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# Special Report

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## Census of Public Defender Offices, 2007

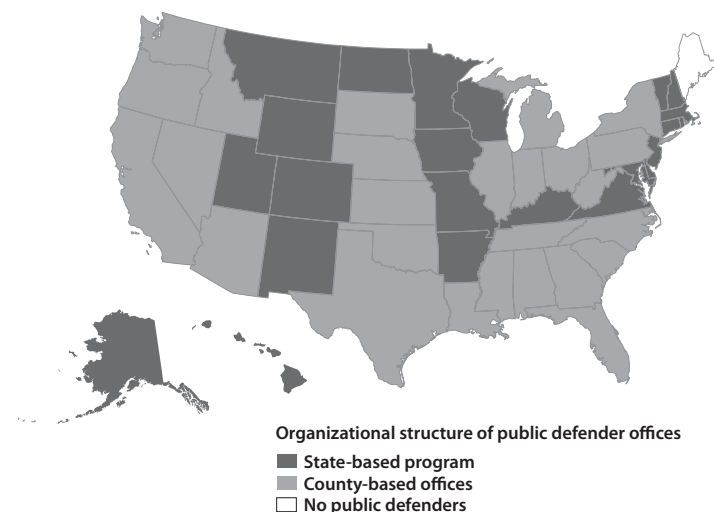
# State Public Defender Programs, 2007

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In 2007, 49 states and the District of Columbia had public defender offices to provide legal representation for some or all indigent defendants. Twenty-two states had a state public defender program that oversaw the operations, policies, and practices of the 427 public defender offices located in these states (figure 1). State-based public defender offices functioned entirely under the direction of a central office that funded and administered all public defender offices in the state. In the remaining 27 states, public defender offices were county-based, administered at a local level, and funded principally by the county or through a combination of county and state funds. The public defender office in the District of Columbia operated like a county-based office and was classified as county-based.

Figure 1.

Twenty-two states had state public defender programs in 2007



## Highlights

- State programs spent more than \$830 million representing indigent defendants, which was about 14% of total state expenditures for all judicial and legal functions in 2007.
- Public defender programs in the 13 states with death penalty statutes spent a combined \$11.3 million providing capital case representation in 2007.
- Misdemeanor and ordinance violations accounted for the largest share (43%) of cases received by public defender programs.
- Fifteen state programs exceeded the maximum recommended number of felony and misdemeanor cases per attorney.
- State programs employed a median of 163 litigating attorneys per state.
- In 2007 state public defender programs employed about 1 investigator for every 6 full-time equivalent (FTE) litigating attorneys.
- State programs had a median attrition rate of 10% for attorneys in 2007.
- Among the 17 states that had a state public defender program in 1999, criminal caseloads increased by 20% overall from 1999 to 2007.

## Professional guidelines for the provision of indigent defense

*State Public Defender Programs, 2007* presents the Bureau of Justice Statistics' (BJS) 2007 Census of Public Defender Offices (CPDO) data in the context of applicable professional guidelines for representing indigent clients. The American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA), and special commissions, such as the National Study Commission on Defense Services (1976) and the President's National Advisory Commission on Criminal Justice Standards and Goals (1973), have released professional guidelines for the provision of indigent defense. In 2002, the ABA condensed these guidelines into the ABA's *Ten Principles of a Public Defense Delivery System*. The ten principles are widely regarded as a succinct statement of the currently accepted requirements for adequate defense representation and are referenced throughout the report. The report also references professional guidelines from the American Bar Association *Standards for Criminal Justice, Providing Defense Services* (3rd ed. 1992), and the National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995).

### Ten Principles

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

### Other professional guidelines

National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Chapter 13: The Defense* (1973).

National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976).

American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992).

National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995).

State public defender programs employed 29% of the nation's 15,000 public defenders in 2007 (table 1). The 4,300 attorneys working in these state programs served 73.4 million residents and handled approximately 1.5 million cases, or 27% of the nearly 5.6 million cases handled by public defenders nationwide.

In 1963 the United States Supreme Court ruled in *Gideon v. Wainwright* that state courts are required to ensure that right-to-counsel provisions under the Sixth and Fourteenth Amendments apply to indigent defendants. Since the Gideon ruling, states, counties, and jurisdictions have established varying means of providing public representation for defendants unable to afford a private attorney. Indigent defense systems typically provide representation using some combination of—

1. a public defender office
2. an assigned counsel system in which the court schedules cases for participating private attorneys
3. a contract system in which private attorneys contractually agree to take on a specified number of indigent defendants or indigent defense cases.

The Bureau of Justice Statistics' (BJS) 2007 Census of Public Defender Offices (CPDO) collected data on public defender offices, which was one of the three methods for delivering indigent defense services. Public defender offices have a salaried staff of full or part-time attorneys who represent indigent defendants and are employed as direct government employees or through a public, nonprofit organization.

The CPDO was the first systemic, nationwide study of public defender offices to collect data on the staffing, caseloads, expenditures, standards and guidelines, and attorney training in the 957 offices across 49 states and the District of Columbia. Maine did not have public defender offices in 2007.

Public defender offices nationwide employed over 15,000 litigating attorneys in 2007. These offices received a total of approximately 5.6 million indigent defense cases and spent about \$2.3 billion representing indigent defendants.

This report presents data on the policies and operations of the 427 public defender offices that comprised the 22 state public defender programs. Data from the 22 state programs are reported at the state-level because within each state, state-based offices often share resources and caseloads, as needed.

Information presented in the text and tables of the report came from the CPDO unless otherwise noted. In some instances states did not report data, and the CPDO findings were supplemented with information from relevant state statutes. Any data supplemented from outside sources are noted in the text and tables.

CPDO findings on county-based offices in 27 states and the District of Columbia are discussed in *County-based and Local Public Defender Offices, 2007*, BJS Web, September 2010.

Table 1.

**Characteristics of public defender offices, by type of office, 2007**

Type of office	Number of states <sup>a</sup>	Population served (in thousands) <sup>b</sup>	Number of offices <sup>c</sup>	Number of cases received <sup>d</sup>	FTE litigating attorneys <sup>e</sup>	Total expenditures (in thousands)
<b>U.S. total</b>	50	240,160	957	5,572,450	15,026	\$2,310,040
State-based	22	73,370	427	1,491,420	4,321	833,358
County-based	28	166,790	530	4,081,030	10,705	1,476,682

<sup>a</sup>Includes the District of Columbia, which is classified as county-based public defender office due to its unique status outside of any state's jurisdiction. In 2007 Maine did not have city, county, or state public defender offices.

<sup>b</sup>Includes the population served only in those jurisdictions that had a public defender office in 2007.

<sup>c</sup>Excludes public defender offices that are privately funded or principally funded by federal or tribal governments and those that provide primarily conflict of interest representation, or felony capital, juvenile, or appellate cases services. Also excludes all other providers of indigent services, including attorneys or offices providing contract or assigned counsel services on an individual or case basis.

<sup>d</sup>Rounded to the nearest ten. Alaska's state public defender program did not report caseload data. Caseload data available for 97.4% of all county-based offices.

<sup>e</sup>See *Methodology* for a definition of full-time equivalent (FTE) litigating attorney.

## State public defender programs spent over \$830 million providing indigent defense representation in 2007

In 2007, public defender programs served a total resident population of over 73 million and operated 427 public defender offices (table 2). These 22 programs served a median resident population of 2.9 million, with a median of 19 public defender offices per state; the number of offices per state ranged from 4 in North Dakota to 36 in Missouri. State public defender programs employed 4,321 litigating attorneys to handle the nearly 1.5 million cases received in 2007.

State programs spent more than \$830 million representing indigent defendants in 2007, with the median annual expenditure estimated at over \$33 million per program.<sup>1</sup> The 22 programs received a median of 73,000 cases, equating to a median per-case expenditure of \$510 (not shown in table).

<sup>1</sup>Survey instructions asked respondents to report operating expenditures for public defender offices only. If the state funded assigned counsel or contract attorneys in addition to public defenders, these expenditures were not to be reported by the state.

Table 2.

