

**CRIMINAL JUSTICE FOUNDATION
2003 STATE STREET
SALEM, OR 97301**

REPORT ON INDIGENT DEFENSE IN OREGON

Introduction

Indigent defense is traditionally defined as the state-paid defense of a defendant in a criminal case who cannot afford to pay for his or her defense. Oregon expands this definition to also include non-criminal defendants such as children and parents in dependency and termination of parental rights proceedings.¹ Oregon's indigent defense system now costs Oregon taxpayers almost \$117 million for the current 1997-99 biennium. This study on the provision of indigent defense in Oregon was conducted by the Criminal Justice Foundation to identify strengths and weaknesses of Oregon's indigent defense system, and to suggest changes which will improve this system.

The first section of this report analyzes the federal requirements regarding taxpayer-paid legal counsel for indigent defendants. The second section compares the current Oregon concepts with federal requirements. The third section outlines the practical operation of Oregon's indigent defense system. The fourth section discusses issues that surround Oregon's current system of indigent defense. The fifth section

¹ See Appendix A. Appendix A was provided by IDSD. This Appendix details the types of cases that are covered by the indigent defense system in Oregon and also covers the basis of authority for these cases. In the future, it might be wise for Oregon (as other states have done) to separate the dependency and termination proceedings from criminal proceedings.

identifies alternatives that may be used in Oregon to improve the provision of indigent defense services.

I. The Federal Court System

The Sixth Amendment of the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence [sic].”² The right to counsel is an essential right to defendants who are charged with crimes because, without this right, the defendant would not have the ability to effectively assert his or her personal rights as a citizen.³ The appointment of counsel allows the criminal process to proceed fairly so that no individual’s rights are denied without due process of the law.⁴ Therefore, under the federal Constitution, a defendant accused of a crime has the right to appointed counsel at state expense if the defendant cannot afford his own defense counsel.

In criminal cases, under the federal Constitution, the right to counsel exists as to all felonies,⁵ misdemeanors when the sentence is to a jail term,⁶ and to civil proceedings such as juvenile delinquency proceedings.⁷ The extent of the federal right to indigent defense counsel extends from the time that judicial proceedings have been initiated against the accused, whether by way of formal charge, preliminary

² U.S. Constitution, Sixth Amendment.

³ Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963). In Gideon the Supreme Court held that a defendant’s right to appointed counsel extended to the states through the due process clause of the Fourteenth Amendment of the United States Constitution. Thus, according to Gideon, the states have a duty to provide criminal defendants with appointed counsel.

⁴ *Id.*

⁵ *Id.*

⁶ Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006 (1972).

⁷ In re Gault, 387 U.S. 1, 87 S.Ct. 1428 (1967).

hearing, indictment, information, or arraignment,⁸ through to sentencing⁹ and appeal¹⁰. In short, if a defendant is charged with a felony, he or she will receive indigent defense counsel at the federal level.¹¹

On the other hand, regarding misdemeanors, federally-paid counsel will be provided for persons charged with Class A misdemeanors in federal court, and the court may use its discretion to appoint federally-paid counsel in Class B or C misdemeanor cases if a determination has been made at the beginning of such case that no incarceration will be imposed.¹²

On the civil side, the federal Criminal Justice Act requires that representation be provided to any indigent person who is charged with a violation of probation, any juveniles alleged to have committed an act of juvenile delinquency, any person subject to a mental commitment hearing, and any person entitled to the appointment under the federal statute relating to transfer of offenders to and from foreign countries.¹³

⁸ Brewer v. Williams, 430 U.S. 387, 97 S.Ct. 1232 (1977).

⁹ Mempa v. Rhay, 389 U.S. 128, 88 S.Ct. 254 (1967).

¹⁰ Douglas v. California, 372 U.S. 353, 83 S.Ct. 814 (1963).

¹¹ LEGAL RESEARCH PAPER ON THE CONSTITUTIONAL AND STATUTORY RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AT STATE EXPENSE, Indigence Defense Services, 1-2 (date unknown) [hereinafter LEGAL RESEARCH PAPER].

¹² This requirement is a result of the Criminal Justice Act. This source is used throughout the first section of this study.

¹³ THE RIGHT TO COUNSEL AT GOVERNMENT EXPENSE: COMPARISON OF OREGON'S PROVISIONS TO FEDERAL PROVISIONS Indigent Defense Services (November 9, 1994) [hereinafter COMPARISON OF OREGON AND FEDERAL AUTHORITY].

