

# Report on Iowa's Indigent Defense System



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Adam C. Gregg  
State Public Defender

## **INTRODUCTION**

Iowa's indigent defense system is strong. The more than 200 employees of the State Public Defender System have been efficiently providing high quality representation on more cases than ever before. In Fiscal Year 2014, public defender offices closed more than 87,600 cases, at an average cost per case of \$299.07, and there was a final finding of ineffective assistance of counsel in less than 0.001% of these cases.

Similarly, more than 800 contract attorneys continue to provide high quality representation throughout all 99 of Iowa's counties. In Fiscal Year 2014, 62,846 claims were submitted to the indigent defense fund, at an average cost per claim of \$494.91. This was an increase of nearly 2,000 claims from Fiscal Year 2013.

This report pursuant to section 13B.2A of the Iowa Code provides the State Public Defender's recommendations related to the hourly rates paid to court-appointed counsel, the per case fee limitations, and other indigent defense matters.

It does not recommend changes in the statutory rates for court-appointed counsel or adjustments to the per case fee limitations at this time.

## **BACKGROUND**

This report is submitted pursuant to section 13B.2A of the Iowa Code, which provides:

1. The state public defender shall file a written report every three years with the governor and the general assembly by January 1 of a year in which a report is due relating to the recommendations and activities of the state public defender relating to the state indigent defense system. The first such report shall be due on January 1, 2012.
  
2. The report shall contain recommendations to the general assembly regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

Prior to the enactment of the current version of the statute, the now-disbanded Indigent Defense Advisory Commission was required to issue a report every three years making "recommendations to the legislature and state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations." Iowa Code § 13B.2A (2009). The commission issued four such reports, on December 9, 2002, December 15, 2003, December 6, 2006, and November 30, 2007.

## HOURLY RATES PAID TO COURT-APPOINTED COUNSEL

Hourly rates for fees to court-appointed counsel for indigents in criminal prosecutions, juvenile court cases, and other authorized proceedings are set by section 815.7 of the Iowa Code. Although the State Public Defender has authority to contract with providers at rates different than the statutory rate, *see* Iowa Code §§ 13B.4(3), 815.7(1), historically the State Public Defender has contracted with attorneys at the statutory rates except for a few special circumstances.<sup>1</sup>

For appointments made on or after July 1, 2007, the statutory rates are \$70 per hour for Class A felonies, \$65 per hour for Class B felonies, and \$60 per hour for all other cases. For appointments between July 1, 2006, and June 30, 2007, the rates were \$65 per hour for Class A felonies, \$60 per hour for all other criminal cases, and \$55 per hour for all other cases. For appointments between July 1, 1999, and June 30, 2006, the rates were \$60 per hour for Class A felonies, \$55 per hour for Class B felonies, and \$50 per hour for all other cases.

At this time, the State Public Defender does not recommend a change to the statutory rates. There are currently 813 attorneys with active contracts to represent indigent persons in Iowa courts, covering all 99 counties. The number of contract attorneys has decreased due, in large part, to changes in the qualifications requirements for contracting.

There do not generally appear to be problems finding counsel willing to be appointed to handle the available cases. It will be important to continue to evaluate this issue, however, because as the legal market improves and the overhead expenses of attorneys continue to increase, it may become more difficult to attract and retain competent attorneys to represent indigent persons at the current rates. Additionally, the minimum qualification requirements may have the effect of further reducing the pool of attorneys eligible to be appointed to represent indigent defendants.

It also remains vitally important to ensure that the indigent defense fund, from which the court-appointed attorney fees are paid, is appropriately funded for the estimated expenditures each fiscal year. Early 2011 was a challenging time for attorneys, and other indigent defense providers, when the State Public Defender was forced to delay making payments on claims because the indigent defense fund had run out of money. For many attorneys, their indigent defense work is a sizable portion of their practice and the delays in payment caused significant hardship. It appears that most attorneys decided to continue doing indigent defense work, but there is a real danger that circumstances like these could cause attorneys to consider leaving their indigent defense practice.

Accordingly, the State Public Defender recommends overall status quo funding for the indigent defense appropriations. Further, if the legislature chooses to increase the statutory rates, it is recommended that the legislature also provide a corresponding increase in funding, or risk creating a scenario similar to 2011.

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<sup>1</sup> Currently, the State Public Defender contracts with several nonprofit organizations at alternative rates, including for example: the Drake Legal Clinic, Youth Law Center, and Linn County Advocate. The State Public Defender also contracts with individual attorneys in certain counties to handle specialized representation, such as drug court programs.

