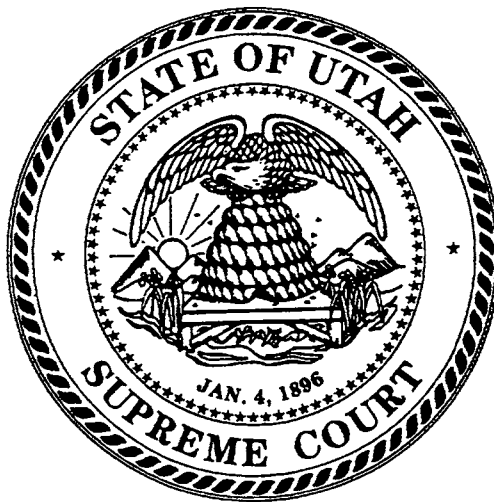


Task Force
on
**Appellate Representation of
Indigent Defendants**



FINAL REPORT
September 14, 1994

This report of the Task Force on Appellate Representation of Indigent Defendants represents the debate and recommendations of the Task Force. Although the Task Force was commissioned by the Supreme Court, the report does not necessarily represent the position of the Supreme Court. For additional information, contact the Administrative Office of the Courts, 230 South 500 East, Suite 300, Salt Lake City, UT 84102.

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TASK FORCE MEMBERS

DAVID B. THOMPSON
Private Counsel
Task Force Chair

CURTIS C. NESSET
Private Defense Counsel

WALTER F. BUGDEN, JR.
Private Defense Counsel

HON. GREGORY K. ORME
Utah Court of Appeals

SCOTT M. BURNS
Iron County Attorney

RON PERRY
Summit County Commissioner

WILLIAM F. DAINES
Deputy Weber County Attorney

BILL THOMAS PETERS
Private Counsel

TODD GODFREY
Deputy Salt Lake City Attorney

CHRISTINE F. SOLTIS
Assistant Utah Attorney General

F. JOHN HILL
Salt Lake Legal Defenders Association

JOAN B. WATT
Salt Lake Legal Defenders Association

JOAN HELLSTROM
Weber County Commissioner

HON. I. DANIEL STEWART
Utah Supreme Court
Task Force Liaison

LYLE W. HILLYARD
State Senator, District 25

* * *

G. FRED METOS
Private Defense Counsel

BRENT M. JOHNSON
Task Force Staff Counsel

ANNINA M. MITCHELL
Assistant Utah Attorney General

COLIN R. WINCHESTER
Task Force Staff Counsel

**UTAH STATE
LAW LIBRARY**

I. INTRODUCTION

The Utah Supreme Court formed the task force to study the feasibility of creating a statewide appellate public defender's office, based upon its concern about the variable quality of legal representation afforded indigent criminal defendants at the appellate level. A majority of the task force concluded that there is a significant problem with inconsistent appellate representation of indigents, and that some modification of the current system is necessary.

II. MODELS CONSIDERED

1. Introduction

Utah has adopted a county-based indigent criminal defense system, under which each county pays for the legal representation of indigents at trial and on appeal. Because this system has resulted in concerns about the quality of representation, particularly at the appellate level, the task force considered the various models for indigent criminal representation adopted in other states.

Whatever the system, a commission, council, or board is generally created to oversee indigent defense within a particular region. The commission, council or board is usually a combination of attorneys, elected officials, and lay persons, as prescribed by statute or ordinance. The number of members varies from three to fifteen. Appointments generally are made by either the governor, the legislature, the judiciary, or some combination of the three.

Although they vary from state to state, the powers and duties of these oversight bodies include the following:

1. Appointing the public defender (state, county, or district);
2. Setting the qualifications for the public defender;
3. Setting the qualifications for conflict or other contract defenders;
4. Negotiating contracts with conflict and other contract defenders, and approving fees for those attorneys;
5. Assisting counties or districts in negotiating contracts with public defenders;
6. Setting the qualifications for capital case public defenders;
7. Setting the standards for determining indigency and thus eligibility for appointed counsel;

8. Determining indigency on a case-by-case basis;
9. Preparing budgets;
10. Negotiating for office space for public defenders;
11. Distributing funds to counties or districts for their defense programs;
and
12. Providing training.

Members of the commission, council or board usually serve without compensation. They are reimbursed for their expenses and travel. In some instances, the oversight body may hire and pay for staff to assist in the performance of its duties.

2. Statewide Defender Office

A large percentage of states have a statewide defender office, which may have up to five divisions: (1) trial division; (2) juvenile division; (3) mental commitment division; (4) appellate division; and (5) post-conviction division. The statewide office usually handles all indigent criminal matters, subject only to conflicts. The office is often part of the executive branch, but it is sometimes linked with the judicial branch.

The appellate division generally handles appeals from the office's trial division and contract attorneys, as well as appeals in cases where the defendant had private counsel at trial but has insufficient funds to pay an attorney on appeal.