II. Oregon's Indigent Defense System - Federal Comparison

Indigents accused of crimes in Oregon are entitled to state-paid legal services under the Sixth Amendment to the United States Constitution (as discussed above) and Article I, Section 11 of the Oregon Constitution, which provides that “in all criminal prosecutions, the accused shall have the right . . . to be heard by himself and counsel . . .”.¹⁴ Oregon expands on the federal requirements of areas in which appointed counsel must be provided for defendants. Based on information provided by Indigent Defense Services Division of the Supreme Court Administrator's office (hereinafter IDSD), attorneys in Oregon provide legal services at state expense in 133,620 cases per year.¹⁵ Of these 133,620 cases, federal constitutional authority only mandates that 85,347 defendants (64 percent) receive court-appointed counsel.¹⁶ The remainder of the 133,620 cases that are state-paid (48,273) are not mandated by the federal Constitution.¹⁷ Under what authority are these 50,000 cases deemed to be indigent defense cases? The answer lies within Oregon case law and Oregon statutes.

Specifically, the Oregon Constitution has been interpreted to require indigent defense services to 26,268 (20%) more indigents than the federal constitution requires. Additionally, the Oregon Revised Statutes provide indigent defense services to 19,438 (15%) more indigents than both the Oregon Constitution and federal Constitution require. Therefore, Oregon expands the federal provision of indigent

¹⁴ Article I, Section 11 of the Oregon Constitution; LEGAL RESEARCH PAPER, *supra* note 11, pgs. 3-10.

¹⁵ COMPARISON OF OREGON AND FEDERAL AUTHORITY, *supra* note 11, at 5.

¹⁶ *Id.* at 2.

¹⁷ *See* Appendix A.

defense by 35%. Furthermore, this leaves 2,567 Oregon indigent defense cases that have no documented¹⁸ federal or state authority.

In a 1977 decision, the Oregon Supreme Court interpreted the Oregon Constitution to require the appointment of counsel for indigent defendants in all criminal proceedings, regardless of whether the defendant is actually incarcerated as a result of conviction.¹⁹ In summary, in Oregon, court-appointed counsel is required in three instances: (1) if the crime charged is a felony;²⁰ (2) if there is **potential**²¹ that the defendant will serve a sentence of one day or more in jail; and (3) if there is no potential for incarceration but the defendant **might have** pre-trial detention in jail and substantial potential fines.²²

III. Oregon's Indigent Defense System – Operations

The State Court Administrator, under the authority of the Chief Justice of the Oregon Supreme Court, and through the Indigent Defense Services Division (IDSD) operates the indigent defense program in Oregon. The Judicial Branch, through this system (a) creates the policies and guidelines that are used to determine whether indigence exists; (b) determines what qualification standards to impose on indigent

¹⁸ The use of the term “documented” does not indicate that the representation is in any way inappropriate. It instead indicates that the source for the representation is not clear.

¹⁹ Brown v. Multnomah County, 280 Or. 95 (1977); see also COMPARISON OF OREGON AND FEDERAL AUTHORITY, *supra* note 11, at 5.

²⁰ As noted in the preceding paragraph, this is mandated by the federal Constitution, and therefore, Oregon must comply with this mandate.

²¹ The fact that Oregon appoints counsel if there is a potential for incarceration is very different from the federally mandated standard that only those who are to be **actually** incarcerated after conviction will receive the assistance of state-paid counsel.

²² COMPARISON OF OREGON AND FEDERAL AUTHORITY, *supra* note 11, at 5, 6. In short, Oregon's Constitution provides for state-paid representation for all indigent misdemeanants because misdemeanor convictions carry the potential for a jail sentence.

defense providers; (c) appoints indigent defense providers; (d) compensates providers for indigent defense services; (e) authorizes non-attorney extraordinary expenses; and (f) negotiates contracts for the provision of indigent defense services.²³

Specifically, the Indigent Defense Services Division (IDSD) plays an important role in the administration of indigent legal services in Oregon. The IDSD is responsible for the managerial administration of the Indigent Defense Account and the Indigence Verification Program. The Indigent Defense Account provides the funds necessary to compensate counsel and pay the associated reasonable and necessary expenses where the provision of counsel at state expense is constitutionally or statutorily mandated. Therefore, counsel and funds are provided for the defense of indigent persons summoned into state court on criminal prosecutions, juvenile, civil commitment, or probation violation proceedings, and for indigent persons seeking relief in state courts in habeas corpus, post-conviction, or appellate proceedings.

Another one of IDSD's primary responsibilities is to negotiate contracts with independent (non-state employee) law firms, public defenders, and others to provide indigent defense representation. The IDSD is currently comprised of 7.1 (FTE) staff members and has a biennial budget of \$830,690.²⁴

Indigent defense services are primarily delivered to indigent defendants in one of two ways: under a contract with the State Court Administrator's office or on a

²³ Oregon State Bar, FINAL REPORT OF THE OREGON STATE BAR INDIGENT DEFENSE TASK FORCE at 8 (July 1994) [hereinafter FINAL REPORT].

