

The

IOWA STATE BAR ASSOCIATION



INDIGENT DEFENSE

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ISSUE - Indigent Defense is a program designed to meet the requirement of the Iowa and United States Constitutions to provide legal representation at state expense to low income persons accused of a crime that may result in incarceration. The State Public Defender either handles the matter or compensates attorneys which are on the court appointment list for handling the case. After cases are concluded, orders are entered requiring the indigent defendant to repay expenses to the State (recoupment) to the extent the defendant is reasonably able to do so. In recent years, the demands placed upon the State Public Defender's budget for indigent defense have continued to increase.

ISBA POSITION - The Iowa State Bar Association supports adequate compensation of court appointed counsel in order to ensure that the state meets its constitutional obligation to provide competent assistance of counsel to indigent persons accused of crimes. **The ISBA supports a \$5.00/hour increase in the contract rate and further supports periodic cost-of-living adjustments in the hourly rate for such compensation. The ISBA also supports the appointment of a "Blue Ribbon Task Force" to recommend appropriate improvements to the provision of indigent defense, to include compensation.**

BACKGROUND - The 6th Amendment to the United States Constitution guarantees to all persons accused of crime the right to counsel in their defense. The U.S. Supreme Court has interpreted the 6th and 14th Amendments to the U.S. Constitution as requiring States to provide counsel to all indigents who are accused of crime in their jurisdictions. In addition, the Iowa Constitution guarantees that in all criminal prosecutions, the accused shall have a right to the assistance of counsel. Both the United States and Iowa Supreme Courts have interpreted this Constitutional provision as meaning the right to effective assistance of counsel.

Under Iowa's current system there are three (3) ways of providing legal representation to indigents. Legal representation is provided by Public Defenders, lawyers who are state employees with the State Public Defenders Office; contract attorneys who are private attorneys who contract with the Public Defender to provide legal representation to indigents; or court appointed attorneys in private practice who are not employed by or under contract with the Public Defender, but are appointed to represent an indigent person on a case-by-case basis.

A recent ISBA survey of Iowa lawyers who provide criminal defense services found that on average, criminal law practitioners providing these services have practiced law for 13.4 years. Seventy-five percent (75 percent) of Iowa lawyers who do criminal defense work practice on their own as solo practitioners or in an office with only one other lawyer. Ninety-seven percent (97 percent) of Iowa lawyers doing criminal defense work practice in a firm with five or fewer lawyers. On the average, 29

percent of their total law practice involves criminal work. According to the most current ISBA economic survey in 2015, the average overhead costs of operating a law office in Iowa is over \$75 per hour.

Many of the lawyers performing indigent defense are younger attorneys who are carrying significant student debt. In the early 80s, after the Public Defender system had become fully operational, college indebtedness of young practitioners was rarely over \$20,000. Today it is rarely under \$100,000. The ISBA estimates that 90 percent of the lawyers doing court appointed work with less than five years of experience carry at least six figures in college debt. Loan repayments are averaging between \$1200 and \$1400 per month.

Debt has had a terrifically negative impact on small town attorneys and is a main contributing factor to the decline of young lawyers locating in rural Iowa. It is extremely difficult to recruit young attorneys to a small town. It has been common for many who have started practices in smaller communities to leave their community simply because they cannot pay their student loans. A one or two-person firm with overhead of \$75 per hour can scarcely afford to bring on a new associate and have them do court appointed work when it does not cover the overhead to say anything of the wage of the associate. Simply put, a \$10 an hour increase over the last 35 years has had a negative impact on small firms especially in rural areas.

