge to judge within a county. Because the range of practices concerning compensation of court-appointed counsel in so-called "reasonable compensation" states is so significant, we highlight below several examples from the various states.

Arizona

In Arizona, state statute and the Rules of Criminal Procedure govern compensation of appointed counsel, leaving it to the court to award the attorney a sum representing reasonable compensation for services performed. In the two largest counties –Maricopa (Phoenix) and Pima (Tucson)– the responsibility to establish rates of reasonable compensation for court-appointed counsel has been transferred from the courts to county agencies. The agencies administer contract programs for conflict of interest cases which the primary and secondary public defender agencies are unable to handle. These counties determine the necessary compensation through a contracting system rather than a fixed hourly rate.

Maricopa County pays its court-appointed counsel on a flat fee basis according to the type of offense. Effective July 2007, the rates are as follows:

- Felony DUI; Class 4-6 Felonies: \$900
- Classes 2 and 3 Felonies: \$1,250
- Negligent Homicide: \$5,000
- Manslaughter: \$7,500

- Second Degree Murder: \$10,000
- Non-capital First Degree Murder: \$15,000

In Pima County, the Office of Court-Appointed Counsel (OCAC) divides non-capital felonies into three categories – Group A, Group B, and first degree murder. OCAC pays a flat rate of \$800 for up to 20 hours of work in Group A (less serious) felonies. If counsel gets prior approval from OCAC and a court order, he or she can work beyond the 20 hours at a rate of \$50 per hour. For Group B felonies, which include more serious charges such as armed robbery, attempted murder, and dangerous crimes against children, attorneys earn a flat rate of \$3,000 for up to 60 hours of work. Once again, with a court order and prior approval from OCAC, the attorney can earn an hourly rate of \$60 for work beyond 60 hours. For first degree murder cases, OCAC pays an hourly rate of \$75 with a \$15,000 cap, which is routinely waived.

California

In California, trial-level indigent defense representation is organized at the county level. The majority of counties have a public defender, and several counties have a second, and even third, public defender office to handle conflict of interest cases. Some counties contract with lawyers who accept case assignments and receive flat fee-per-case payments, while others pay conflict counsel hourly rates.

The majority of indigent cases in Los Angeles County are handled by the county public defender and alternative public defender. Conflict cases are handled by court-appointed counsel who contract with the Los Angeles County Bar Association Indigent Criminal Defense Appointments (ICDA). The hourly rates paid to those attorneys contracting with the ICDA range from \$68 to \$91 depending on the severity and sentence applied to the felony.

San Mateo County has no public defender program and relies exclusively on court-appointed counsel to provide indigent defense services. In 1968, San Mateo County contracted with the San Mateo County Bar's Private Defender Program (PDP) to provide legal representation of indigent defendants entitled to public counsel. Attorneys are compensated through an event-based fee schedule that is designed to provide no economic incentive to plea out a case. When a case is assigned, the attorney is paid a case fee of \$375. Attorneys also receive additional flat fees for pretrial conferences (\$80), preliminary hearings (\$310-\$350), and motions. During trial, court-appointed attorneys receive an hourly rate depending on whether it is a jury trial (\$90 per hour) or not (\$70 per hour). In certain circumstances attorneys may receive additional compensation of up to \$1,250 for cases that require exceptional time and effort. For those cases with special circumstances, attorneys also receive an increased hourly rate (\$85-\$115 per hour) depending on the circumstances.

Idaho

In Idaho, court-appointed counsel rates vary widely across the state as indigent defense systems are determined on a county-by-county basis. In Ada County (Boise), conflict cases are

handled by private contract attorneys. The hourly rates paid to conflict attorneys in Ada County are \$40 for work performed out of court and \$50 for work performed in court. There are no caps on how much an attorney can earn per case.

Louisiana

In Louisiana, determination of compensation for court-appointed attorneys is left up to local indigent defender boards. Most of the district-based indigent defender boards utilize contract counsel to handle conflict of interest cases. Baton Rouge, for example, contracts with two attorneys per criminal court section to handle its conflict cases; the contracts are negotiable. In Caddo Parish (Shreveport), the Indigent Defender Office (IDO) contracts with attorneys for conflict and overload cases. Felony contracts pay \$40,000 per year to panel attorneys.

