

Appendix A: Funding for Prosecution, Defense in Sample States

| State | Funding Method for Prosecutors | Funding Method for Indigent Defense |
|---------------|--------------------------------|-------------------------------------|
| Wisconsin | Hybrid | State-Funded |
| Iowa | County Funded | Hybrid |
| Illinois | Hybrid | Hybrid |
| Michigan | County Funded | Hybrid |
| Minnesota | County Funded | State-Funded |
| New York | County Funded w/ State Grants | County Funded w/ State Grants |
| Pennsylvania | Hybrid | County Funded |
| West Virginia | County Funded | State-Funded |
| Arkansas | Hybrid | Hybrid |
| Oklahoma | State-Funded | State-Funded (Minus 2 Counties) |
| New Jersey | Hybrid | Hybrid |
| Massachusetts | Hybrid | State-Funded |
| Kentucky | Hybrid | State-Funded |
| Virginia | Hybrid | State-Funded |

| | |
|----------------|--|
| Wisconsin: | <p>Prosecution: District Attorneys, Deputy District Attorneys, Assistant District Attorneys, and a limited number of clerical employees are considered state employees and the legislature bears a statutory burden to provide funding for these positions under state law. Wis. Stat. § 978.12 (2022); 978.13(1) (2022). Counties bear the burden of paying for all other operational costs of district attorney offices. Wis. Stat. § 978.13(2) (2022). See also Milwaukee County, 2022 Adopted Operating Budget, Milwaukee County (2021), available at https://county.milwaukee.gov/EN/Administrative-Services/Strategy-Budget-and-Performance (detailing a breakdown of state funding and county funding for one of the state's largest district attorney offices).</p> <p>Defense: Wisconsin's public defense agency is an independent state agency that is funded with appropriations determined by the legislature. Wis. Stat. § 15.78 (2022); 977.02 (2022). The Board is statutorily required to handle 67% of the felony and juvenile cases with its own attorneys and can appoint private attorneys to handle all misdemeanor and the remaining felony and juvenile cases. Wis. Stat. § 977.08(5)(c) (2022).</p> |
| Iowa: | <p>Prosecution: Iowa's prosecutors are called "county attorneys" and they are county-level officials. They receive no funding from the state and are fully funded by their local counties. Iowa Code Ann. § 331.751 (2022); 331.756 (2022); See also Iowa Code Ann. § 331.757 (2022); Polk County, Proposed Budget: Fiscal Year July 1, 2021 – June 30, 2022, Polk County (2021), available at https://www.polkcountyiaowa.gov/board-of-supervisors/budget/.</p> <p>Defense: Iowa's indigent defense system is a component of the state's Department of Inspections and Appeals and has the responsibility to represent all indigent individuals "under arrest or charged with a crime." Iowa Code Ann. § 13B.2 (2022); 13B.4 (2022). Both public defenders and the cost of appointed attorneys are paid for by the state with counties only being required to pay a "base of expenses" for juvenile proceedings. Iowa Code Ann. § 232.141(2)-(3) (2022); 815.1 (2022). See also Legislative Services Agency, Budget Unit Brief – FY 2023: Office of the State Public Defender, Legislative Services Agency (2022), available at https://www.legis.iowa.gov/publications/fiscal/budgetUnitInfo.</p> |
| Illinois: | <p>Prosecution: The state bears the burden of funding only part of each state attorney's salary (66.6% of the salaries in 1998 + 100% of increases since then) and certain portions of some assistant state attorney's salaries through a variety of reimbursement mechanisms. 55 I.L.C.S. § 5/4-2001(a)-(c), (e)-(f), (h) (2022); 55 I.L.C.S. 5/4-2003 (2022); 55 ILCS 5/4-2005 (2022).</p> <p>Defense: The state bears the burden of funding all criminal appeals and 66.6% of each head public defender's salary. 55 I.L.C.S. 5/3-4007 (2022); 55 I.L.C.S. 5/3-4009 (2022); 725 I.L.C.S. 105/3 (2022); 725 I.L.C.S. 105/10 (2022).</p> |
| Michigan: | <p>Prosecution: Michigan does not provide any direct funding to local prosecutor offices but does provide limited indirect support to such offices through the Prosecuting Attorneys Coordinating Council and two Attorney General programs (Public Safety Initiative and Sexual Assault Law Enforcement). Mich. Comp. Laws § 49.103 (2022); 49.109 (2022); See also Michigan Department of Attorney General, Fiscal Year 2022: Budget Presentation, Michigan Department of Attorney General (2021), https://www.house.mi.gov/hfa/PDF/GeneralGovernment/GenGov_Subcmte_Testimony_Attorney_General_Budget_Presentation_3-16-21.pdf (providing details on the two programs that fund A.G. participation in certain criminal prosecutions).</p> <p>Defense: Counties are required to provide funding equal to their average annual expenditures on indigent defense between fiscal years 2010 through 2012 and the state provides grant money to cover any additional cost. Mich. Comp. Laws § 780.983(g) (2022); 780.993 (2022); 780.1002 (2022); See also Public Sector Consultants, Michigan Indigent Defense Commission Local Share Evaluation Interim Report, Public Sector Consultants (2021), https://micounties.org/wp-content/uploads/MIDC-Interim-Report-Presentation-4-20-21.pdf (showing counties' local share declined from 30% to only 24% between FY 2019 and FY 2020).</p> |
