



VIRGINIA DEFENDERS

INDIGENT DEFENSE COMMISSION

2019

ANNUAL REPORT

**Virginia Indigent
Defense Commission**

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FY19 - Commission Members and (Appointing Authorities)

Chairman (July 2009 – Present)

The Honorable Alan E. Rosenblatt (ret.) (Senate of Virginia)

Steven D. Benjamin (Senate of Virginia)

Henry Chambers (Governor)

The Honorable Christopher E. Collins (Virginia House of Delegates)

John G. Douglass (Virginia State Bar)

Carolyn Grady (Virginia State Bar)

Karl R. Hade, Executive Secretary of the Supreme Court

The Honorable Edward W. Hanson, Jr. (Senate of Virginia)

James Hingeley (Governor)

Guy W. Horsley (Speaker of the House)

Kristen Howard (Crime Commission, designee)

The Honorable Richard Stuart (Senate of Virginia)

David D. Walker (Speaker of the House)

Carmen B. Williams (Speaker of the House)

Commission Staff

Executive Director

David J. Johnson

Deputy Director

Maria Jankowski

Information Technology Director

Jason Hodges

Human Resource Director

Donna Moore

Budget and Finance Director

Denise Sandlin

Public Defender Offices

Office	Localities Served	Year Established
Alexandria	City of Alexandria	1987
Arlington	County of Arlington and City of Falls Church	2005
Bedford	City/County of Bedford	1989
Capital Defender (Central)	Cities of Bedford, Charlottesville, Colonial Heights, Emporia, Hopewell, Lynchburg, Petersburg, Richmond, and Counties of Albemarle, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greensville, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Surry, Sussex, Westmoreland	2002
Capital Defender (North)	Cities of Alexandria, Fredericksburg, Winchester and Counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Harrisonburg, King George, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren	2003
Capital Defender (Southeast)	Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and Counties of Accomack, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, York	2003

Public Defender Offices

Office	Localities Served	Year Established
Capital Defender (Western)	Cities of Bristol, Buena Vista, Covington, Danville, Galax, Lexington, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, Waynesboro and Counties of Alleghany, Augusta, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe	2003
Charlottesville	City of Charlottesville and County of Albemarle	1998
Chesapeake	City of Chesapeake	2005
Danville	City of Danville	1990
Fairfax	City and County of Fairfax	1987
Franklin	City of Franklin and Counties of Isle of Wight and Southampton	1989
Fredericksburg	City of Fredericksburg and Counties of King George, Stafford, and Spotsylvania	1990
Halifax	Counties of Halifax, Lunenburg, And Mecklenburg	1990
Hampton	City of Hampton	2005
Leesburg	Counties of Fauquier, Loudoun, and Rappahannock	1988
Lynchburg	City of Lynchburg	1991
Martinsville	City of Martinsville and Counties of Henry and Patrick	1992

Public Defender Offices

<u>Office</u>	<u>Localities Served</u>	<u>Year Established</u>
Newport News	City of Newport News	2005
Norfolk	City of Norfolk	2002
Petersburg	City of Petersburg	1979
Portsmouth	City of Portsmouth	1986
Pulaski	City of Radford and the Counties of Bland, Pulaski, and Wythe	1988
Richmond	City of Richmond	1986
Roanoke	City of Roanoke	1976
Staunton	Cities of Buena Vista, Lexington, Staunton, and Waynesboro and the Counties of Augusta and Rockbridge	1972
Suffolk	City of Suffolk	1989
Virginia Beach	City of Virginia Beach	1973
Winchester	Counties of Clarke, Frederick, Page, Shenandoah, and Warren, and the City of Winchester	1989

VIRGINIA INDIGENT DEFENSE COMMISSION

MISSION STATEMENT

Dedicated to protecting and defending the rights and dignity of our clients through zealous, compassionate, high-quality legal advocacy.

The Virginia Indigent Defense Commission (VIDC), in conjunction with court-appointed private attorneys, provides legal representation for indigent people accused of crimes for which the possible punishment is incarceration or death.¹

This year the VIDC welcomed one new Chief Public Defender. New Hampton Public Defender Matthew Johnson replaced Rebecca Robinson, who was selected by the General Assembly to serve as a Juvenile and Domestic Relations Judge in Newport News. Mr. Johnson was the long serving Deputy in Portsmouth and brings a wealth of trial, supervising and training experience.

Community and policy engagement continues to grow in 2019. In addition to the tens of thousands of cases handled every year across the Commonwealth by the Public Defender offices, the Executive Director, Deputy Director, and many Public Defenders serve on various boards, commissions, committees, and other groups working toward improving the criminal justice system both statewide and in their communities. The Executive Director continues his engagement with DCJS (Department of Criminal Justice Services) by serving on the Criminal Justice Services Board and Advisory Committee on Juvenile Justice and Prevention. The Executive Director serves on the Board of Governors for VTLA and as Co-Chair of the VCJC (Virginia Criminal Justice Conference). He also serves as co-Chair of the VCJC committee tasked with studying the impact of body worn cameras on the criminal justice system and on the deferred disposition study committee.

The Deputy Director, as well as the Public Defender for Petersburg and the Capital Defender for the Southwest region, serves on the Virginia State Bar Criminal Law Board of Governors. The Deputy also continues to serve on the State Drug Treatment Court Advisory Committee as well as groups organized by the Supreme Court to review applications for Veterans Dockets and Mental Health Dockets. The VIDC appreciates the opportunity to engage with other stakeholders to ensure that the unique challenges facing indigent defendants in the Commonwealth are not overlooked.

A. VIRGINIA CODE § 19.2-163.01 - STATUTORY MANDATES

The sections of the Code of Virginia governing the VIDC include several statutory mandates most of which concern the duty to oversee court-appointed private attorneys. A summary of the recent actions taken and the mandate requiring such action follows.