²⁴ The funding level for the IDSD (\$830,690 for the 1997-99 biennium) represents less than 1% of the funding level for direct indigent defense services (\$116,955,501 for the current biennium). Additionally, the staffing of the IDSD has remained effectively unchanged since FY 1989, while the number of contracts that that IDSD negotiates and monitors has increased 61% from FY 1989 to FY 1998.

case-by-case appointment basis.²⁵ Generally, the services are provided pursuant to contracts that are entered into between the State Court Administrator's office and nonprofit public defender organizations, law firms, individual attorneys, or a combination of individual attorneys.²⁶ In fact, attorney services for approximately 92 percent of the annual indigent defense caseloads are generally provided under two-year contracts negotiated by IDSD. The division is currently responsible for 79 contracts which cover 34 of Oregon's 36 counties. Those cases that are not handled by an indigent defense contractor are assigned to attorneys who qualify to represent indigents and who are in private practice. These attorneys are paid an hourly rate for the work that they do on assigned cases.²⁷

IV. Issues Relating to the Current System in Oregon

The first issue regarding the provision of indigent defense counsel in Oregon is the breadth of the system. As noted earlier, the federal Constitution mandates the provision of indigent defense counsel under certain circumstances. But, the Oregon Constitution and the Oregon statutes increase the breadth of the provision of indigent defense counsel from 85,347 cases mandated by the federal Constitution to 133,620 cases.²⁸

Approximately 16,500 (14%) of the indigent defense caseload in Oregon has no direct constitutional authority from either the Oregon or United States

²⁵ *Id.* at 16.

²⁶ REPORT TO THE NOVEMBER 1994 EMERGENCY BOARD ON THE OPERATIONAL AND FINANCIAL DESIRABILITY OF ESTABLISHING A STATE AGENCY PUBLIC DEFENDER SYSTEM IN OREGON, Indigent Defense Services Division 1 (November 7, 1994).

²⁷ Oregon Judicial Department's 1999-01 Fiscal Plan.

²⁸ Two percent of the indigent defense cases in Oregon have no documented federal or state authority. *See* Appendix B.

Constitutions. These indigent defense cases are taxpayer-supported only because of the requirements in Oregon’s statutes.²⁹ This expansion of the right to indigent defense counsel creates a broad system that provides indigent defense services to a wider range of individuals than the federal Constitution, or even the Oregon Constitution, require.

A second issue regarding the current indigent defense system in Oregon is that it lacks a uniform performance monitoring system.³⁰ This lack of a uniform performance monitoring system entails two factors. First, there is presently no comprehensive performance monitoring system for indigent defense practitioners to determine the quality of their representation.³¹ Although the capability of indigent defense counsel is reviewed prior to assigning work to the attorney, there is not a sufficient number of staff members at IDSD to monitor the attorney’s performance on the cases that he or she handles.

Additionally, there are no detailed standards for measuring effective and efficient representation. This lack of “cost accountability” is a significant problem. It exists mainly due to the inadequate number of staff members at Indigent Defense Services. IDSD does not have the time, the staff, or the resources to evaluate attorney spending on indigent defense cases.

The lack of a substantive monitoring system that reviews the costs spent by attorneys allows some cases to have extraordinarily high attorney fees. For example,

²⁹

Id.

³⁰

FINAL REPORT, *supra* note 21, at 16.

³¹

Id.

in State v. Gable³² in Marion County, the two lead attorneys on the case received a combined total of \$271,036 for attorney fees. This calculated out to be 6,329.41 billable hours between April 6, 1990 and July 12, 1991.³³ On the other hand, the prosecution's attorney costs (basically salary and benefits) were \$205,871, which also includes their compensation for all of the other cases they handled from April 6, 1990 to July 12, 1991.³⁴

In State v. Manzo-Hernandez, the defendant was accused of killing an Oregon State Police trooper.³⁵ The cost of this defendant's defense totaled almost \$1.1 million.³⁶ The attorneys were on the case from September 30, 1992 to February 9, 1995. During this time, two of the defense attorneys had a combined total of 7,918.91 billable hours, which calculates into attorney fees of \$435,540.11.³⁷

In State v. Conan Wayne Hale,³⁸ one of the attorneys worked from May 29, 1996 to May 29, 1998 and earned \$280,698.19. At \$55 an hour, this averages out to

³² Marion County case number 90C20442; April 6, 1990 to July 12, 1991. The Foundation recognizes that approximately 15% of the indigent defense cases are handled with contracts that state an hourly fee, such as is the case in this Marion County case. The use of this case, and the others mentioned in the report, simply exemplifies some of the problems inherent with the current system. Additionally, the other 85% of the case load that is handled on a flat fee basis has its own accountability issues such as the assignment of appropriate staff to accomplish certain tasks. The point of using these case examples is to illustrate a need to develop a fully staffed accountability review system regardless of the payment methodology that is used.

