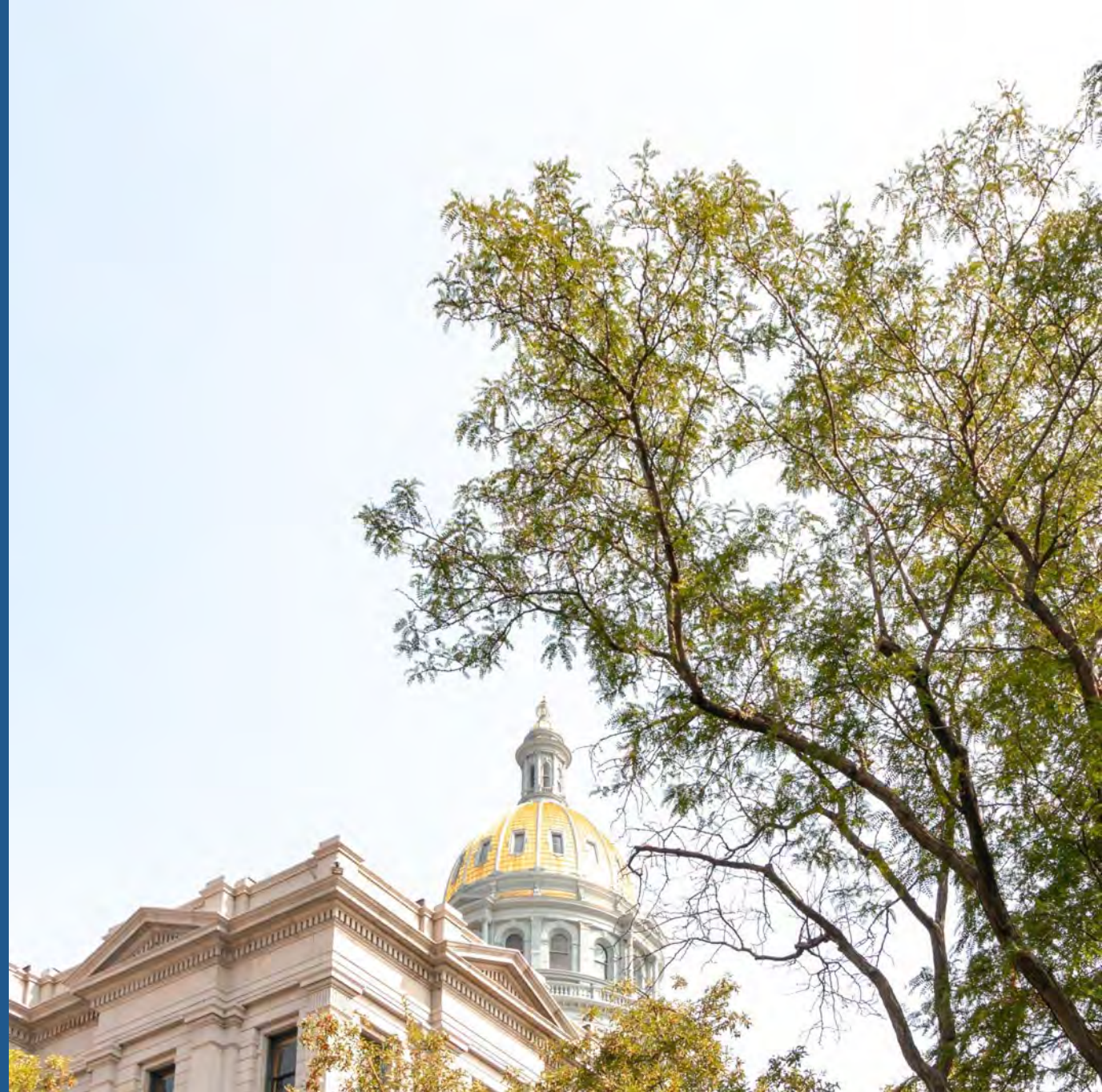




# State Efforts to Promote Indigent Defense Services in Rural Areas

Jessica L. Guarino, Esq.

Policy Analyst, Criminal and Civil Justice







# Who is NCSL?

- Non-profit, bi-partisan organization.
- Members are all 7,383 legislators and 30,000 legislative staff in 50 states, D.C. and U.S. territories.
- Offices in Denver and D.C.
- Among our goals– to provide legislatures with information and research about policy issues, both state and federal.
- NCSL tracks state policy develops in all public policy areas.