1. VIRGINIA CODE § 19.2-163.01(A)(1) - Publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants.

The initial qualification requirements as well as the requalification requirements for attorneys seeking to represent indigent clients accused in criminal cases are enumerated in Virginia Code §19.2-163.03. A list of the qualification requirements can be found on the VIDC website at www.vadefenders.org. Applications for initial certification and re-certification are also available on the website. The Certification and Compliance Attorney or the Certification and Compliance Assistant receive applications for certification and re-certification for review and determine whether the qualification or requalification requirements have been met.

2. VIRGINIA CODE § 19.2-163.01(A)(2) - Develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.

The VIDC continues to offer live Initial Certification training for attorneys wanting to do court-appointed indigent criminal defense work. This training is offered three times a year. In FY2019 we held Initial Certification training in December at the Virginia State Police Headquarters and in March at the VIDC. We had 71 attendees at these trainings. This training is staffed with seasoned public defenders and other VIDC specialty attorneys, including our Chief Appellate Counsel and Certification Attorney. In addition to content updates and improvements, valuable practice tips are provided throughout the program. The VIDC attorney resource website and other free resources are highlighted for the attendees. Finally, the live format allows participants to ask questions of the faculty and the faculty are available to provide answers and support to the attendees. In addition to the resource manual, this training consists of six hours of specialized criminal defense instruction, four additional hours of juvenile defense instruction and two hours of immigration training over a two-day period.

The VIDC continues to strive to provide quality training, free of charge, to the private court-appointed attorneys. All VIDC trainings are MCLE (Mandatory Continuing Legal Education) approved by the Virginia State Bar. This year the VIDC provided numerous CLE hours to over 300 private court-appointed attorneys from across the state. All of these CLEs are offered free of charge. We hosted five Late Day Lectures at our Richmond administrative office in FY2019. "Late Day Lectures" (LDL) are one to two-hour long trainings focused on a specific area of the law. In FY2019 we offered lectures on juvenile sentencing, DWIs, ethics, SANE reports and ethical considerations when representing juveniles.

Recognizing a need for quality training across the Commonwealth, these LDLs have been recorded and are made available via our Sproutvideo replay library to the private court-appointed attorneys across the Commonwealth. We currently offer thirteen videos for misdemeanor/felony

eligible courses and seven videos for juvenile eligible courses. These videos range in length from one to two hours. These videos can be used by court appointed attorneys to re-certify if they are unable to attend the required recertification hours live. Initial Certification is also recorded and provided on Sproutvideo for public defenders only. This allows public defenders to become initially certified right after they are hired and not have to wait for one of the three live certification trainings. We cut back on the number of Late Day Lectures we hosted in second half of FY2019 because we have so many videos available on Sproutvideo and we hosted Initial Capital Certification in June of 2019 and were preparing for Capital Habeas Certification in July 2019.

In June of 2019 we hosted Initial Capital Certification. This training was initially done in 2015 and at that time the Capital Qualification Standards Committee decided that all attorneys would “sunset” off the capital list every four years. This meant that every attorney on the capital list needed to either attend Initial Capital Certification or some other qualifying capital-specific training and fill out a Sunset Application detailing their recent, relevant experience. This training was held in a conference room at the Virginia State Bar and offered twelve hours of CLE credit, including one and a half hours of ethics and two hours of capital appellate specific content. This training was also held for any attorney who was interested in becoming newly certified to handle capital cases. Thirty-two people attended this training and it covered the substantive law, ethical considerations, use of experts, jury selection, mitigation and mental health evidence. This training is also in our Sproutvideo replay library for anyone interested in becoming capital certified before we hold the next live training in four years.

Furthering the goal of providing hands on training, the VIDC continued to partner with Judges from the Court of Appeals for our day long Annual Introduction to Indigent Defense

Appeals at the University of Richmond, School of Law on July 26, 2018. Fifty-nine court appointed attorneys attended this training. In addition to this day long introductory program, a condensed version, Essentials of Appellate Advocacy, was held in Wytheville. This training also featured two Court of Appeals judges and had twenty-three attendees.

Acknowledging the need for more juvenile defense training, the VIDC continues to partner in presenting the Juvenile Law and Education Conference at the University of Richmond, School of Law.

All VIDC sponsored trainings satisfy the requirements for attorneys to maintain their eligibility for court appointments. Additionally, the VIDC reviews and approves legal education courses provided by other organizations to determine whether the courses satisfy the requirements for attorneys to maintain their eligibility for court appointments. A current list of Commission and MCLE-approved courses is provided on the VIDC website at <http://www.vadefenders.org/recertification/> and is updated as new courses are approved.

By statute, attorneys maintain their eligibility for court appointments for a period of two years from the date of their initial certification. Prior to the expiration of each two-year period, attorneys receive multiple expiration date notifications via e-mail along with instructions on where to find information about re-certification. Attorneys wishing to maintain certification for court-appointed work are required to complete the one-page re-certification form. Attorneys must include on the form the information verifying their completion of the statutorily required number of Commission and MCLE-approved continuing legal education credits.

3. VIRGINIA CODE § 19.2-163.01(A)(3) - Maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards. Disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts.

ACeS (Attorney Certification System) is an online system that allows attorneys to apply, renew and modify their certification status via the VIDC website. ACeS continually updates the certified counsel list located on the VIDC website and is accessible by court personnel to retrieve the names of certified attorneys by case type and judicial circuit/district

As of July 25, 2018, the number of certified attorneys totaled 2,081 and the total attorneys certified by case type were as follows: **(NOTE: An attorney may be certified for more than one case type.)**

Case Type	Number of Certified Attorneys 7/2018	Number of Certified Attorneys 7/2019	Annual Change %
Capital Appellate	21	22	+4.7
Capital Habeas	10	10	0
Capital Trial Co-Counsel	115	119	+3.48
Capital Trial Lead Counsel	64	64	0
Felony	1739	1695	-2.53
Juvenile	970	939	-3.20
Misdemeanor	2052	1949	-5.02

A list is sent to the Office of the Executive Secretary every four months advising of attorneys who have not been re-certified or who have been removed from the certified counsel list for other reasons. The most recent list of ineligible attorneys was provided on May 31, 2019.