Michigan

There is wide variation in court-appointed counsel fee schedules among Michigan's judicial circuits. Further, while some circuits pay hourly rates on a case-by-case basis, other circuits pay flat fees for plea and trial cases. In the 3rd Judicial Circuit (Wayne County), for example, attorneys handling criminal cases in the trial court are reimbursed according to a graduated, event-based schedule. Based on the event (e.g., motion, preliminary examination, etc.) and possible sentence, attorneys receive a particular fee. For instance, for a half day of trial, an attorney receives between \$90 and \$210, depending on the severity of the potential sentence. Other districts, such as the 21st (Isabella County), use contracts as the basis for compensation for counsel representing indigent defendants. Isabella County contracts with nine attorneys for a total indigent defense cost of \$318,887 per year (increasing by 2% each year). Contract attorneys in Isabella County also earn a flat rate of \$250 per day at trial.

Mississippi

Compensation rates for court-appointed counsel in non-capital cases in Mississippi vary throughout the state. The general range of hourly rates paid to court-appointed attorneys in Mississippi is \$45 to \$65. The state has capped court-appointed compensation at \$1,000 per case. Litigation in Mississippi challenging the constitutionality of the fee cap failed to increase or eliminate the per-case maximum, but succeeded in entitling court-appointed counsel to receive reimbursement for overhead costs.¹⁵ In addition to submitting vouchers for payment of attorneys' fees, counsel in Mississippi submit vouchers for reimbursement of overhead costs for every hour worked. The presumptive rate for such expenses is \$25 per hour.

Pennsylvania

The rates paid to court-appointed counsel vary widely in Pennsylvania, with all decisions left to local judges. In Philadelphia, effective March 10, 1997, compensation for court-appointed

¹⁵ See *Wilson v. State*, *supra* note 2, at 2.

counsel shifted from an hourly basis to a “Modified Guaranteed Fee System,” where attorneys are paid on a per-diem basis. The fee is payable as follows:

Preparation Fees:

- Non-homicide felony, disposition after arraignment but prior to trial: \$400
- Non-homicide felony, disposition at trial: \$650
- Homicide, disposition after arraignment but prior to trial: \$1,133
- Homicide, disposition at trial: \$1,700

Per Diem Fees:

- Non-homicide felony, 3 hours or less: \$175
- Non-homicide felony, more than 3 hours: \$350
- Homicide felony, 3 hours or less: \$200
- Homicide felony, more than 3 hours: \$400

In Allegheny County (Pittsburgh), court-appointed attorneys are paid \$50 per hour plus office expenses. They can also opt to get paid a flat rate of \$250 for a half day and \$500 for a full day of in-court work. Fees are capped at \$3,000 for homicides and \$1,500 for serious, multiple incident felonies (such as rape).

Texas

In 2001 the Texas Fair Defense Act was signed into law. The Fair Defense Act created the Texas Task Force on Indigent Defense, which was created in part to ensure uniform indigent defense guidelines throughout Texas. Previous to this legislation there was no systemic way to track the assigned counsel compensation plan for Texas’ 254 counties, as judges set compensation rates for their own courtrooms (and there are more than 800 criminal courts in Texas). Each county is still given the responsibility of designing and funding its own indigent defense system. However, counties must now develop and publish plans for their indigent defense systems that meet certain standards laid out in the statute. One such requirement is that all criminal courts in a county adhere to a single county-wide compensation plan.

The compensation plans and therefore compensation rates in Texas vary widely. The hourly rate for court-appointed attorneys for both in- and out-of-court work ranges from \$30 to \$175.¹⁶ The hourly rate often depends on the type of felony, the particular event, and the experience of the attorney. Many counties use a combination system of hourly and fixed rates. Harris County (Houston), for example, uses this type of combination system. For out-of-court work, the county pays on an hourly basis depending on the degree of the felony. Court-appointed attorneys earn \$100 per hour working on a first degree felony case, with a cap of \$2,000. A second degree felony case pays an hourly rate of \$75 with a maximum of \$750, and a third degree felony pays an out-of-court rate of \$50 with a \$500 maximum. In-court fixed daily rates also depend on the degree of the felony, as well as whether the case is at trial or not. The

¹⁶ Range determined from information provide to the Texas Task Force on Indigent Defense. For county-specific information, visit <http://tfid.tamu.edu/IDPlans/Feedocuments.asp>.

daily rate for a first degree felony at trial is \$500, while the daily rate for a third degree felony in court but not at trial is \$150 with a \$750 maximum.