General characteristics of state public defender programs, by state, 2007

State	State population (in thousands) <sup>a</sup>	Number of offices	Number of cases received <sup>b</sup>	FTE litigating attorneys <sup>c</sup>	Total expenditures (in thousands) <sup>d</sup>	State judicial and legal expenditures (in thousands)	Public defender expenditures as a percent of judicial and legal expenditures
<b>Total</b>	73,370	427	1,491,420	4,321	\$833,358	\$6,183,948	13.5%
<b>Median</b>	2,907	19	72,740	163	33,326	230,056	14.5
Alaska	681	13	/	93	\$17,231	\$171,776	10.0%
Arkansas	2,831	31	83,810	305	20,047	126,664	15.8
Colorado	4,843	22	90,620	241	37,884	251,642	15.1
Connecticut	3,490	27	83,100	127	47,600	566,197	8.4
Delaware	862	7	29,410	70	13,713	138,845	9.9
Hawaii	1,277	5	43,770	93	8,500	203,107	4.2
Iowa	2,983	16	70,150	96	48,533	218,686	13.3
Kentucky	4,236	31	148,520	327	32,513	364,033	8.9
Maryland	5,619	16	199,750	508	77,519	456,812	17.0
Massachusetts	6,468	28	16,820	197	123,400	820,454	15.0
Minnesota	5,182	27	139,120	371	61,800	371,252	16.7
Missouri	5,878	36	83,160	261	34,138	224,667	15.2
Montana	957	21	22,650	128	18,659	77,542	24.1
New Hampshire	1,312	10	24,130	107	12,668	96,935	13.1
New Jersey	8,653	23	100,240	458	99,000	839,868	11.8
New Mexico	1,964	13	72,740	223	37,083	235,445	15.8
North Dakota	638	4	2,270	10	1,700	38,956	4.4
Rhode Island	1,053	6	18,760	40	8,782	100,232	8.7
Vermont	621	11	11,690	31	6,839	53,823	12.7
Virginia	7,699	29	95,340	305	37,369	344,876	10.8
Wisconsin	5,599	35	142,400	294	80,766	269,400	30.0
Wyoming	523	16	12,980	38	7,615	54,187	14.1

/Data not reported.

<sup>a</sup>Population estimates from Population Division, U.S. Census Bureau, *Table 1. Annual estimates of the population for the United States, regions, states, and Puerto Rico: April 1, 2000 to July 1, 2008.* <<http://www.census.gov/popest/states/NST-ann-est2008.html>>.

<sup>b</sup>Rounded to the nearest ten. Includes cases received by general trial public defender offices only. Any indigent defense cases handled by contract or assigned counsel attorneys within the state are not included.

<sup>c</sup>See *Methodology* for a definition of full-time equivalent (FTE) litigating attorney.

<sup>d</sup>The Census of Public Defender Offices, 2007, instructed respondents to report either fiscal or calendar year 2007 total public defender office expenditures for indigent defense functions, excluding any fixed capital costs.

## A median of 15% of states' legal and judicial direct expenditures went to public defender programs

Each year the U.S. Census Bureau produces state-by-state estimates of direct government expenditures for police, courts, and corrections.<sup>2</sup> A median of 15% of state judicial and legal direct expenditures was spent by public defender programs in the 22 states in 2007. Wisconsin spent the largest share of judicial and legal expenditures on the state's public defender program (30%), followed by Montana (24%), Maryland (17%) and Minnesota (17%). All other states spent less than 20% of their reported legal and judicial expenditures on the public defender program.

<sup>2</sup>State-by-state justice expenditure estimates were derived from the U.S. Census Bureau's Annual Government Finance Survey. (See U.S. Census Bureau, State and Local Government Finance, Web 2007. <<http://www.census.gov/govs/estimate/>>.)

## In 2007, 15 state public defender programs were overseen by an advisory board or commission

In 2007, 15 state public defender programs had an advisory board or commission (table 3). In 9 of these states, the board had both rule-making authority and the authority to hire and remove the chief public defender. The board's authority also extended over budgetary decisions in 6 of these states.

Seven of the 15 state public defender programs with an advisory board relied on more than one authority to select board members. The governor, in conjunction with the state supreme court, legislature, or other entity, such as the State Bar Association, appointed members to the advisory board in 7 state public defender programs: Connecticut, Iowa, Kentucky, Minnesota, North Dakota, New Hampshire, and Wisconsin. In

*The public defense function should be independent of undue political influence. To safeguard independence and promote efficiency and quality of services, a nonpartisan board should oversee defender systems.*

Table 3.

### Authorities appointing state public defender program advisory boards or commissions and the authority exercised by boards, by state, 2007

State	Advisory board appointed by—				Advisory board authority			
	Governor	Supreme Court	Legislature	Other <sup>a</sup>	Hire or remove chief public defender	Rule-making	Budgetary	Other <sup>b</sup>
<b>Total</b>	11	8	5	4	11	10	7	8
Arkansas	X				X	X	X	X
Connecticut	X		X		X	X	X	X
Colorado		X			X			
Hawaii	X				X	X		
Iowa	X	X	X					X
Kentucky	X	X		X			X	X
Maryland	X				X			X
Massachusetts		X			X	X	X	
Minnesota	X	X			X	X	X	X
Missouri	/	/	/	/	/	/	/	/
Montana	X				X	X		
North Dakota	X	X	X	X	X	X		
New Hampshire	X	X	X	X		X		X
Virginia				X	X	X	X	
Wisconsin	X		X		X	X	X	X

Note: Fifteen states had a public defense advisory board or commission. Alaska, Delaware, New Jersey, New Mexico, Rhode Island, Vermont, and Wyoming did not have an advisory board in 2007 and are not included in the table.

/Data not reported.

<sup>a</sup>Includes statutorily determined appointing bodies, State Bar Association, and state law school ex officio deans. In Virginia, the appointing body was statutorily determined and varied depending on the board member's position.

<sup>b</sup>Includes general supervision of operations, recommendations regarding per case fees, approval of district public defenders and deputy chief public defender selections, approval of union contracts and employee salaries, and authority to contract for indigent defense services.

The defender office should screen clients for eligibility, with eligibility decisions then subject to review by the court. The determination of eligibility should be based on the liquid assets of the defendant, as well as the defendant's own assessment of his or her ability to obtain sufficient representation. The office should not base indigency determinations on whether the defendant was able to post bond following his or her arrest.

Arkansas, Hawaii, Maryland, and Montana, the governor had the sole responsibility for advisory board appointments. The state supreme court was the sole appointing authority in Colorado and Massachusetts.

### Nearly all states with a state public defender program followed specific criteria or written guidelines to determine indigency

Except for New Hampshire, states with a public defender program used specific criteria to determine if a defendant qualified as indigent and was eligible for legal representation (table 4). Eligibility criteria included, at a minimum, the defendant's income level and a sworn or unsworn

statement from the defendant declaring indigency. Six states—Connecticut, Delaware, Kentucky, Massachusetts, Missouri, and Wisconsin—also considered a defendant's ability to post bond as a criterion for indigency determination.

Public defenders (8 states), judges (8 states), and court personnel (5 states) were the most common entities responsible for indigency screening for potential clients in the 18 states that reported data. Kentucky and Massachusetts used either pretrial services or probation officers to screen clients for indigency. Judges were also involved in the screening process in both these states (not shown in a table).

Table 4.

Criteria used to determine whether a defendant qualified for public counsel representation, by state, 2007

State	Number of factors considered <sup>a</sup>	Defendant's									
		Income level	Receipt of public assistance	Sworn application	Debt level	Federal poverty guidelines	Residence in public institution <sup>b</sup>	Judge's discretion	Unsworn application	Ability to post bail or bond	Other <sup>c</sup>
<b>Total</b>		21	17	16	15	13	11	9	7	6	9
Alaska <sup>d</sup>	4	X		X	X						X
Arkansas	7	X	X	X	X	X	X	X			
Colorado	8	X	X	X	X	X	X	X		X	
Connecticut	7	X	X		X	X		X	X	X	
Delaware	6	X	X	X			X	X			X
Hawaii	6	X	X		X		X		X		X
Iowa	4	X		X	X	X					
Kentucky	8	X	X	X	X	X		X		X	X
Maryland	6	X	X	X		X	X				X
Massachusetts	7	X	X	X	X	X	X			X	
Minnesota	7	X	X		X	X	X	X	X		
Missouri <sup>e</sup>	4	X		X						X	X
Montana	6	X	X		X	X	X		X		
New Hampshire <sup>f</sup>	0										
New Jersey	4	X	X	X	X						
New Mexico <sup>g</sup>	6	X	X			X	X		X		X
North Dakota	6	X	X	X	X	X		X			
Rhode Island	7	X	X	X	X	X	X		X		
Vermont	8	X	X	X	X	X	X	X			X
Virginia	4	X	X	X				X			
Wisconsin	6	X	X	X					X	X	X
Wyoming	3	X		X	X						

<sup>a</sup>The 2007 Census of Public Defender Offices (CPDO) included questions about 10 factors used to determine indigency.

