

Bureau of Justice Statistics Bulletin

Criminal Defense for the Poor, 1986

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ACQUISITIONS

In 1986 almost \$1 billion was spent by State, county, and other local sources to provide legal representation for indigent criminal defendants nationwide, an increase of 60% from the \$625 million reported in 1982. These and other findings are based on the 1986 survey of criminal defense programs for the poor.¹

Other findings include the following:

- o There were an estimated 4.4 million cases involving the appointment of counsel for indigent defendants in 1986 nationwide, an increase of 40% from the nearly 3.2 million cases reported in 1982.
- o Average costs for each indigent criminal defense case nationwide increased from \$196 in 1982 to \$223 in 1986. Average costs per case in 1986 ranged from a low of \$63 in Arkansas to a high of \$540 in New Jersey.
- o Nationwide annual per capita expenses for criminal defense for the poor increased over the 4-year period, from \$2.76 to \$4.11. Per capita expenditures for 1986 ranged from \$.69 in Arkansas to \$29 in the District of Columbia.
- o More counties (52%) used assigned counsel than any other system of indigent defense, but the percent dropped since 1982, when it was 60%. The number of counties using public defender programs increased during this same period, from 34% to 37%. Contract

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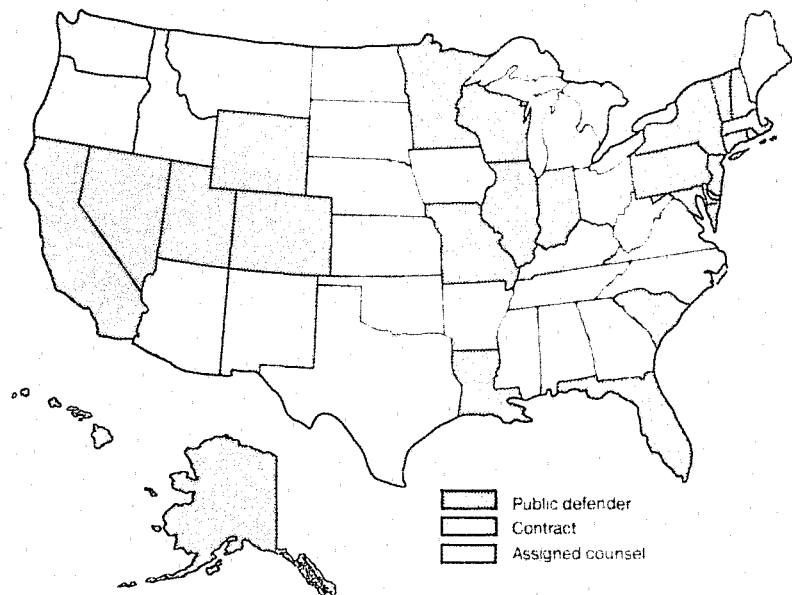
Four years ago the Bureau of Justice Statistics published a Special Report summarizing the results of the 1982 national survey of indigent criminal defense programs. The report provided substantial data on indigent defense services throughout the country for 1982. It was the first comprehensive effort ever undertaken with the goal of providing State-by-State data on legal services for indigent persons

accused of a crime. This report updates that earlier publication, providing information for 1986 on key subjects such as cost, type of program, and caseloads.

The Bureau gratefully acknowledges the cooperation of the many individuals who served as State and county liaisons and whose generous assistance made this study possible.

Steven R. Schlesinger
Director

State defense systems, by type
in majority of counties, 1986



¹Statistical data in this report are estimates resulting from the use of information obtained from a sample survey rather than a complete census (see Methodology).

defense programs also increased, from almost 7% to about 11% of all counties.

• Twenty States and the District of Columbia funded their criminal defense systems for the poor with State dollars; programs in 10 States were county funded; and the remaining States funded programs through a combination of State and county funding.

Introduction

This report is based upon a 1986 survey of State criminal defense programs for the poor; it updates the results of the first survey, which covered 1982.² Although not as comprehensive as the first survey, the 1986 survey provided an opportunity to examine trends since 1982 in the organization, cost, and caseloads of defense programs for the poor.

Since the publication of the results of the first survey, a number of changes in the structure and funding of defense delivery systems for the poor have occurred. These include a shift from county funding to increased State funding, an increase in the rates of compensation paid to private attorneys, expanded use of contracts for providing representation, and a rise in caseloads.

The legal mandate

The sixth amendment to the U.S. Constitution mandates that a defendant accused in a criminal prosecution is entitled "to have the Assistance of Counsel for his defence." In *Powell v. Alabama* (1932) the U.S. Supreme Court held that the 14th amendment required State courts to appoint counsel for poor defendants in capital cases. In 1938, in *Johnson v. Zerbst*, the Court established the right of indigent defendants to appointed counsel in all criminal proceedings in Federal Courts.