Utah

In Utah, indigent defense systems are determined on a county-by-county basis. All of the counties in Utah have opted to contract either with private attorneys or independent organizations. Counties also have the option of setting up a public defender office. Salt Lake County, which handles about half of the felony cases in Utah, uses a contract system for court-appointed attorneys. The annual salary of the attorneys is determined by wage parity with prosecutors. Utah's Indigent Defense Act also allows for the use of a risk pool whereby counties can opt to pay into a fund that they can later draw from for felony cases; however, the minimum number of counties needed to participate in the fund has not been reached.

Washington

Court-appointed counsel compensation rates vary widely in Washington. In King County (Seattle), the Office of Public Defense contracts with four non-profit defender agencies. For conflict cases, court-appointed counsel earn \$50 per hour. The Office of Public Defense regularly pays beyond the \$50 per hour rate for complex cases. Spokane County pays a flat fee of \$1,100 for most felonies, and for more serious felony cases, court-appointed counsel is paid between \$50 and \$60 per hour.

Reasonable Compensation, Rate Recommended

In two states, Indiana and Ohio, although there is no set rate of compensation, a statewide body within the indigent defense system recommends a rate. Because indigent defense is organized and delivered at the local level in these states, the recommended rates have no binding effect.

Indiana

In Indiana, the Indiana Public Defender Commission receives a state appropriation for disbursement to counties which meet its standards and guidelines pertaining to the delivery of indigent defense services. The Commission requires counties to pay attorneys at least \$60 per hour for work in non-capital felony cases with no case maximum, and the Commission reimburses compliant counties for a portion of their annual expenditures on appointed counsel.

Ohio

Each county in Ohio is required to have a fee schedule for court-appointed counsel. In addition, the Ohio Public Defender sets a non-binding, recommended maximum fee schedule for appointed counsel. The Ohio Public Defender recommended rates are currently \$50 per hour out

of court and \$60 per hour in court. Recommended per case maximums in non-capital felony cases are: aggravated murder without death penalty specifications - \$10,000 for two attorneys, \$8,000 for one attorney; felonies with the possible punishment of life imprisonment, repeat violent offenders, and major drug offenders - \$5,000; aggravated felony (first, second and third degree felonies) - \$3,000; other felonies - \$2,500. Most counties pay lower rates than those suggested by the Public Defender's Office. The Ohio Public Defender reimburses counties for up to 50% of the state or county rate (whichever is lower) paid to court-appointed counsel. Attorneys may petition the court for a waiver of the maximum if their county has an extraordinary fee clause in its fee schedule.

The Ohio Public Defender Commission's 2005 Annual Report lists the hourly rates paid in each county for felonies, misdemeanors, juvenile, appeals, death penalty and other cases. The average hourly rate for non-capital felonies paid among the counties in FY 2005 was \$39. The \$39 hourly rate does not include routine expenses (such as travel, printing, copying, etc.).

Combination System

In Illinois and Oklahoma, a combination of more than one system is used to determine the rates of compensation for court-appointed attorneys.

Illinois

Illinois statute sets compensation rates and maximums that apply to only Cook County (Chicago). In Cook County, statutory rates of compensation for court-appointed attorneys are \$30 for out-of-court work and \$40 for in-court work. These rates have not changed since 1975. The statute also sets the maximum amount per case at \$1,250; this amount may be waived "if the trial court certifies that such payment is necessary to provide fair compensation."

The other 101 counties follow the "reasonable compensation" method, and local courts set the compensation rates. For example, Lake County contracts with five attorneys at a rate of \$2,500 per month to handle conflict cases that cannot be handled by the Public Defender. Compensation in additional cases (beyond those handled by the five contract attorneys) is determined on a case-by-case basis.

Oklahoma

In Oklahoma, the statewide Oklahoma Indigent Defense System (OIDS) is responsible for all indigent defense representation in 75 of the state's 77 counties. Counsel in these counties who are appointed by the court to felony cases are entitled to be paid statutory rates of compensation – \$40 per hour out of court and \$60 per hour in court with a \$3,500 maximum. However, the majority of cases in these counties are handled by attorneys who work under annual contracts with OIDS or work as staff employees at satellite offices.

Oklahoma and Tulsa counties both have separate county public defender systems. In Oklahoma County, court-appointed attorneys earn a flat fee of \$500; in addition to the flat fee, the public defender may recommend that the judge grant additional payment for extraordinary expenses. For non-capital murder cases in Oklahoma County, court-appointed attorneys earn a flat rate of \$1,800 plus \$400 per day in trial. On average, court-appointed attorneys in Oklahoma County earn \$40 per hour for non-murder felonies and \$50 per hour for non-capital murder felonies. Tulsa County, on the other hand, pays an hourly rate with maximums set by local court rule. The hourly rate in Tulsa County is \$60 for out-of-court work and \$80 for in-court work. Tulsa County has a maximum cap of \$3,000 for non-capital murder felonies and \$1,000 for all other felonies.