Statewide offices are typically funded through a general appropriation from the legislature. But, in some states, the counties are required to pay a certain percentage of the office's budget or to provide space, furnishings, and utilities for the branch offices. Many states have also increased filing fees or criminal fines to help provide funding.¹

3. Statewide Appellate Defender Office

Several states that do not have a "full service" statewide defender office nevertheless have a statewide appellate defender office. These states may have a main office with several satellite offices, but typically the office is in one location. The offices are part of the judicial or executive branch.

¹ For additional detail on the statewide defender office system, see Appendix, Subcommittee Report: Indigent Defense In Other States (hereafter "Subcommittee Report") at 5-9.

States have varying requirements for acceptance of cases by the appellate defender office. Some require the office to take all indigent cases. Others mandate that the office take only those cases (a) the budget will allow, (b) in which ineffective assistance of counsel is alleged, or (c) where the trial court, in its discretion, assigns the case to the office.

As with the full service defender offices, appellate defender offices are usually funded through legislative appropriation. In some states, the counties are required to contribute, or a fund is set up which is comprised of a portion of filing fees and/or criminal fines.

Several state appellate offices also have post-conviction attorneys or sections. Post-conviction work depends upon budget constraints and whether a right to counsel in post-conviction proceedings has been legislatively or judicially recognized.²

4. State Resource or Training Office

Several states offer resources or training to public defenders through a central office. The services range from periodic classes on pertinent criminal law subjects to libraries and computer networks carrying the latest information. The state commission, council, or board often coordinates the training or resource systems.

The funding for this alternative may come from a legislative appropriation or criminal fines collected expressly for this purpose.³

5. Capital Resource Center

Numerous states have received federal funds to establish a capital resource center. These centers assist in the representation of or directly represent capital defendants in the post-conviction stages of their cases.

The centers are designed to improve the practice of attorneys representing capital defendants in federal post-conviction proceedings. The federal funds are used for training and resources, or to hire attorneys to handle post-conviction matters, including cases that have been remanded to state court for a new trial.⁴

² For additional detail on the statewide appellate defender office system, see Appendix, Subcommittee Report, at 10-12.

³ For additional detail on the state resource or training office system, see Appendix, Subcommittee Report, at 12-13.

⁴ For additional detail on capital resource centers, see Appendix, Subcommittee Report, at 14.

6. State Capital, Conflicts, and/or Post-Conviction Office

Finally, several states have offices that handle only capital cases, conflict cases, or post-conviction cases. Additional detail on such systems is contained in Appendix, Subcommittee Report, at 15.

III. RECOMMENDATIONS

The task force considered each of the foregoing systems, as well as the alternative of simply adopting a rule of appellate procedure requiring appointed counsel on appeal to meet certain minimum qualifications (compare Utah R. Crim. P. 8 -- setting forth minimum qualifications for appointed trial and appellate counsel in capital cases). The task force rejected the rule option and concluded that a statewide appellate defender office should be created.

The task force makes the following recommendations for the appellate representation of indigent criminal defendants in Utah:

1. **A statewide Appellate Public Defender's Office should be created; it should be placed within the judicial branch for funding purposes only.**

The task force concluded that a statewide appellate defender office would best serve the criminal justice system in Utah. The task force recommends that the office be placed in the judicial branch for funding purposes only based on its belief that funding of the office would be least susceptible to unwarranted cuts in that branch. The judicial branch would be particularly sensitive to the service provided by an appellate defender office.

A centralized office, with a staff of specialized attorneys who are given adequate resources, should provide consistently competent representation of indigent criminal defendants at the appellate level. Competent representation through the direct appeal process, something that too frequently is not provided, ensures the indigent defendant a fair appeal and should also dramatically reduce the time and money currently spent by the State in defending against post-conviction petitions in state court.

In short, indigent criminal defendants who have received competent representation on direct appeal are less likely to have a legitimate basis for filing a petition for post-conviction relief. Further, the post-conviction courts will be less inclined to review a conviction that has been previously presented for appellate review by competent and adequately funded appointed counsel.

2. **A five member Appellate Public Defender Commission should be created, its membership to be defined by statute as follows:**
 - (a) **One retired judge appointed by the Utah Judicial Council;**
 - (b) **Two attorneys appointed by the Utah State Bar;**
 - (c) **One attorney appointed by the Minority Law Section of the Utah State Bar; and**
 - (d) **One public member appointed by the Governor.****In making appointments to the Commission, each entity should take into account the ethnic diversity of the State of Utah.**

The task force believes the foregoing scheme fairly distributes the appointment responsibility among the three entities in the best position to know of qualified persons to serve on the Commission.