| Minnesota: | <p>Prosecution: The state does not directly fund any cost of local prosecutor offices but does provide limited funding to the Attorney General's Office to assist counties with prosecutions through the "Enhanced Criminal Enforcement and Initiatives" program. Minn. Stat. § 8.01 (2022) (authorizes AG to prosecute a case after request from county attorney).</p> <p>Defense: Minn. Stat. § 611.27(1), (5), (7) (2022); 611.26(3), (3a) (2022).</p> |
| New York: | <p>Prosecution: The state provides only partial funding to certain county District Attorney offices and various grant programs. These funding sources include the Crimes Against Revenue Program (CAPR), DA Salary Increase and Salary Support program, and some select appropriations to a few specific county DA offices. N.Y. County Law § 700(10)-(11); See e.g. S.B. 2503, 2021-2022 Gen. Assemb., 2021 Regular Session (2021) (appropriating \$13.5 million for CARP, \$4.2 million for district attorney salaries, and \$100,000 for Richmond, Queens, and Rockland counties).</p> <p>Defense: New York has a county-run system that receives significant state funding through the "Indigent Legal Services Program" established in 2003. No particular funding percentage is required by state law and the program is managed by a state agency with minimal legislative guidelines. The state has also been subject to a legal settlement since 2010 that requires it to provide funding to five specific counties and additional state-wide funding. Lastly, the NY Division of Criminal Justice Services provides grants for criminal defense services in an effort to expedite the processing of serious and violent crimes through the justice system. See e.g. S.B. 2503, 2021-2022 Gen. Assemb., 2021 Regular Session (2021) (appropriating \$7.6 million through NY DCJS and \$307 million through the Office of Indigent Legal Services).</p> |
| Pennsylvania: | <p>Prosecution: Pennsylvania is statutorily required to pay for 65% of each district attorney's salary but counties bear the remaining cost for the state's district attorney offices. 16 Pa. Stat. § 1401(p) (2022).</p> <p>Defense: Pennsylvania is obligated to provide 0% of the funding necessary to maintain the state's public defense system under state law. 16 Pa. Code § 9960.1-9960.13 (2022). The legislature has decided to provide one-off funding in certain instances. See e.g., S.B. 712, 2019 Gen. Assemb., 2019 Reg. Sess. (2019) (appropriating \$500,000 in state money to support indigent defense).</p> |
| West Virginia: | <p>Prosecution: W. Va. Code § 7-4-1 (2022); 7-4-6 (2022).</p> <p>Defense: W. Va. Code § 629-21-3 (2022); 29-21-4 (2022); 29-21-5 (2022); 29-21-6 (2022); 29-21-8 (2022); 29-21-13 (2022).</p> |
| Arkansas: | <p>Prosecution: The state assumed the obligation to provide the funding for deputy prosecuting attorney salaries and made them state employees in 2000. Counties retain the responsibility to provide all other funding. The state also previously provided funding for county prosecutors, but this appears to have ended shortly after 2000. See S.B. 623, 82nd Gen. Assemb., 1999 Reg. Sess. (1999) (appropriating funding for deputy prosecuting attorney salaries and shifting financial responsibility for deputy prosecuting attorneys' salaries to the state); H.B. 1106, 80th Legis., 1995 Reg. Sess. (1995) (appropriating funding for prosecuting attorney salaries for the 1996 and 1997 fiscal years); See also Dorothy Spector, et al., A Broken System, Arkansas Association of Counties (2020), available at https://issuu.com/associationofarkansascounties/docs/fall_county_lines_yudu/</p> <p>Defense: Arkansas is statutorily required to pay for the salaries of public defenders and their staff as well as certain specific expenses, but the county must pay for all facilities, equipment, and other office expenses. A.C.A. § 16-87-302 (2022); See also S.B. 26, 81st Gen. Assemb., 1997 Reg. Sess. (1997) (establishing that the state – through the Arkansas Public Defender Commission – is responsible for public defender and support staff salaries); Spector, supra note 99; See generally Joe Schratz, Ethics office opinion challenges public defenders, The Sun (2022), https://www.jonesborosun.com/news/ethics-office-opinion-challenges-public-defenders/article_7b363c8c-ae9e-514d-88df-0072bd71fc0c.html.</p> |