# Roadmap

I. How States Oversee Right to Counsel Services

II. Right to Counsel and Legal Deserts

III. Barriers to Legal Representation in Rural Areas

IV. State Examples

- South Dakota
- Maine
- Ohio
- Texas
- Michigan

V. Conclusion



# How States Oversee Right to Counsel Services

## Oversight: Setting and Enforcing Standards



- States employ many approaches, including establishing statewide commissions as well as limited commissions that oversee some, but not all, case types.
- 33 states do not have full oversight commission, meaning they do not set standards or monitor whether people receive counsel in all cases where they have a right to it.

## Administration



- States have a variety of approaches, from administration entirely from the local level, to entirely at the state level, to a mix of state and local administration.
- Generally focused on trial-level administration of services.
- Administration can be through contracted services with a NGO, through a government agency (public defender), or appointed private counsel.

## Funding



- States utilize a mix of funding sources.
- Five states have public defense services (trial-level, non-capital) funded entirely locally.
- 30 states fund public defense services from both state and local sources.
- 15 states fund public defense services at the state level.



# How States Oversee Right to Counsel Services

National Institute of Justice | NIJ.ojp.gov  
Office for Access to Justice | justice.gov/ATJ

Exhibit 5. Overview of State Public Defense Models: Administration, Funding, and Oversight.

	Local Administration (14)			Mixed Administration (20)			State Administration (16)		
	Local Funding (5)	Mixed Funding (8)	State Funding (1)	Mixed Funding (20)			Mixed Funding (2)	State Funding (14)	
No Commission (17)	AZ MS PA SD WA	CA IL		AK FL NJ TN RI			WY	DE IA MT VT	
Limited Commission (17)		IN NY TX NE		AL CO GA KS LA	MO NM ND OH OK	OR SC WI			
State Commission (16)		MI UT	ID*	KY NV			AR	CT HI ME MD MA	MN NH NC VA WV

Total Local Funding (5); Total Mixed Funding (30); Total State Funding (15).  
Primary delivery method: **Public Defenders** (20), **Private Assigned Counsel** (5); Mixed (25).  
Underlined: States with major, recent changes (12), summarized in Exhibit 6.  
\*In 2024, Idaho will shift to state administration and no oversight commission.

- **Public Defenders:**
  - Work as employees of the government or a nonprofit office, under the direction of a chief public defender, and generally work on public defense cases.
- **Private Assigned Counsel:**
  - Work as private attorneys paid by the government to handle cases according to the time they work (hourly, daily, annually), the number of cases they take, the activities they perform, or a combination of these factors.



## Right to Counsel and Legal Deserts

- ***Gideon v. Wainwright* (1963)**
  - “Reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled to court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”
- 40 percent of all counties in the U.S. have less than one lawyer per 1,000 residents. – [American Bar Association, 2020](#)
- “Rural counties also incarcerate a disproportionate number of people—and for longer periods of time—compared to metropolitan areas.” – [Wayne Law Review](#) (2023)
- One 2018 [study](#) utilizing data from the Texas Indigent Defense Commission found that defendants in rural counties used indigent defense counsel at statistically significantly lower rates than urban defendants.

[https://www.innovatingjustice.org/sites/default/files/media/document/2023/CJI\\_Gideon\\_Monograph\\_1115\\_2023\\_pageview.pdf](https://www.innovatingjustice.org/sites/default/files/media/document/2023/CJI_Gideon_Monograph_1115_2023_pageview.pdf) ; <https://www.ojp.gov/pdffiles1/nij/307325.pdf>

# Barriers to Legal Representation in Rural Areas



- **Low wages**
  - Average annual wages for attorneys in rural counties are \$20,000 lower than those in urban areas.
- **Large caseloads**
  - The Bureau of Justice Statistics (BJS) estimated that 73 percent of county-based and 79 percent of state-based public defender offices in 2007 exceeded national caseload guidelines from 1973.
  - A 2023 study by [RAND](#) reinforces the findings of exceeded national caseload guidelines.
- **Frequent travel over long distances for court appearances and client meetings**
  - [One study](#) from 2018 reported that attorneys in one rural county in central New York traveled an average of 195 miles per case.
- **Lack of replacements for attorneys who leave or retire**
- **Lack of specialized representation – most rural attorneys are generalists**