3. **The commissioners should have terms of six years each, staggered so that new commissioners are appointed very two years.**
4. **The unpaid commissioners should act as a "board of directors," responsible for appointing and retaining the Appellate Public Defender, developing general policies for the Appellate Public Defender's Office, and approving promotions within the Appellate Public Defender's Office.**
5. **None of the commissioners should be eligible for appointment as the Appellate Public Defender or for employment by the Appellate Public Defender's Office during his or her term on the Commission.**
6. **The Appellate Public Defender should possess the following qualifications:**
 - (a) **Be admitted to practice in Utah;**
 - (b) **Have at least five years of practice as an attorney prior to appointment; and**
 - (c) **Have special experience in appellate practice and criminal law and procedure.**
7. **The Appellate Public Defender should be appointed for five years, and should be permitted to apply for reappointment at the end of the term.**
8. **The Appellate Public Defender should appoint a chief deputy, deputy appellate public defenders, and staff personnel. Salaries for professional and clerical staff should be commensurate with comparable positions in the Utah Attorney General's Office.**
9. **The Appellate Public Defender's Office should be staffed by eight attorneys, and individual case loads should be consistent with United States Department of Justice and American Bar Association standards.**

Based on figures supplied to it by the Criminal Appeals Division of the Utah Attorney General's Office and the Appellate Division of the Salt

Lake Legal Defenders Office (the largest public defender office in the state), the task force estimates that eight attorneys would be necessary to handle the case load. The Criminal Appeals Division of the Attorney General's Office currently employs nine full-time attorneys and one part-time attorney for direct appeal and certiorari work.

10. **The Appellate Public Defender's Office should be established in Salt Lake City, and, if possible, located adjacent to the state courts complex in order to allow convenient access to the courts and the state law library.**
11. **The Appellate Public Defender's Office should be responsible for representing all indigent defendants in their first appeal of right in felony criminal cases, including capital cases. Additionally, the Office should be authorized to file petitions for certiorari and amicus briefs (with leave of court).**

The task force carefully considered the appropriate scope of representation provided by the office. Although many on the task force believed that the office's representation of indigent defendants could appropriately extend to post-conviction proceedings, a majority concluded that such an extension is not yet warranted under current state and federal law, which does not require appointment of counsel in state post-conviction proceedings.

While technically an indigent defendant is not entitled to appointed counsel on certiorari petitions, at least on those to the United States Supreme Court, the task force viewed such petitions as more closely related to the direct appeal process than are post-conviction relief petitions.

Finally, the task force concluded that misdemeanor appeals should remain with the local public defender offices. This scheme would mirror that on the prosecution side of the equation, where the Attorney General's Office is statutorily obligated to represent the state only in felony appeals. But, the Appellate Public Defender's Office would have the authority to request permission to file an amicus brief in a misdemeanor appeal that presents a significant question for review.

12. **Indigency should be determined according to standards and procedures used at the trial level.**
13. **The Appellate Public Defender's Office should be funded through a combination of an appropriation from the state legislature and contributions from each of the counties.**

The task force considered the various funding mechanisms in other states and received direct input concerning the funding issue from

Senator Lyle W. Hillyard, 25th District, Utah State Senate. It became apparent to the task force that this issue involves numerous political variables which make it impracticable to devise a specific recommendation for funding.

But, the task force's review of funding in other states and its discussion with Senator Hillyard led it to conclude that some combination of state and county funding is the most appropriate solution. Suggested approach: The state should pay a significant percentage of the cost of a statewide appellate office, and the remainder should be paid by the counties, each contributing proportionately according to its tax base, its population, and the number of appeals it generates per year. For example, Wyoming uses the following formula to determine each county's contribution:

$$\frac{\text{county assessed valuation} + \text{county population} + \text{\# of county cases}}{\text{total state valuation} + \text{state population} + \text{\# of total cases}}$$

3

Finally, based on figures supplied to it by the Utah Attorney General's Office concerning costs for its criminal appellate division, the task force estimates that the annual budget for the Appellate Public Defender's Office would be \$900,000 to \$1,000,000.

APPENDIX

SUBCOMMITTEE REPORT
INDIGENT DEFENSE IN OTHER STATES

TASK FORCE
ON

APPELLATE REPRESENTATION OF
INDIGENT DEFENDANTS

INTRODUCTION

The following is divided into three sections each containing a description of the types of indigent systems in place in other states. The first section lists the types of programs available and the states that use each program. The second section gives general descriptions of the various programs, and includes descriptions of programs in states with populations and situations similar to ours; and the third section gives a little more detail on the programs that each state uses, and the manner in which the state uses the program.

The Spangenburg Group provides consultation and assistance in developing indigent defense programs. The Group recognizes that states are usually not able to develop a fully funded statewide public defender office in a short period of time. The Group recommends that states begin by establishing some type of indigent defense commission, council or board to begin oversight of indigent defense and to begin setting clearer standards for indigency and representation. Once a commission is established, the state may then proceed to add other programs incrementally: a resource and training center; an appellate defender office; and finally a statewide public defender's office.