| Oklahoma: | <p>Prosecution: District attorneys and their staff are considered state employees (except for special district attorneys). The state is required to pay all DA and DA staff salaries and all office expenses but counties with a population of more than 400,000 can contribute an additional 25% of the state-provided salary to supplement DA staff salaries. Okla. Stat. tit. 19 § 215.30.</p> <p>Defense: Oklahoma provides the funding necessary to provide defense services in 75 of the state's counties (Tulsa and Oklahoma County are excluded because they have their own locally controlled offices). 19 OK Stat § 19-138.1a et seq. (2022); OK Stat. § 22-1355 et seq. (2022).</p> |
| New Jersey: | <p>Prosecution: The state has only assumed an obligation to pay for a certain portion of each county attorney's salary. In 2008, New Jersey statutorily proscribed the salaries that should be paid to county prosecutors. A.B. 2135, 212th Legis, 2007 Reg. Sess. (N.J. 2007). In 2018, the state-mandated two subsequent years of \$8,000 raise for county prosecutors and pegged permanent annual raises at the higher of 2% or the annual Consumer Price Index increase. S.B. 1229, 218th Legis., 2018 Reg. Sess. (N.J. 2018). The state has now assumed any cost for such positions over \$100,000. N.J. Stat. § 2A:158-10.</p> <p>Defense: New Jersey has two public defender systems - one for state courts and one for municipal courts. The state funds 100% of the cost for the state system which covers all felonies and juvenile cases but does not deal with misdemeanors. The state also funds an appellate defender program. N.J. Stat. § 2B:24-7 (2022); N.J. Stat. § 2A:158A-24 (2022); N.J. Stat. § 2A:158A-5.2 (2022).</p> |
| Massachusetts: | <p>Prosecution: Massachusetts has assumed financial responsibility for the salaries of assistant district attorneys, assistants to the district attorneys, special assistant district attorneys (in two counties), legal assistants, and messengers (in Suffolk County). Mass. Gen. Laws ch. 12, § 16, 18, 19, 20, & 20A (2022). Recent increases in state funding for district attorney offices were implemented to keep those roles filled. State budgets also frequently provide additional funding through the Massachusetts District Attorneys Association for specific programs such as diversion and technology upgrades and as matching funds for federal grants. See e.g., H.B. 4002, 192nd Gen. Assem., 2021 Re. Sess. (Mass. 2021).</p> <p>Defense: The Massachusetts Committee for Public Counsel is a state agency tasked with providing legal services for indigent clients in criminal and certain civil cases. It is fully state funded but private donations are also allowed to be made to the system. ALM Gl ch. 211D, § 1, 3, 6, & 13.</p> |
| Kentucky: | <p>Prosecution: Kentucky's laws provide for both Commonwealth and County Attorneys. They are both considered part of Kentucky's "Unified Prosecutor System." K.R.S. § 15.700 (2022); 15.725 (2022). Commonwealth attorneys handle all felony cases and are a Constitutionally created office funded fully by the state in counties with a population less than 150,000. KRS § 15.725 (2022); 15.755 (2022); 15.760 (2022). In counties exceeding that population, the state pays all staff salaries, but the county must pay all other expenses. K.R.S. § 69.120 (2022). County attorneys handle all misdemeanor cases and are statutorily created offices that only receive state funding for county attorney and assistant county attorney salaries. KRS § 15.725 (2022); 15.765 (2022); 15.770 (2022); 69.210 (2022). All other expenses are paid by the county itself.</p> <p>Defense: Kentucky's Department of Public Advocacy is a state-level agency that provides indigent defense statewide and is fully state-funded. K.R.S. § 31.010</p> |
| Virginia: | <p>Prosecution: Commonwealth attorneys in Virginia are state employees and their salaries are paid by the state. Va. Code Ann. 15.2-1627.1 (2022). The state through a "Compensation Board" also reimburses counties and cities for a portion of other staff salaries but these employees are considered county employees. Va. Code Ann. § 15.2-1626 (2022); 15.2-1627.1 (2022); 15.2-1632 (2022).</p> <p>Defense: The Virginia Indigent Defense Commission is a statutorily established statewide public defense system that is fully funded by the state, but counties or cities can supplement the salaries of public defender staff. Va. Code Ann. § 19.2-163.01(2022); 19.2-163.01:1 (2022); § 19.2-163.04 (2022).</p> |