In 1963, in the landmark decision *Gideon v. Wainwright*, the Supreme Court extended the right to appointed counsel in State Courts to all indigent defendants charged with a felony. In 1972, in *Argersinger v. Hamlin*, the Court further extended the right to all criminal prosecutions involving a sentence of imprisonment. Juveniles

charged with delinquent acts were accorded the right to appointed counsel in the case of *In re Gault* (1967).³

Gideon, Argersinger, and Gault provide the broad Federal constitutional mandate for providing indigent defendants with counsel in criminal cases.

³Other decisions by the Supreme Court have addressed an indigent defendant's right to counsel at pre- and posttrial proceedings: custodial interrogation, *Miranda v. Arizona* (1966); preliminary hearings, *Coleman v. Alabama* (1970); post-indictment lineups, *U.S. v. Wade* (1967); pre-indictment lineups, *Kirby v. Illinois* (1972); arraignments, *Hamilton v. Alabama* (1961); sentencing, *Townsend v. Burke* (1948); appeal of right, *Douglas v. California* (1963); collateral attack, *Johnson v. Avery* (1969); and probation and parole revocation, *Gagnon v. Scarpelli* (1973).

Implementation of these decisions has been left to the States, whether by State constitutional mandate, statute, and/or State Supreme Court decision. Some States have chosen to expand the current constitutional right to counsel to other criminal and quasi-criminal proceedings such as parole and probation revocation, ordinance violations, termination of parental rights, civil commitments, and post-conviction petitions.

Organizational characteristics of defense systems for the poor

In 1986, as in 1982, the predominant level of government responsible for

Table 1. Level of government where indigent defense programs are organized, by State, 1982 and 1986

	States with indigent defense programs organized at each level of government					
	1982			1986		
	State	County	District or circuit	State	County	District or circuit
Alabama		X			X	
Alaska	X			X		
Arizona		X			X	
Arkansas		X	X		X	
California		X			X	
Colorado	X			X		
Connecticut	X			X		
Delaware	X			X		
District of Columbia	X			X		
Florida			X			X
Georgia			X		X	
Hawaii	X			X		
Idaho		X			X	
Illinois		X			X	
Indiana		X			X	
Iowa		X			X	
Kansas		X	X	X	X	
Kentucky	X	X		X		
Louisiana			X			X
Maine		X			X	
Maryland	X			X		
Massachusetts	X			X		
Michigan		X				X
Minnesota			X	X	X	
Mississippi		X			X	
Missouri		X	X	X		
Montana		X			X	
Nebraska		X			X	
Nevada	X	X		X	X	
New Hampshire	X	X		X		
New Jersey	X			X		
New Mexico	X			X		
New York		X			X	
North Carolina		X			X	
North Dakota	X	X	X	X	X	X
Ohio	X	X		X	X	
Oklahoma		X			X	
Oregon		X		X	X	
Pennsylvania		X			X	
Rhode Island	X			X		
South Carolina		X			X	
South Dakota		X			X	
Tennessee		X			X	
Texas		X			X	
Utah		X			X	
Vermont	X			X		
Virginia		X			X	
Washington		X			X	
West Virginia	X	X		X		
Wisconsin	X			X		
Wyoming	X			X		

²Criminal defense systems: A national survey, BJS Special Report, NCJ-94630, August 1984.

providing indigent criminal defense was the county. In 24 States, county governments were solely responsible for providing criminal defense for the poor (table 1). In 17 States the State government was responsible (up from 13 in 1982). Three States reported a district- or circuit-organized system, compared to four in 1982. Six States combined more than one of these systems.

Program types

There are three basic program types used throughout the country to provide defense services to the poor:

Assigned counsel programs--In these programs there is a case-by-case appointment of counsel who are local members of the private bar.

Contract attorney programs--In these programs the funding source contracts with individual private attorneys, private law firms, or local bar associations to provide representation to indigent defendants for a given period of time.

Public defender programs--In these programs a salaried staff of full-time or part-time attorneys is organized to provide defense services to indigent defendants. The organization may be a public agency, that is, part of a State or local government, or a private, non-profit corporation that contracts with State or local governments to provide indigent defense services.

The service delivery system in a given State or county may consist of more than one type of program. Within each jurisdiction, however, there is one primary type of program. Assigned counsel systems were the most common type of program; however, during the 1982-86 period there was a decrease in the number of counties using this type of system and an increase in the use of public defender and contract programs. Between 1982 and 1986 the number of counties primarily using assigned counsel programs decreased from 1,833 to 1,609, or from almost 60% to 52% of all counties (table 2). Among the States, only Maine continued to rely exclusively on an assigned counsel system. Public defender programs increased from 34% to 37% of all counties. Contract defense programs grew by nearly two-thirds, from almost 7% to 11% of all counties.