TYPES OF INDIGENT DEFENSE PROGRAMS

1. State Commission, Council or Board
2. County or District Commission, Council or Board
3. Statewide Defender Office
4. County or District Defender Office
5. State Appellate Defender Office
6. State Resource or Training Center or Program
7. Federally Funded Capital Resource Center
8. State Capital, Conflicts and/or Post-Conviction Office

<u>State</u>	<u>State</u> <u>Comm'n,</u> <u>Board</u>	<u>County</u> <u>Comm'n,</u> <u>Board</u>	<u>Statewide</u> <u>Defender</u> <u>Office</u>	<u>County</u> <u>Defender</u> <u>Office</u>	<u>State</u> <u>Appellate</u> <u>Defender</u>	<u>State</u> <u>Resource</u> <u>Center</u>	<u>Capital</u> <u>Resource</u> <u>Center</u>	<u>Capital,</u> <u>Conflicts</u> <u>Office</u>
Montana	X			X	X			
Nebraska				X				
Nevada			X					
New Hampshire				X				
New Jersey			X					
New Mexico	X			X		X		
New York				X				
North Carolina				X	X		X	
North Dakota				X				
Ohio	X	X	X	X				
Oklahoma	X			X				
Oregon	X			X	X			
Pennsylvania	X	X		X	X			
Rhode Island			X					
South Carolina	X			X	X		X	
South Dakota		X		X				
Tennessee	X			X				
Texas				X				
Utah				X				
Vermont			X					
Virginia	X		X					
Washington				X				
West Virginia	X			X				
Wisconsin	X		X					
Wyoming			X					

offered by a different group. The defender will usually have the discretion to appoint assistant defenders and employ all other staff, although in some cases, elected officials also appoint the assistant defenders, particularly those that will head the local offices. The term of office of the defender will be set by statute and is typically from 4 to 6 years.

Each state office is organized differently, but there are many common characteristics. The main defender office will usually be located in the state's capital city. The office may have a trial division, appellate division, juvenile division, mental commitment division, and a post-conviction division. Satellite or local offices will be located in those cities, counties or districts in which the caseload warrants the expense of a local office. At least one state uses local law firms or defender organizations for some of its satellite offices. An office might be located within a court building for convenience. A post-conviction division might be located at or near a state prison. Areas without a main or local office will either be serviced by attorneys traveling from those offices, or by attorneys who have contracted with the state office or are appointed on an ad hoc basis..

2. Conflicts. The local court or county will usually be required to hire attorneys for conflicts, although the defender office may have that responsibility in some states. These appointments can be done on an as needed basis or with contract attorneys.

3. Caseload. The statewide office is usually required to handle all indigent defense matters, subject only to conflicts. However, some state budgets do not allow representation in all matters and county sponsored defense may be required.

Although courts usually determine indigency, some offices have been given the authority to determine indigency, subject to court review.

4. Funding. Statewide offices are usually funded from a general appropriation from the state's legislature. In some cases, the state's counties are told to pay a certain percentage of the office's budget. In Alaska, municipalities may be required to reimburse the fees and costs expended in defending a person being prosecuted under a local ordinance. Some states require the county to provide office space, utilities and furnishings for the local offices. Many states have increased filing fees or criminal fines to help fund the office. The indigent is often ordered to repay the costs and/or fees of representation when the indigent is able, and the state may impose a lien on the indigent's real or personal property until the debt is paid.

5. Appellate Divisions. The appellate division of a statewide office will typically handle those appeals which were handled by the trial division and contract attorneys, as well as appeals from private attorneys whose clients ran out of funds. Appellate defense by the office is again often determined by the budget of the office. If the office cannot handle all appeals, priority is usually determined by several factors that include: 1) how effective was trial counsel? and 2) what type of penalty is at stake for the defendant? The greater these factors, the higher the odds of representation. Many appellate divisions will not handle appeals of cases in which ineffective assistance of counsel is alleged on the part of the trial division. These cases will be referred back to the court and the court will appoint a contract or ad hoc attorney.

COLORADO:

The Colorado State Public Defender Office is within the judicial branch. The Supreme Court establishes a five member Public Defender Commission. The Commission is comprised of 3 attorneys and 2 nonattorneys. The Commission appoints a public defender to a five year term. The only qualifications that the Defender must possess is admission to the Colorado Bar and practice for at least 5 years. The Commission can apparently select from a pool of applicants.

The Defender appoints a chief deputy, deputies and staff. The state supreme court establishes the salaries. The Defender has a main office and satellite offices. The Defender handles all trials in which conviction may result in incarceration. The only cases that the Defender will not handle are conflicts. Indigency is determined by the Defender, subject to court review. An indigent may ask the court to appoint the Defender or the indigent may approach the Defender directly

The Appellate Division of the office handles appeals from the trial division and from private attorneys whose clients have run out of money. The Appellate Division is statutorily only required to handle those appeals which the division feels have merit, although it does handle all first appeals. The Appellate Division will only petition for a writ of certiorari if the case has merit. Cases in which ineffective assistance of counsel is alleged on the part of the trial division are handled by contract attorneys appointed by the trial or supreme court and approved by the supreme court. The Appellate Division does not handle post-conviction matters. The trial court will appoint contract attorneys in those matters.