Appendix G: Pending Cases at Year End, Sample States

Rate is cases per 1,000 residents

| State | Metric | 2019 | 2020 | 2021 | Percent change |
|---------------|----------------|---------|---------|---------|----------------|
| Wisconsin | Reported Total | 58,678 | 75,153 | 79,347 | 35.22% |
| | Rate | 10.08 | 12.75 | 13.46 | 33.53% |
| Minnesota | Reported Total | 31,607 | 45,517 | 49,882 | 57.82% |
| | Rate | 5.60 | 7.99 | 8.74 | 55.97% |
| Michigan | Reported Total | 12,575 | 18,148 | 23,007 | 82.96% |
| | Rate | 1.40 | 1.80 | 2.30 | 63.59% |
| Illinois | Reported Total | 393,608 | 448,061 | | |
| | Rate | 31.06 | 34.97 | | |
| Iowa | Reported Total | 144,637 | 162,402 | 153,128 | 5.87% |
| | Rate | 45.84 | 50.91 | 47.96 | 4.61% |
| New York | Reported Total | 220,957 | 237,762 | 219,847 | -0.50% |
| | Rate | 11.36 | 11.77 | 11.08 | -2.42% |
| Pennsylvania | Reported Total | 77,448 | 87,370 | | |
| | Rate | 6.05 | 6.72 | | |
| West Virginia | Reported Total | 7,569 | 8,457 | 8,591 | 13.50% |
| | Rate | 4.22 | 4.74 | 4.82 | 14.08% |
| Arkansas | Reported Total | 66,325 | 80,694 | 85,513 | 28.93% |
| | Rate | 21.98 | 26.79 | 28.26 | 28.59% |
| New Jersey | Reported Total | 12,269 | 15,260 | 20,227 | 64.86% |
| | Rate | 1.38 | 1.64 | 2.19 | 58.01% |
| Massachusetts | Reported Total | 68,404 | 18,677 | 85,807 | 25.44% |
| | Rate | 9.92 | 2.66 | 12.28 | 23.79% |
| Virginia | Reported Total | | 274,390 | 247,714 | |
| | Rate | | 31.79 | 28.66 | |

Sources and notes

All per capita pending case rates were calculated using the U.S. Census Bureau's official state population data for 2019, 2020, and 2021.