The Midwest experienced a number of changes in the types of primary defense programs used by the individual counties. The number of counties using primarily assigned counsel programs declined 21%, while public defender programs increased by almost 34%, and contract programs nearly doubled, growing by 84% (table 3).

Table 2. Type of indigent criminal defense programs in counties, by State, 1982 and 1986

State	Total counties in 1986	Number of counties using each type of indigent defense program					
		Public defender		Assigned counsel		Contract	
		1982	1986	1982	1986	1982	1986
Total	3,083	1,048	1,144	1,833	1,609	201	330
Alabama	67	6	9	61	58	0	0
Alaska	4	4	4	0	0	0	0
Arizona ^a	15	2	5	5	4	7	6
Arkansas	75	18	9	57	66	0	0
California	58	49	49	0	0	9	9
Colorado	63	63	63	0	0	0	0
Connecticut	8	8	8	0	0	0	0
Delaware	3	3	3	0	0	0	0
District of Columbia	1	1	1	0	0	0	0
Florida	67	67	67	0	0	0	0
Georgia	159	19	19	127	127	13	13
Hawaii	4	4	4	0	0	0	0
Idaho	44	14	14	1	1	29	29
Illinois	102	74	74	28	28	0	0
Indiana	92	44	61	44	31	4	0
Iowa	99	15	15	84	84	0	0
Kansas	105	6	11	99	94	0	0
Kentucky	120	55	41	28	0	37	79
Louisiana	64	49	49	15	15	0	0
Maine	16	0	0	16	16	0	0
Maryland	23	23	23	0	0	0	0
Massachusetts	14	12	12	2	0	0	2
Michigan	83	5	8	41	46	37	29
Minnesota	87	42	66	45	21	0	0
Mississippi	82	20	20	62	62	0	0
Missouri	114	20	59	94	0	0	55
Montana	56	4	4	37	30	15	22
Nebraska	93	26	16	62	75	5	2
Nevada	17	15	16	0	0	2	1
New Hampshire	10	4	10	6	0	0	0
New Jersey	21	21	21	0	0	0	0
New Mexico	32	16	8	16	0	0	24
New York	62	55	40	7	22	0	0
North Carolina	100	14	10	86	90	0	0
North Dakota ^b	53	0	0	50	49	3	4
Ohio	88	30	30	58	58	0	0
Oklahoma	77	2	2	66	72	9	3
Oregon	36	13	11	20	11	3	14
Pennsylvania	67	67	67	0	0	0	0
Rhode Island	5	5	5	0	0	0	0
South Carolina	46	39	46	7	0	0	0
South Dakota	66	2	4	64	62	0	0
Tennessee	95	4	8	83	87	8	0
Texas	254	2	6	252	248	0	0
Utah	29	17	17	0	0	12	12
Vermont	14	8	8	0	0	6	6
Virginia	104	5	13	99	91	0	0
Washington	39	6	4	31	15	2	20
West Virginia	55	0	9	55	46	0	0
Wisconsin	72	47	72	25	0	0	0
Wyoming	23	23	23	0	0	0	0

Note: Numbers of counties under each system type are weighted estimates based on survey responses. Counties and States are classified according to the predominant system of service delivery; other systems may supplement the primary system.

^aA change in Arizona's county boundaries

resulted in one new county since the 1982 survey. ^bFor the casetypes included in this survey, North Dakota remains a predominantly assigned counsel State. If casetypes were limited to serious criminal matters (felonies), North Dakota would show a shift to a predominantly contract State.

Table 3. Type of indigent defense programs in counties, by region, 1982 and 1986

Region	Percent of counties with each type of indigent defense program					
	Public defender		Assigned counsel		Contract	
	1982	1986	1982	1986	1982	1986
Total	34.0%	37.1%	59.5%	52.2%	6.5%	10.7%
Northeast	82.9	78.8	14.3	17.5	2.8	3.7
Midwest	29.5	39.5	65.8	52.0	4.6	8.5
South	23.5	24.0	71.7	69.2	4.8	6.8
West	54.9	52.9	26.3	14.5	18.9	32.6

The overall reduction in assigned counsel programs and increase in public defender programs in the Midwest region resulted largely from changes in Missouri (which shifted to a statewide public defender program) and, to a lesser extent, in Minnesota and Wisconsin.