- VIRGINIA CODE § 19.2-163.01(A)(4) - Establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients and guidelines for the removal of an attorney from the official list. Notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.**

The Standards of Practice for Indigent Defense Counsel in non-capital cases are located on the VIDC website. The Standards of Practice complaint process and the complaint form are also

located on the website. The Standards of Practice are highlighted in the live certification training and beginning in June 2018 the complete Standards of Practice were included in the manual provided to every attendee.

Previously implemented efforts to raise awareness of the Standards of Practice and the enforcement thereof have continued. Currently, VIDC training programs incorporate the Standards of Practice whenever applicable.

5. VIRGINIA CODE § 19.2-163.01(A)(5) - Develop initial training courses for public defenders and to review and certify legal education courses that satisfy the continuing requirements for public defenders to maintain their eligibility.

All public defenders must receive the same certification training as any attorney seeking to serve as court-appointed counsel. In keeping with the revised Standards of Practice, now all public defenders must also complete a three-hour training on defending non-citizens.

Additionally, all public defenders serving as their office's appellate supervisor must attend a specialized appellate training. Finally, every public defender attorney must attend the annual conference.

All newly hired attorneys must attend an intensive week-long "Trial Skills Boot Camp" and complete a two-part online appellate training once hired and before handling their first appeal. "Boot Camp" is an intensive four-day legal training program that continues to be a success. This training emphasizes trial skills and addresses the rewards and challenges of public defense with the goal of developing a client-centered practice. The program remains staffed by experienced public defender leaders as well as Senior Trial Attorneys who specialize in training. The bootcamp program is one part of an overall strategy to recruit, train, and retain quality attorneys who want to serve as public defenders.

The 2018 Annual Public Defender Conference was held on October 23-24, 2018 in Williamsburg, Virginia. The annual conference provides all public defenders with the opportunity to earn half of the required continuing legal education credit and maintain eligibility. The VIDC strives to provide a wide range of topics using experienced attorneys from across the Commonwealth as well as noted national experts. The plenary speakers included Stephen P. Lindsay, speaking on using demonstrative evidence, and David Patton, Executive Director of the Federal Defenders of New York, speaking on impeachment. We also featured several of our assistant public defenders speaking on appellate, immigration, firearms and digital evidence topics. Additional topics included adolescent brain development, false confessions, in-court identifications, ethics, DUIs and recent developments in criminal law and procedure. The 2019 Annual Public Defender Conference will be held October 10-11, 2019 in Williamsburg, Virginia. The conference, as always, will provide specific ethics, appellate, and juvenile training.

The VIDC continued to demonstrate its commitment to providing management training to all supervising attorneys within the Public and Capital Defender offices. In April 2019, the VIDC held its eighth annual Management Conference with the majority of the agency's supervising attorneys in attendance. This conference is an opportunity for Chief Capital and Public Defenders, Deputy Public Defenders, and supervising Senior Assistant Public Defenders to receive education in areas related to managing both people and processes. The conference included two sessions by Jonathan Rapping, President/Founder of Gideon's Promise, a review of the merit-based pay system and a discussion about the four core challenges to attorney retention.

- 6. VIRGINIA CODE § 19.2-163.01(A)(6) - Periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the caseload handled by each public defender office.**

The VIDC counts cases by the number of individual clients represented, rather than by the number of charges defended. Many cases involve more than one charge. (See **Appendix A, VIDC FY19 Caseload and Charge Data**). These totals include appeals to both the Court of Appeals of Virginia and Supreme Court of Virginia.

7. VIRGINIA CODE § 19.2-163.01(B) - Commission shall adopt Rules and Procedures for the conduct of its business.

The VIDC adopted its policies and procedures in November 2006. The policies and procedures are reviewed and updated as necessary, but no less than annually. This year the Commission voted on a new procurement policy. The policies are accessible electronically to all employees via the VIDC intranet and MOAT, the IT security training program. All employees must acknowledge receipt of the Policies as part of the annual IT security training.

8. VIRGINIA CODE § 19.2-163.01(A)(14) - Report annually on or before October 1 to the Virginia State Crime Commission, the House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the state of indigent criminal defense in the Commonwealth, including Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel pursuant to §19.2-159 or subdivision B2 of §16.1-266.

A 2005 ABA report, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, noted that Virginia's caps on court-appointed compensation placed its fees among the lowest in the nation.²

This report, specifically the ranking, sparked debate in Virginia, the result of which was an added requirement on the VIDC to report on Virginia's ranking among the fifty states for compensation of court-appointed counsel.

State-to-state comparisons are difficult because the structure and funding of indigent defense systems vary nationwide. Pursuant to Va. Code § 19.2-163, an attorney appointed to represent an indigent defendant in Virginia is compensated at an hourly rate set by the Supreme

Court. The total amount or cap to be paid is set by statute and may not exceed \$120.00 for a misdemeanor in general district court, \$1,235.00 for a felony charge where the maximum period of confinement is more than 20 years, and \$445.00 for any other felony in circuit court. Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an additional \$650). Felony charges with a penalty of 20 years or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155. With approval of the judge, Virginia also allows for a second level waiver in certain cases. These caps, even with the initial waiver, remain some of the lowest in the nation. For a comparative look at the states see (Appendix B, State Comparisons Chart).

Compensation for court appointed counsel in Virginia on appeal is governed by Virginia Code §19.2-326 which provides in part:

In felony or misdemeanor case...the court which an appeal is taken shall order the payment of such attorneys' fees in an amount not less than \$300, cost or necessary expenses of such attorneys in an amount deemed reasonable by the court, by the Commonwealth out the appropriation for criminal charges. If the conviction is upheld on appeal, the attorney's fees, cost and necessary expenses of such attorney paid by the Commonwealth under provision hereof shall be assessed against the defendant.