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2578&context=mjlr> ; [https://sjlr.law.ucdavis.edu/archives/vol-27-no-1/08-SJLR-Winter-2023-27-1\\_GARRETT.pdf](https://sjlr.law.ucdavis.edu/archives/vol-27-no-1/08-SJLR-Winter-2023-27-1_GARRETT.pdf) ; <https://escholarship.org/content/qt2763j35b/qt2763j35b.pdf>



# South Dakota

## HB 1096 (2013)

- **Incentive payment**
  - Payable in five equal annual installments, each payment equal to 90% of one year's resident tuition and fees at the University of South Dakota School of Law
    - Amounts to \$12,513.60 per year and a total benefit of \$62,568 for each attorney
    - Appropriation of \$475,000 to provide incentive payment
- **Eligible counties**
  - County population of 10,000 or less;
  - Municipal population of 3,500 or less; and
  - Agree to provide a portion of the incentive payment
- Program Expansion
  - Made permanent in 2019
  - Expanded to 32 attorneys from 16
  - \$500,000 appropriated for incentive payment





# South Dakota

## Incentive payment program data

- 31 current and past participants
- 15 graduates, with 12 of those staying in the rural community to practice
- 5 terminated contracts

Year	State Contribution	County/Municipality Contribution*	State Bar Contribution*
FY15	\$ 6,256.80	\$ 4,379.76	\$ 1,877.04
FY16	\$ 31,284.00	\$21,898.80	\$ 9,385.20
FY17	\$ 50,054.40	\$35,038.08	\$15,016.32
FY18	\$ 66,947.76	\$43,797.60	\$18,770.40
FY19	\$108,242.64	\$78,835.68	\$33,786.72
FY20	\$112,622.40	\$78,835.68	\$33,786.72
FY21	\$ 87,595.20	\$61,316.64	\$26,278.56
FY22	\$ 93,852.00	\$65,696.40	\$28,155.60

\*Per Person, per year.



# Maine

[The Maine Commission on Indigent Legal Services](#) (MCILS) and the Rural Defender Unit (RDU)

