



INDIGENT REPRESENTATION TASK FORCE

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SCOPE OF THE TASK FORCE'S WORK

The Tennessee Supreme Court created this Task Force (1) to identify the current statutes, rules, and policies regarding the provision of legal services to indigent parties in both civil and criminal proceedings, (2) to review how these statutes, rules, and policies are currently being implemented, and (3) to make recommendations regarding the delivery of these services in a uniform, efficient, and cost-effective manner that will ensure that persons entitled to these services receive adequate representation.

TOPICS TO BE ADDRESSED BY THE TASK FORCE

The Task Force intends to address the following topics:

- (1) The lack of current and accurate data regarding the appointment and compensation of counsel and experts for indigent parties in criminal and civil proceedings.
- (2) The adequacy of resources and staffing for the Public Defender's Office and the process of allocating funding to the District Public Defenders.
- (3) The adequacy of compensation to private counsel under Tenn. Sup. Ct. R. 13 and the procedures and criteria for ensuring the adequacy of training and experience of appointed counsel.
- (4) The criteria for determining indigency.
- (5) The procedure for determining indigency.
- (6) The manner in which counsel is selected for persons found to be indigent.
 - (A) In criminal proceedings, the criteria and procedure to appoint either a public defender or private counsel.
 - (B) The adequacy and uniformity of the current standards for

- determining whether a District Public Defender has a conflict of interest.
- (C) The procedure for appoint counsel in juvenile court proceedings and the criteria for determining the adequacy of the training and experience of appointed counsel.
 - (D) The procedure for appointing counsel in other civil proceedings and the criteria for determining the adequacy of the training and experience of appointed counsel.
- (7) The most appropriate state-wide governing structure for allocating indigent representation resources and for providing adequate representation to indigent persons. Rolled into this issue are:
- (A) The creation of a centralized office to represent indigent parties on appeal and in the lower courts when the District Public Defender has a conflict of interest.
 - (B) The relationship between a centralized office and the Office of the Post-Conviction Defender.
- (8) The assessment, collection, and distribution of fees for supporting indigent representation.
- (9) The compensation for private counsel appointed under Tenn. Sup. Ct. R. 13.
- (A) The process for obtaining payment.
 - (B) The circumstances when task billing is appropriate.
 - (C) The circumstances when contracting for services is appropriate.
- (10) The appointment of experts under Tenn. Sup. Ct. R. 13.
- (A) The role of the courts.
 - (B) The availability and qualification of experts.
 - (C) The compensation of experts.
 - (D) The circumstances when task billing is appropriate.
 - (E) The circumstances when contracting for services is appropriate.
- (11) Other issues affecting indigent representation.

- (A) Bail.
- (B) Bailable offenses.
- (C) Releases on own recognizance.
- (D) Digitalizing of court records.

Many other topics have significant direct and indirect effects on the adequacy of the provision of indigent representation in Tennessee. While these topics merit serious consideration, the Task Force has determined that they are not within the scope of its work. These topics include: (a) the efficacy of the current internal governance of the District Public Defenders Conference, (b) the realignment of the current judicial districts, and (c) sentencing reform.

INFORMATION TO BE OBTAINED

The ability of the Task Force to make appropriate recommendations regarding for improving indigent representation in Tennessee depends entirely on the accuracy and completeness of the information it receives. Accordingly, the Task Force will look to the staff provided by the Administrative Office of the Courts and the organizations and persons whose work will be affected by the Task Force's recommendations to provide the data and information on which its recommendations will be based. This information includes:

- (1) The identification of all criminal proceedings in which indigent persons are entitled to representation by a public defender or appointed counsel or other resources. [This should include citations to relevant statutes or rules.]
- (2) The identification of all civil proceedings in which indigent persons are entitled to appointed counsel or other resources. [This should include citations to the relevant statutes or rules.]
- (3) Information by county and judicial district of the following:
 - (a) County population in 2000 and 2015
 - (b) Number and percentage of population below the federal poverty level
 - (c) County demographics (gender, race, age)
 - (d) Public Defenders
 - (1) Number of state-funded District Public Defenders and APDs
 - (2) Number state-funded APDs

- (3) Number of locally-funded APDs
- (4) Number of federally funded APDs
- (5) Number of state-funded investigators
- (6) Number of locally-funded investigators
- (7) Number of federally-funded investigators
- (8) Total office budget for FY 2011, 2012, 2013, 2014 & 2015
- (9) Total lawyer salaries for FY 2011, 2012, 2013, 2014 & 2015
- (10) Total investigator salaries for FY 2011, 2012, 2013 2014 & 2015
- (11) Ave. caseload per APD for FY 2010, 2011, 2012, 2013 and 2014
- (12) Total disqualifications for conflict of interest for FY 2010, 2011, 2012, 2013 & 2014
- 13) Total number of cases in which the PD was available but not appointed in FY 2010, 2011, 2012, 2013 & 2014.

