

# **Legislative Budget and Finance Committee**

## **A Report on the Pennsylvania Indigent Criminal Defense Services Funding and Caseloads**

Report Comments by Jason R. Brehouse, Esq., Project Manager  
Wednesday, November 10, 2021

Good morning. My name is Jason Brehouse, Esq. (Project Manager) and it is a pleasure to be here today with the members of the Legislative Budget and Finance Committee to discuss our report on Pennsylvania Indigent Criminal Defense Services Funding and Caseloads. With me today are committee staff persons, Anne Witkonis (Analyst) and Amy Hockenberry (Analyst) who were both instrumental in helping to gather and analyze the data for this report.

House Resolution 2019-619 (HR 2019-619) directed the committee to issue a report analyzing the funding and caseloads related to indigent criminal defense services in the Commonwealth of Pennsylvania. We were asked to determine by county: 1) the amount of funding, and source of funding, 2) the number and type of criminal caseloads, and 3) the number of attorneys who represented indigent clients along with other applicable information such as the salaries and number of full-time and part-time public defenders.

We reviewed the 2011 Joint State Government Commission (JSGC) report on indigent criminal defense services to understand the subject matter. We also reviewed numerous United States Supreme Court cases and Pennsylvania court cases and laws that support an indigent criminal defendant's right to be represented by an attorney/public defender. As previously indicated in the 2011 JSGC report, we found Pennsylvania indigent criminal defense services data collection continues to reflect a lack of systematic and complete data given data collection remains a county responsibility and substantive policies differ from county to county throughout the Commonwealth. We reviewed funding and caseload data for calendar years 2018, 2019, and 2020 to the extent data was maintained and was available for the 67 counties of the Commonwealth.

The Sixth Amendment of the U.S. Constitution and its right to fair trial provisions was ratified in 1791, but an indigent criminal defendant's right to free legal counsel in capital cases was not recognized by the U.S. Supreme Court until 1932. It would be another three decades before the U.S. Supreme Court ruled in *Gideon v. Wainwright* (1963) that the Sixth Amendment mandates governments, both federal and state, to provide free counsel for indigent criminal defendants in felony cases. Subsequently, the Court extended the requirement of free counsel to misdemeanor (and petty offense) prosecutions, juvenile proceedings and to all "critical proceedings" after a person's arrest.

Section 9 of Article I of the Pennsylvania Constitution itself provides:

*In all criminal prosecutions the accused hath a right to be heard by himself and his counsel . . . .*

Pennsylvania Supreme Court cases have indicated the Pennsylvania Constitution aligns with the U.S. Constitution in terms of indigent criminal defendant's right to counsel.

In addition, the Pennsylvania Constitution provides that county officers shall consist of appointed public defenders.

Pennsylvania indigent criminal defense services are provided and funded at the county level. However, one-time state funding of \$500,000 was provided in the fiscal year 2019-20 state budget for Pennsylvania Commission on Crime and Delinquency (PCCD) capital case indigent defense program grants.

Pennsylvania is one of two states that generally provide no state funding for the administration of indigent criminal defenses services. States fall into one of three funding classifications: 27 states are identified as state-funded services, 14 states are identified as mixed state and local funded services, and nine states are identified as minimal or no state-funded services.

Crime rates and indigent criminal defense expenditures differ among the counties. In 2020 Philadelphia County, with a crime rate of over 4,000 crimes per 100,000 people, spent the highest amount among the counties at almost \$49 million on indigent criminal defense and Cameron County, with a crime rate of approximately 1,600 crimes per 100,000 people spent the least amount at about \$36,000.

Per capita and per case disposed expenditures also varied among the counties with per capita expenditures averaging \$7.63 and per case disposed expenditures averaging \$1,216.54.

- In 2019 Philadelphia County, with a population of 1.6 million, had the highest spending per capita at \$30.20 and Mifflin County, with a population of 46,000, had the lowest spending per capital at \$3.20.
- In 2020 Philadelphia spent, on average, the most per case disposed at \$3,800 and Mifflin County spent, on average, the least at \$284.

On average, 54 percent of all adult criminal cases statewide had representation provided by a public defender in calendar years 2018 to 2020, which is reflective of 121,000 cases in 2018, 115,000 case in 2019, and 78,000 case in 2020. In 2020 the individual county percentages ranged from 86.5 to 30.6 percent.

Meanwhile, the number of juvenile delinquency cases statewide involving a public defender were 12,000 in 2018, 12,000 in 2019, and 10,000 in 2020. It is important to note that all juveniles are presumed indigent under Pennsylvania statute.

We surveyed public defenders' offices for data regarding caseloads, salaries, number of attorneys, etc. We received responses from 36 counties, which reflected a lack of complete and uniform data. Survey responses reflected the following:

- Although some public defender offices have caseload management systems, many offices indicated the data requested was unknown and untracked by their offices, or it was available through county court administration.
- Counties lack a uniform process for determining who is indigent and qualifies for a public defender.
- Respondents indicated chief public defender salaries ranging from \$40,100 to \$139,000 in 2020.
- Respondents indicated full-time public defender salaries ranging from \$40,500 to \$120,000 in 2020.

We were able to collect caseload data from various statewide case management systems through the Administrative Office of Pennsylvania Courts (AOPC) and Juvenile Court Judges Commission (JCJC). Much of the funding data was gathered by direct outreach to the counties. While the data gather for this report provides a useful perspective, it is neither systematic nor complete in many instances.

In closing, we extend thanks to the various stakeholders that provided guidance and insight regarding our numerous inquiries. In particular, we thank the staffs of AOPC, JCJC, PCCD, and PDAP (Public Defender Association of Pennsylvania) for their cooperation and input. We would also like to thank the numerous local county officials and chief public defenders for the information they provided.