The Federal Model: the Criminal Justice Act

The approach to appointing private counsel to represent indigent defendants charged with federal crimes is very similar to the "statutory hourly rate" approach used in a number of states. At the federal level, the Criminal Justice Act of 1964 (18 U.S.C. §3006A) authorizes payment for representation of indigent defendants accused of committing crimes. Under the Act, each United States District Court is required to develop a plan for furnishing counsel and investigative, expert and other services necessary for adequate representation in trial and appellate proceedings. The Criminal Justice Act (CJA) authorizes three methods for a court to provide counsel to indigent defendants: a Federal Public Defender Organization, a Community Defender Organization, and a panel of private attorneys.

The majority of the federal judicial districts operate a Federal Public Defender Organization. A Federal Public Defender Organization consists of one or more full-time, federal salaried attorneys who are prohibited from having private law practices. The head of a Federal Public Defender Organization, the federal public defender, is appointed by the respective court of appeals to a renewable four-year term and is paid a salary fixed by the court of appeals at a rate not greater than that of the United States Attorney (prosecutor) for that district. A Federal Public Defender Organization operates under a budget approved by the Administrative Office of the United States Courts.

A Community Defender Organization (CDO) is a non-profit legal services organization incorporated under state laws and supervised by a board of directors. CDOs may operate under grants approved by the Judicial Conference or they may opt to be reimbursed for their services on a case-by-case basis under the statutorily prescribed hourly rates which also apply to CJA panel attorneys.

CJA panel attorneys serve every district in the federal court system. In those districts where there is a Federal Public Defender Organization or a Community Defender Organization, panel attorneys are appointed to handle those cases in which the institutional defender has a

conflict of interest -- approximately 25% of all cases. They handle all of the indigent defendant cases in those districts without a CDO or Federal Public Defender Organization.

Private attorneys are appointed on a case-by-case basis by a district court or court of appeals from a panel of lawyers approved by the court as qualified to handle federal criminal cases. The CJA establishes hourly panel attorney payments of \$45 for out-of-court work and \$65 for in-court work, but authorizes the Judicial Conference to approve higher rates. In April of 2001, the Judicial Conference raised the payment rates to \$55 out of court and \$75 in court. As of January 1, 2006, the CJA panel attorney rate is \$92 in and out of court in all districts. This increase reflects the partial implementation by Congress of the annual pay adjustments authorized by the CJA. Attorneys may receive up to \$7,000 for felony cases. This ceiling may be exceeded in complex or extended cases upon application to the court.

Panel attorneys are also entitled to reimbursement for out-of-pocket expenses, such as travel. In order to receive payment for their services, panel attorneys submit vouchers to the clerk of the appointing court, specifying the number of hours devoted to the case and any accompanying expenses.

Findings

Based on the information contained in the accompanying table and the preceding narrative regarding court-appointed counsel rates, we find that:

- Since our last comprehensive report in 2002, hourly rates have increased in twelve states, Washington, D.C., and on the federal level;
- Of the states with rate increases, the majority had dramatic increases (i.e., over \$20 per hour);
- Litigation has contributed to rate increases in two states;
- Per-case maximums have been raised in several states;
- Three states have implemented change that led to greater uniformity in rates statewide; and
- There is great disparity among rates across the country.

Since 2002, a number of changes have occurred in the hourly rates paid to court-appointed counsel. For instance, the federal government has raised the rates of compensation for court-appointed counsel in federal court from \$90 to \$92 an hour for work done both in and out of court. Hourly rates have been increased on a statewide basis in 12 states (Colorado, Delaware, Hawaii, Iowa, Kansas, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island, and South Dakota) and in the District of Columbia. In Wyoming, where the Rules of Criminal Procedure include a range of hourly rates, the range has increased over the past five years. Connecticut, Hawaii, and New York removed the distinction between in- and out-of-court rates; Connecticut kept its in-court rate for all cases, which was the greater of the two. Of the

twelve states with rate increases, many increased their compensation rates dramatically over the five-year period. For example, in Hawaii the statutory hourly compensation rates for court-appointed attorneys in felony cases went from \$40 out of court and \$60 in court to \$90 for both in and out of court. New Jersey doubled the hourly rates it paid to court-appointed attorneys from \$25 out of court and \$30 in court to \$50 out of court and \$60 in court.