³³ This breaks down to be 421.96 billable hours per month and 98.13 billable hours per week or 49.07 hours per attorney per week.

³⁴ This represents the prosecuting attorneys' salaries for the year, and therefore it takes into account the other caseloads that the attorneys were handling while they were also handling the Gable case. The figures that were used for the defense attorney fees only take the Gable case into account.

³⁵ Klamath County case number 9201724CR; September 30, 1992 to February 9, 1995.

³⁶ The actual cost from the indigent defense account payments was \$986,226.22.

³⁷ This amounts to monthly billable hours of 282.82 and 65.77 billable hours per week, or 32.89 hours per attorney per week. By comparison, the Klamath County DA's entire office budget for FYE 1997 was \$788,461.

³⁸ Lane County case number 109604830; May 29, 1996 to May 29, 1998.

be 5,103.6 billable hours.³⁹ The second attorney worked from August 1997 to May 1998 and received compensation of \$114,796. At \$50 an hour, this averages out to be 2,295.92 billable hours for the case.⁴⁰

The purpose of using these three case examples is to illustrate the high costs sometimes associated with the payment of attorney fees for indigent defense counsel.⁴¹ At present, these attorneys are almost unaccountable for the costs and billings associated with their representation of indigent defendants. The system does not have a method – or staff – to monitor the amount of time an attorney is billing and spending on a case.

A third issue regarding the provision of indigent defense counsel in Oregon is that historically a judge approved costs that the indigent defense attorney was going to spend defending the indigent client. Today, this process is bifurcated between local judges and the IDSD director. The IDSD has authority for accounting and auditing purposes. Judges continue to have responsibility for reviewing non-attorney billings for reasonableness and necessity.⁴² Currently there are 155 judges statewide who authorize indigent defense expenditures. Some of the costs that these judges approve are the costs of investigations, testimony by experts, and testimony by family members at trial.

³⁹ This calculates to 212.65 hours a month and 49.45 hours a week.

⁴⁰ This calculates to 229.60 hours a month and 53.39 hours a week.

⁴¹ According to IDSD, the average cost of death penalty cases from cases filed since 1993 is \$70,233. Of a total of 122 death penalty cases, the range of defense costs is from \$1,752 all the way to almost \$1 million.

⁴² See ORS 135.055(3). Additionally, there is a bill that was filed for the upcoming legislative session that recommends amending relevant statutes to provide for an administrative review process, rather than the judicial review process, in the future.

In some cases unusual costs are approved. One example can be found in the Manzo-Hernandez case. In this case, the judge allowed indigent defense counsel to hire two cultural experts that provided professional services and expert testimony on legal issues in this case. These cultural experts also traveled, at state expense, to Mexico on three occasions to study the environment that the defendant was raised in. The total cost for these two cultural experts was \$22,000.

The problem that arises with having judges approve expenses is that they are under pressure to approve the expenditures because, if they do not, the defense may argue on appeal that the defendant was not provided a fair and reasonable trial. Therefore, there is a practical conflict in having the judges approve and disapprove defense expenses.

A fourth issue regarding the provision of indigent defense services in Oregon is the overall cost of the indigent defense system compared to the costs of prosecuting the indigent defendants. Appendix B contains information that the Criminal Justice Foundation compiled from various sources. This Appendix provides the indigent defense expenses and the prosecutor's expenses in a county-by-county analysis.⁴³

⁴³ See Appendix C. We realize that these comparisons between the expenses of the district attorneys' offices and the indigent defense counsel are not exactly comparable. For instance, the column detailing the number of cases the DAs in each county handle also includes infractions. Infractions are included because infractions require processing and staff time. Second, it is further important to note that the breakdown among counties cannot be completely precise because some indigent defense providers operate in one county but also provide indigent services in other counties. Third, as was noted earlier in the report, indigent defense providers must pay overhead and it is possible that the budget figures for the DAs' offices do not always include budget figures for overhead items such as rent.

