

Court-Appointed Attorney Costs

SDCL 23A-40-7 provides that the governing board of any county or municipality is responsible for providing legal counsel to anyone within their jurisdiction who is charged with a Class 1 misdemeanor or felony. If the county maintains a public defender's office, judges or magistrates will assign this office to represent indigent defendants. In counties where there is no public defender system, an attorney will be appointed.

The cost of court-appointed representation is initially borne by the county in which the charge is levied. The judge may assess attorney costs against the defendant as a part of a sentence. There is also a provision for creation of a lien against a defendant's real or personal property (SDCL 23A-40-11 and -12).

Whether represented by court-appointed counsel or by a public defender's office, and regardless of whether or not the defendant is convicted, the defendant is expected to repay the cost of the court-appointed attorney.

In addition to the costs repaid directly by the defendant, a \$6.00 fee is collected for each criminal conviction including traffic violations. This is paid into a court-appointed attorney fund established by state law. This year the fund provided an allocation to each county of approximately 9.0% of the court-appointed attorney costs incurred. This figure is shown in the second column of Table 9.

Table 9 also shows county expenditures and defendant repayment as reported to the State Treasurer by the counties.

Chart 8 graphically compares court-appointed attorney costs and repayment by circuit for the past fiscal year. The Minnehaha (Second Circuit) and Pennington County (Seventh Circuit) Public Defender's Offices have full-time legal staffs funded by the counties to provide for the defense of economically disadvantaged persons accused of crimes. Lawrence and Butte Counties (Fourth Circuit) also share the expense of a full-time public defender's office.

The data contained in Table 9 shows the raw approximate average cost to each county for each court-appointed attorney case. This average does not include costs recovered by the counties either from direct payments by defendants, state reimbursements, or county lien collection efforts. When cost recovery is included in the calculation, the average payment per appointment is substantially lower. These costs were computed by dividing the total payment for the fiscal year by the total number of court-appointed attorney cases. Table 9 also shows the percentage of total Class 1 misdemeanor and felony filings which resulted in court appointment of an attorney.

Chart 8 shows that the difference between the cost of court-appointed attorneys and the amount the UJS collects has increased over the past five years. The cost for court

-appointed attorneys is difficult to predict from year to year because it depends on the number of arrests by law

enforcement agencies and the number of criminal prosecutions filed by the state's attorney in each county.

Chart 8. Court-Appointed Attorney Costs Compared to Repayment by Circuit - FY2010

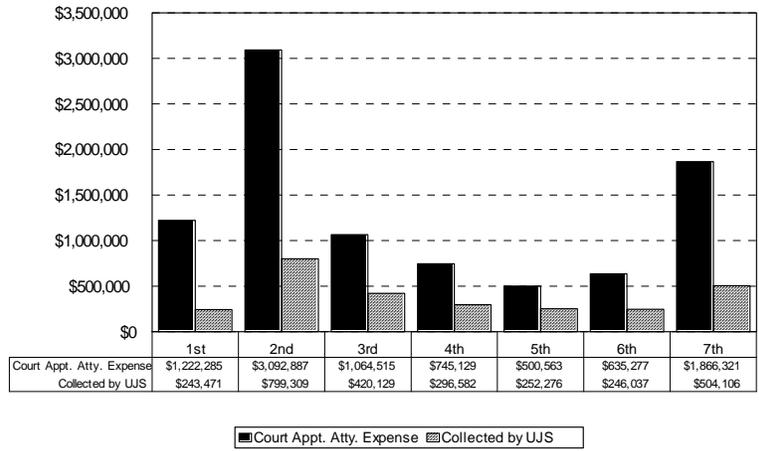
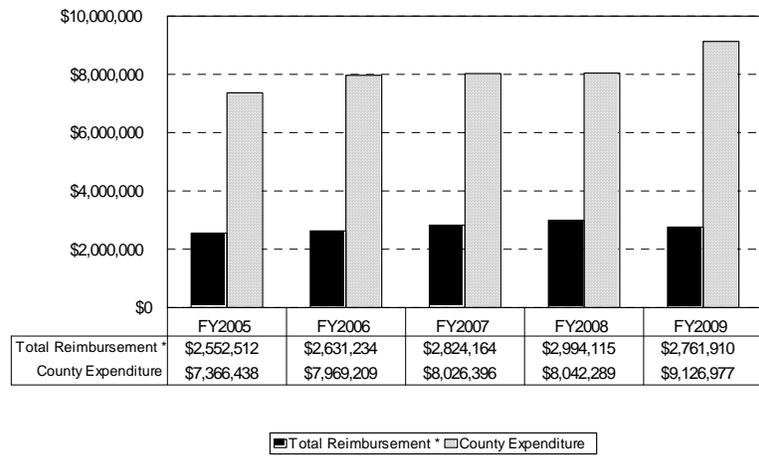


Chart 9. Court-Appointed Attorney Cost Payback by Fiscal Year



* Does not include other transfers made to county general funds.