According to the Supreme Court, during the writ stage each appeal is looked at on its own basis. Where there is a dismissal based on a procedural default the attorney receives nothing. Otherwise, generally, there is a minimum payment of \$400 and maximum of \$1200. In the case of a guilty plea, *Alford* plea, Anders petition, or probation violations there is a flat rate of \$400, whether or not there is oral argument. For other types of writ cases, there is a base rate of about \$400, where there is no oral argument. The attorney will receive \$400 if the petition is generally the same as the petition filed in the Court of Appeals. If there is a new

petition, where the attorney substantively addresses the Court of Appeals in the argument sections, there will be a bump of, generally, \$100. If it is a complicated case, like a capital non-death or a case with voluminous transcripts, additional money may be considered. If there is an oral argument, whether before the panel of Justices or Chief Staff Attorney, there is another bump of, generally, \$100. But, to get the \$100, it has to be more than just showing up for the argument and relying on brief. There are slight adjustments, downward, if the case is only a misdemeanor. What results in the difference between the range of \$400 and \$1200 is type of appeal; substantive oral argument; and whether there is a "new" petition in the Supreme Court. All this is only for the writ stage not for merit cases in the Supreme Court of Virginia.

In the Virginia Court of Appeals there is a clear fee structure as follows:

For writ stage if the case only involves misdemeanors the compensation is \$300 and if the appeal involves felony, \$400 and an extra \$100 if there is an oral argument. For the merit stage the total amounts which include writ and merit stages are as follows: If appeal only involves misdemeanors the compensation is \$625 and \$725 if the appeal involves a felony. If a rehearing en banc is granted the attorney is entitled to an extra \$200.

¹ U.S. Const. Amend. VI

² ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group (August 2005)

Appendix A, VIDC FY19 Caseload Data

Office Caseload FY2019 (including Appeals)

Office	Total Cases	Charges
Alexandria	1926	3524
Arlington	2232	3771
Bedford	1114	1876
Charlottesville	1891	3648
Chesapeake	3819	8549
Danville	2203	3567
Fairfax	6225	10774
Franklin	996	1993
Fredericksburg	6177	12993
Halifax	1785	3184
Hampton	3711	6226
Leesburg	4522	6575
Lynchburg	3201	5059
Martinsville	2752	4245
Newport News	5811	11923
Norfolk	5455	9958
Petersburg	2084	3473
Portsmouth	3340	6185
Pulaski	2173	3806
Richmond	8180	15727
Roanoke	3967	6875
Staunton	4668	8645
Suffolk	2080	4159
Virginia Beach	8679	14754
Winchester	2657	4149

Appendix B – State Comparisons Chart

STATE	HOURLY RATE	CAPS	AUTHORITY/NOTES
Alabama	\$70	Capital Case: No cap Class A Felony: \$4,000 Class B Felony: \$3,000 Class C Felony: \$2,000 Juvenile: \$2,500 All Other Cases: \$1,500	Code of Ala §15-12-21 (2016) Counsel shall be entitled to reimbursement of non-overhead expenses, with expenses exceeding \$300 subject to advance approval by the trial court.
Alaska	\$60 in-court \$50 out-of-court	Misdemeanor - Guilty Plea, No Contest Plea, or Dismissal: \$400 Misdemeanor - Trial: \$800 Felony - Guilty Plea, No Contest Plea, or Dismissal: \$2,000 Felony - Trial: \$4,000 Probation Violation - Misdemeanor: \$350 Probation Violation - Felony: \$1,000	2 AAC 60.010 (1986) (Alaska Administrative Code)
Arizona	Varies	Varies (Judicial discretion)	A.R.S. § 13-4013 (2005) “Compensation for services rendered to the defendant shall be in an amount that the court in its discretion deems reasonable, considering the services performed.”

Arkansas	<p>\$90-\$110 - Capital</p> <p>\$70-\$90 - Homicide, Class Y or A Felonies</p> <p>\$60-\$80 - Other Felony</p> <p>\$50-\$80 - District, Juvenile, or Probate</p>	N/A	<p>A.C.A. § 16-87-211 (2001) Statute directs the Arkansas Public Defender Commission to set guidelines for court-appointed attorney compensation.</p> <p>Hourly rates provided by the Arkansas Public Defender Commission (2012).</p>
California	Varies	Varies	<p>Cal Pen Code § 987.2 (2002)</p> <p>Ca. Pen Code § 987.3 (1973)</p> <p>The court determines reasonable compensation.</p>
Colorado	<p>\$95 - Capital Cases</p> <p>\$85 - Type A Felony</p> <p>\$80 - Type B Felony, Juvenile</p> <p>\$75 - Misdemeanor, Traffic</p> <p>\$75 – Travel</p>	<p>Class 1 Felony & unclassified felonies where max. penalty is death, life, or 51+ years: \$30,000 (with trial), \$15,000 (without trial)</p> <p>Class 2 Felony, DF 1 felonies: \$13,000 (with trial), \$6,500 (without trial)</p> <p>Class 3-6 Felonies, DF 2-4 felonies: \$8,000 (with trial), \$4,000 (without trial)</p> <p>Misdemeanors, Traffic, & Petty Offenses: \$3,000 (with trial), \$1,500 (without trial)</p> <p>Juvenile: \$5,500 (trial)/ \$2,750 (without trial)</p>	<p>C.R.S. 21-2-101 (2007)</p> <p>C.R.S. 21-2-103 (2018)</p> <p>Describing when alternate defense counsel (as opposed to a public defender) would be appointed to represent an indigent defendant.</p> <p>Chief Justice Directive 04-04 (Amended July 2018)</p> <p>Provides alternate defense counsel hourly rates and fee caps.</p>