(e) District Attorneys General

- (1) Number of state-funded District Attorneys and ADAs
- (2) Number state-funded ADAs
- (3) Number of locally-funded ADAs
- (4) Number of federally funded ADAs
- (5) Number of state-funded investigators
- (6) Number of locally-funded investigators
- (7) Number of federally funded investigators
- (8) Total office budget for FY 2011, 2012, 2013, 2014 & 2015
- (9) Total lawyer salaries for FY 2011, 2012, 2013, 2014 & 2015
- (10) Total investigator salaries for FY 2011, 2012, 2013 2014 & 2015
- (11) Ave. caseload per ADA for FY 2010, 2011, 2012, 2013 and 2014

(f) Judges

- (1) Number of Criminal Court Judges
- (2) Number of Circuit Court Judges
- (3) Number of Chancellors
- (4) Number of Child Support Referees
- (5) Number of General Sessions Judges
- (6) Number of Probate Court Judges
- (7) Number of Juvenile Court Judges
- (8) Number of Juvenile Court Magistrates or Referees

(g) Appointments [For FY 2010, 2011, 2012, 2013, & 2014]

- (1) Public defender in criminal proceedings
- (2) Private counsel in criminal proceedings

- (3) Private counsel in civil proceedings
- (h) Appeals [For FY 2010, 2011, 2012, 2013, & 2014]
 - (1) Appeals to the Court of Criminal Appeals by public defenders [Separate counts, if possible, for direct appeals, post-conviction appeals, and other appeals]
 - (2) Appeals to the Court of Criminal Appeals by appointed counsel in a criminal matter [Separate counts, if possible, for direct appeals, post-conviction appeals, and other appeals]
 - (3) Appeals to the Court of Appeals by public defenders in civil proceedings
 - (4) Appeals to the Court of Appeals by appointed counsel in civil proceedings
 - (5) Total cost for appellate records in criminal proceedings
 - (6) Total cost for appellate records in civil proceeding
- (I) Tenn. R. App. P. 11 Applications [For FY 2010, 2011, 2012, 2013, & 2014]
 - (1) Applications by public defenders in criminal proceedings
 - (2) Applications by appointed counsel in criminal proceedings
 - (3) Applications by public defenders in civil proceedings
 - (4) Applications by appointed counsel in civil proceedings
- (j) Tenn. Sup. Ct. R. 13 Expenditures
 - (1) Expenditures for appointed counsel in criminal proceedings in FY 2010, 2011, 2012, 2013 & 2014
 - (2) Expenditures for experts in criminal proceedings in FY 2010, 2011, 2012, 2013 & 2014
 - (3) Expenditures for appointed counsel in civil proceedings in FY 2010, 2011, 2012, 2013 & 2014
 - (4) Expenditure for experts in civil proceedings in FY 2010, 2011, 2012, 2013 & 2014
 - (5) Expenditure for appellate records in civil proceedings in FY 2010, 2011, 2102, 2013 & 2014
- (k) Rates of Compensation for Privately Retained Counsel
 - (1) Hourly rates for legal services
 - (2) Differentiation in rates depending on the court or the seriousness of the crime
 - (3) Standard terms of retainer agreements

- (4) Circumstances in which task billing is used.
- (5) The frequency of write-offs of earned but unpaid fees
- (6) Rates currently charges by investigators and experts.

PROPOSED FORMAT OF FINAL REPORT

The proposed format and contents of the Task Force's final report is as follows:

- I. Introduction
- II. Summary
- III. Recommendations
- IV. History of Indigent Representation in Tennessee
 - A. Criminal
 - B. Civil
- IV. Current Indigent Representation Programs
 - A. Criminal
 - B. Civil
- V. Nation-wide Information
- VI. Findings
 - A. Criminal
 - B. Civil
- VII. Recommendations [w/discussion]
- VIII. Conclusion
- IX. Acknowledgments
- X. Appendix