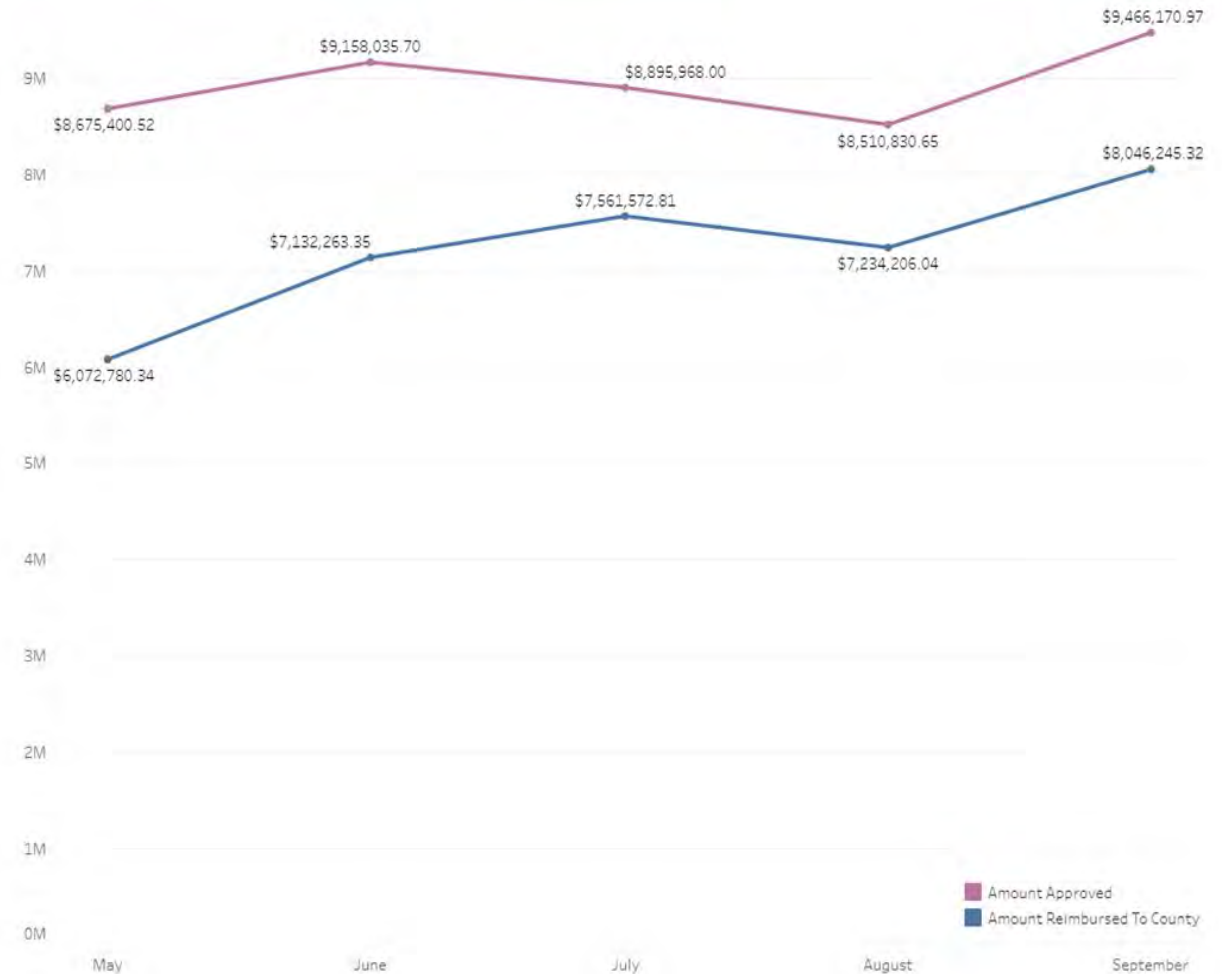
- The RDU was originally comprised of five attorneys with just under \$1 million in funding in 2022
- As of 2023, [\\$1.6 million](#) has been [appropriated](#) to fund one Deputy Executive Director position, one District Defender position, three Assistant Public Defender II positions, three Assistant Public Defender I positions, two paralegal positions and one legal secretary position
- “An estimated \$51 million is needed to open public defender offices in all 16 counties in Maine” – [The Right to Criminal Legal Defense in Maine, Nov. 2023](#)
- Recent [agency proposal](#) seeks \$2.5 million to add public defender offices in several counties
  - The proposed offices are designed to handle approximately [30 percent](#) of the adult criminal caseload in the area



# Ohio

## Proposed solutions

- Traditionally funded public defense services with a 50/50 split between state and local funds.
- [HB 33 \(2023\)](#) provides for funding entirely from the state level
  - \$366 million in appropriations to reimburse counties for indigent defense costs for Fiscal Year 2024 and 2025
- [Reimbursement rate](#)
  - Initial rate set at 85 percent for FY24
  - As of March 2023, submissions for indigent defense reimbursement totaled \$18.1 million
  - Limits on reimbursement
    - Hourly rate of reimbursement not to exceed \$75/hour