This data suggests that, in 17 counties, more is spent defending indigent defendants than is spent on the entire prosecutorial budget for the county.⁴⁴

For example, the State of Oregon spent \$986,226.22 to defend Manzo-Hernandez, who was charged with killing a police officer. Most of this expense was incurred in fiscal years 1992 and 1993. The Klamath County District Attorney who prosecuted this case only had about \$700,000 for his entire budget for each of those years. The indigent defense expense of this single aggravated murder case would have funded the entire Klamath County DA operations for a year and four months.

At first, the Criminal Justice Foundation thought that the above analysis, and specific case examples, may be out of line, and may have unduly focused on specific case costs. Also, the Criminal Justice Foundation was concerned that its critique of overall costs may be inappropriate, given the constitutional imperative that indigent defendants be provided with legal counsel. However, a comparison of indigent defense expenses in Oregon with those of other states establishes that Oregon has a high rate of indigent defense costs.

During the 1997-99 biennium, it is anticipated that the total cost of indigent defense in Oregon will be \$116,955,501. Based on an expenditure of approximately \$49.5 million in the 1997 fiscal year, and an estimated July 1998 population of 3,275,000 million persons, the per capita annual expenditure in Oregon for indigent defense is \$15.11. This compares unfavorably with indigent defense expenditures, per capita, reflected in a survey of eight states, where fiscal year 1997 per capita

⁴⁴ See Appendix C. A comprehensive study of the specific budget data for indigent defense attorneys and the district attorneys' office was beyond the scope of this study.

indigent defense expenditures, from all sources, ranged from a low of \$3.90 to a high of \$11.99, with an average of \$5.89 per capita. The Oregon per capita expenditure of \$15.11 is over twice as high as the average of these eight states.⁴⁵

V. Alternatives to Oregon's Current Indigent Defense System

One significant solution to the problems confronting the delivery system for indigent defense is the establishment of a truly independent entity for the provision of such services, or for oversight of such services. A bill to establish such an independent entity was filed in the 1997 legislative session, with the support of the Chief Justice of the Supreme Court and the State Court Administrator. The bill was SB 278. Unfortunately, the bill did not pass.

There is no "model" for the provision of indigent defense services, nationally, but one steady pattern of reform has been to move the oversight function to independent entities, either at the county level or the state level. Since counties do not pay for indigent defense in Oregon, it appears more appropriate for such an independent entity to be established on a statewide basis.

The separate entity could be a state agency, a public corporation, a nonprofit corporation established by the state, or a private for-profit corporation which contracts

⁴⁵ Comparative analysis of indigent defense expenditures and caseloads in states with mixed state and county funding, prepared for the Georgia Indigent Defense Council on behalf of the American Bar Association, Bar Information Program, by the Spangenberg Group. This can be found on the Internet at <http://www.gidc.com/spangen.htm> (February 25, 1998). It is important to note that it is an imperfect science to compare one state's indigent defense system with another state's indigent defense system. For instance, it is important to note that in many states, indigent defense programs do not include funding for representation of parents and children in dependency and termination of parental rights cases. Oregon does include these figures, which does contribute to a higher indigent defense expenditure in Oregon (20,156 of these types of cases were included in the FY 1997 indigent defense budget).

with the state to provide oversight. Preference should be given to a model which moves the indigent defense monitoring and operations outside of the judicial branch itself, since it is always difficult for the judicial branch to reign in defense expenditures, for fear of appearing less than impartial in the adjudication of cases.

It is also preferable to keep any indigent defense entity separate from other executive branch entities, since the executive branch has a number of agencies associated with the prosecution of cases, such as the Oregon Department of Justice (handling all criminal appeals and assisting with many prosecutions) and the State Police.

There are other changes which can be made to reduce the cost of indigent defense, and potentially improve efficiency. These include: (1) a modification of the Oregon Constitution to specify that indigent defense need not be required in any case other than where required under the federal constitutional standards; (2) the elimination or modification of statutes which allow indigent defense in Oregon beyond the requirements of the Oregon Constitution; (3) the limitation of the availability of indigent defense to the trial level (through overall limits on the right of appeal); (4) the redefinition of indigent defense eligibility standards (one change may be to establish a sliding scale so as to require some defendants to pay a portion of the cost of their defense, where full indigency has not been established); (5) stricter application of the principle that indigent defendants have an obligation to repay the state for the cost of their indigent defense (this can include recoupment of the cost of indigent defense through a portion of an inmate's income from prison work

programs); (6) tightening of the reporting requirements as to billable hours reports by attorneys handling indigent defense (more specificity can be required where the review is carried out by an entity outside of the judicial branch, so that the judicial branch does not have access to potentially confidential information involving the defense strategy or tactics).