The funding of the office is by legislative appropriation. For fiscal year 1993 this was \$23 million, which covered 22 offices and 295 employees. The office budget does not include payments to conflict attorneys. The supreme court has a separate legislative appropriation to pay conflicts attorneys. The supreme court approves conflict fees prior to payment.

WYOMING:

The Office of the State Public Defender is within the executive branch. The State Defender is appointed by the governor. The governor may also appoint one assistant public defenders in each judicial district. These assistants serve at the will of the Defender. The staffs of the Defender and assistants are employed by the Defender.

The Defender handles all cases in which the Defender or an assistant is within geographic proximity and in which the Defender does not have a conflict. The Defender's office has contracts with 15 separate attorneys to handle nongeographic and conflict matters. The funding for these contracts is included within the office's annual budget. The office handled 5000 cases last year.

C.
County or District Defender Office

1. **Organization and Appointments.** This option remains the most popular for states, although there is not uniformity as to how these offices are established and controlled. County or District offices are usually established and paid for by local county governments, however there are many other schemes. Some states establish local commissions to appoint and oversee local defenders; some states have elected county officials choose the public defender; some provide for county public defenders to be locally elected officials; and some local defenders are appointed by a judge or group of judges. The term of office of the defender might be limited by statute or the county or district may have the discretion to appoint to an unlimited term.

2. **Funding.** Funding for these local defenders is typically the responsibility of the local county government, but a number of states contribute state funds or allow counties to request a reimbursement of funds expended. Louisiana contributes a set amount each year, while South Carolina contributes an amount based on the county's population. Some states, such as Indiana, allow counties to request reimbursement from funds collected on criminal fines assessed. Conflict and other contract attorneys are usually paid by the county, although some states contribute funds. Many states statutorily set the hourly rate at which counsel will be paid. Some states have put caps on the maximum amount an attorney may receive in each case, although these provisions have been struck down in some states as being unconstitutional. These states find that the caps may affect the quality of the representation.

3. **Conflicts.** The discretion to select conflict and other contract attorneys might be placed in the hands of any number of groups or persons: county officials, county indigent defense commissions, the public defender, a judge or judges, or possibly even a state commission or council.

4. **Caseload.** The cases that the defender is required to handle is determined by statute. Typically the defender will handle all felonies and most misdemeanors. The defender will handle capital cases unless the state has a separate capital office. The defender may also be required to handle juvenile and some civil matters. The defender will also usually be required to handle the appeal, unless the state has an appellate office that handles appeals, or unless the trial or appellate court feels that it is necessary to replace counsel. The defender will also be required to handle post-conviction matters if the legislature, state high court or trial court has determined that representation is either mandatory in most all cases or necessary in that particular case.

D.
State Appellate Defender Office

1. **Organization and Appointments.** Several states that do not have a statewide defender office, do have a statewide appellate defender office. These states may have a main office with a satellite office or two, but typically the office is in one location. The state appellate office

the office may handle at any one time. The current cap is six. If the number is exceeded, the court administrator appoints a qualified attorney. The appointed attorney works for \$40 an hour with no cap on the total amount paid.

The funding for this office is by legislative appropriation. The annual budget is \$3.6 million for 19 attorneys and 11 support persons. The state does not receive any federal or county contributions.

MONTANA:

The Montana State Appellate Defender's Office is within the executive branch, although it considers itself to be an independent agency. The Defender is appointed by a five member Appellate Defender Commission, which Commission has been appointed by the governor. The Commission establishes the qualifications for the Defender, as well as the Defender's duties.

The Defender's office is approximately two years old. The office started as a test project with a two year term imposed by the legislature. The legislature recently gave the office permanent status. The office currently consists of the Defender and a paralegal. The office has an annual budget of \$100,000. The legislature has established the District Court Fund which pays for indigent defense at all levels, including the appellate office. The District Court Fund is comprised of a combination of county contributions and a legislative appropriation. The Defender occupies office space in the state capitol and uses the Supreme Court's library.

By statute, the Defender is to accept appeals in three instances: when ineffective counsel is alleged, when the trial court feels that the Defender should accept the matter or when the office agrees to accept representation. The intent in creating the office was to have the Defender accept all of the "difficult" cases. The Defender has thus far been able to offer some type of assistance in all cases requested. The assistance has ranged from simply offering advice to an attorney, to entering an appearance as co-counsel, to representation of the defendant. The two most populous counties (out of 56) have legal defender associations which usually handle the appeals of cases in those counties.

The Defender is not required to take a case beyond the first appeal, but the office has an unwritten policy that it will remain with a case through certiorari and post-conviction, if the case has merit. The Defender will usually not handle post-conviction work in cases in which the appeal was handled by another attorney.