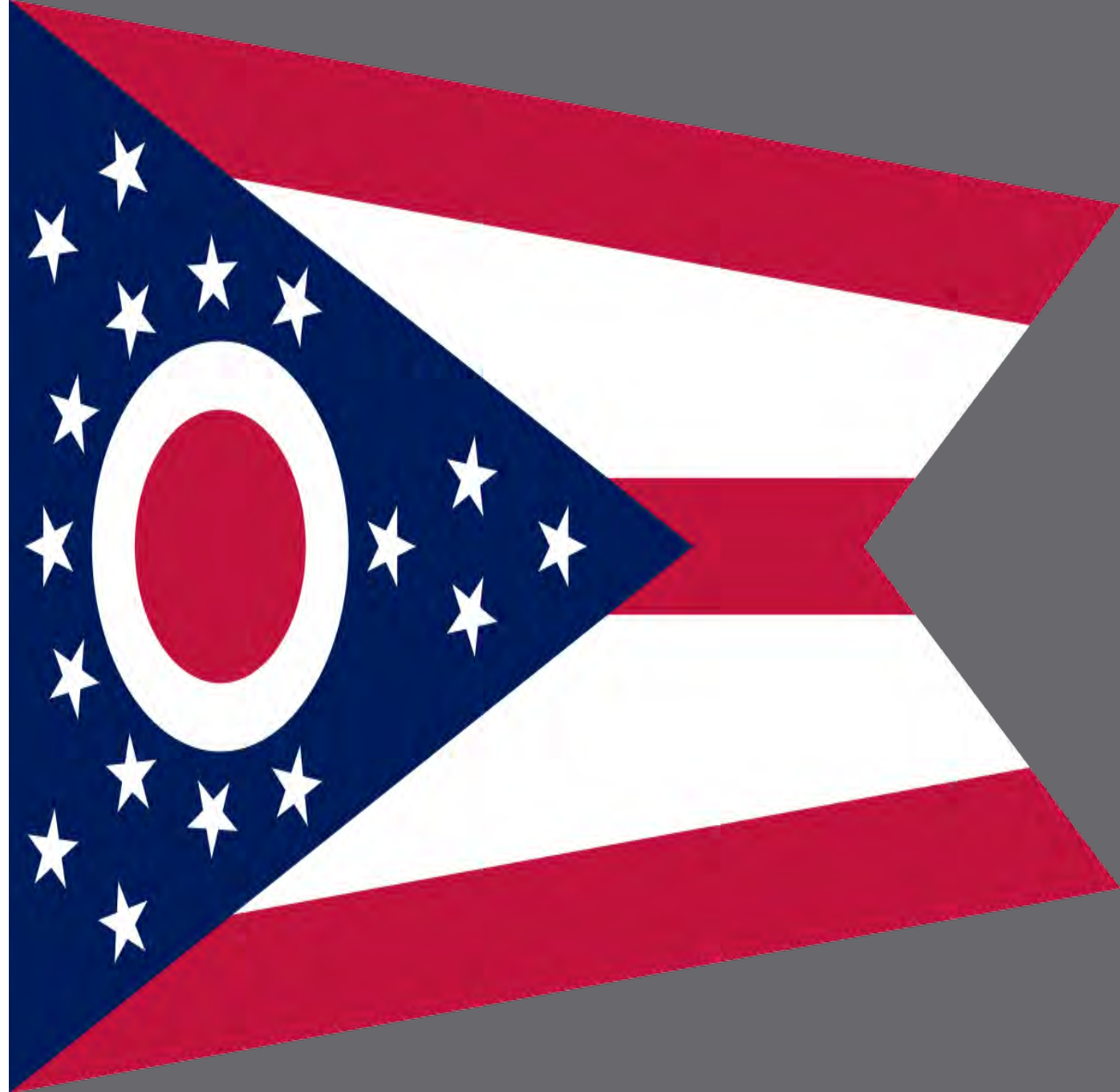
[https://www.ohiobar.org/globalassets/advocacy/access-to-justice/final-report\\_future-of-indigent-defense-task-force\\_01.24.24.pdf](https://www.ohiobar.org/globalassets/advocacy/access-to-justice/final-report_future-of-indigent-defense-task-force_01.24.24.pdf)  
<https://analytics.das.ohio.gov/t/PUBPUB/views/FY24PDExpenseReport/Final?%3Aembed=y&%3AisGuestRedirectFromVizportal=y>



# Ohio

## [HB 150 \(2023\)](#)

- **Establishes a legislative task force to study and report on indigent defense**
  - First report will be available in early 2024
- **Establishes the Rural Practice Incentive Program**
  - Purpose is to provide loan repayment on behalf of attorneys who agree to employment as service attorneys in areas designated as underserved communities.
  - If funds are available, participating individuals shall be reimbursed up to \$50,000
  - \$1.5 million transferred from the General Revenue Fund to the Rural Practice Incentive Fund



[https://www.ohiobar.org/globalassets/advocacy/access-to-justice/final-report\\_future-of-indigent-defense-task-force\\_01.24.24.pdf](https://www.ohiobar.org/globalassets/advocacy/access-to-justice/final-report_future-of-indigent-defense-task-force_01.24.24.pdf)