<sup>b</sup>Includes residence in a public mental health institution or a correctional institution.

<sup>c</sup>Includes family status, number of dependants, monthly expenses, worker's compensation or disability, bankruptcy, liquid assets, letters from employers, and judicial discretion.

<sup>d</sup>Criteria used to determine eligibility for representation in Alaska were obtained from Alaska Statute 18.85.120(b), Determination of Indigency; Repayment. (See Alaska Legal Resource Center, Web. 5 Jan. 2009 <<http://www.touchngo.com/lglcntr/akstats/Statutes/Title18/Chapter85/Section120.htm>>.)

<sup>e</sup>Criteria used to determine eligibility for representation in Missouri were obtained from Missouri Revised Statute 600.086.(1), Eligibility for representation, rules to establish indigency, how determined, procedure, appeal, false statements, penalty investigation authorized. (See Missouri revised statutes, Web. 28 Aug. 2009 <<http://www.moga.mo.gov/statutes/C600-699/6000000086.htm>>.)

<sup>f</sup>New Hampshire did not use formal or written criteria to determine indigency.

<sup>g</sup>Criteria used to determine eligibility for representation in New Mexico were obtained from New Mexico Statutes Annotated 1978: Section 31-15-7. (See New Mexico Public Defender Department, Web. 26 Oct. 2009 <[http://www.pdd.state.nm.us/aboutus/clientinfo\\_guideline.html](http://www.pdd.state.nm.us/aboutus/clientinfo_guideline.html)>.)

## Eleven of 19 reporting public defender programs used a state-administered assigned counsel program for conflict cases

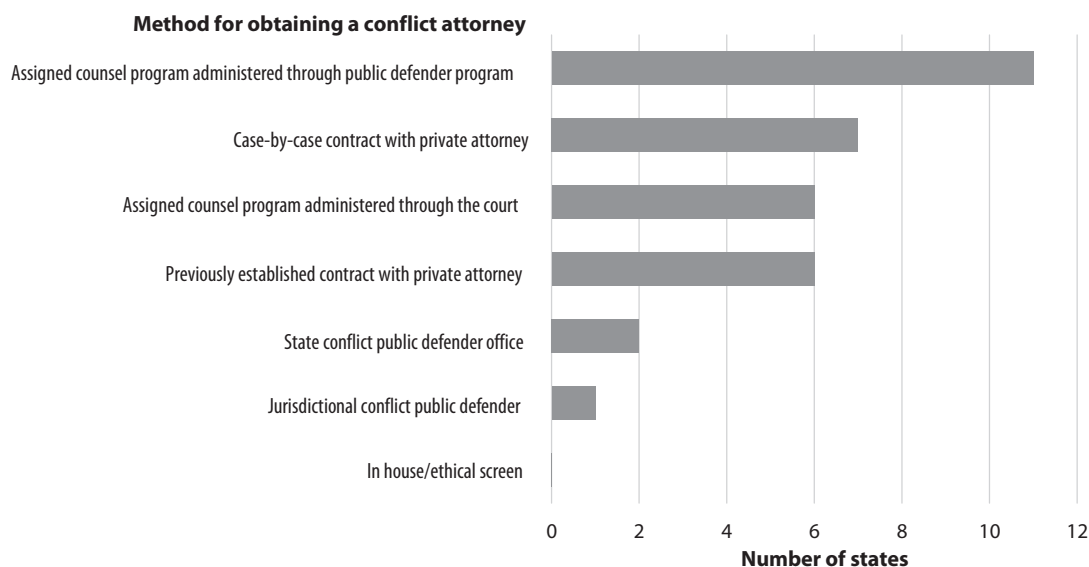
Nineteen state public defender programs provided data on the handling of cases in which there was a conflict of interest with the public defender office, such as a co-defendant already handled by the office. Of these states, 11 used a program-administered assigned counsel system to handle conflict cases in 2007 (figure 2). Seven states

reported using a case-by-case contract with a private attorney, the second most common approach to handling conflict cases. No state public defender program reported using an ethical screen, whereby an office takes the case regardless of the conflict, but isolates the attorney with conflicting connections from involvement in the case.

*The private bar should be involved in providing indigent defense services for cases in which there is a conflict of interest with the public defender's office or the public defender has exceeded caseload limits. Private bar appointments for conflict cases should be made through an established and directed assigned counsel or contract system and not on an ad hoc basis.*

Figure 2.

### Types of conflict attorney systems established in states with state public defender programs, 2007



Note: Based on 19 states. Alaska, Missouri, and New Mexico did not provide data on obtaining conflict attorneys. Numbers do not sum to 19 due to some states using multiple methods for handling conflict cases.

The same attorney should represent a client through all stages of case proceedings.

### Eleven state programs provided vertical representation for felony defendants in the majority of offices in the state

Vertical representation refers to the practice of one attorney representing a client from arraignment through the duration of the case. It is distinguished from horizontal representation in which a different attorney represents the same client at various stages of the case. Nearly three-quarters of reporting state public defender programs had a written policy encouraging vertical representation in 2007 (table 5). In 11 of the programs that reported data, the majority of offices in the state provided vertical representation for defendants in felony, non-capital

cases. Six state programs used a mixture of vertical and horizontal representation in felony, non-capital cases, and 4 programs assigned one attorney to cover the arraignment and another to represent the defendant through the duration of the case. No state program relied solely on horizontal representation for felony, non-capital cases in 2007.

Five state programs had a written policy that an attorney should be appointed within 24 hours of client detention. Thirteen programs had a policy of assigning cases based on case type and attorney experience. Most state programs (14) also had a policy that the most experienced attorneys in an office should handle the most complex cases.

Table 5.

Program operating guidelines and representation practices used by state public defender programs, by state, 2007

State	Operating guidelines included a policy related to—				Type of felony, non-capital case representation provided by the majority of offices in the state		
	Matching attorney experience with—		Types of cases handled	Attorney representation of client through all stages of proceedings	Vertical	Combination of vertical and horizontal	One attorney through arraignment, one for the duration of the case
	Attorney appointment within 24 hours of client detention	Case complexity					
<b>Total</b>	5	14	13	14	11	6	4
Alaska	/	/	/	/	/	/	/
Arkansas		X	X	X	X		
Colorado		X	X	X	X		
Connecticut		X		X			X
Delaware		X	X	X		X	
Hawaii		X	X	X			X
Iowa				X		X	
Kentucky	X	X	X	X	X		
Maryland		X	X			X	
Massachusetts	X	X	X	X	X		
Minnesota						X	
Missouri	/	/	/	/		X	
Montana		X	X	X		X	
New Hampshire	X	X	X	X	X		
New Jersey	X	X	X	X	X		
New Mexico	/	/	/	/			X
North Dakota	X			X	X		
Rhode Island							X
Vermont		X	X		X		
Virginia		X	X	X	X		
Wisconsin		X	X	X	X		
Wyoming					X		

/Data not reported



## Nineteen state public defender programs could charge fees for indigent defense services

Three states, Iowa, Minnesota, and Rhode Island, did not allow cost recoupment for public defender services in 2007 (table 6). The other 19 state programs had a system in place to allow for the collection of fees from indigent defendants.

Among the states permitting cost recoupment, the most widely available fee was a charge based on the cost for the defender's services (12 programs). Eight public defender programs could charge an up-front

application or administrative fee, which typically ranged between \$10 and \$200 depending on the state and type of case.<sup>3</sup> Expert witness fees, facilities fees, and court-related expenses were each allowed in 4 or fewer programs.

<sup>3</sup>See American Bar Association. (December 2001). 2001 Public Defender Up-front Application Fees Update. <<http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-table.pdf>>.

*Public defender programs can charge fees to indigent defendants under circumstances in which the defendant's contribution would not impose significant financial hardship.*

Table 6.