2019 Data: <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>.

2020 Data: <https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html>

2021 Data: <https://www.census.gov/quickfacts/fact/table/US/PST045221>

Wisconsin: Wisconsin Court System, Circuit Court Statistical Reports, Wisconsin Court System (2022), <https://www.wicourts.gov/publications/statistics/circuit/circuitstats.htm>.

Minnesota: Court Services Division, Performance Measures Key Results and Measures Annual Report: September 2021, Minnesota Judicial Branch (2021), available at <https://www.mncourts.gov/About-The-Courts/PublicationsAndReports.aspx>.

Michigan: Only reflects felonies as the state cannot currently compile data on its District Court system which handles misdemeanors. Michigan Courts, Statewide Circuit Court Summary: 2019 and 2020 Court Caseload Summaries, available at <https://www.courts.michigan.gov/publications/statistics-and-reports/caseload-reports/>. 2021 figures: Email from John Nevin, Communications Director at Michigan Supreme Court – Public Information Office to Jeremiah Mosteller (August 9, 2022) (on file with author).

Illinois: Administrative Office of the Illinois Courts, Illinois Courts: 2019 and 2020 Statistical Summary, available at <https://www.illinoiscourts.gov/reports/annual-report-illinois-courts/>.

Iowa: Email from Jess Wiley, Research, Policy, and Planning Analyst for Iowa Judicial Branch to Jeremiah Mosteller (August 4, 2022) (spreadsheet of data on pending cases at month end for January 2019 through June 2022 on file with author); See also Bob Gast, FY23 Judicial Branch Budget Presentation, Iowa Judicial Branch (2022), available at <https://www.iowacourts.gov/iowa-courts/fy-2023-budget/>.

New York: Email from Statistical Services Unit Office of Justice Research and Performance at the New York State Division of Criminal Justice Services to Jeremiah Mosteller (August 13, 2022) (spreadsheet of data on pending cases at calendar year-end for 2019, 2020, and 2021 on file with author).

Pennsylvania: Kim Nieves, et al., 2019 and 2020 editions of Caseload Statistics of the Unified Judicial System of Pennsylvania, available at <https://www.pacourts.us/news-and-statistics/research-and-statistics/caseload-statistics>

West Virginia: Email from Jennifer Bundy, Public Information Officer for Supreme Court of Appeals of West Virginia to Jeremiah Mosteller (July 11, 2022) (spreadsheet of data on pending criminal cases at year-end for 2019 through 2021 on file with author).

Arkansas: Office of Research and Justice Statistics, Arkansas Judiciary Annual Summary, Arkansas Judiciary (2022), https://public.tableau.com/app/profile/orjs.arcourts/viz/AR_Annual_Summary_Public_0/Dashboard1.

New Jersey: Reflects fiscal rather than calendar years on account of the New Jersey Courts methodology. See Quantitative Research Unit, New Jersey Judiciary Court Management June 2020, New Jersey Courts, available at <https://www.njcourts.gov/public/stats.html>.

Massachusetts: Reflects fiscal rather than calendar years on account of the Massachusetts Courts methodology. See Email from Lee Kavanagh, Director of Department of Research and Planning for Massachusetts Court System to Jeremiah Mosteller (August 20, 2022) (on file with author).

Virginia: Virginia's court system is unable to provide comparable data for 2019 because its dataset for general district courts begins in 2020. See Email from Myron D. McClees, Staff Attorney for Legislative and Public Relations for the Supreme Court of Virginia to Jeremiah Mosteller (August 16, 2022) (on file with author). 2020 and 2021: Karl R. Hade, Report to the Senate General Government Subcommittee, Supreme Court of Virginia (2022), http://sfac.virginia.gov/pdf/GeneralGov/2022/02012022_No1_Courts.pdf.