Summary

Oregon can be proud of its efforts to make sure that any individual who is charged with a crime, who cannot afford legal counsel, will be provided with defense counsel to prepare and present an appropriate defense for the individual. At the same time, Oregon faces many other financial obligations, and there are many unmet needs. An indigent defense system which is costly, and which does not contain sufficient cost accountability or cost controls, requires careful reevaluation. There are alternative systems available, and other states obviously are able to provide justice through the criminal defense system at lower cost. These alternatives must be considered.

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INDIGENT DEFENSE IN OREGON

Glossary of Terms

Appellate Court	Appellate courts review the merits and procedural histories of cases which have previously been heard in trial court.
Indigency	Oregon's guidelines for determining indigency follow the qualification guidelines for the federal food stamp program. However, regardless of income levels, a person will be considered indigent if it is deemed that reasonable defense costs will create significant financial hardship for that person or their family.
Indigency Verification	Indigency is determined by the judge presiding over the case. The judge generally bases his decision upon a financial statement which is prepared by the defendant and verified by a court-employed Verification Specialist. There are 27 full-time Verification Specialists around the state.
Indigent Defense	The United States Constitution mandates that counsel be appointed to criminal defendants if they are facing incarceration upon conviction and are financially unable to retain an attorney. The Oregon Constitution expands this mandate to include anyone facing the possibility of incarceration if convicted who is financially unable to retain an attorney. The Oregon Revised Statutes further expand this mandate to include some civil cases.
Indigent Defense Account (IDA)	The Indigent Defense Fund is a part of the Oregon Judicial Department's budget. It is used to pay for the cost of court-appointed counsel and other defense-related expenses for all trial level (non-appellate) cases and a limited number of appellate cases.
Indigent Defense Services Division (IDSD)	IDSD is a division of the State Court Administrator's Office. IDSD is responsible for the administration of the Indigent Defense Fund. This includes selecting and contracting with attorneys who will serve as appointed counsel. IDSD contracts with private attorneys, consortiums of attorneys, and non-profit public defender associations to provide court-appointed counsel.
Prosecutor	Prosecuting attorneys represent the people of the state in litigation against a criminal defendant. Prosecuting attorneys may work at the county level in a District Attorney's office or on the state level in the Attorney General's office.

Public Defender

A public defender is a court-appointed attorney whose work consists primarily of representing indigent defendants in criminal cases. In Oregon a public defender may also represent indigent clients in some types of civil cases.

State Court Administrator

The office of the State Court Administrator assists the Chief Justice of the Supreme Court in his role as the administrative authority in the Oregon Judicial Department. Among numerous other duties, the State Court Administrator supervises the non-judge staff and the accounting system of the State Court.

Trial Court

Trial Court is the court of original jurisdiction where all evidence is first heard and considered. Trial court is the first court to consider legislation.

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RIGHT TO COUNSEL AT GOVERNMENT EXPENSE
TYPES OF CASES AND BASIS OF AUTHORITY
TRIAL LEVEL

LEGEND: Y = Yes; Direct Authority; Absolute Right, If Indigent
 N = No; Direct Authority; No Right
 S = Some; Direct Authority; Discretionary or Due Process Right, If Indigent
 ? = Unknown
 Y? = Likely; No Direct Authority
 N? = Unlikely; No Direct Authority
 S? = Likely for Some; No Direct Authority
 * = Estimate of Caseload
 ** = Limited to Indian Child Welfare Act Cases