### Types of cost recoupment that could be required for public defender representation, by state, 2007

State	Cost recoupment that could be required						
	Attorney cost	Standard statutory fee	Application or administrative fee	Court-related expenses	Facilities fee	Expert witness fee	Other*
<b>Total</b>	11	9	8	4	3	4	3
Alaska		X			X		
Arkansas	X	X	X				
Colorado	X		X	X		X	
Connecticut	/	/	/	/	/	/	/
Delaware		X					
Hawaii	X						
Iowa							
Kentucky		X		X	X		
Maryland			X	X			
Massachusetts		X					
Minnesota							
Missouri			X			X	X
Montana	X	X					
New Hampshire	X	X				X	
New Jersey	X		X				X
New Mexico		X	X	X			
North Dakota	X	X	X				
Rhode Island							
Vermont	X		X				
Virginia	X						
Wisconsin	X				X		X
Wyoming	X					X	

Note: Iowa, Minnesota, and Rhode Island did not require any cost recoupment for indigent criminal defendants.

/Data not reported. Connecticut could require cost recoupment, but did not provide data on the types of fees that could be applied to indigent defendants.

\*Includes standard fees set by a commission or administrative rule and court reporter or investigator fees.

### Misdemeanors or ordinance violations made up more than 40% of the cases received by state public defender programs in 2007

The 22 state public defender programs received nearly 1.5 million cases in 2007. Misdemeanors carrying a jail sentence or ordinance violations accounted for about 640,000 (43%) of these cases (table 7). Felony non-capital cases accounted for the next largest percentage (25%) of public defender program caseloads. Juvenile-related (14%), civil (3%), appellate (1%), and felony capital (<0.5%) cases made up the smallest share of cases received by state programs in 2007. The CPDO, however, did not collect data from public defender offices that provided primarily juvenile or appellate case representation.

Variations in the number and type of cases received by public defender programs are due in part to differences between the resident population and offending patterns in each state. These variations may also be due in a larger part to the differences in how indigent defense cases are distributed among public defender offices and other contract and

assigned counsel programs in each state. The 2007 CPDO did not allow for enumeration of the total number of indigent cases received in each state or the percentage of indigent defense cases handled by the public defender office versus contract or assigned counsel attorneys. However, public documents allow for some examination of state variations in the percentage and type of cases that public defender offices receive.

An earlier BJS report, *State-Funded Indigent Defense Services, 1999*, revealed that the volume and type of indigent cases handled outside of the public defender office varies from state to state. Massachusetts' public defender program handled 3% of the approximately 208,000 indigent defense cases received in 1999, while assigned counsel attorneys handled the remaining 97%. During that same year, Connecticut's public defender programs handled 87% of the 64,500 indigent defense cases received, while assigned counsel handled 1%, and contract attorneys handled 11%.<sup>4</sup>

<sup>4</sup>See *State-Funded Indigent Defense Services, 1999*, BJS Web. September 2001 and National Survey of Indigent Defense Systems (NSIDS), BJS Web. 1999.)

Table 7.

#### Number of cases received by state public defender programs, by state and case type, 2007

State	Total cases received <sup>a</sup>	Felony capital	Felony non-capital	Misdemeanor/ violation <sup>b</sup>	Juvenile-related <sup>c</sup>	Civil <sup>d</sup>	Appeals
<b>Total</b>	1,491,420	436	378,440	640,230	208,400	47,620	10,870
<b>Median</b>	72,740	2	11,420	25,840	7,610	280	100
Arkansas	83,810	99	29,190	35,500	16,460	2,410	150
Colorado	90,620	13	55,160	26,670	8,780	0	0
Connecticut	83,100	56	/	27,520 <sup>e</sup>	5,900	100	320
Delaware	29,410	9	5,820	20,340	3,130	0	110
Hawaii	43,770	~	4,600	31,170	7,610	280	110
Iowa	70,150	~	10,000	25,000	35,000	110	60
Kentucky	148,520	181	33,170	86,700	21,850	4,430	2,230
Maryland	199,750	15	41,280	125,010	20,220	13,160	60
Massachusetts	16,820	~	12,830	3,180	490	50	270
Minnesota	139,120	~	28,000	83,020	26,900	0	1,200
Missouri	83,160	/	/	/	/	/	/
Montana	22,650	2	5,800	12,300	1,060	3,200	290
New Hampshire	24,130	1	7,420	13,350	3,250	10	90
New Jersey	100,240	18	65,110	/	17,760	16,090	1,260
New Mexico	72,740	6	/	/	/	/	/
North Dakota	2,270	~	800	650	500	280	50
Rhode Island	18,760	~	4,770	10,870	2,310	770	60
Vermont	11,690	~	2,290	6,850	2,130	370	60
Virginia	95,340	34	36,280	48,280	9,420	0	1,340
Wisconsin	142,400	~	35,800	71,810	25,240	6,390	3,160
Wyoming	12,980	2	120	12,000	400	0	60

Note: Numbers rounded to the nearest ten with the exception of felony capital case numbers. Number of cases may not sum to total due to rounding. Caseload data not reported for Alaska. Includes cases received by general trial public defender offices only. Any indigent defense cases handled by contract or assigned counsel attorneys within the state are not included.

~Not applicable. Alaska, Hawaii, Iowa, Massachusetts, Minnesota, North Dakota, Rhode Island, Vermont, and Wisconsin did not have the death penalty in 2007.

/Data not reported.

<sup>a</sup>Refers to cases that were assigned to and accepted for representation by the public defender program.

<sup>b</sup>Includes misdemeanors that carry a jail sentence and ordinance or municipal infractions or violations.

<sup>c</sup>Includes juvenile delinquency, delinquency appeals, and transfer or waiver hearing cases.

<sup>d</sup>Includes mental commitment, state post-conviction or habeas corpus, federal habeas corpus, status offense, child protection or dependency, termination of parental rights, or sexually violent predator cases.

<sup>e</sup>Includes only misdemeanors that carry a jail sentence. Data on number of ordinance or municipal infraction or violations were not provided.

Other documents reveal that some of the variation in the types of cases handled by state public defender programs in 2007 may also be due to variations in the types of indigent cases assigned to public defenders versus other indigent service providers. In 2007, misdemeanors and ordinance violations accounted for 92% of the public defender program caseload in Wyoming, while felony non-capital cases made up the majority of the caseloads in Massachusetts (76%). The 2009 Annual Report for the Wyoming Office of the State Public Defender reported that from 2006 to 2009 the public defender program has served over

80% of the state's indigent criminal defendants.<sup>5</sup> In contrast, Massachusetts typically assigned serious felony non-capital cases to the public defender offices, while state-assigned counsel attorneys handled misdemeanor cases.<sup>6</sup>

<sup>5</sup>See <<http://wyodefender.state.wy.us/files/2009Annual.pdf>>.

<sup>6</sup>See National Association of Criminal Defense Lawyers, Massachusetts Indigent Defense <<http://www.nacdl.org/public.nsf/defenseupdates/mass007>>.

## Public defender programs in states with death penalty statutes spent \$11.3 million providing capital case defense in 2007

Thirteen of the 22 states with state-based public defender programs had death penalty statutes (table 8). Of these states, 11 provided complete data on capital case representation and spent almost \$11.3 million to represent capital case defendants. Connecticut, Kentucky, and Virginia spent more than \$2 million each to provide capital case representation of indigent defendants in 2007.

Collectively, the 11 state-based programs represented 436 indigent defendants charged with capital offenses. Prosecutors filed for the death penalty in 209 of these cases. The number of cases in which the prosecutor filed for the death penalty ranged from 97 cases represented by public defenders in Kentucky to 1 case each in Arkansas and New Hampshire.

Eight of the 11 reporting public defender programs in death penalty states had specialized units for capital case defense. Six state programs provided indigent defense in more than 15 capital cases in 2007. Of these state programs, one program (Colorado) did not have a specialized unit.

All specialized capital defense units provided indigent representation for trial-level capital cases. Specialized units also provided representation for direct appeals and post-conviction capital cases in 4 states: New Jersey, Connecticut, Virginia, and Arkansas. Kentucky's death penalty unit represented capital defendants in trial-level cases and direct appeals, and Maryland's unit represented defendants in trial-level and post-conviction cases.

Table 8.