Connecticut	<p>\$75 - Felonies, serious Juvenile offenses, Habeas, appellate</p> <p>\$50 - Misdemeanor</p> <p>\$100 - Capital felony</p>	<p>Where flat rate compensation contracts are used, they are put in place by jurisdiction:</p> <p>Judicial District cases: \$1,000</p> <p>Geographical Area cases: \$350</p> <p>Juvenile Delinquency cases: \$350</p>	<p>Conn. Gen. Stat. § 51-291 (2012)</p> <p>By statute, the Chief Public Defender establishes the compensation for court-appointed attorneys.</p> <p>Division of Public Defender Services, Assigned Counsel Frequently Asked Questions (last visited July 2019)</p> <p>Cases are paid on an hourly rate or a flat fee and are assigned as such pursuant to the contract with the attorney. The bulk of case assignments are done through flat rate contract agreements.</p>
Delaware	<p>\$60 in Superior Court</p> <p>\$50 in Supreme Court</p>	<p>Felony: \$2,000 (per attorney)</p> <p>Misdemeanors: \$1,000 (per attorney)</p>	<p>Delaware Rules of Criminal Procedure, Rule 44 (2016) & Rules of the Supreme Court of the State of Delaware, Rule 26 (2019)</p> <p>Rules includes provisions for exceeding caps.</p>
District of Columbia	<p>\$60 - in-court</p> <p>\$40 - out-of-court</p> <p>Can seek up to \$75 in certain cases</p>	<p>Felony: \$7,000 (per attorney)</p> <p>Misdemeanor: \$2,000 (per attorney)</p>	<p>18 U.S.C. § 3006A (2010)</p> <p>“The compensation maximum amounts...shall increase simultaneously by the same percentage, rounded to the nearest multiple of \$100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for time expended since the case maximum amounts were last adjusted”</p> <p>Statute includes provisions for exceeding caps.</p>

Florida	Flat Fees	Capital: \$25,000 Life Felonies: \$9,000 Noncapital, Nonlife Felonies: \$6,000 Misdemeanors & Juveniles: \$1,000 Appeal: \$9,000	Fla. Stat. § 27.5304 (2018) Statute includes provisions for exceeding caps.
Georgia	By contract	By contract	O.C.G.A. § 17-12-22 (2011) Georgia Public Defender Standards Council contracts with individual attorneys for conflict appointment. State Bar of Georgia: Appointed Work for Attorneys Certain localities which have opted out of the state system set their own compensation rates for court-appointed attorneys.
Hawaii	\$90	Felony: \$6,000 Misdemeanor (jury trial): \$3,000 Misdemeanor (jury waived): \$1,500 Petty Misdemeanor: \$900 Appeals: \$5,000	HRS § 802-5 (2015) Statute includes provisions for exceeding caps.
Idaho	Set by contract either by the local board of county commissioners or by the court	Set by contract either by the local board of county commissioners or by the court	Idaho Code § 19-859 (2014) Compensation varies by each locality, largely set by the board of county commissioners, but judges can set the compensation rates in individual cases.

<p>Illinois</p>	<p>Reasonable Fee as set by the Court</p> <p>In Counties with populations greater than 2 million people:</p> <p>\$40 - in-court</p> <p>\$30 - out-of-court</p>	<p>Reasonable Fee as set by the Court</p> <p>In Counties with populations greater than 2 million people:</p> <p>Felony: \$1,250</p> <p>Misdemeanor: \$150</p>	<p>725 ILCS 5/113-3 (2000) Statute includes provisions for exceeding caps.</p>
<p>Indiana</p>	<p>Set by the Court – per the Indiana IDC, hourly rates range from \$30-\$60, with the majority of counties going with \$40 for out-of-court time and \$50 for in-court time</p> <p>The Indiana Public Defender Commission requires a \$90/hour rate in all Commission counties (roughly 2/3 of counties in Indiana)</p> <p>\$124 - Death Penalty</p>	<p>N/A</p>	<p>Burns Ind. Code Ann. § 33-40-8-2 (2004) states that “a judge shall establish the fee to be paid to an attorney or attorneys for providing services to poor people.”</p> <p>Indiana Public Defender Commission can recommend standards for indigent defense.</p>

Iowa	<p>\$73 - Class A Felony</p> <p>\$68 - Class B Felony</p> <p>\$63 - All other cases</p>	<p>Adult Cases -</p> <p>Class A Felony: \$18,000</p> <p>Class B Felony: \$3,600</p> <p>Class C Felony: \$1,800</p> <p>Class D Felony: \$1,200</p> <p>Aggravated Misdemeanors: \$1,200</p> <p>Serious Misdemeanors: \$600</p> <p>Simple Misdemeanors: \$300</p> <p>Misdemeanor appeals to District Court: \$300</p> <p>Contempt/Show Cause: \$300</p> <p>Probation/Parole violations: \$300</p> <p>Juvenile Cases –</p> <p>Delinquency: \$1,200</p> <p>Juvenile Court Review: \$300</p> <p>Judicial Bypass Hearings: \$180</p> <p>Juvenile Commitment Hearings: \$180</p> <p>Juvenile Petition on Appeal: \$600</p> <p>Motion for Further Review after Petition on Appeal: \$300</p>	<p>Iowa Code § 13B.4 (2017) - Flat fee contracts</p> <p>Iowa Code § 815.7 (2019) - Hourly rates</p> <p>Iowa Code § 815.10A (2013) Statute includes provisions for exceeding caps.</p> <p>State Public Defender Administrative Rules Chapter 12.6 (2017) Provides the attorney fee caps.</p>
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Kansas	<p>\$80 (Negotiable)</p> <p>\$75 - Assigned Attorneys</p>	<p>Non-tried cases -</p> <p>Felony 1-5: \$1,500</p> <p>Felony 6-10: \$1,125</p> <p>Probation Revocations: \$400</p> <p>Tried cases -</p> <p>Felony 1-3, off-grid felony offenses, felony drug offenses level 1: \$7,500</p> <p>Felony 4, felony drug offenses 2-5: \$3,000</p> <p>Felony 5-10: \$2,4000</p>	<p>K.S.A. § 22-4507 (2007)</p> <p>The Court can negotiate a lower hourly rate with attorneys willing to accept court appointments. If appropriations for payments are insufficient, the state board of indigent's defense services can establish a formula for pro rata payments.</p> <p>Kansas Administrative Regulations 105-5-2, -6, -7, -8 Provides generally for the hourly rates and caps, as well as provisions for exceeding caps.</p> <p>It appears that localities set caps for misdemeanor cases. See Douglas County Kansas Rules and Suggestions for Completing Misdemeanor Vouchers</p>
Kentucky	Set by contract by the Department of Public Advocacy	Set by contract by the Department of Public Advocacy	<p>KRS § 31.235 (2002)</p> <p>The court shall pay reasonable and necessary fees but not in excess of fees established by the Department of Public Advocacy.</p>
Louisiana	Flat fee contracts	Flat fee contracts	<p>La. R.S. 15:147(C)(1) (2017)</p> <p>The Louisiana Public Defender Board enters into contracts with attorneys to provide indigent defense services.</p>