Litigation in New York and Massachusetts challenged the constitutionality of the rates paid to court-appointed attorneys and served as a catalyst for an increase in hourly rates for court-appointed attorneys.¹⁷ In New York, the New York County Lawyers' Association (NYCLA) filed a class action lawsuit in 2000 on behalf of the indigent clients of New York City court-appointed attorneys.¹⁸ As a result of the lawsuit, the hourly rates for court-appointed counsel in New York have increased from \$25 in court and \$40 out of court to \$75 for both in- and out-of-court work. In Massachusetts, two lawsuits that were filed in 2004 led to two rate increases in 2005 and 2006.¹⁹ In that time period, hourly rates increased from \$54 to \$100 in homicide cases; \$39 to \$60 in Superior Court cases; and \$30 to \$50 in all other cases.

Many per-case maximums have changed since the last comprehensive report as well. Maximum rates have been raised in federal cases, the District of Columbia, and statewide in six states (Hawaii, Iowa, Maryland, Nevada, New York, and Rhode Island). In Virginia, the current maximums of \$1,235 for felonies punishable by over 20 years imprisonment and \$445 for all other felonies can now be waived up to an additional \$850 and \$155, respectively; previously, the maximums in Virginia were not waivable. Other states developed maximums that distinguish among different types of cases. The maximums paid in Kansas now reflect a differentiation between types of felonies; whereas the maximum for all felonies was \$5,000 in 2002, the range depending on severity of the felony is now between \$1,200 and \$8,000. New Hampshire now has a higher maximum for homicide felonies, and West Virginia removed its maximum for those felonies punishable by life without the possibility of parole. Tennessee developed per-case maximum categories for preliminary hearings and trials in which the trial maximums are higher than the 2002 maximums. The maximums set in Kentucky are now distinguished by whether or not the case goes to trial; however, the per-case maximums have decreased in Kentucky since 2002.

Three states (Georgia, Montana, and North Dakota) have implemented reforms that have resulted in a greater uniformity of the rates paid to court-appointed counsel since 2002. In 2003, the Georgia legislature passed the Georgia Indigent Defense Act, which established the Georgia

¹⁷ See *New York County Lawyers' Ass'n. v. State of New York*, *supra* note 12, at 6; *Lavallee v. Justices in the Hampden Superior Court*, *supra* note 9, at 5; *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, *supra* note 10, at 5.

¹⁸ For a more in depth discussion of *New York County Lawyers' Ass'n v. State of New York*, see narrative on page 5 of this report.

¹⁹ For more discussion of *Lavallee v. Justices in the Hampden Superior Court* and *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, see page 5 of this report.

Public Defender Standards Council (GPDSC). One of the responsibilities of the council is to establish compensation rates for court-appointed attorneys. As of January 2006, the Montana Public Defender Commission, created in the 2005 legislative session, assumed responsibility for setting rates for court-appointed attorneys, among other responsibilities. In both Georgia and Montana, the rates of compensation for court-appointed attorneys prior to the establishment of their statewide commissions varied across the state. Like Montana, North Dakota's statewide commission was created by the 2005 legislative session. The North Dakota Commission on Legal Counsel for Indigents (CLCI) was also assigned the responsibility for setting court-appointed counsel rates. Prior to the establishment of CLCI, court-appointed attorneys were paid through a contract system in which attorneys contracted with district judges for two years of service. All of these reforms result in a standardization of rates on a statewide basis.

As evident from the table that accompanies this report, there is great disparity among the states regarding the hourly rate paid to court-appointed attorneys in non-capital felony cases. For example, the hourly rate in Oregon and Wisconsin is \$40 while the hourly rate in Nevada is \$100. The same is true concerning per-case maximums. Many states do not use a maximum. Of those states that do use a per-case maximum, the maximums vary greatly. For example, the per-case maximum for felonies punishable by life imprisonment is a waivable \$25,000 in Vermont while the cap for the same type of case in Virginia is \$1,235, waivable up to an additional \$850.