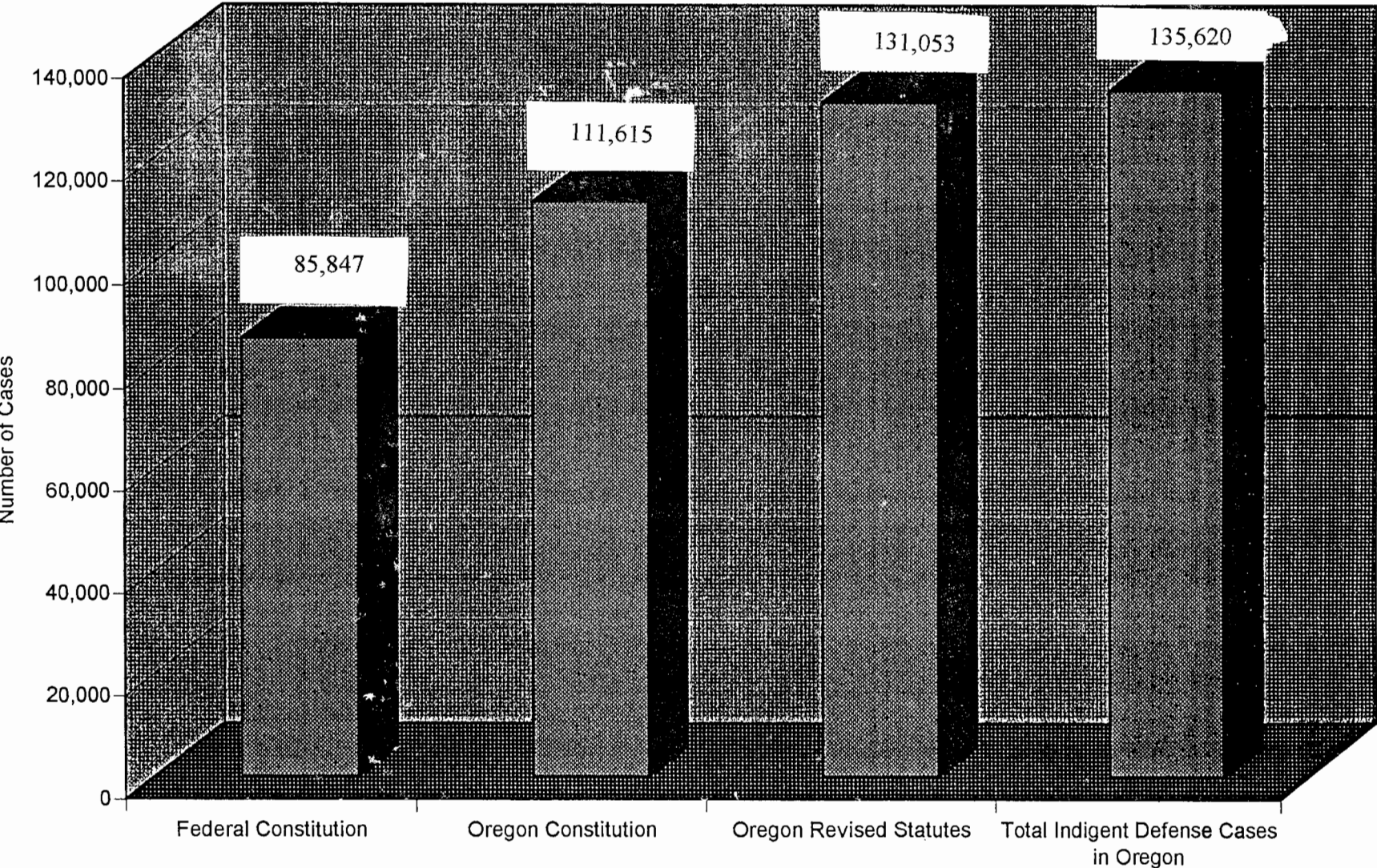
CASE TYPE	OREGON COURTS BASIS OF AUTHORITY					FEDERAL COURTS BASIS OF AUTHORITY	
	Oregon Constitution	Oregon Statute	Federal Constitution	Federal Statute	Annual Number of I.D. Cases	Federal Constitution	Federal Statute
CRIMINAL/OFFENSE							
Pre-Criminal Charges							
Interrogation	Y	N	Y	N	0	Y	Y
Line-up	Y	N	Y	N	0	Y	Y
Other Critical Stage	Y	N	Y	N	0	Y	Y
Death Penalty & Murder	Y	Y	Y	N	133	Y	Y
Felonies	Y	Y	Y	N	27,709	Y	Y
Misdemeanor							
Actual Jail	Y	Y	Y	N	10,961*	Y	Y
Potential Jail	Y	Y	N	N	19,907*	N	S
Violation/Infraction							
NO Jail Potential	Y?	N	N	N	0	N	N
Small Fine Only	N	N	N	N	0	N	N
Contempt	Y	Y	Y	N	1,776	Y	?
Diversion							
W/Guilty Plea	Y?	Y?	Y?	N	2,000*	Y?	Y?
W/O Guilty Plea	N	N	N	N	0	N?	N
Show Cause/Term.	Y	N	S?	N	725*	?	Y
GWIL							
Extradition	?	Y	?	N	1,042	?	Y
Material Witness	S?	Y	S?	N	5*	S?	Y
Probation Violation							
Felony	Y	Y	S	N	10,924	S	Y
Misdemeanor	Y	Y	S	N	7,848	S	Y
Parole Violation	S	S	S	N	0	S	Y
Invol. Commitment	Y	Y	Y	N	1,819	Y	Y
PSRB Hearing	Y?	Y	Y?	N	370	Y?	Y?
Invol. Sterilization	Y?	Y	Y?	N	0	N/A	N/A
Mental Retardation	Y?	Y	Y?	N	0	N/A	N/A
Postconviction Relief	N?	Y	N	N	628	N	N
Habeas Corpus	N	Y	N	N	337	N	S
Forfeiture	?	N	Y?	N	0	Y?	S