### Capital case representation among states with death penalty statutes that represented an indigent defendant facing the death penalty, 2007

State	Death penalty eligible cases			State has a specialized death penalty unit providing representation for—		
	Representation expenditures	Cases received <sup>a</sup>	Number of death penalty cases <sup>b</sup>	Trial level cases	Direct appeals	Post-conviction cases
<b>Total</b>	\$11,289,150	436	209	8	5	5
Arkansas	80,000	99	1	X	X	X
Colorado	896,820	13	17			
Connecticut	2,383,330	56	16	X	X	X
Delaware	276,430	9	8	X		
Kentucky	2,474,880	181	97	X	X	
Maryland	1,900,000	15	30	X		X
Missouri	/	/	/	/	/	/
Montana	100,000	2	2			
New Hampshire	171,690	1	1			
New Jersey	206,000	18	19	X	X	X
New Mexico	/	6	/	/	/	/
Virginia	2,600,000	34	16	X	X	X
Wyoming	200,000	2	2	X		

Note: The following states did not have death penalty statutes and were excluded: Alaska, Hawaii, Iowa, Massachusetts, Minnesota, North Dakota, Rhode Island, Vermont, and Wisconsin. Missouri and New Mexico provided indigent defendant death penalty representation but did not report data on number of cases, expenditures, or use of specialized death penalty units. Representation expenditures rounded to the nearest ten.

<sup>a</sup>Includes felony capital cases received in 2007.

<sup>b</sup>Includes felony capital cases in which the prosecutor actually filed for the death penalty. May be greater than the number of felony capital cases received in 2007 because of cases carried over from previous years.

The defense counsel's workload should be sufficiently controlled to allow defenders the time needed to provide quality representation in each case. Furthermore, public defenders are expected to decline appointments that exceed the established caseload limits.

The 1973 U.S. Department of Justice's National Advisory Commission (NAC) on Criminal Justice Standards and Goals specified that a public defender should not have more than 150 felony non-capital, 400 misdemeanor, 200 juvenile, or 25 appellate cases per year.

### Fifteen state public defender programs had caseload or workload limits, the authority to refuse cases, or both

In 2007, 11 of the 22 state programs had established formal caseload limits, and 8 had the authority to refuse appointments due to case overload (table 9). Four states—Massachusetts, Montana, New Hampshire, and Wyoming—had both formal caseload limits and the authority to refuse appointments. Seven states had neither caseload limits nor the authority to refuse appointments.

### Fifteen of the 19 reporting state programs exceeded the maximum recommended limit of felony or misdemeanor cases per attorney

State public defender programs received a median of 11,420 felony non-capital cases and 20,340 misdemeanor cases in 2007. These programs employed 4,321 full-time equivalent (FTE) litigating public defenders, with a median of 163 litigating attorneys in each state. Maryland employed the most FTE litigating attorneys (508) and North Dakota employed the fewest attorneys (10).

The National Advisory Commission (NAC) guidelines recommend a caseload for each public defender's office, not necessarily each attorney in the office. They state that "the caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25."<sup>7</sup> While 'caseload' can apply to the number of cases per attorney at a given time, BJS interprets the NAC standard as applicable to the sum of cases attorneys in an office are responsible for in a given year. Because the CPDO only collected data on cases received in 2007, these caseload numbers may understate the actual caseload of attorneys who are responsible not only for the new cases received in a given year but also cases pending from previous years.

<sup>7</sup>Department of Justice, National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts § 13.12 (1973).

**Table 9.** Caseload or workload limits, number of cases received, and estimated attorney caseloads, by state and case type, 2007

State	Program reported workload or caseload limits	FTE litigating attorneys	Cases received			
			Felony, non-capital		Misdemeanor <sup>a</sup>	
			Total	Per FTE litigating attorney <sup>b</sup>	Total	Per FTE litigating attorney <sup>b</sup>
<b>Total</b>		4,321	378,440	88	575,770	133
<b>Median</b>		163	11,420	82	20,340	217
Alaska	X	93	/	/	/	/
Arkansas	*	305	29,190	96	35,500	116
Colorado	X	241	55,160	229	26,670	111
Connecticut	X	127	/	/	27,520	217
Delaware		70	5,820	83	20,340	291
Hawaii		93	4,600	49	31,170	335
Iowa	*	96	10,000	105	25,000	262
Kentucky		327	33,170	101	86,560	265
Maryland	X	508	41,280	81	124,960	246
Massachusetts	X*	197	12,830	65	3,180	16
Minnesota		371	28,000	75	19,750	53
Missouri		261	/	/	/	/
Montana	X*	128	5,800	45	12,300	96
New Hampshire	X*	107	7,420	69	13,350	125
New Jersey	X	458	65,110	142	/	/
New Mexico		223	/	/	/	/
North Dakota	*	10	800	80	650	65
Rhode Island		40	4,770	119	10,870	272
Vermont	X	31	2,290	75	6,850	225
Virginia	*	305	36,280	119	47,280	155
Wisconsin	X	294	35,800	122	71,810	245
Wyoming	X*	38	120	3	12,000	316

Note: Total cases received rounded to the nearest ten.

\*Program reporting having the authority to refuse appointments due to caseload.  
/Data not reported.

<sup>a</sup>Includes misdemeanors that carry a jail sentence.

<sup>b</sup>Assumes that all cases and case types are evenly distributed across reported full-time equivalent (FTE) litigating attorneys. The 1973 U.S. Department of Justice's National Advisory Commission (NAC) on Criminal Justice Standards and Goals suggest that if a public defender carries both felony and misdemeanor cases, s/he should carry no more than 75 felony and 200 misdemeanor cases per year. See *Methodology* for definition of FTE litigating attorney.

One way to analyze the numeric caseload guideline is to estimate the number of cases received per FTE litigating attorney. Since the CPDO did not collect data on the caseloads of individual attorneys, it was assumed for estimation purposes that the felony and misdemeanor cases received in 2007 were equally distributed among FTE litigating attorneys.

Using this estimation method, a public defender program would meet the professional guideline for cases received in 2007 if FTE litigating attorneys received no more than 75 felony non-capital and 200 misdemeanor cases.<sup>8</sup>

This conservative measure also assumes that attorneys did not have any cases pending from previous years and did not handle any other type of case. Still, in 2007 attorneys in state public defender programs received a median of 82 felony and 217 misdemeanor cases, approximately 27 more cases in one year than recommended by the guideline.

Four states—Massachusetts, Minnesota, Montana, and New Hampshire—met the professional guidelines for cases per attorney based on this conservative

estimation. Rhode Island (391 cases per attorney) and Hawaii (384 cases per attorney) had two of the highest combined felony and misdemeanor caseloads per attorney in 2007.

Another way to examine caseloads is to calculate the number of defenders needed to meet the nationally accepted caseload guideline of 150 felony non-capital cases, 400 misdemeanor cases, 200 juvenile cases, or 25 appellate cases per defender each year. To calculate the total number of attorneys needed in each program, analysts first computed the number of attorneys needed to handle the cases received in each of the four case categories: felony non-capital, misdemeanor, juvenile-related, and appellate. The numbers of attorneys needed for each of the case types were then summed to get the total number of litigating attorneys recommended by the caseload guideline.

In order to meet the professional guideline, a state program would need a median of 151 attorneys to handle the median number of felony, misdemeanor, juvenile-related, and appellate cases received in 2007 (table 10). State public defender programs reported a median of 128 FTE litigating attorneys, and had a median of 67% of the estimated number of attorneys required by the guideline.

<sup>8</sup>The NAC guideline frames caseloads as though an attorney handles only one type of case. The misdemeanor and felony caseload guidelines were halved to follow the analytic assumption that attorneys handle both types of cases.

**Table 10.**  
**Number of full-time equivalent (FTE) litigating attorneys and estimated number of attorneys required to meet caseload guidelines, by state, 2007**

State <sup>a</sup>	FTE litigating attorneys on staff <sup>b</sup>	Attorneys needed to meet caseload guidelines <sup>c</sup>	Percent range of actual FTE litigating attorneys out of the estimated number needed <sup>b</sup>			
			<50%	51-75%	76-99%	100%+
<b>Total<sup>d</sup></b>	3,159	4,755		X		
<b>Median<sup>d</sup></b>	128	151		X		
Arkansas	305	372			X	
Colorado	241	479	X			
Delaware	70	110		X		
Hawaii	93	151		X		
Iowa	96	307	X			
Kentucky	327	636		X		
Maryland	508	692		X		
Massachusetts	197	107				X
Minnesota	371	419			X	
Montana	128	87				X
New Hampshire	107	103				X
North Dakota	10	12			X	
Rhode Island	40	73		X		
Vermont	31	46		X		
Virginia	305	461		X		
Wisconsin	294	671	X			
Wyoming	38	36				X

Note: The 1973 U.S. Department of Justice's National Advisory Commission (NAC) on Criminal Justice Standards and Goals specified that a public defender should not have more than 150 felony non-capital cases, 400 misdemeanor cases per year, 200 juvenile-related cases, or 25 appellate cases per year. Number of attorneys needed to meet the NAC standard is based on the total number of cases received across each of these four case types.