Appendix
Selected Case Law Concerning Indigent Defendant Counsel Compensation

State v. Smith, 681 P.2d 1374 (Arizona, 1984)
In re: Rhem v. County of Richardson, 410 N.W.2d 92 (Neb. 1987)
State Ex Rel Stephen v. Smith, 747 P.2d 816 (Kansas S.Ct., 1987)
State v. Ryan, 444 N.W. 2d 656 (Nebraska, 1989)
White v. Board of County Commissioners, 537 So.2d 1376 (Fla. 1989)
State v. Lynch, 796 P.2d 1150 (Oklahoma S.Ct., 1990)
Wilson v. State, 574 So.2d 1338 (Miss. S.Ct., 1990)
May v. State, 672 S. 2d 1307 (Ala. App., 1993), cert. denied, May v. State, 672 S. 2d. 1310 (Ala. 1995)
Zarambia v. Superior Court, 912 P.2d 5 (Ariz. 1996)
New York County Lawyers' Association v. State of New York, 196 Misc. 2d 761 (N.Y. Sup.Ct. 2003)
Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228 (2004)
Arianna S., et al. v. Commonwealth of Massachusetts, et. al., SJ 2004-0282 (2004)
Wright v. Childree, CV-05-1544 (Ala. 2006)

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Alabama ¹	\$40	\$60	Felony with possible sentence of life without parole: No maximum Class A Felony: \$3,500 Class B Felony: \$2,500 Class C Felony: \$1,500	Yes		Code of Alabama § 15-12-21
Alaska	\$50	\$60	Felony disposed following a trial - \$4,000; Felony disposed of following a plea of guilty or nolo contendere, or by dismissal - \$2,000	Yes		2 AAC 60.010 Alaska Administrative Code
Arizona	Varies		Varies	Yes	Varies	AZ Rev. Stat. Ann. § 13-4013(a) grants authority to local court
Arkansas	Non-capital homicide, Classes A and Y felonies: \$70-\$90; All other felonies: \$60-\$80.		None			Arkansas Code Ann. § 16-87-211 authorizes the Public Defender Commission to set the rates
California	Varies Los Angeles: ranges from \$68-\$91, depending on type of felony. Sacramento: ranges from \$70-\$90, depending on type of felony.				Varies	California Penal Code § 987.2 grants authority to local court
Colorado	Type A (violent): \$60 Type B (non-violent): \$56		Felony 1 (trial/no trial): \$15,000/\$7,500 Felony 2 (trial/no trial): \$7,500/\$3,500 Felonies 3-6 (trial/no trial): \$5,000/\$2,500	Yes		Rates set by Chief Justice Directive 04-04, per Colo. Rev. Stat. § 21-2-105.

¹ In addition to the hourly rate set by statute, pursuant the *May v. State* counsel may also request an hourly overhead for “expenses reasonably incurred.” The average and presumptive hourly rate for overhead costs is \$30, which is almost always granted by the judge.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Connecticut	\$65		None		Varies	Appointed counsel rates are set by the State PD in accordance with C.G.S. § 51-291(12).
Delaware	\$60 ²		\$15,000 ³	Yes	Yes	Del. Code Ann. 29 § 4605 grants authority to Supreme Court.
D.C.	\$65		\$3,600 ⁴	Yes		D.C. Code Ann. § 11-2604(a)
Florida	N/A		Non-capital, non-life felonies: \$2,500; Life felonies: \$3,000	Yes	Yes	Fla. Stat. § 27.5304 sets maximums and states that flat fee amounts “shall be established annually in the General Appropriations Act.”
Georgia	\$45	\$60	None			OCGA § 17-12-8(b)(9) grants authority to the Georgia Public Defender Standards Council.

² Rate applies only to court-appointed attorneys in Class A felonies after 25 hours of work. Court-appointed counsel contract for \$4,503 per month in Delaware.

³ This maximum only applies to the hourly rate beyond contract in Class A felonies.

⁴ In addition to a per-case cap, no attorney may earn more than \$135,200 annually from court appointments in the District of Columbia.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Hawaii	\$90		\$6,000	Yes		H.R.S. § 802-5(b)
Idaho	Varies Ada County (Boise): \$40 \$50					Idaho Code § 19-860(b) grants authority to local judge.
Illinois⁵	Varies					725 IL.C.S. 5/113-3.
Indiana	Varies ⁶					Ind. Code § 33-40-8-2 grants authority to local judge; Ind. Code § 33-40-5-4 authorizes Commission to set standard rates.
Iowa	Class A felonies: \$65 All other felonies: \$60		Felony punishable by life w/out parole (Class A): \$18,000 Felony punishable by 25 years to life (Class B): \$3,600 All other felonies (Classes C and D): \$1,200	Yes		Iowa Code § 815.7; State Public Defender sets per case maximum in 493 I.A.C. 12.6 (1)

⁵ Illinois' Compiled Statutes sets a statutory rate of \$30 out of court and \$40 in court with a \$1,250 waivable maximum that applies only to Cook County; all other counties follow the "reasonable compensation" model in which the local court sets the compensation rate.