Maine	\$60	<p>Murder: Fee to be set by Executive Director</p> <p>Class A: \$3,000</p> <p>Class B and C (against person): \$2,250</p> <p>Class B and C (against property): \$1,500</p> <p>Class D and E (Superior or Unified Criminal Court): \$750</p> <p>Class D and E (District Court): \$540</p> <p>Probation Revocations: \$540</p> <p>Juvenile: \$540</p>	<p>15 M.R.S. § 810 (2018) 4 M.R.S. § 1804(3)(F) (2019) The Maine Commission on Indigent Legal Services sets the rate for court appointed counsel.</p> <p>Code of Maine Rules § 94-649, Chapter 301 (2011) Provides the hourly rates and caps.</p>
Maryland	Same hourly rate as federal panel attorneys.	<p>District Court - federal misdemeanor</p> <p>Circuit Court - federal felony</p> <p>Juvenile Court - federal felony</p>	<p>Md. Criminal Procedure Code Ann. § 16-207 (2008) The Public Defender prepares schedules for fees and expenses for panel attorneys.</p> <p>Code of Maryland Regulations 14.06.02.06 (2018) Attorneys are compensated at the same hourly rate as federal panel attorneys.</p>
Massachusetts	<p>\$100 - Homicide</p> <p>\$68 - Superior Court non-homicide</p> <p>\$50 - District Court</p> <p>\$53 - Children/Family Law, Sex Offender, Mental Health</p>	Annual cap on billable hours: 1,650	<p>ALM Gl ch. 211D, §11 (2018)</p> <p><u>Note:</u> Counsel may not accept new appointments or assignments after billing 1,350 billable hours, except in homicide cases.</p>
Michigan	Set by the Court	Set by the Court	<p>MCLS § 775.16 (2013) The statute covers appointment of counsel, but the case law notes following the statute state that the court sets the rates.</p>

Minnesota	State Board of Public Defense determines rates	State Board of Public Defense determines rates	<p>Minn. Stat. §611.215(2)(c)(3) (2007) State Board of Public Defense responsible for appointment of counsel and collection of costs.</p> <p>Minn. Stat. §611.27 (2014) The state's obligation for the costs of the public defender services (including court-appointed attorney fees) is limited to the appropriations made to the Board of Public Defense.</p>
Mississippi	Set by the Court	<p>Circuit Court: \$1,000</p> <p>Court not of record: \$200</p> <p>Capital Cases: \$2,000</p> <p>Appeals to State Supreme Court: \$1,000</p>	Miss. Code Ann. §99-15-17 (1980)

Missouri	<p>Flat fee contracts</p> <p>Jury Trial - \$1,500 for 1st day, \$750 for each additional day (partial days prorated)</p> <p>Bench Trial - \$750/day, prorated</p>	<p>Murder first degree: \$10,000</p> <p>Other homicide: \$6,000</p> <p>Felony Class A/B - Drugs: \$750</p> <p>Felony Class A/B- Other: \$1,500</p> <p>Felony Class A/B - Sex: \$2,000</p> <p>Felony Class C/D/E - Drugs: \$750</p> <p>Felony Class C/D/E - Other: \$750</p> <p>Felony Class C/D/E - Sex: \$1,500</p> <p>Misdemeanor: \$375</p> <p>Juvenile - Non-violent offense: \$500</p> <p>Juvenile - Violent offense: \$750</p> <p>Probation Violation: \$375</p> <p>Direct Appeal: \$3,750</p>	<p>§600.042 R.S.Mo. (2019) The state Public Defender contracts with private attorneys for legal services.</p> <p>§600.021 R.S.Mo. (1986) The commission contracts with private attorneys to provide defense services.</p> <p>Missouri State Public Defender Website – https://publicdefender.mo.gov/private-counsel-opportunities/mspd-contracting/panel-rates/</p>
Montana	Non-Capital - \$56	Statute allows for fixed fee contracts	47-1-121, MCA (2019) The Public Defender Commission adopts rules to provide reasonable compensation to contract attorneys.
Nebraska	Set by Court or Public Defender Commission	N/A	<p>R.R.S. Neb. §29-3927 (2014) Public Defender Commission is responsible for determining compensation rates for contracting attorneys and court-appointed attorneys.</p> <p>R.R.S. Neb §29-3905 (1990) Allows the court to fix reasonable expenses and fees.</p>