E.

State Resource or Training

1. **Organization.** Several states offer resources or training to public defenders. This may range from periodic classes taught to a library and computer network carrying the latest

F.
Capital Resource Center

Many states have received federal funds to help establish a capital resource center. The federal government might require state matching of the funds. These centers assist or handle post-conviction capital cases. The centers are designed to improve the practice of attorneys in capital cases that find their way to federal courts on post-conviction matters. The funds received from the federal government might be used for training and resources, or for the hiring of attorneys to handle post-conviction capital cases, including matters that have been remanded for a new trial. The recipients of federal funds have traditionally been those states with the greatest number of persons on death row.

Selected Model

NORTH CAROLINA:

The North Carolina Capital Resource Center is under the direction of the state administrative office of the courts. The Center shares office space with the state's appellate defender. The Center employs a director, 4 attorneys and 2 staff persons to handle post-conviction capital cases. The Center has also handled direct appeals. The Center also provides consultation to attorneys in capital cases at the trial level and will often make a direct appearance in matters that have been remanded for a new trial. There are approximately 150 persons on death row in North Carolina and the Center is involved to some extent in all of these cases.

In multiple defendant cases, the Center uses the assistance of law professors at three law schools near the Center. The professors provide only consultation for attorneys handling the multiple defendant cases. If a conflict arises, the Center will refer the case to the state appellate defender who will hire a conflict attorney. The Center relies heavily on pro-bono assistance from the bar to handle the 150 cases.

The state legislature provides an annual appropriation for those matters which are in state court, whether it is consultation, post-conviction, a retrial or a direct appeal. The federal government pays for all post-conviction matters that are in federal court. The Center bills the federal government on a monthly basis for the time spent on federal cases. For 1993, the federal government paid over \$400,000. The federal government promptly pays the invoices.

The center was originally established with IOLTA funds. After a period of time, and several applications, the Center was able to obtain matching funds from the federal government's Defender Services. The federal government's contribution has become greater than 50% due to the number of cases that are in federal court.

- b. Commission chooses a public defender and sets the defenders budget
- c. The public defenders are paid by the state and have six year term
- d. The public defender hires a staff with the commission's approval
- e. Staff fees are also paid by the state
- f. The public defender also handles the **appeal**, there is no statewide office
 - i. The trial attorney will handle the appeal if the commission approves, otherwise, new counsel will be appointed.
- g. **Appellate fees** are approved by the appellate court and paid out of state treasury
- h. The public defender will also handle **post-conviction** proceedings if appointed by the trial court.
 - 1. Trial court has discretion whether to appoint, but there is no apparent limit for post-conviction appointments.
 - 2. Have received federal funds for post-conviction, death penalty cases

Alaska - §18-85

- 1. State Public Defender Agency telephone no. (907) 279-7541
 - a. Within the Department of Administration
 - b. Governor appoints public defender from 2 or 3 recommended by the Judicial Council
 - c. \$7.6 million annual budget
 - i. We have copy of annual report
 - ii. Amount spent on appellate work is not separated.
 - d. State Defender Office handles trial, **appeal**, **post-conviction**, some civil
 - i. 17,000 cases in 1992
 - A. 142 **felony appeals**
 - B. 49 **misdemeanor appeals**
 - C. 613 **postconviction**
 - e. 92 total staff, 55 attorneys
- 2. Public defender has a four year term and appoints own assistants and staff
- 3. Public defender can contract with other attorneys for local representation
 - a. Paid from agency budget - (however, they do not do this because of a lack of funds)
- 4. Municipalities reimburse the cost of defense when prosecuting under a local ordinance

Arizona - §11-582 §12-117

- 1. Each county has its own public defender
 - a. Fees of public defender are paid by county
 - b. The public defender will handle the **appeal**
 - c. Appointed counsel will handle the following post-conviction proceedings:
 - i. All capital matters
 - ii. The first habeas for non-capital

- b. State Defender appoints a chief deputy, deputy defenders and staff at salaries approved by the Supreme Court
- c. State Defender represents in trials and appeals. if appeals have merit
- d. State Defender decides question of indigency subject to court review
 - i. Indigent can be referred by court or approach agency on won.
- e. Annual budget of \$23 million
 - i. 22 offices. 295 employees
 - ii. Separate **appellate** office of 20 attorneys, plus staff
- f. Does not handle **post-conviction** such as habeas

Connecticut - §51-289

- 1. State Public Defender Services Commission
 - a. Comprised of 7 members: two judges, one by governor, two each by house and senate
 - b. Commission appoints state public defender and deputy to four year terms
- 2. State Defender appoints public defenders in each district and a **state appellate defender** telephone no. (203) 566-5328
 - a. Salaries and staff of all defenders are set and paid by the Commission out of its budget
 - b. Annual budget is \$15 million
 - c. 252 employees, 33 offices
 - d. Appellate division also handles **postconviction**
 - i. Assistance is mandatory
 - ii. Its portion of budget is unknown