The West also experienced changes in primary program types between 1982 and 1986. In that region the number of counties using assigned counsel programs declined by almost 45%, while the number of counties using contract programs increased by nearly 75%. Changes in New Mexico, Oregon, and Washington accounted in large measure for these shifts. In 1982 New Mexico reported an equal number of counties (16) using public defender programs and assigned counsel programs (table 2). In 1986, eight counties used public defenders, and the remaining counties had contract programs. Oregon reported similar program changes: In 1986, 14 counties had contract programs as their primary source of indigent criminal defense, compared to 3 contract counties in 1982. Two of Washington's 39 counties had contract programs in 1982; 20 Washington counties reported using contract systems for primary defense services in 1986.

In the South, 79 of Kentucky's 120 counties reported using a contract system in 1986, compared to 37 in 1982.

Sources of defense funding for the poor

The two primary financial sources for providing legal counsel to poor persons charged with a criminal offense were State and county governments. Twenty States funded their indigent defense system with State dollars; programs in 10 States were county funded; and the remaining States funded programs through a combination of State and county funding (table 4).

Changes in the primary financial source of defense programs for the poor occurred in a number of States between 1982 and 1986:

- Delaware, Iowa, and Oregon shifted to full State funding since 1982.
- Idaho, Montana, and South Dakota shifted to partial State funding during this same period of time.
- Georgia, Indiana, Michigan, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, and Washington are currently exploring the feasibility of beginning or expanding State fiscal responsibility for providing defense programs for the poor.

While most States that provide State funding do so out of an annual appropri-

Table 4. Total expenditures for indigent defense, by source of funding and State, 1986

State	Amount of spending for indigent defense programs			
	Total	State	County	Other*
Total	\$991,047,250	\$377,698,104	\$604,355,473	\$8,993,673
Alabama	6,153,292	6,153,292	0	0
Alaska	6,892,400	6,892,400	0	0
Arizona	16,240,654	0	16,240,654	0
Arkansas	1,636,500	0	1,560,000	76,500
California	251,504,768	23,269,060	226,264,000	1,971,699
Colorado	12,126,270	11,613,894	0	512,376
Connecticut	9,251,316	9,251,316	0	0
Delaware	2,750,000	2,750,000	0	0
District of Columbia	18,089,976	18,089,976	0	0
Florida	82,133,008	55,873,044	26,259,966	0
Georgia	8,318,500	0	8,281,000	37,500
Hawaii	4,382,609	4,382,609	0	0
Idaho	2,622,000	0	2,622,000	0
Illinois	33,101,784	4,446,785	28,655,000	0
Indiana	10,966,497	3,152,521	7,528,908	285,068
Iowa	11,536,008	286,008	11,250,000	0
Kansas	4,262,333	3,311,293	951,040	0
Kentucky	7,664,000	7,164,000	500,000	0
Louisiana	10,842,017	0	10,830,017	12,000
Maine	1,962,694	1,962,694	0	0
Maryland	20,042,024	20,042,024	0	0
Massachusetts	20,761,822	20,761,822	0	0
Michigan	43,612,176	2,889,600	38,595,856	2,126,722
Minnesota	14,165,242	1,529,000	12,636,242	0
Mississippi	2,912,000	0	2,910,000	2,000
Missouri	6,746,272	6,246,272	500,000	0
Montana	4,220,507	1,620,507	2,600,000	0
Nebraska	4,335,000	0	4,335,000	0
Nevada	6,382,795	292,778	6,090,017	0
New Hampshire	4,329,960	4,329,960	0	0
New Jersey	31,025,000	31,025,000	0	0
New Mexico	6,283,700	6,283,700	0	0
New York	111,671,160	16,618,998	95,052,160	0
North Carolina	16,480,870	16,480,870	0	0
North Dakota	1,225,963	844,330	376,633	5,000
Ohio	26,518,090	15,545,801	10,712,289	260,000
Oklahoma	4,496,538	434,815	4,061,723	0
Oregon	22,432,300	22,432,300	0	0
Pennsylvania	28,636,000	0	28,558,000	78,000
Rhode Island	2,083,091	2,083,091	0	0
South Carolina	4,699,868	2,347,631	2,241,997	110,240
South Dakota	1,781,804	254,179	1,527,625	0
Tennessee	7,792,823	5,778,908	2,013,915	0
Texas	32,897,000	0	32,225,000	672,000
Utah	2,327,765	0	2,136,000	191,765
Vermont	2,777,798	2,777,798	0	0
Virginia	10,122,671	10,122,671	0	0
Washington	21,190,420	1,959,616	16,578,000	2,652,803
West Virginia	4,848,921	4,848,921	0	0
Wisconsin	20,061,508	20,061,508	0	0
Wyoming	1,749,543	1,487,112	262,431	0

Note: Detail may not add to total because of rounding.