Nevada	<p>\$125 - Capital cases</p> <p>\$100 - all other cases</p>	<p>Capital, or life case: \$20,000</p> <p>Felony not punishable by death or life in prison or a gross misdemeanor: \$2,500</p> <p>Misdemeanor: \$750</p> <p>Gross Misdemeanor or Felony Appeal: \$2,500</p> <p>Misdemeanor Appeals: \$750</p>	<p>Nev. Rev. Stat. Ann. §7.125 (2013)</p> <p>Statute includes provisions for exceeding caps.</p>
New Hampshire	<p>\$100 – Major Crimes</p> <p>\$60 – all others</p>	<p>Homicides under RSA 630:1-2 (per co-counsel): \$20,000</p> <p>Felony – Sexual Assault: \$8,000</p> <p>Felony: \$4,100</p> <p>Misdemeanor: \$1,400</p> <p>Supreme Court Appeals: \$2,000</p>	<p>Rules of the Supreme Court of the State of New Hampshire, Rule 47 (2015)</p> <p>Rule includes provisions for exceeding caps.</p>
New Jersey	<p>\$60 - in-court</p> <p>\$50 - out-of-court</p> <p>\$252 - full day (per diem)</p> <p>\$60 – in-court (appellate cases)</p> <p>\$50 – out-of-court (appellate cases)</p> <p>\$250 – Oral Argument (appellate cases)</p>	N/A	<p>N.J. Stat. §2A:158A-7 (1994)</p> <p>Public Defender establishes compensation with contract attorneys.</p> <p>OPD Pool Attorney Application Process (2019)</p> <p>These guidelines set the current rates.</p>

New Mexico	<p>Flat-fee contracts generally</p> <p>First degree murder and first degree felonies – \$85</p>	<p>Can vary by district</p> <p>1st Degree Murder: \$5,400</p> <p>1st Degree Felony (Life Imprisonment): \$5,400</p> <p>1st Degree Felony: \$800 or \$750</p> <p>2nd Degree Felony: \$780 or \$700</p> <p>3rd Degree Felony: \$750 or \$645</p> <p>4th Degree Felony: \$650 or \$540</p> <p>Juvenile: \$350 or \$300</p> <p>Misdemeanor Trial: \$180</p> <p>Retrial: Half the Original Fee</p>	<p>N.M. Stat. Ann. §31-15-7 (2014) Public Defender to establish fee schedule for court appointed counsel.</p> <p>Public Defender Contract Counsel Sample Contract (2018) Lists flat fee schedules on pages 19-20.</p>
New York	<p>\$75 – Felony both in and out of court</p> <p>\$60 – Misdemeanor both in and out of court</p>	<p>Felony: \$4,400</p> <p>Misdemeanor: \$2,400</p>	<p>NY CLS County §722-b (2004) Statute includes provisions for exceeding caps.</p>

<p>North Carolina</p>	<p>\$90 - Capital Cases, Appeals, & post-conviction</p> <p>\$75 - Class A-D felony</p> <p>\$60 – Class E-I felony</p> <p>\$55 - All other cases resolved in District court</p> <p>\$60 - All other cases resolved in Superior Court</p> <p>\$60 - Parole and post-release revocation hearings</p> <p>\$55 – Competency Cases</p> <p>\$75 – Non-Capital Appeals and Post-Conviction (A-D Felony)</p> <p>\$60 – All other Non-Capital Appeals and Post-Conviction</p>	<p>No caps in general</p> <p>Capital – cannot bill more than \$35,000 pre-trial, \$10,000 for mitigation, or \$10,000 for investigation</p>	<p>N.C. Gen. Stat. § 7A-498.5 (2015)</p> <p>Office of Indigent Defense Services responsible for setting rates.</p> <p>Private Assigned Counsel Rates were updated December 1, 2018.</p>
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<p>North Dakota</p>	<p>By contract, either using a flat fee or hourly rates</p> <p>According to Commission office, standard monthly contract rate is \$75/hr.</p>	<p>Felony - \$2,000</p> <p>Misdemeanor - \$850</p> <p>Juvenile - \$850</p> <p>Post-conviction - \$500</p> <p>Appeal - \$2,000</p>	<p>N.D. Cent. Code, § 54-61-02 (2017) Commission on Legal Counsel has authority to set fees.</p> <p>N.D. Cent. Code, § 29-07-01.1 (2013) Lawyers representing indigent persons must be compensated at a reasonable rate determined by the commission on legal counsel for indigents.</p> <p>Presumed Rate for Attorney Fee Reimbursement (2019) Provides the presumed rates for cases as determined by the Commission.</p> <p>Policy on Payment of Extraordinary Attorney Fees (last viewed 2019) Provides policy for exceeding caps, as well as the caps themselves.</p>
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Ohio	<p>\$75 - in-court or out-of-court</p> <p>\$125 - death penalty cases, both in-court and out-of-court</p>	<p>Adult Aggravated Murder (w/ specs) - no fee maximum</p> <p>Aggravated Murder (w/o specs) - \$15,000/1 attorney, \$25,000/2 attorneys</p> <p>Murder - \$10,000</p> <p>Felony with Possible Life Sentence/Repeat Violent Offender/Major Drug Offender: \$10,000</p> <p>Felony (degrees 1-2) - \$8,000</p> <p>Felony (degree 3) - \$5,000</p> <p>Felony (degrees 4-5 - \$3,500</p> <p>Misdemeanor (degrees 1-4) - \$2,000</p> <p>Misdemeanor OVI/BAC - \$2,500</p> <p>Contempt - \$500</p> <p>Probation violations - \$750</p> <p>Preliminary Hearings - \$300</p> <p>Sex Offender - \$750</p> <p>Juvenile Aggravated Murder (w/ specs) - no fee maximum</p> <p>Aggravated Murder (w/o specs) - \$7,500/1 attorney, \$12,500/2 attorneys</p> <p>Murder - \$6,000</p> <p>Felony (degrees 1-2) - \$5,000</p> <p>Felony (degrees 3-5) - \$3,500</p>	<p>ORC Ann. 120.33 (2017) The Board of County Commissioners shall establish a schedule of fees by case or an hourly basis. The County must file an up-to-date fee schedule with the Ohio Public Defender, who then will reimburse up to the maximum set by the Ohio Public Defender State Maximum Fee Schedule. Statute includes provisions for exceeding caps.</p> <p>Ohio Public Defender Standards and Guidelines for Appointed Counsel Reimbursement (2019) Manual on Ohio Public Defender's website that provides the hourly rates and caps (includes the State Maximum Fee Schedule referenced above).</p>
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Oklahoma	Flat-fee contracts	<p>Felony: \$3,500</p> <p>Misdemeanor, Juvenile, Traffic: \$800</p>	22 Okl. St. §1355.8 (2001) Statute includes provisions for exceeding caps.