## PER CASE FEE LIMITATIONS

The State Public Defender is required by section 13B.4(4)(a) to “establish fee limitations for particular categories of cases.” Accordingly, the State Public Defender has adopted administrative rules establishing attorney fee limitations for adult cases, juvenile cases, and appellate cases. *See* Iowa Admin. Code § 493-12.6. A claim by an attorney in excess of the attorney fee limitations established by the State Public Defender will not be paid unless the attorney seeks and obtains prior authorization from the appointing court to exceed the attorney fee limitations. *See* Iowa Code § 815.10A(3); Iowa Admin. Code § 493-12.6(4). Such motions are routinely granted, often at the beginning of a case without any further limitation on fees.

The State Public Defender does not make any further recommendations to the General Assembly regarding the fee limitations. At this time, the current limits appear appropriate in light of the fee rates and the number of hours typically spent on a particular type of case, and the State Public Defender will continue to evaluate the appropriateness of the limitations and will exercise the current statutory authority to adjust the limitations through revisions to the administrative rules if necessary. No further legislative action is necessary.

The current fee limitations established by the State Public Defender are set forth in the charts below.

### Adult Cases

| Type of Case   | Fee Limitation   |
|--|--|
| Class A felonies   | \$18,000   |
| Class B felonies   | \$3,600  |
| Class C felonies   | \$1,800  |
| Class D felonies   | \$1,200  |
| Aggravated Misdemeanors  | \$1,200  |
| Serious Misdemeanors   | \$600  |
| Simple Misdemeanors  | \$300  |
| Simple Misdemeanor appeals to district court                               | \$300  |
| Contempt/Show Cause Proceedings  | \$300  |
| Chapter 229A Proceedings (civil commitments of sexually violent predators) | \$10,000   |
| Probation Violation  | \$300  |
| Parole Violation   | \$300  |
| Extradition  | \$300  |
| Postconviction relief  | \$1000 or ½ of the fee limitation for the conviction from which relief is sought |

### Juvenile Cases

| <b>Type of Case</b>  | <b>Fee Limitation</b> |
|--|-----------------------|
| Delinquency (through disposition)                                | \$1,200               |
| Child in Need of Assistance (CINA) (through disposition)         | \$1,200               |
| Termination of parental rights (TPR) (through disposition)       | \$1,800               |
| Juvenile court review and other postdispositional court hearings | \$300                 |
| Judicial bypass hearings   | \$180                 |
| Juvenile commitment hearings                                     | \$180                 |
| Juvenile petition on appeal                                      | \$600                 |
| Motion for further review after petition on appeal               | \$300                 |

## ADDITIONAL DEVELOPMENTS

### ***Gideon Fellowships***

The Gideon Fellowship Program was established by House File 2132, which was signed into law by Governor Terry E. Branstad on April 3, 2014. The program was proposed by the State Public Defender to provide a new method of recruiting and hiring entry-level attorneys competitively with other legal employers. The program is named in honor of *Gideon v. Wainwright*, which established the right to counsel for indigent defendants in criminal cases more than 50 years ago.

The Gideon Fellowship Program is the Office of the State Public Defender's primary means of hiring entry-level attorneys. Each year, two Gideon Fellows are selected to serve a two-year term appointment in one of our public defender offices. Fellows will serve alongside career public defenders representing clients, trying cases, and participating in training and mentoring through the State Public Defender's New Attorney Development Program. Fellows are eligible to apply for permanent public defender positions during the term of their fellowship and it is hoped that successful fellows will continue their careers long-term in Iowa with the Office of the State Public Defender.

Offers have been made and accepted to the first two Gideon Fellows. It is anticipated they will begin work in the Des Moines Adult Office and Waterloo Adult Office in October 2015 (FY 2016).

### ***Minimum Qualifications***

Effective January 1, 2015, the State Public Defender has adopted amendments to its administrative rules establishing minimum qualification requirements for indigent defense contract attorneys. These rules are intended to better ensure that all indigent persons are provided competent and effective counsel, while still providing new attorneys the opportunity to participate in the indigent defense system on less serious cases. Contracts with participating attorneys have been amended to reflect the counties and types of cases for which they have been approved, pursuant to an analysis of their eligibility under the rules.

A summary of the rules is provided as Appendix A to this report.