⁶ In order to be reimbursed by the Indiana Public Defender Commission, courts must pay assigned counsel a minimum of \$60 per hour. *See description on page 14 of narrative.*

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Kansas	\$80		Non-trial: Non-drug offenses levels 6-10/ Drug offense under 6 hours in court: \$1,200 Non-drug offenses levels 1-5/ Drug offense over 6 hours in court: \$1,600 Trial: Non-drug offenses levels 5-10: \$2,400 Non-drug offenses level 4/ Drug offenses levels 2-4: \$3,200 Non-drug offenses levels 1-3/ Drug offenses level 1: \$8,000	Yes		K.S.A. 22-4501 et. seq. grants authority to Kansas Board of Indigents' Defense Services.
Kentucky	Non-violent felonies: \$40 Violent felonies: \$50		Non-violent felonies (no trial): \$600 Non-violent felonies (trial): \$900 Violent felonies (no trial): \$1,200 Violent felonies (trial): \$1,500	Yes	Varies	K.R.S. Ann. § 31.235 grants authority to the Department of Public Advocacy.
Louisiana	Varies					Louisiana Revised Statutes § 15-144 et. seq.
Maine	\$50		Murder: As determined by trial judge. Class A: \$2,500 Class B/C against a person: \$1,875 Class B/C against property: \$1,250	Yes		Supreme Judicial Court Admin. Order JB 05-5.
Maryland	\$50		\$3,000	Yes		Ann. Code of Maryland Art. 27 § 6(d) grants Public Defender authority to promulgate administrative law.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Massachusetts	Homicide cases: \$100; Superior Court non-homicide felonies and youthful offender cases: \$60; All other felony cases in district court: \$50.		None			Mass. General Laws Ann. Ch. 211D § 11.
Michigan	Varies Range is from \$40-\$89		Varies			Michigan Compiled Laws Ann. § 775.16 grants authority to presiding judge.
Minnesota ⁷	\$50		None			No official authority; PD establishes rates.
Mississippi	Varies Range is from \$45-\$65		\$1,000 plus overhead expenses, which are presumptively set at \$25 an hour.	No		Miss. Code Ann. § 99-15-170 <i>Wilson v. State</i> , 574 So. 2d 1338 (1990).
Missouri	Rarely Used \$50		None		Yes	Missouri Rev. Stat. § 600.017 allows PD Commission to approve fee schedule.
Montana	\$60		None			Administrative Rules of Montana Title 2.69.601 authorizes PD Commission to establish rates.
Nebraska	Varies. Range is from \$60-\$80. Douglas County (Omaha): \$65 \$80 Lancaster County (Lincoln): \$75		Varies	Yes		Nebraska Revised Statutes § 29-3905 grants authority to local judge.

⁷ The majority of the public defender conflict of interest cases are handled by contract counsel. Hourly rate applies only to attorneys not on contract.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Nevada	\$100		\$20,000 facing life without the possibility of parole; \$2,500 if facing less than life without parole.	Yes		N.R.S. 7.125
New Hampshire	\$60		Homicide felonies: \$15,000 All other felonies: \$3,000	Yes		N.H. Constitution Part II, Art. 73A grants authority to the State Supreme Court; New Hampshire Supreme Court Rule 47.
New Jersey	\$50	\$60	None			N.J.S.A. § 2A:158A-7 grants authority to the New Jersey Public Defender.
New Mexico	N/A		Varies		Yes	New Mexico Statutes Ann. § 31-15-7(11) authorizes Chief Public Defender to formulate a fee schedule.
New York	\$75		\$4,400	Yes		Article 18-B of the County Law § 722-b.
North Carolina	\$65		None			General Statutes of North Carolina § 7A-498.5 grants authority to the Office of Indigent Defense Services.
North Dakota	\$65		\$2,000	Yes		North Dakota Century Code § 54-61-02(a)(1) grants authority to the Commission on Legal Counsel for Indigents.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Ohio	Varies. Public Defender Standards recommend: \$50 \$60		Public Defender Commission recommends: Aggravated Murder: \$8,000 (1 attorney), \$10,000 (2 attorneys); Murder and Felony w/ possibility of life sentence/repeat Violent Offender/Major Drug Offender: \$5,000; Felonies (degrees 1-3): \$3,000; Felonies (degrees 4&5): \$2,500.	Yes		Ohio Revised Code Ann. § 120.33 grants local board of county commissioners authority to set rate; Ohio Revised Code Ann. § 120.04 authorizes public defender to recommend rates and set maximum.
Oklahoma ⁸	\$40	\$60	\$3,500	Yes		22 Oklahoma Statutes § 1355.4 grants authority to the Executive Director of the Oklahoma Indigent Defense System.
Oregon ⁹	\$40		None			O.R.S. § 151.216(f)(C) grants authority to the Public Defense Services Commission.
Pennsylvania	Varies Philadelphia County pays on a per diem basis.		Varies		Varies	Pennsylvania Statutes Ann. Article 16 § 9960.7 grants authority to local judge.
Rhode Island	Murder cases: \$100; if potential sentence is greater than 10 years: \$90; if potential sentence is less than 10 years: \$60.		Murder cases: \$15,000; if potential sentence is more than 10 years: \$10,000; if potential sentence is less than 10 years: \$5,000.	Yes		General Laws of the State of RI § 8-15-2 vests authority w/ Chief Justice. Supreme Court Executive Order No. 95-01.