Delaware - §29-4601

- 1. State Office of the Public Defender
 - a. State public defender appointed by the governor to a 6 year term
 - b. Public defender selects assistants and sets the salaries
 - c. Salaries and fees are paid by the state
 - d. Office handles appeals
 - e. **Post-conviction** assistance if case has merit

Florida - §27.50 §27.701

- 1. Each judicial circuit has an elected public defender
 - a. Elected official hires assistants and personnel
 - b. Counties provide office space and other support as well as cover certain enumerated costs
- 2. State provides a **Capital Collateral Representative**
 - a. Handles all matters after direct appellate proceedings for persons convicted and sentenced to death
 - b. Capital Collateral Representative is appointed by governor
 - c. The representative is paid by the state and chooses own staff

- d. 5 district offices. 1 supreme court office
- e. Handles **all** appeals for 101 of 102 counties, might assist Cook county with their appeals if requested
 - i. Also handles some post-conviction
 - A. Post-conviction assistance must be provided if case is not frivolous
- f. 1500 to 2000 cases per year
- g. **Capital Resource Center** handles **post-conviction death penalty** cases
 - i. Federally funded

Indiana - §33-9-1

- 1. Counties appoint and contract with public defenders
- 2. **State Public Defender Council** telephone no: (317) 232-2490
 - a. Council comprised of all public defenders and court appointed counsel
 - b. Council is under the direction of an 11 member board elected by members
 - c. Council acts as a **resource center** assisting defenders as necessary and provides education. no direct involvement in trials or appeals
 - d. Budget is \$750,000.00 per year, \$600,000 from state, \$150,000 from feds
 - e. 14 total staff - 4 attorneys (1 research, 1 publications, 1 sentencing, 1 appeals)
 - f. Provides a library and computer network
- 3. **State Public Defender Commission**
 - a. 11 members from various appointments
 - b. Commission makes determinations of indigency and sets standards for representation
 - c. Commission assists counties in negotiating and developing defender contracts
- 4. **Public Defense Fund**
 - a. Comprised of fines assessed in cases
 - b. Counties may request reimbursement from this fund of amounts expended in defense
- 5. **Public Defender of Indiana** telephone no: (317) 232-2475
 - a. Handles strictly **post-conviction** cases
 - b. Budget of \$4 million per year
 - c. 37 attorneys (13 capital only), 72 staff
 - d. 1600 - 1800 cases open at a time

Iowa - §13B

- 1. **State Public Defender** telephone no: (515) 281-6186
 - a. Within the Department of Inspections and Appeals
 - b. State defender is appointed by governor
 - c. State defender may establish local defender offices in counties with sufficient cases
 - d. State defender appoints a **state appellant defender**

1. Each county has an Indigent Defender Board comprised of 3 to 7 members
 - a. Each board keeps a list of attorneys for indigent defense
 - b. The Board may employ a Chief defender and assistants
 - c. Each Board maintains an indigent defender fund which is comprised of ~~frs~~ \$10,000 each year from state, and county budgeted funds
 - d. Post-conviction assistance is mandatory if case has merit
 - e. Has received federal funds for post-conviction death penalty cases

Maine - §15-810

1. No apparent formal system
2. Public defenders are paid out of state coffers
3. Statute provides for appointment of attorney on post-conviction cases, if appointment is necessary for presentment of a fair claim. Appointment not necessary if petition will be summarily dismissed

Maryland - §27A

1. **State Office of Public Defender** telephone no. (410) 333-4826 Phyllis Hildreth
 - a. Governor appoints 3 member board of trustees
 - b. Board of trustees appoints, studies and observes the public defender
 - c. Budget is \$34,822,00.00, all from state
 - i. Administration: \$1,700,000
 - ii. District matters: \$27,520,000
 - iii. **Appellate and collateral** (29 total attorneys - 22 appeals and 7 collateral review): \$3,881,000
 - iv. Involuntary commitment: \$839,000
 - v. Capital defense assistance: \$854,000
 - d. 152,000 cases per year, 144,000 at trial level, remainder split among appeals, post conviction, involuntary commitment
 - e. Collateral review division takes habeas and when ineffective counsel is ~~and~~
 - f. Capital defense division assists other attorneys, but does not try the case
2. State defender appoints deputy and one defender in each district
3. Districts maintain lists of other attorneys on contract or used as needed
 - a. Fees are paid by the Office
4. Each district has an Advisory Board to study and observe each district defender
 - a. Board is comprised of four attorneys and one judge

Massachusetts

No apparent organized system
 Fees of defenders are paid by state
 Committee for Public Counsel Services