### ***Revised Claims Practices***

The State Public Defender has adopted amendments to its administrative rules relating to review and payment of indigent defense claims. These amendments include a comprehensive reorganization and stylistic revisions to improve clarity, simplicity, and precision. They also establish a number of safeguards in response to the improper billing practices of some indigent defense contract attorneys. These safeguards include setting a maximum number of aggregate hours that an attorney can bill in a day, requiring more detailed itemized time and expense reimbursement records, establishing additional documentation requirements for claims of attorneys whose contracts were canceled for improper billing practices, and clarifying the prohibition on other improper practices, such as standardized billing, estimated billing, and duplicative mileage reimbursements.

A summary of the rules is provided as Appendix B to this report.

## CONCLUSION

The Office of the State Public Defender will continue to strive towards its mission: to ensure that all indigent persons in Iowa are provided high-quality legal representation in criminal, juvenile, and other eligible proceedings in the most efficient and fiscally responsible manner. The State Public Defender will continue to look for opportunities to improve the quality of representation and achieve efficiencies so that the State of Iowa can use its limited resources for indigent defense in the most cost-effective manner.

The State Public Defender is in the process of transitioning to an online indigent defense claim submission system, which offers an opportunity for cost savings and improvement of the delivery of services to indigent defense providers. In addition, we are also exploring an increased use of specialized contracts with attorneys and other indigent defense providers.

With the cooperation of other key stakeholders, including the Governor, General Assembly, Judiciary, and private attorneys, there is little doubt that Iowa's strong indigent defense system will continue to grow stronger.

**Appendix A**  
**Summary of New Indigent Defense Attorney**  
**Minimum Qualification Requirements**

*Note:* All requirements are merely minimum requirements. The State Public Defender retains discretion to deny or terminate a contract to attorneys who meet these requirements.

**Requirements for A and B Felonies**

- 4 years of criminal law litigation experience.
- Tried at least 5 criminal jury trials to completion to jury as lead counsel.
- 5 hours of criminal law CLE in previous year and each year of contract.
- Provide names of at least 3 judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent defendants in these cases.
- An attorney who has not met all requirements but who has tried a Class A or B felony to completion as lead counsel may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting the requirements and may be approved for contracting at the state public defender's discretion.
- In cases eligible for appointment of two attorneys, the second attorney may be appointed if they meet requirements for other felony cases (below).

**Requirements for Other Felony Cases (C and D Felonies)**

- 2 years of criminal law litigation experience.
- Tried at least 1 criminal jury trial to completion to jury as lead counsel.
- 5 hours of criminal law CLE in previous year and each year of contract.
- Attorney will provide names of at least 3 judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent defendants in these cases.
- An attorney who has met all requirements except the jury trial requirement may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from obtaining jury trial experience and may be approved for contracting at the state public defender's discretion.

**Requirements for Misdemeanor and Other Adult Cases**

(Includes Probation Violations, Parole Violations, Contempt)

- If new contract with less than two years of criminal law litigation experience, must attend one-day Basic Criminal Law Training sponsored by SPD.
- 3 hours of Criminal Law CLE each year of contract

### **Requirements for Postconviction Relief (“PCR”) Cases**

- 2 years of experience in criminal law litigation or as a judicial law clerk.
- 5 hours of criminal law CLE in previous year and each year of contract.
- Postconviction Relief Basic Training, unless attorney has previously handled at least three postconviction relief proceedings to completion.
- Provide names of at least 3 judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent defendants in these cases.

### **Requirement for all Juvenile Cases** (Rule of Juvenile Procedure 8.36)

- 3 hours of juvenile law CLE in previous year and each year of contract.

### **Requirements for Appellate Cases**

- Basic Criminal Appeals Training within one year of entry into contract, unless attorney has previously handled a criminal appeal in Iowa state court.
- 3 hours of criminal law CLE each calendar year.

## **Other Related Contract Rules Changes**

1. Clarifies the scope of contract types and requires that an attorney seek to withdraw if appointed to a case that is amended to more serious charges outside the scope of the contract unless no contract attorney is available or the state public defender consents.
2. Permits termination of the contract on less than 30 days’ notice with the mutual consent of the attorney and state public defender.
3. Establishes new basis of termination for cause based on improper billing practices of the attorney and a method for agency and court review of such terminations.
4. Provides for revised standard contract terms, and updates other language for clarity and consistency

## Appendix B

### Summary of Notable Revisions to SPD Claims Rules

The State Public Defender has adopted amendments to its administrative rules that will be effective for all claims submitted after **July 30, 2014**. The full text of the amendments, as well as the complete revised version of the rules is available on the SPD website at: <http://spd.iowa.gov/adminrules>. This summary highlights some of the most notable revisions, but the rules include a complete reorganization and stylistic revisions to improve clarity, simplicity, and precision.