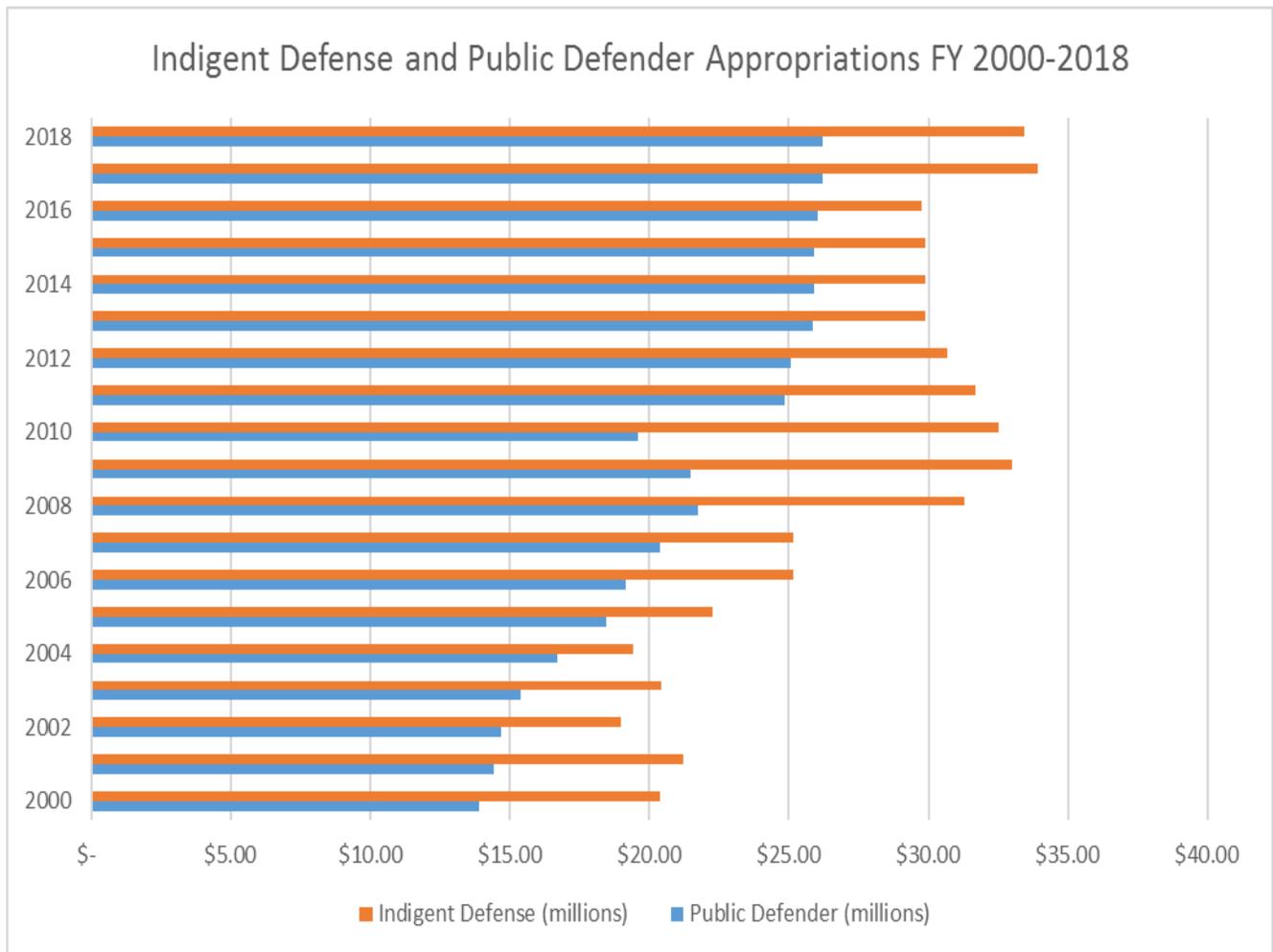
Historically, in an effort to reduce the state's budget, the rates were reduced for indigent defense cases in 1996 by \$5.00 per hour. Legislation adopted in 1999 restored the 1996 cut by increasing pay rates by \$5 per hour. In the 2006 legislative session the ISBA requested a \$10 per hour increase. The fees were increased by \$5.00 per hour in 2006 and another \$5.00 per hour in 2007. **The last fee increase was in 2007.**

Today, attorneys handling Class A felony cases may now be paid \$70 per hour; attorneys handling class B felony cases may be paid \$65 per hour, and attorneys in all other cases will be paid \$60 per hour. Over three decades ago, in 1986, the Iowa Supreme Court adopted guidelines for costs of court appointed counsel, which authorized payment of \$40.00 to \$60.00 per hour. Many attorneys who began practice in the 1970's remember being paid between \$50 and \$60 per hour to handle indigent defense cases in the 1970's. As a comparison, the current federal indigent defense program currently pays \$132 per hour for non-capital cases and in capital cases a maximum hourly rate of \$185. Over the past 30 years there has been approximately a 10 percent increase in Iowa's reimbursement rate for indigent defense fees for handling Class A felonies and virtually no increase in the handling of all other types of criminal cases, and yet law office overhead has increased by almost 200 percent.

Iowa attorneys are proud of their continuing tradition of providing low cost or pro bono services to those who cannot otherwise afford legal representation in civil cases. However, all attorneys are entitled to fair compensation for services provided. A system that pays those who represent the poor less than one third the usual and customary rate charged those who are not indigent runs the risk of providing a lower quality of justice for the poor. Estimates indicate that approximately 70 percent to 80 percent of all criminal cases involved indigent defendants.

INDIGENT DEFENSE BY THE NUMBERS:

- Approximately 832 Iowa lawyers handle indigent cases.
- Approximately 183 Iowa lawyers handle indigent defense appeals.
- In FY 2017, \$33.902 million was appropriated to pay approximately 67,742 claims for contract attorney fees. The FY 2018 appropriation was \$33.444 million.
- The average claim by an Iowa attorney is just over \$468.38. (FY 2017).
- The State Public Defender’s Office reviews all claims and approves approximately 300 claims per day averaging over \$135,740 per day in paid claims. (FY 2017)
- In FY 2017, the Legislature appropriated \$26.182 million to staff 19 Public Defender offices in 14 Iowa cities, serving all 99 Iowa counties.
- Approximately 41 percent of all claims paid relate to juvenile court proceedings. (FY 2017)



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