# Texas

- **Regional Public Defender Offices**

- The Texas legislature created the Texas Task Force on Indigent Defense in 2001. In 2011, the Task Force became the Texas Indigent Defense Commission (“TDIC”)
  - Tasked with funding, overseeing, and improving public defense in all Texas counties
- TDIC provides sustainability funding to cover 2/3 of counties’ costs for participating in rural regional public defender programs
- In FY20, TDIC awarded \$14.8 million to non-capital regional defender offices
- In FY20, TDIC awarded \$3.2 million to the Regional Public Defender Office (RDPO) for Capital Cases



# Texas

- [Managed Assigned Counsel \(“MAC”\) Statute and Program Models](#)
  - Tex. Code Crim. Proc. Art. 26.047
  - Three types of MAC programs:
    - A program operated by a governmental entity;
    - A program operated by a nonprofit corporation; or
    - A program operated by a bar association
- **The Lubbock Private Defender Office**
  - Contracts with Lubbock County to operate most components of the indigent defense system
  - Includes responsibilities such as attorney appointments, approval or attorney vouchers, and payment of attorney fees
- **The Capital Area Private Defender Service**
  - Typically, does not make attorney appointments, but rather establishes who is on the appointment list, which court administration uses to make most appointment
  - Approves attorney vouchers, but payments are still made by the county (Travis)





# Michigan

## Task Force Recommendations

- **Special Assignment Triage Administration**
  - Would function as a Managed Assigned Counsel administrator, with duties including:
    - Assigning cases; overseeing the work and needs of attorneys; approving expert and investigator funds; and review and approval of attorney invoices
    - “The overwhelming consensus from these attorneys is that there is interest in taking cases if the hourly rate matches the federal Criminal Justice Act panel rate (\$158.00 per hour for non-capital cases and \$202.00 per hour for capital cases) with compensation for travel and expenses.”



# Michigan

## Task Force Recommendations

- **Network of Regional Public Defenders**
  - Goal is to act as a backstop to cover cases with conflicts and overflows of some rural counties
  - Accomplished by contracting with non-profit corporation or establishing under the MIDC Act
- **Statewide Public Defender system**
  - Would create the Michigan Public Defender's (MPD) Office with an annual budget, staff of attorneys, and ability to assign cases and regions to attorneys
- **Attracting Younger Defense Team Members**
  - Would improve tuition repayment programs, establish prepaid tuition programs, and/or initiate high school and college-level participatory programs



- **State Resources:**
  - **Texas**
    - [Checklist and Timeline to Set Up a Single County Public Defender Office After a Grant Award from TIDC](#)
    - [Checklist to Set Up a Regional Public Defender Office After a Grant Award from TIDC](#)
    - [A Short Guide to Texas Public Defender Oversight Boards Including Sample Language](#)
    - [Primer on Managed Assigned Counsel Programs](#)
  - **Michigan**
    - [Michigan Indigent Defense Commission Standards](#)
  - **South Dakota**
    - [Indigent Legal Services Task Force Final Report and Recommendations \(Oct. 2023\)](#)
- **National Association of Public Defense**
  - [Annual Report \(2023\)](#)
  - [Seven Keys to Understanding the National Public Defense Workload Study](#)
    - [National Public Defense Workload Study \(RAND\)](#)
- **National Legal Aid & Defender Association**
  - [National Indicators of Quality Indigent Defense](#)
- **Law Review Articles**
  - [Lisa R. Pruitt et al., \*Legal Deserts: A Multi-State Perspective on Rural Access to Justice\*, 13 Harv. L. & Pol’y Rev. 15 \(2018\)](#)
  - [Andrew Davies and Alyssa Clark, \*Gideon in the Desert: An Empirical Study of Providing Counsel to Criminal Defendants in Rural Places\*, 71 Me. L. Rev. 245 \(2019\)](#)
  - [Lisa R. Pruitt and Beth A. Colgan, \*Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense\*, Ariz. L. Rev. 220 \(2010\)](#)
  - [Adam Gershowitz, \*The Prosecutor Vacancy Crisis\*, William & Mary Law School Research Paper No. 09-480 \(2024\)](#)



# Thank you for joining today!

Jessica Guarino, Esq.

Policy Analyst

Jessica.Guarino@ncsl.org

303.856.1419 (o)

720.297.1495 (m)



[www.ncsl.org](http://www.ncsl.org)



@NCSLorg



Denver  
7700 East First Place,  
Denver CO 80230

Washington D.C.

444 North Capitol Street, N.W.  
Suite 515,  
Washington, D.C. 20001