#### Submitting Fee Claims

**Itemizations Detail:** In addition to the previous requirements (date, amount of time, description, designation of in-court/out-of-court/paralegal/travel time), all itemizations must:

- **Specify whenever another attorney performs work**, including the name of the attorney or initials if an explanation is provided as to the full name for each set of initials.
- **Separately itemize all expenses** (e.g., copying, printing, postage, fax, telephone), specifying the date that each expense was incurred, and if not clear from the itemization, the purpose of the expense.
- **Mileage expense itemizations** must specify the date of the travel, the origination and designation locations, and if not otherwise clear from the itemization, the purpose of the travel.

*See* Rule 12.2(1)(f); Rule 12.8(1).

**Itemization Time Rounding/Aggregation:** All itemizations shall report time in tenths of an hour. Time must be rounded to the nearest tenth of an hour. The time spent on each activity must be separately itemized, except that one or more activities on the same day, each taking less than 0.1 hours, must be aggregated together with other activities so that the aggregate amount billed is at least 0.1 hours. If an attorney performs only a single activity taking less than 0.1 hours for a client on a day, the attorney may bill 0.1 hours regardless of the precise length of time spent on the activity. If an attorney performs multiple related activities on the same day, such as multiple e-mail or telephone exchanges, the activities must be aggregated together if separately itemizing the activities would result in claiming more time than the attorney actually spent performing the activities. *See* Rule 12.2(1)(f)(1).

**Include Court Order Documenting Date of Service:** All claims must include a copy of the disposition order (e.g., the sentencing order), the order granting a motion to withdraw prior to disposition, procedendo, or other court order documenting the “date of service” for the claim. *See* Rule 12.2(1)(e).

**45-Day / Date of Service Rule:** The definition specifying when claims must be submitted has been clarified and several new, expanded exceptions to the 45-day rule for timely submission of claims have been added. Exceptions now include the death or certain serious illness, injury, or other medical condition of the attorney or immediate family members cared for by the attorney. The rule also set deadlines for submitting claims after such occurrences. *See* Rule 12.2(3).

### **Billing Practice Clarifications**

**Maximum Hours:** Attorneys are prohibited from billing more than 16 hours a day in the aggregate on all indigent defense cases. Attorneys are prohibited from billing 12-16 hours per day except in limited circumstances and with a written explanation. *See* Rule 12.5(1)

**Mileage Splitting:** Mileage expense must be split among all clients for whom the mileage was travelled and must not be billed in full for every client. *See* Rule 12.8(1)(a).

**Billing Must Be Actual Time:** All attorney time submitted on itemization must be the actual time worked by the attorney. Estimated and standardized billing is prohibited. *See* rule 12.5(2).

**Travel Time:** The circumstances when travel time is payable have been clarified and expanded to include, among other things, travel to all appellate oral arguments and travel to family team meetings occurring outside the county of the case so long as the court approves of the meeting location. *See* Rule 12.5(4).

**Substitute Counsel:** Substitute counsel may generally only be used in limited circumstances, including court hearings and family team meetings with which the appointed attorney has a legitimate scheduling conflict and necessary out-of-court preparation for such hearings or meetings. Substitute counsel may not be used for any trial, and must have a SPD contract or the prior written consent of SPD. *See* Rule 12.5(5).

### **Other Revisions**

**Mileage Rate Increase:** The mileage rate increases from \$0.35 to \$0.39 to be consistent with the state employee mileage rate. The new rate will be paid for claims submitted after July 30, 2014, regardless when the travel occurred. But attorneys must claim the new rate – the State cannot pay a vendor more than the amount the vendor claims. *See* Rule 12.8(1)(a).

**Appellate Claims:** All appellate claims now require a full itemization and are paid at the \$60 per hour rate. There is no fee limitation for appellate claims. And there is no “voluntary flat rate” where an itemization is not required. *See* Rule 12.4(4); Rule 12.6(3).

**Change-of-Employment:** Attorneys may no longer submit an interim claim merely because the attorney is changing law firms. SPD will send payment on an attorney’s claim to whatever entity the attorney

directs, but it is the attorney's responsibility to ensure that any division of funds between firms occurs appropriately. *See* Rule 12.3(5)

**Termination for Improper Billing Practices:** If an attorney's contract is terminated for improper billing practices, attorneys will only be paid on any pending or future claims if attorney resubmits with independent, written documentation originating from a source other than the attorney that supports all time billed. *See* Rule 12.2(8); Rule 11.7(2)(c).