*Other funding includes municipal, Federal, and private sources.

ation from the State general fund, other methods are used:

- In Alabama and Louisiana the system is funded largely through filing fees or court costs imposed upon litigants.
- In South Carolina the State provides some funds on a per capita basis to each county.
- In Wyoming, counties are mandated by law to contribute a specific percentage of the overall cost, while the State contributes the balance.
- In Kansas and North Dakota the State assumes the cost of felony representation, and the counties are responsible for misdemeanor and juvenile representation.

◦ In Illinois, Indiana, Michigan, Oklahoma, and Washington, the State government is responsible for expenses relating to appellate representation, and the counties are responsible for original trial representation.

Expenditures

In 1986 approximately \$991 million was spent nationwide on defense services for the poor. This figure was 60% higher than the estimated \$625 million expended in 1982. County governments accounted for 61% of the overall funding in 1986; States, for 38%; and other

Table 5. Ten States with the highest percentage increases in funding for indigent defense programs, 1982-86

States	Percent increase in spending, 1982-86
Montana	202%
District of Columbia	118
Florida	115
Tennessee	109
Connecticut	105
New Hampshire	102
Indiana	98
Maryland	95
Arizona	88
Michigan	86

Note: Sampling error may affect the precision of the order of States in this table.

sources, for about 1%. (Other sources included funds spent by cities and towns, private sources, and the Federal Government.) State expenditures showed a greater overall increase (80%) than county expenditures (52%) between 1982 and 1986. Expenditures from other sources increased by 14% during the 4-year period.

Of the 10 States (including the District of Columbia) with the highest percentage increase in funding, 5 had predominantly State funding: Florida, Tennessee, Connecticut, New Hampshire, and Maryland (table 5).

The nationwide cost of indigent criminal defense increased from \$2.76 per capita in 1982 to \$4.11 in 1986. The per capita cost for 1986 ranged from a low of \$.69 in Arkansas to a high of \$28.90 in the District of Columbia (table 6). Of the 10 States with the lowest per capita costs in 1986, 7 were in the South. Five of the 10 States had defense systems funded predominantly by county government: Arkansas, Georgia, Mississippi, Oklahoma, and Utah.

Caseload and average cost per case

The total caseload reported nationwide for 1986 was about 4.4 million cases, an increase of approximately 40% between 1982 and 1986. Indigent defense cases per 1,000 persons in the population rose from an average of 14 in 1982 to 19 in 1986.

The nationwide average cost per case in 1986 was \$223, or 14% higher than the \$196 cost per case in 1982. Among the States, average cost per case ranged from a low of \$63 in Arkansas to a high of \$540 in New Jersey. The New Jersey figure increased by almost 50%; the Arkansas figure, in contrast, decreased 45% during this period. Six of the 10 States with the highest average