Oregon	<p>\$61 - Capital lead counsel</p> <p>\$46 - Capital co-counsel</p> <p>\$46 - Non-capital cases</p>	N/A	<p>ORS §151.216 (2018) The Public Defense Services Commission adopts guidelines regarding the fair compensation of appointed counsel.</p> <p>Public Defense Payment Policy and Procedures (2019) Provides guidelines for obtaining an increase in the set hourly rates (section 2.2). Also sets out the hourly rates (Exhibit 2).</p>
Pennsylvania	Set by the Court	Set by the Court	16 P.S. §9960.7 (1969) Attorney to be rewarded reasonable compensation to be fixed by the Court.
Rhode Island	<p>\$100 - Murder</p> <p>\$90 - Class 1 Felony</p> <p>\$60 - Class 2 Felony</p> <p>\$50 - Misdemeanor Appeal (Superior Court)</p> <p>\$30 - Violation of Court Order (non-payment of fines, costs)</p> <p>\$85 – Criminal Appeal</p> <p>\$85 – Misc. Appeals & Petitions</p> <p>Some courts provide \$200/day or \$300/day for certain case types</p> <p>Family Court: \$30 – Dependency/Neglect/Abuse/Arrestment</p> <p>\$50 – DUI</p> <p>\$50 – Misdemeanor</p>	<p>Murder: \$30,000</p> <p>Class 1 Felony: \$10,000</p> <p>Class 2 Felony: \$5,000</p> <p>Misdemeanor Appeal (Superior Court): \$1,500</p> <p>Violation of Court Order (non-payment of fines, costs): \$1,500</p> <p>Criminal Appeal: \$5,200</p> <p>Misc. Appeals & Petitions: \$5,200</p> <p>Family Court Dependency/etc.: \$1,000</p> <p>DUI: \$2,500</p> <p>Misdemeanor: \$1,500</p>	<p>General Laws of Rhode Island §8-15-2 (1969) Statute cited in Executive Order (see below) which provides chief justice of the court to ensure that court-appointed attorneys are paid in a fair and equitable fashion</p> <p>Supreme Court Executive Order re Indigent Defense Service Payment Rates (2019) Provides the hourly rates and caps. Additional case types included beyond those listed.</p>

South Carolina	\$60 - in-court \$40 - out-of-court	Felony: \$3,500 Misdemeanor: \$1,000	S.C. Code Ann. §17-3-50 (2007) Includes provisions for exceeding hourly rates and caps.
South Dakota	\$95	N/A	S.D. Codified Laws § 23A-40-8 (1983) Reasonable amount to be paid based upon guidelines established by the presiding judge of the circuit court. Office of the State Court Administrator re 2019 Court-Appointed Attorney Fees and Mileage Provides the hourly rate.
Tennessee	<i>Non-Capital Cases</i> \$50 - in and out of court <i>Capital Cases</i> Lead Counsel: \$100 Co-Counsel: \$80 Post-conviction: \$80	First Degree Murder or Class A or B felony in trial court: \$6,000 Felony other than First Degree Murder or Class A or B felony: \$4,000 Preliminary hearings for felonies, juvenile charged w/non-capital felony: \$1,500 Misdemeanor, probation violation: \$1,000 Contempt of Court, parole revocation: \$500	Tennessee Supreme Court Rule 13 (checked 2019) Rule includes provisions for exceeding caps (see specifically section 2(e)(1)).
Texas	Court sets rate	Court sets fee	Texas Code of Criminal Procedure Article 26.05 (2019) Counsel to be paid a reasonable fee as set by the court.
Utah	Court sets rate per guidelines set by the county or municipality	Court sets rate per guidelines set by the county or municipality	Utah Code Ann. § 78B-22-302 (2019) Utah Code Ann. § 78B-22-203 (2019) Attorney shall be paid reasonable compensation by the court.

Vermont	\$50	<p>Felony with possible life sentence or death penalty: \$25,000</p> <p>Other major felony: \$5,000</p> <p>Minor felony or Juvenile: \$2,000</p> <p>Misdemeanors & all other proceedings: \$1,000</p> <p>Appeals: \$2,000</p>	<p>13 V.S.A. § 5205 (1982) The Supreme Court shall set reasonable rates of compensation.</p> <p>Vt. A.O. 4 § 6 (1993) Administrative Order of the Supreme Court. Provides the hourly rates and caps, as well as provisions for exceeding the caps.</p>
Virginia	\$90	<p>Felony with 20 years or more sentence (resolved in district court or circuit court): \$1,235</p> <p>Other felony (resolved in district court or circuit court): \$445</p> <p>Misdemeanor in Circuit Court: \$158</p> <p>District Court cases (misdemeanors, felony preliminary hearings where the felony was not resolved in district court): \$120</p>	<p>Va. Code § 19.2-163 (2009) Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an additional \$650). Felony charges with a penalty of 20 year or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155. With approval of the judge, Virginia also allows for a second level waiver in certain cases.</p>
Washington	Set by Court	Set by Court	<p>Rev. Code Wash. (ARCW) §36.26.090 (1969) The court shall provide reasonable compensation to a court-appointed attorney.</p>
West Virginia	<p>\$80 - in-court</p> <p>\$60 - out-of-court</p>	<p>Felony offenses with possibility of life in prison: court discretion</p> <p>All other cases: \$3,000</p>	<p>W. Va. Code §29-21-13a (2019) Statute includes provisions for exceeding caps.</p>
Wisconsin	\$40 - in-court and out-of-court	N/A	<p>Wis. Stat. § 977.08 (2018)</p>
Wyoming	<p>\$100 - in court</p> <p>\$35-\$60 - out-of-court</p>	N/A	<p>Wyoming Rules of Criminal Procedure Rule 44(e) (2019)</p>