<sup>a</sup>Caseload data not available for Alaska, Missouri, and New Mexico. Connecticut did not report number of felony cases and New Jersey did not report number of misdemeanors and both were excluded from the table.

<sup>b</sup>See *Methodology* for definition of full-time equivalent (FTE) litigating attorney.

<sup>c</sup>All fractions rounded up.

<sup>d</sup>Total and median numbers include only the 17 states shown in the table.

There should be 1 managerial attorney for every 10 staff attorneys in an office to ensure effective attorney supervision.

Seventeen states reported complete caseload data in 2007. Of these states—Massachusetts, Montana, Wyoming, and New Hampshire—had enough litigating attorneys to handle the number of cases received without exceeding the caseload guideline. In the remaining 13 states, the actual number of litigating attorneys represented between 31% and 89% of the number required to meet professional caseload guidelines for the number of cases received in 2007.

### State public defender programs reported a median of about 2 managerial attorneys to supervise 10 assistant public defenders

State public defender programs reported a median of 163 litigating attorneys, 12 chief public defenders, and 5 supervisory attorneys in 2007 (table 11). Each

state reported having at least 1 managerial attorney for every 10 staff attorneys. Twelve states reported having a managing attorney to litigating attorney ratio of at least 2 managing attorneys for every 10 litigating attorneys.

### Nearly 3,000 employees provided support to attorneys in state public defender programs

In 2007, state public defender programs in 20 reporting states employed nearly 3,000 support staff (table 12). Support staff refers to employees—such as clerical and administrative staff, paralegals, investigators, social workers, indigency screeners, and interns—who typically are not attorneys, but provide case assistance for public defenders. Clerical and administrative positions accounted for more than half (56%) of the total support staff.

Table 11.

#### Full and part-time public defenders employed by state public defender programs, by state and position title, 2007

State	Total FTE litigating attorneys <sup>a</sup>	Full-time attorneys				Total part-time attorneys	Number of FTE managerial attorneys per 10 FTE assistant public defenders <sup>b</sup>
		Chief public defender	Managing attorneys	Supervisory attorneys	Assistant public defenders		
<b>Total<sup>c</sup></b>	4,321	369	62	336	3,508	345	1.2
<b>Median</b>	163	12	0	5	125	3	2.2
Alaska	93	1	0	15	76	4	2.1
Arkansas	305	9	0	24	240	68	1.2
Colorado	241	22	2	2	218	0	1.2
Connecticut	127	27	0	0	100	0	2.7
Delaware	70	1	1	8	61	2	1.6
Hawaii	93	5	6	0	89	0	1.2
Iowa	96	13	0	0	82	3	1.7
Kentucky	327	31	0	8	290	0	1.3
Maryland	508	26	0	89	400	5	2.9
Massachusetts	197	29	1	17	149	10	3.2
Minnesota	371	10	0	42	229	180	1.6
Missouri	261	36	0	0	261	0	1.4
Montana	128	21	5	26	81	/	6.4
New Hampshire	107	10	1	1	96	0	1.3
New Jersey	458	25	34	0	436	/	1.4
New Mexico	223	10	1	42	181	0	2.9
North Dakota	10	4	0	0	6	0	6.7
Rhode Island	40	4	5	0	35	0	2.6
Vermont	31	9	0	0	18	3	4.6
Virginia	305	30	0	52	215	18	3.7
Wisconsin	294	37	6	10	231	36	2.3
Wyoming	38	9	0	0	14	16	6.8

/Data not reported.

<sup>a</sup>See *Methodology* for definition of full-time equivalent (FTE) litigating attorney.

<sup>b</sup>FTE managerial attorney refers to all full and part-time attorneys in a supervisory position, including chief public defenders, managing attorneys, and supervisory attorneys.

<sup>c</sup>Includes only full-time attorneys for New Jersey and Massachusetts.

Investigators made up the next largest category of support staff, accounting for almost a quarter (24%) of the positions. The 20 programs also employed a median of 2 paralegals to provide assistance to all public defenders statewide.

Maryland received the most cases of any state program in 2007, employed the largest number of support staff, and exceeded all other states in the number of clerical staff (450), indigency screeners (100), paralegals (35), and interns (30). New Jersey was also among the top five states in terms of the number of cases received, and employed the highest number of investigators (233) of all state programs. Investigators accounted for 40% of New Jersey's

support staff. While Wyoming reported one of the lowest caseloads of the 22 programs, paralegals accounted for more than 60% of the public defender support staff in the state.

Five states—Hawaii, Iowa, Delaware, New Hampshire, and Virginia—reported no paralegals or interns on staff. North Dakota reported the lowest number of cases received, was 1 of 9 states that did not employ social workers or indigency screeners, and was the only state that did not employ investigators in 2007. The public defender program in Iowa employed only two types of support staff: investigators and administrative personnel.

Table 12.

**Full-time equivalent (FTE) support staff in state public defender programs, by state and position title, 2007**

State	FTE support staff									
	Total	Investigators	Social workers	Indigency screeners	Paralegals	Administrative	Clerical	Training	Interns	Other*
<b>Total</b>	2,963	714	166	109	117	672	976	14	87	110
<b>Median</b>	85	25	4	0	2	32	11	1	0	0
Alaska	56	15	0	0	6	5	31	0	0	0
Arkansas	27	6	6	0	4	5	6	0	0	0
Colorado	163	72	3	0	4	59	15	1	10	0
Connecticut	126	46	29	0	2	0	38	0	11	0
Delaware	74	14	14	0	0	35	5	1	0	5
Hawaii	31	7	0	0	0	23	2	0	0	0
Iowa	51	20	0	0	0	31	0	0	0	0
Kentucky	172	46	10	0	6	46	50	0	12	2
Maryland	716	30	20	100	35	50	450	1	30	0
Massachusetts	106	31	16	1	2	33	18	3	/	3
Minnesota	157	35	23	0	24	69	6	0	0	0
Montana	89	17	0	0	4	52	9	1	0	6
New Hampshire	81	29	0	0	0	44	7	1	0	0
New Jersey	577	233	0	0	12	0	279	0	0	53
North Dakota	9	0	0	0	1	4	2	0	2	0
Rhode Island	55	7	6	4	0	2	24	1	10	2
Wisconsin	212	43	13	4	2	92	17	3	10	29
Vermont	30	10	0	0	1	11	6	1	0	2
Virginia	210	51	27	0	0	109	14	1	0	9
Wyoming	25	3	0	0	16	5	0	0	2	0

Note: Data not available for Missouri and New Mexico. Numbers rounded to the nearest whole number. See *Methodology* for definition of full-time equivalent (FTE). /Data not reported.

\*Includes human resources staff, forensic specialists, clinical psychologists, information technology (IT) specialists, interpreters, and investigators hired on a contractual basis.

A public defender program should have at least 1 investigator for every 3 litigating attorneys.

Defender organizations should offer professional development opportunities to assist attorneys in providing quality representation for indigent clients. Public defense counsel should also have systematic and comprehensive training appropriate to specific areas of practice.

### State programs had 1 investigator for every 6 FTE litigating attorneys in 2007

In 2007, 18 of the 20 reporting public defender programs had a ratio of less than 1 investigator for every 3 FTE litigating attorneys (table 13). State programs in New Jersey and Connecticut exceeded the professional guidelines for the ratio of investigators to attorneys. New Jersey had about 15 investigators and Connecticut had about 11 investigators for every 30 FTE litigating attorneys. Conversely, Arkansas reported having less than 1 investigator per 30 FTE litigating attorneys.

State public defender programs had a median of about 1 paralegal per 60 FTE litigating attorneys. Wyoming reported the highest ratio of paralegals to

attorneys (about 2 paralegals for every 5 attorneys), followed by North Dakota (1 paralegal for every 10 attorneys).

### All state programs provided opportunities for public defense attorneys to improve trial skills

The CPDO collected data on policies related to continuing education for attorneys and the types of training provided by state public defender programs. Nearly all of the 19 reporting state programs had operating guidelines that included a policy on continuing education requirements (18 programs) and annual attorney performance review (17 programs) (table 14).

Table 13.