Table 6. Per capita and average cost per indigent defense case, by State, 1986

State	Total expenditures	Per capita cost		Caseload estimates	Average cost per case	
		Amount	Ranking		Amount	Ranking
Total	\$991,047,250	\$4.11		4,441,000*	\$223*	
Alabama	6,153,292	1.52	44	32,000	192	29
Alaska	6,892,400	12.91	2	15,000	468	2
Arizona	16,240,654	4.89	10	71,000	230	20
Arkansas	1,636,500	.69	51	26,000	63	51
California	251,504,768	9.32	3	886,000	284	10
Colorado	12,126,270	3.71	21	53,000	229	21
Connecticut	9,251,316	2.90	25	67,000	138	45
Delaware	2,750,000	4.34	14	18,000	153	40
District of Columbia	18,089,976	28.90	1	54,000	334	7
Florida	82,133,008	7.03	5	307,000	268	13
Georgia	8,318,500	1.36	47	60,000	138	44
Hawaii	4,382,609	4.13	18	20,000	219	22
Idaho	2,622,000	2.62	28	16,000	164	35
Illinois	33,101,784	2.87	26	255,000	130	46
Indiana	10,966,497	1.99	37	68,000	162	36
Iowa	11,536,008	4.05	20	42,000	274	11
Kansas	4,262,333	1.73	41	26,000	165	34
Kentucky	7,664,000	2.06	36	65,000	118	47
Louisiana	10,842,017	2.41	34	69,000	158	38
Maine	1,962,694	1.67	42	10,000	187	31
Maryland	20,042,024	4.49	13	102,000	196	27
Massachusetts	20,761,822	3.56	22	145,000	143	43
Michigan	43,612,176	4.77	11	138,000	316	8
Minnesota	14,165,242	3.36	24	54,000	261	14
Mississippi	2,912,000	1.11	50	27,000	107	49
Missouri	6,746,272	1.33	49	37,000	183	32
Montana	4,220,507	5.15	8	10,000	413	4
Nebraska	4,335,000	2.71	27	29,000	152	42
Nevada	6,382,795	6.03	6	22,000	291	9
New Hampshire	4,329,960	4.22	16	11,000	402	5
New Jersey	31,025,000	4.07	19	57,000	540	1
New Mexico	6,283,700	4.25	15	23,000	269	12
New York	111,671,160	6.28	7	457,000	244	17
North Carolina	16,480,870	2.60	29	70,000	235	19
North Dakota	1,225,963	1.81	39	6,000	198	26
Ohio	26,518,090	2.47	32	141,000	188	30
Oklahoma	4,496,538	1.36	48	44,000	102	50
Oregon	22,432,300	8.31	4	141,000	160	37
Pennsylvania	28,636,000	2.41	33	148,000	193	28
Rhode Island	2,083,091	2.14	35	8,000	254	16
South Carolina	4,699,868	1.39	46	31,000	152	41
South Dakota	1,781,804	2.52	31	5,000	367	6
Tennessee	7,792,823	1.62	43	38,000	206	24
Texas	32,897,000	1.97	38	213,000	154	39
Utah	2,327,765	1.40	45	12,000	198	25
Vermont	2,777,798	5.13	9	16,000	177	33
Virginia	10,122,671	1.75	40	87,000	116	48
Washington	21,190,420	4.75	12	101,000	209	23
West Virginia	4,848,921	2.53	30	20,000	242	18
Wisconsin	20,061,508	4.19	17	77,000	261	15
Wyoming	1,749,543	3.45	23	4,000	431	3

Note: Sampling error may affect the precision of the ranking of States in this table. Per capita estimates based on 1986 population data are from the Statistical Abstract of the United States, 1988, table 26. Caseload estimates include the

following casetypes: felony, misdemeanor, juvenile, appeals, mental commitments, probation/parole revocations, postconviction relief, and other criminal matters. *Average calculated on unrounded data.

costs per case in 1982 retained that position in 1986: New Jersey, Alaska, Wyoming, Montana, New Hampshire, and the District of Columbia (table 7).

Six of the 10 States with the lowest average costs per case in 1986 were found in the South, 2 in the Northeast, and 2 in the Midwest (table 8). Most of the States with lower case costs used assigned counsel systems to provide indigent criminal defense. Fee schedules and maximum rates for court-

appointed counsel were among the lowest in the country for many of these States.

Three States and the District of Columbia more than doubled their caseloads between 1982 and 1986, and another four States experienced caseload increases of between 80 and 100% (table 9). Among these States, Massachusetts and Oregon shifted from county to State funding, and Montana shifted from total county funding to partial State funding. Previous research suggests that such caseload

Table 7. Ten States with the highest average cost per indigent defense case, 1982 and 1986

1982		1986	
State	Cost per case	State	Cost per case
Hawaii	\$567	New Jersey	\$540
District of Columbia	434	Alaska	468
New Jersey	362	Wyoming	431
Alaska	338	Montana	413
Wyoming	332	New Hampshire	402
New Hampshire	319	South Dakota	367
Iowa	283	District of Columbia	334
Oregon	282	Michigan	316
Montana	266	Nevada	291
Rhode Island	259	California	284

Note: Sampling error may affect the precision of the order of States in this table.

Table 8. Ten States with the lowest average cost per indigent defense case, 1982 and 1986

1982		1986	
State	Cost per case	State	Cost per case
Oklahoma	\$ 85	Arkansas	\$ 63
Connecticut	105	Oklahoma	102
Louisiana	111	Mississippi	107
Virginia	111	Virginia	116
Maine	112	Kentucky	118
Arkansas	115	Illinois	130
Nebraska	117	Connecticut	138
Idaho	121	Georgia	138
Mississippi	123	Massachusetts	143
Illinois	130	Nebraska	152

Note: Sampling error may affect the precision of the order of States in this table.

Table 9. States with the largest percentage increases in indigent defense caseload, 1982-86

State	Percent increase in caseload, 1982-86
Hawaii	261%
Oregon	214
District of Columbia	184
Kentucky	111
Massachusetts	96
Montana	95
Iowa	87
Arkansas	82

Note: Sampling error may affect the precision of the order of States in this table.

increases may be a product of the improved recordkeeping that accompanies State funding.

Overall improvements in data collection and recordkeeping practices since 1982 may also have had an impact on the reported caseload increases.