CASE TYPE	OREGON COURTS BASIS OF AUTHORITY					FEDERAL COURTS BASIS OF AUTHORITY	
	Oregon Constitution	Oregon Statute	Federal Constitution	Federal Statute	Annual Number of I.D. Cases	Federal Constitution	Federal Statute
JUVENILE							
Delinquency	Y	Y	Y	N	6,311	Y	Y
Dependency							
Parent	Y	S	S?	Y**	2,738	N/A	N/A
Child	?	Y	S?	S**	2,346	N/A	N/A
Review Hearing							
Parent	?	Y	?	Y**	3,650	N/A	N/A
Child	?	Y	?	S**	4,302	N/A	N/A
Probation Violation	Y	N	S	N	2,097	N/A	N/A
Emancipation	N?	Y	N?	N	0	N/A	N/A
Term. Parent. Rights							
Parent	S	Y	S	Y**	277	N/A	N/A
Child	S	Y	?	S**	30	N/A	N/A
Contested Adoption							
Parent	S	N	S?	Y?*	11	N/A	N/A
Child	S?	N	?	S?*	0	N/A	N/A
Perm. Guardianship							
Parent	S	N	S?	Y?*	0*	N/A	N/A
Child	S?	N	?	S?*	0*	N/A	N/A

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11/07/94

Basis of Authority for Appointment of State-Paid Counsel



**COUNTY BY COUNTY COMPARISON OF INDIGENT DEFENSE SPENDING TO PROSECUTION
SPENDING
FOR FISCAL YEAR ENDING 06/30/97**

	County	DA's Budget	Ind. Def. Costs	DA Court Cases	Ind. Def. Cases
1	Baker	\$ 182,915	\$ 277,915	150	526
2	Benton	\$ 1,082,105	\$ 489,719	8,151	1,505
3	Clackamas	\$ 4,798,529	\$ 2,428,632	24,028	8,042
4	Clatsop	\$ 590,000	\$ 484,583	6,681	1,239
5	Columbia	\$ 558,060	\$ 356,626	4,004	918
6	Coos	\$ 635,632	\$ 1,415,476	11,525	3,668
7	Crook	\$ 228,243	\$ 182,450	3,591	1,291
8	Curry	\$ 170,000	\$ 44,610	3,991	816
9	Deschutes	\$ 1,362,686	\$ 2,518,184	17,633	5,050
10	Douglas	\$ 1,268,000	\$ 1,696,414	11,707	3,802
11	Gilliam	\$ 94,306	\$ 23,279	56	93
12	Sherman	\$ 27,486	\$ 1,003	82	CWA
13	Wheeler	\$ 17,262	\$ 2,278	28	CWA
14	Grant	\$ 69,924	\$ 117,945	77	162
15	Harney	\$ 107,042	\$ 62,389	54	65
16	Hood River	\$ 121,490	\$ 103,977	4,306	1,002
17	Jackson	\$ 1,950,107	\$ 2,171,129	16,540	4,233
18	Jefferson	\$ 232,951	\$ 369,383	6,074	1,447
19	Josephine	\$ 1,256,450	\$ 526,424	12,512	3,464
20	Klamath	\$ 788,461	\$ 1,187,364	11,654	5,475
21	Lake	\$ 62,992	\$ 6,414	1,676	CWA
22	Lane	\$ 4,595,720	\$ 4,829,412	16,804	13,318
23	Lincoln	\$ 962,105	\$ 1,015,473	9,706	2,372
24	Linn	\$ 1,225,094	\$ 1,171,359	8,340	3,461
25	Malheur	\$ 535,069	\$ 606,296	1,750	1,716
26	Marion	\$ 5,711,942	\$ 3,364,816	14,184	10,512
27	Morrow	\$ 82,151	\$ 14,387	168	2,787
28	Umatilla	\$ 774,862	\$ 1,091,760	10,277	CWA
29	Multnomah	\$15,636,820	\$17,208,782	124,409	40,037
30	Polk	\$ 624,415	\$ 414,852	6,690	1,793
31	Tillamook	\$ 258,089	\$ 454,462	1,210	742
32	Union	\$ 195,000	\$ 265,669	5,938	789
33	Wallowa	\$ 76,297	\$ 14,926	753	CWA
34	Wasco	\$ 341,132	\$ 685,061	6,610	1,282
35	Washington	\$ 3,884,979	\$ 2,683,502	19,453	10,204
36	Yamhill	\$ 797,003	\$ 1,161,327	8,630	1,695
	Totals	\$51,305,319	\$49,448,278	379,442	133,596