#### Full-time equivalent (FTE) support staff per 30 litigating attorneys in state public defender programs, by state and position title, 2007

State	FTE litigating attorneys	FTE support staff per 30 FTE litigating attorneys <sup>a</sup>		
		Investigators	Paralegals	All other positions <sup>b</sup>
<b>Median</b>	163	4.7	0.5	15.8
Alaska	93	4.7	1.9	11.5
Arkansas	305	0.6	0.4	1.7
Colorado	241	8.9	0.5	10.9
Connecticut	127	10.9	0.5	18.3
Delaware	70	6.0	--	25.7
Hawaii	93	2.3	--	7.7
Iowa	96	6.3	--	9.6
Kentucky	327	4.2	0.6	11
Maryland	508	1.8	2.1	38.5
Massachusetts	197	4.7	0.2	15.9 <sup>c</sup>
Minnesota	371	2.8	1.9	7.9
Missouri	261	/	/	/
Montana	128	4.0	0.9	15.9
New Hampshire	107	8.0	--	14.4
New Jersey	458	15.3	0.8	21.8
New Mexico	223	/	/	/
North Dakota	10	--	3.0	22.5
Rhode Island	40	5.3	--	36.4
Vermont	31	9.8	0.5	18.7
Virginia	305	5.0	--	15.6
Wisconsin	294	4.3	0.2	17.1
Wyoming	38	2.4	12.2	5.1

Note: Support staff data not available for Missouri and New Mexico. See *Methodology* for definition of full-time equivalent (FTE).

--Less than 0.5%.

/Data not reported.

<sup>a</sup>Ratio calculated from a base of 30 FTE litigating attorneys to allow comparison with the professional guidelines recommending at least 1 investigator for every 3 litigating attorneys. According to the guidelines, a program should employ at least 10 FTE investigators for every 30 litigating attorneys.

<sup>b</sup>Includes all support staff with the exception of paralegals and investigators. Includes social workers, indigency screeners, administrative staff, clerical staff, training staff, interns, and other support staff.

<sup>c</sup>Does not include interns. Data on interns not reported.



All of the state public defender programs provided opportunities for attorneys to improve trial skills. Nearly all (20) programs provided attorneys with professional development opportunities in the area of juvenile delinquency. In 17 public defender programs, attorneys could take training on handling defendants with mental illness. In 10 of the 13 states with the death penalty, public defender programs also provided professional development opportunities in the area of death penalty defense. Civil defense training, offered in 3 states, was the least common type of professional development offered by state public defender programs.

### State public defender programs had a median attrition rate of 10% for assistant public defenders

Minimum entry-level salaries for assistant public defenders ranged from about \$37,000 to \$58,000, with a median salary of \$46,000 per year. More experienced (6 years or more) assistant public defenders earned a median salary between \$60,000 and \$78,000. Connecticut had the highest salary range, with an entry-level salary of more than \$58,000 and a maximum salary for experienced public defenders of nearly \$122,000 per year.

Table 14.

#### Program operating guidelines and attorney professional development opportunities in state public defender programs, by state, 2007

State	Operating guidelines included a policy related to—		Areas of professional development training provided to attorneys							
	Continuing legal education for attorneys	Annual attorney performance review	Civil	Death penalty trial	Juvenile delinquency	Trial skills	Appellate cases	Dependency cases	Mental illness cases	Other
				defense						
<b>Total</b>	18	17	3	10	20	22	16	11	17	8
Alaska	/	/	X	~	X	X	X	X	X	
Arkansas	X	X		X	X	X	X	X	X	
Colorado	X	X		X	X	X	X		X	
Connecticut	X	X		X	X	X	X		X	X
Delaware	X	X		X	X	X	X		X	X
Hawaii	X			~	X	X			X	
Iowa	X	X		~	X	X	X	X		
Kentucky	X	X	X	X	X	X	X		X	X
Maryland	X	X			X	X				
Massachusetts	X	X	X	~	X	X	X	X	X	
Minnesota		X		~	X	X			X	
Missouri	/	/			X	X			X	
Montana	X	X		X	X	X	X	X	X	X
New Hampshire	X	X		X	X	X	X		X	X
New Jersey	X	X		X	X	X	X	X		X
New Mexico	/	/			X	X	X		X	
North Dakota	X	X		~	X	X	X	X		
Rhode Island	X			~	X	X		X	X	
Vermont	X	X		~	X	X	X	X	X	X
Virginia	X	X		X		X				
Wisconsin	X	X		~	X	X	X	X	X	X
Wyoming	X	X		X		X	X	X	X	

/Data not reported.

~Not applicable. Alaska, Hawaii, Iowa, Massachusetts, Minnesota, North Dakota, Rhode Island, Vermont, and Wisconsin did not have the death penalty in 2007.

State public defender programs reported a median 10% turnover rate of assistant public defenders in 2007 due to resignation, termination, retirement, or illness (table 15). Virginia had the highest attrition rate (24%) and one of the lowest averages for assistant public defenders' length of service (3 years). Nearly all states with an attrition rate below 10% reported assistant public defender salaries that were at or above the median salary observed in the 22 states.

**From 1999 to 2007, public defender program caseloads increased by 20% while staffing increased by 4%**

Seventeen of the 22 states in this report had established a state public defender program in 1999. These states were included in the BJS National Survey of Indigent Defense Systems (NSIDS)

conducted from 1999 to 2000.<sup>9</sup> Data on caseloads, staffing, and expenditures from 1999 and 2007 can be compared for these 17 states. The 1999 expenditure data have been adjusted for inflation and are represented in 2007 dollars.

Overall, total expenditures, cases received and full-time equivalent (FTE) public defenders increased in the 17 states from 1999 to 2007 (table 16). The number of attorneys employed in state public defender programs increased by 4%, from approximately 2,700 to over 2,800. Additionally, criminal caseloads increased by 20% overall and total expenditures increased by 19% during this period. There was considerable variability in the caseload, expenditure, and staffing trends for individual states.

<sup>9</sup>See *State-Funded Indigent Defense Services, 1999*, <<http://bjs.ojp.usdoj.gov/content/pub/pds/sfids99.pdf>> for 1999 data on the 17 state public defender programs.

Table 15.

**Length of service, attrition rate, and base annual salary for assistant public defenders in state public defender programs, by state, 2007**

State	Mean years of service	Attrition rate <sup>b</sup>	Salary for assistant public defenders <sup>a</sup>					
			Entry level		5 years or less experience		6 years or more experience	
			Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
<b>Median</b>	9	10.0 %	\$46,000	\$58,400	\$54,800	\$64,900	\$60,300	\$77,700
Arkansas	5	10.0	39,400	47,500	/	/	/	/
Colorado	7	16.5	45,700	59,100	49,900	65,600	67,700	90,700
Connecticut	13	4.0	58,300	63,100	71,000	71,000	73,900	121,800
Delaware	18	4.8	52,700	52,700	56,900	76,400	79,000	97,700
Hawaii	6	11.0	57,100	57,100	65,300	78,300	78,300	89,600
Iowa	12	--	44,400	67,600	55,600	85,500	71,900	102,300
Kentucky	9	13.0	38,800	51,400	46,900	60,000	51,600	60,000
Maryland	10	4.0	53,000	77,400	56,500	90,700	60,300	96,800
Massachusetts	8	12.5	37,500	37,500	39,000	55,500	57,500	77,700
Minnesota	10	5.0	49,200	92,000	/	/	/	/
Montana	1	20.0	40,000	58,800	58,800	70,500	60,100	70,500
New Hampshire	5	15.3	42,900	42,900	44,500	56,600	63,600	74,700
New Jersey	11	6.6	54,500	77,400	68,600	97,900	78,800	112,700
North Dakota	2	0.0	46,000	60,000	46,000	60,000	50,000	62,000
Rhode Island	12	15.0	51,500	58,400	63,000	64,300	70,500	71,200
Vermont	11	13.3	37,200	47,400	44,300	56,500	52,800	67,500
Virginia	3	24.0	48,200	64,600	/	/	55,200	72,900
Wisconsin	16	7.9	47,000	47,000	49,700	49,100	49,100	113,000
Wyoming	6	10.0	45,000	45,000	54,000	57,000	57,000	66,000

Note: Data not provided by Alaska, Missouri, and New Mexico.

--Less than 0.5%.

/Not applicable. Respondent reported "no such position."

<sup>a</sup>Rounded to the nearest hundred dollars.

<sup>b</sup>Attrition rate is defined as the number of litigating attorneys who left the office in fiscal year 2007, divided by the total number of litigating attorneys employed on the first day of the fiscal year. Attrition rate includes supervisory attorneys as well as assistant public defenders.