Type of defense program and cost per case

Per case costs in any jurisdiction are affected by the type of indigent defense program and the related budget process. In most public defender programs, the county or State negotiates an annual appropriation for the program. The figure may be determined by negotiations between the funding source and the public defender or,

increasingly, may be based upon caseload or workload standards agreed to by both parties. In either case, the appropriation is intended to support a full-time or part-time salaried staff and other necessary expenses.

The costs for assigned counsel programs are affected by other factors. For example, most assigned counsel programs establish a set of hourly rates for appointed counsel, usually based upon a lower rate for out-of-court work than in-court work. In addition, the local jurisdiction may establish a set of maximum allowable fees for each case or each set of case types. For example, one jurisdiction may establish an hourly rate of \$25 per hour for out-of-court work and \$35 per hour for in-court work, with a maximum allowance per case of \$750 for a misdemeanor and \$1,500 for a felony. Typically, waivers of the maximum fee may be requested in extraordinary cases. However, a few jurisdictions do not permit a waiver of the maximum fee level.

The hourly rates and maximum fees per case may be established by legislation or court rule for uniform application throughout the State. In many jurisdictions, however, the fee levels are left to the discretion of the individual trial court judge. Substantial variation is found both among States and between jurisdictions within States (and even among judges in the same local

court in some instances). Maximum fees per case can substantially affect the cost per case among the assigned counsel jurisdictions. In some States there are no established maximum levels, and the local trial judge determines whether the total fee requested is reasonable. In comparing the cost per case for assigned counsel programs, an understanding of what the local fee levels are and the maximum fee levels permitted is required.

In contract programs there are a variety of payment mechanisms. One of the most common is to establish a cost level for each type of case. For example, a county may contract with a private lawyer or law firm to handle a given number of felony cases at \$1,000 per case. In other jurisdictions, the funding source may offer to pay a total annual amount for the handling of all cases requiring appointment of counsel in a given jurisdiction. This contract method has recently been under attack in several States and was held unconstitutional by the Arizona Supreme Court in *Smith v. State*, 140 Arizona 355 (1984). In the *Smith* case, the Arizona Supreme Court found that the Mohave County contract system, which by design assigned the indigent defense system representation to the lowest bidder, violated the fifth and sixth amendments to the U.S. Constitution for four reasons: 1) The system did not take into account the time the attorney is expected to spend in representing his share of indigent defendants. 2) The system did not provide for support costs for the attorney, such as investigators, paralegals, and law clerks. 3) The system failed to take into account the competence of the attorney. An attorney, especially one newly admitted to the bar, for example, could bid low in order to obtain a contract but would not be able to represent adequately all of the clients assigned according to the standards. 4) The system did not take into account the complexity of the case.

Methodology

In order to provide comparable data for 1982 and 1986, the current study used the same basic approach to data collection as was originally employed.⁴ Data collection activities were divided into five phases: sampling plan, survey development, respondent identification, survey fielding and followup, and data compilation and analysis.

The original stratified sample of 718 counties throughout the 50 States was

⁴National criminal defense systems study, Bureau of Justice Statistics, NCJ-94702, September 1986.

again used. The county was the unit of analysis because many States continue to fund and organize their indigent defense systems at the county level. The 1982 basic methodology was revised based upon what was learned in the initial survey. The length of the questionnaire was substantially reduced, and greater reliance was placed on those State-level respondents who were able to provide data for the entire State.

The 1986 respondent list was developed through a process similar to the one developed in 1982. For each State, a call was made to a State-level contact or to the 1982 county-specific respondents to determine their current appropriateness. Through this process, some States were identified as having the potential to provide statewide data from one or two sources. The availability of statewide data eliminated the need to survey specific county respondents. The sampling plan was therefore adapted to capture statewide data where available. An extensive respondent list was developed and included State-level administrators, county administrators, court clerks, judges, and indigent defense attorneys.

With two levels of respondents identified (statewide and county-level), two sets of survey instruments were prepared. Each set had four sections--a general system section and one section for each program type: assigned counsel, contract attorney, or public defender. The questionnaires addressed total system costs by source, total program costs by source, types of programs, area served by programs, total caseloads by program, and method and rate of payment for assigned counsel programs. No major changes were made in either survey instrument as a result of extensive sets of pretests.

In 44 States, State-level questionnaires were sent to agencies or organizations that indicated that they had State-level aggregate data. In cases where States provided limited data, county-level questionnaires were also mailed to the sample counties in that State.

In 19 States, individual questionnaires were mailed to each county in the sample. Telephone followup was provided, where necessary, and a series of telephone interviews were conducted to obtain the necessary data.