Michigan - §28.1114

1. **State Appellate Defender Commission**

Montana - §2-15-1020 §46-8-202

1. **State Appellate Defender Commission** telephone no. (406) 447-8205 Judge Dorothy Carter
 - a. 5 members appointed by the governor
 - b. Commission establishes qualifications and duties of **appellate** defense
 - c. **Appoints a State Appellate Defender**
2. State Defender takes appeals when ineffective counsel is alleged, when trial court feels it is appropriate, or when state office agrees to accept representation telephone no. (406) 449-4122
 - a. Office is one and a half years old
 - b. One attorney and one paralegal
 - c. Eventually hoping to handle all appeals
3. Counties create local public defender offices
 - a. **Post-conviction** assistance is discretionary

Nebraska - §29.1805

1. Judges within a district can appoint a District Public Defender
2. The appointment is approved and paid for by the governor
3. Subsequent district defenders are elected
4. Counties without a district defender can appoint and pay for a county defender
5. Public defender must receive leave of court to continue as **appellate** counsel
6. Post-conviction assistance is required if case has merit

Nevada - §180.010 §260.010

1. Counties of more than 100,000 persons create county defender offices
2. Office of the State Public Defender telephone no. (702) 687-4880 Karen
 - a. **State Defender** handles all **appeals** and **post conviction** - county defender assists
 - b. Handles trials in cities and counties without a defender (Las Vegas and Reno have their own defender)
 - c. Annual budget is \$1.3 million, 43% paid by state, 57% by participating counties
 - d. **Appellate division** has 3 attorneys
 - i. **Handles post conviction**
 - A. Assistance is mandatory

New Hampshire - §604 - B1

1. The Judicial Council, with governor approval, contracts with organizations or groups of lawyers to provide defender services
2. The fees are set by the supreme court and paid out of state appropriations
3. Judicial Council sets a caseload division between established public defenders and other appointed counsel

North Dakota

No apparent system

Ohio - §120.01

1. State Public Defender Commission
 - a. Comprised of 9 members of various appointments
 - b. Commission appoints a State Public Defender
2. State Defender handles **appeals** when trial court finds it is in best interests, otherwise county defender defends
3. Counties establish public defender commissions and public defenders
 - a. Counties can request reimbursement of up to 50% of expenses from state commission
4. Post-conviction assistance is required if case has merit

Oklahoma - §22 - 1355

1. Oklahoma Indigent Defense System Board
 - a. Composed of five members appointed by the governor
 - b. The "System" employs attorneys or contracts with attorneys when necessary.
 - c. Indigents are ordered to pay the costs of representation, which order is a debt against the person
 - d. Post-conviction assistance is required if case has merit
 - e. Has received federal funds for post-conviction death penalty cases

Oregon - §151.010

1. Counties generally handle public defense at trial level
2. State Public Defender's Committee
 - a. 5 members appointed by the supreme court
 - b. Appoints public defender to four year term
3. **Public Defender's Office** telephone no. (503) 378-3349 Betty
 - a. Annual budget of \$3.6 million
 - b. Handles all felony and misdemeanor **appeals**
 - i. Rarely do trial work
 - c. **No habeas**, although post-conviction assistance is mandatory
 - d. 19 attorneys, 30 total staff

Pennsylvania - §16 P.S. 99605

Each county has a public defender appointed by the county board of commissioners
Public Defender Commission
Office of Appellate Defender

Rhode Island - §12-15-1

1. **State Office of Public Defender** telephone no. (401) 277-3492 Barbara Hurst
 - a. Governor appointed, state employees

Post-conviction representation is mandatory

Tennessee - §8-14-101

1. State establishes a defender for each district
2. Voters elect subsequent defenders
3. State employees
4. All defenders are members of State District Public Defender Conference, which ensures efficient public defense
5. No separate **appellate** office
6. Post-conviction representation is mandatory
7. Has received federal funds for post-conviction death penalty cases

Texas - §26.041

Counties provide defense

County defenders handle trial and **appeal**

State assists with expenses only when offense committed by person already incarcerated

Post-conviction representation is mandatory

Has received federal funds for post-conviction death penalty cases

Utah

Vermont - §13-5201

1. State Office of Defender General telephone no. (802) 828-3168
 - a. Appointed by governor - state employee
 - b. State defender establishes local offices or contracts with local attorneys to provide service
 - c. 11 district offices, one administrative office (3 offices are contracts with private law firms)
 - i. 56 state employees
 - ii. Within administrative office: **2 appellate defenders, 1 prisoner's rights attorney, juvenile attorney**
 - A. **One appellate attorney** takes all appeals from local offices, one takes from contract attorneys
 - d. Annual budget of \$4,196,865: \$3,192,743 to public defender offices, \$1,004,122 to contract attorneys, no break down on appeals
 - e. Number of cases: 9,450 for public defense offices, 3,641 for contract attorneys, no break down on appeals
 - f. Receives \$35,000 from feds for drug and abuse cases

Virginia - §19.2 - 163.1

1. State Public Defender Commission telephone no. (804) 225-3363
 - a. 9 members of various appointments

1712 Carey Avenue
Cheyenne, WY 82002
(307) 777-7137