Increases in the number of cases received were greater than increases in staffing or expenditures in five states from 1999 to 2007: Colorado, Massachusetts, New Hampshire, Rhode Island, and Virginia. Conversely, caseloads in state-based public defender offices stayed the same or decreased in five states during the same period: Delaware, Hawaii, Iowa, Minnesota, and Vermont.

After adjusting for inflation, Virginia's public defender program spent 67% more in 2007 than in 1999. Hawaii (down 20%), Missouri (down 12%), Minnesota (down 5%), and New Jersey (down 4%) had declines in expenditures during this period. From

1999 to 2007, Minnesota had greater declines in both criminal caseloads (down 20%) and FTE public defenders (down 30%) than in expenditures.

Of the states that reported data in 1999 and 2007, more state programs had a decline in the number of FTE public defenders than in the number of cases received or expenditures. Seven state programs reported a decrease in the number of FTE public defenders from 1999 to 2007, compared to four programs reporting a decrease in criminal caseloads and four state programs reporting a decline in expenditures during this period.

Table 16.

**Percent change in criminal caseloads, operating expenditures, and the number of full-time equivalent (FTE) attorneys in state public defender programs, by state, 1999 and 2007**

State	Criminal caseload <sup>a</sup>			Operating expenditures (in thousands)			Total FTE attorneys <sup>b</sup>		
	1999	2007	Percent change	1999 <sup>c</sup>	2007	Percent change	1999	2007	Percent change
<b>Total</b>	711,090	855,417	20%	634,851	752,825	19%	2,710	2,819	4%
Alaska	15,853	/	/%	14,021	17,231	23%	84	94	12%
Colorado	54,352	81,842	51	32,044	37,884	18	249	244	-2
Connecticut	56,327 <sup>d</sup>	83,100 <sup>d</sup>	48	32,197	47,600	48	169	127	-25
Delaware	30,460 <sup>e</sup>	26,285	-14	10,286	13,713	33	60	72	20
Hawaii	35,778	35,874	0	10,614	8,500	-20	94	100	6
Iowa	48,360	35,060	-28	43,246 <sup>f</sup>	48,533	12	126	97	-23
Maryland	/	166,367	/	55,304 <sup>f</sup>	77,519	40	/	518	/
Massachusetts	6,200	16,278	163	87,559 <sup>f</sup>	123,400	41	125	201	61
Minnesota	140,475	112,224	-20	65,318 <sup>f</sup>	61,800	-5	527	371	-30
Missouri	73,738 <sup>d</sup>	83,160 <sup>d</sup>	13	38,944	34,138	-12	337	297	-12
New Hampshire	8,812	20,865	137	11,362	12,668	11	65	108	66
New Jersey	58,165	66,391	14	102,727	99,000	-4	350	495	41
New Mexico	53,911 <sup>d</sup>	72,740 <sup>d</sup>	35	32,230 <sup>f</sup>	37,083	15	161	234	45
Rhode Island	10,500	15,686	49	6,696	8,782	31	48	44	-8
Vermont	10,344	9,202	-11	6,095	6,839	12	46	29	-37
Virginia	41,019	85,937	110	22,365	37,369	67	269	306	14
Wisconsin	82,649	110,773	34	54,058	80,766	49	/	302	/

Note: Arkansas, Kentucky, Montana, North Dakota, and Wyoming did not have state public defender programs in 1999 and are not included in the table. /Data not reported.

<sup>a</sup>Criminal caseload counts include felony capital, felony noncapital, misdemeanors that carry a jail sentence, ordinance infraction, appeal, and probation and revocation cases. Juvenile, civil, and other cases, including special proceedings, miscellaneous hearing, post conviction probation, and child protection cases, are excluded from the analysis because of changes in the way these data were collected in 2007. Numbers from 2007 do not include probation and revocation cases. Totals and percent changes are based on the 15 states that reported data in both 1999 and 2007.

<sup>b</sup>Includes full and part-time chief public defenders, managing attorneys, supervisory attorneys, and assistant public defenders. Totals and percent changes are based on the 15 states that reported data in both 1999 and 2007. See *Methodology* for definition of full-time equivalent (FTE).

<sup>c</sup>Expenditures from 1999 are adjusted for inflation according to the Consumer Price Index and presented in 2007 dollars.

<sup>d</sup>Includes total criminal, juvenile, civil, and other cases.

<sup>e</sup>Includes conflict cases.

<sup>f</sup>Expenditures reported for all indigent defense services in the state.

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## Methodology

The 2007 Census of Public Defender Offices (CPDO) collected office-level data from 957 publicly funded public defender offices located in 49 states and the District of Columbia. (Maine had no public defender offices in 2007 and provided all indigent defense services through assignment to and contract services with private attorneys.) The universe included all public defender offices principally funded by state or local governments to provide general criminal defense services, conflict services, or capital case representation.

Federal public defender offices and offices providing primarily contract or assigned counsel services with private attorneys were excluded from the data collection. Public defender offices funded privately or principally by a tribal government or by offices providing primarily appellate or juvenile services were also excluded.

### *Scope of Data Collection*

The Bureau of Justice Statistics (BJS), the National Legal Aid and Defender Association (NLADA), and a number of chief defenders and other experts in the field of indigent defense collaborated to develop the CPDO data collection instrument. The American Bar Association's Standing Committee for Legal Aid and Indigent Defense and the National Association of Criminal Defense Lawyers also had the opportunity to review and comment on the instrument. The data collection began in April 2008 and was completed in March 2009.

BJS had questionnaires sent to 1,046 public defender offices identified in the United States. Approximately 97% of the offices provided responses to at least some of the critical items identified on the survey instrument.

### *Organizational Structure of Public Defender Offices*

The CPDO included both state and county-based public defender offices. State-based offices functioned entirely under the direction of a central administrative office that funded and administered

all the public defender offices in the state. County-based offices were administered at the local level and funded principally by the county or through a combination of county and state funds. The Public Defender for the District of Columbia was funded by the Federal Government, but functions as a county-based office and was classified as such.

These variations in public defender systems dictated the distribution of the CPDO data collection instrument. In the District of Columbia and states with county-based public defender offices, each of 588 offices submitted one completed questionnaire via hardcopy or online submission. Only the 530 offices that served as the principal public defender office for the jurisdiction are included in table 1.

Data presented are primarily from the 22 central offices of the state public defender programs. The 22 states completed an online questionnaire and responded to questions pertaining to each of the local offices within the states. All 22 states provided responses to at least some of the critical items identified on the survey instrument. In select instances where respondents did not provide the information requested and the information was detailed in certain state statutes, BJS analysts used the statutes to supply missing data.

Because the state-based public defender offices often shared resources among local offices as needed, the state programs had the option of providing data on staffing, caseload, and expenditures either for the entire state or for each individual office. Six of the 22 state-based public defender programs were able to provide complete information at the local office level, covering 27% of the 427 local offices in state-based public defender programs. Sixteen state programs provided a portion of the data at the state level and a portion of the data at the local office level. Because of the variations in the level of data provided by each state public defender program, all local office data were aggregated to the state level for these 22 states.

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### *Measuring caseload versus workload*

The CPDO was designed to collect aggregate data from public defender offices or programs. Respondents were instructed to provide the number of cases received by the office or program in 2007. This caseload number is presented throughout the report as a measure of public defender office labor. While workload is generally considered a more accurate measure of the burden on public defenders than caseload, an assessment of workload requires data on the number and types of cases handled by individual attorneys within an office, as well as information about additional attorney responsibilities. The survey instrument and project design did not allow for assessment of the work of individual attorneys within an office. Providing data on individual attorneys would have been burdensome and time-consuming for the public defender offices and programs.

### *Calculating number of full-time equivalent (FTE) litigating attorneys*

Full-time equivalent (FTE) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. (See U.S. Census Bureau, Government Employment, 1997, Web. Updated annually. <[http://quickfacts.census.gov/qfd/meta/long\\_58632.htm](http://quickfacts.census.gov/qfd/meta/long_58632.htm)>.)

Included are litigating attorneys who carry a caseload (supervisory attorneys, assistant public defenders, and chief defenders). Excluded are managing attorneys who do not litigate cases. Data on whether chief public defenders carry a caseload were missing for Alaska, Arkansas, Missouri, and New Mexico. The total number of FTE litigating attorneys excludes chief public defenders in these 4 states.



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This report in portable document format and in ASCII and its related statistical data and tables are available at the BJS World Wide Web Internet site: <<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2242>>.

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