The intensive data collection follow-up resulted in a 100% participation rate for 36 States for which statewide data were available. Of the 14 States for which only county-level data were available, questionnaires were com-

pleted for 147 counties, or 66% of the 222 counties surveyed. In these States, estimates of State-level expenditures are based on data from all counties selected with certainty in the original study plus a random selection of five previously selected counties. The overall response rate for the study was 90%.

As the questionnaires were received, the data provided were cross-checked with available secondary sources for corroboration. Any discrepancies that were identified were clarified through telephone followup.

Local data collection limitations appeared to be similar to those found in 1982. In a few States, only limited data were collected by programs or counties. When data were collected, there may have been little consistency among jurisdictions in case definitions, county procedures, or levels of fiscal accountability. On the other hand, some States have substantially improved their data collection programs since 1982 and were able to report more reliable data than was then available.

State-level estimates for States in which only county-level data were available were computed in the same manner as in the 1982 study. For a more detailed account of the sample design and weighting procedures used in the 1982 survey, please refer to National Criminal Defense Systems Study, NCJ-94702, September 1986, pp. 39-40.

U.S. Supreme Court cases cited

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Kirby v. Illinois, 406 U.S. 682 (1972)
Miranda v. Arizona, 384 U.S. 436 (1966)
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Townsend v. Burke, 334 U.S. 736 (1948)

State notes

Alaska. A new statewide agency has been created principally to handle conflict of interest cases of the State Public Defender Program.

California. A new State-level appellate program (California Appellate Program) was created to involve private court-appointed attorneys in appellate cases. In addition, there has been a major shift in conflict cases from assigned counsel to contract programs at the trial level.

Delaware. The State has assumed total funding responsibility in all cases.

Florida. A new program, the Office of the Capital Collateral Representative, was created to provide representation in postconviction capital cases.

Iowa. As of July 1, 1987, the State took over the funding for indigent defense from the counties.

Kansas. A State appellate program has been created.

Kentucky. All counties are now provided service either through a full-time public defender program or a contract program.

Massachusetts. The Committee for Public Counsel Services has been created with the responsibility of providing State-funded services in all cases throughout the State.

Minnesota. The State has increased its funding support, and the State Board of Public Defense was created to improve services in each county.

Montana. The State has taken over partial funding from the counties.

New Hampshire. The State public defender is now available in all counties. Some cases are assigned through a contract defense program in a few counties.

New York. Fees for assigned counsel have been raised statewide.

Oregon. On January 1, 1983, the State assumed total responsibility for funding from the counties.

South Carolina. Each county is now represented by an independent public defender program.

Tennessee. The State has assumed a larger share of the responsibility for funding from the counties, and rates of compensation for assigned counsel have increased.

Wisconsin. The State legislature removed the requirement of 100% representation in some counties by assigned counsel, and the State public defender now has a presence in each county. In addition, the rate of compensation for assigned counsel has been increased.

This Bureau of Justice Statistics Bulletin was prepared by Robert L. Spangenberg, Judy Kapuscinski, and Patricia A. Smith of the Spangenberg Group. Herbert I. Weisberg and David M. Volpe assisted with the analysis. Carla K. Gaskins, program manager, BJS adjudication unit, supervised the project. Frank D. Balog edited the bulletin. Marilyn Marbrook, publications unit chief, administered production, assisted by Christina Roberts, Yvonne Shields, Jeanne Harris, La'Shan Coglein, and Stephanie Terry.

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The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

New from BJS

- Sourcebook of criminal justice statistics, 1987, NCJ-111612, 9/88
- Criminal victimization in the U.S., 1986, NCJ-111456, 9/88
- Compendium of State privacy and security legislation: 1987 overview, NCJ-111097, 9/88
- Compendium of State privacy and security legislation, 1987 (1,497 pages, microfiche only), NCJ-113021, 9/88
- Justice expenditure and employment extracts, 1982-83, NCJ-106629, 8/88
- Our crowded jails: A national plight, NCJ-111846, 8/88
- Technical appendix, Report to the Nation on crime and justice, second edition, NCJ-112011, 8/88
- Criminal defense for the poor, 1986 (BJS Bulletin), NCJ-112919, 8/88
- Drugs & crime data rolodex card, 800-666-3332, 8/88
- Criminal justice microcomputer guide and software catalog, NCJ-112178, 7/88
- Proceedings of the third workshop on law and justice statistics, NCJ-112230, 7/88
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- Drug law violators, 1980-86: Federal offenses and offenders (BJS Special Report), NCJ-111763, 7/88
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- Historical statistics on prisoners in State and Federal institutions, yearend 1925-86, NCJ-111098, 6/88

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