⁸ Rates apply only to conflict and overload cases within the Oklahoma Indigent Defense System. Tulsa County and Oklahoma County have separate public defender systems.

⁹ Rates apply only to cases that do not use contract attorneys; contractors handle the majority of cases in Oregon.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
South Carolina	\$40	\$60	\$3,500	Yes		Code of Law of S.C. Ann. § 17-3-50.
South Dakota	\$78		None			S.D.C.L. § 23A-40-8. ¹⁰
Tennessee	\$40	\$50	Preliminary hearings in general sessions or municipal court: \$1,000; Trial court: \$1,500	Up to \$3,000 ¹¹		Supreme Court Rule 13 § 2
Texas	Varies Bexar County (San Antonio): Ranges from \$50-\$75 out of court and \$75-\$125 in court. Dallas County: Ranges from \$75-\$100 El Paso County: \$50 \$65		Varies		Varies	Texas Code of Criminal Procedure Art. 26.05 grants authority to local judge.
Utah	Varies				Varies	Utah Code Ann. § 77-32-304.5 grants authority to county legislative body or district court.
Vermont ¹²	\$50		Felony involving life in prison: \$25,000 Major felony: \$5,000 Minor felony: \$2,000	Yes		13 V.S.A. § 5205(a) grants authority to the Vermont Supreme Court.

¹⁰ The source of authority for this rate is a Supreme Court rule. The South Dakota Supreme Court rules are incorporated into the state code.

¹¹ The \$3,000 maximum may be waived in a homicide case if the Chief Justice finds that extraordinary circumstances exist and the failure to waive the maximum would result in undue hardship.

¹² Hourly rate only applies to attorneys that are not under contract with the state public defender; since 2001, most cases have been appointed by means of contract.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Virginia	\$90		\$1,235 to defend charges punishable for more than 20 years; \$445 to defend other felony charges.	Up to an additional \$850 to defend charges punishable for more than 20 years; up to an additional \$155 for all other felony charges. ¹³		Code of Virginia § 19.2-163 grants authority to the Virginia Supreme Court and sets the per case maximums.
Washington	Varies		Varies		Varies	RCW § 36.26.090 grants authority to court; RCW § 10.101.030 requires counties to adopt standards including rates of compensation.
	King County: \$50 Pierce County: \$50-\$62 Spokane County: (serious felonies) \$50-\$60 Skagit County: \$65-\$75		Pierce County: Class A Felonies: \$1,100 (no trial) \$5,500 (trial) Classes B/C Felonies: \$700 (no trial) \$2,000 (trial)			
West Virginia	\$45	\$65	No maximum for felonies punishable by life imprisonment without parole. All others: \$3,000 ¹⁴	Yes		West Virginia Code Ann. § 29-21-13a(d).
Wisconsin	\$40 plus \$25 per hour for travel	\$40	None			Wisconsin Statutes Ann. § 977.08(4m).
Wyoming	Varies: Up to \$60, no less than \$35	Varies: Up to \$100	None			Wyoming Rules of Criminal Procedure Rule 44(e) sets range; Wyoming Code § 7-6-109 grants authority to court.

¹³ Effective July 1, 2007.

¹⁴ West Virginia also sets its maximum amount for expenses at \$1,500 per case; this amount is waivable as well.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
U.S. Government		\$92	\$7,000	Yes		18 U.S.C. § 3006A