



Draft South Dakota Indigent Defense Evaluation Plan

Introduction: The Sixth Amendment to the United States Constitution states that in “all criminal prosecutions” the accused shall enjoy the right, among others, to “have the Assistance of Counsel for his defence.”¹ In 1963 in *Gideon v. Wainwright*, the U.S. Supreme Court declared it an “obvious truth” that anyone accused of a crime who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.”² As the U.S. Supreme Court has noted, “[o]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.”³

Since *Gideon v. Wainwright*, the Sixth Amendment right to counsel means every person is entitled to have an attorney defend them in all federal and state courts at government expense whenever that person faces the potential loss of liberty and is unable to afford an attorney.⁴ In subsequent cases, the U.S. Supreme Court determined that the Sixth Amendment requires the appointment of counsel in felonies, misdemeanors,⁵ misdemeanors with suspended sentences,⁶ direct appeals,⁷ and appeals challenging a sentence imposed following a guilty plea where the sentence was not agreed to in advance.⁸ Children in delinquency proceedings, no less than adults in criminal courts, are also entitled to appointed counsel when facing the loss of liberty.⁹

¹ U.S. CONST. amend. VI.

² *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

³ *United States v. Cronin*, 466 U.S. 648, 654 (1984). *See also Powell v. Alabama*, 287 U.S. 45, 68-69 (1932). (“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”).

⁴ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁵ *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

⁶ *Alabama v. Shelton*, 505 U.S. 654 (2002).

⁷ *Douglas v. California*, 372 U.S. 353 (1963).

⁸ *Halbert v. Michigan*, 545 U.S. 605 (2005).

⁹ *In re Gault*, 387 U.S. 1 (1967). “[I]t would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase ‘due process.’ Under our Constitution, the condition of being a boy does not justify a kangaroo court.” *Id.* at 27-28. “A proceeding where the issue is whether the child will be found to be ‘delinquent’ and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child ‘requires the guiding hand of counsel at every step in the proceedings against him.’ . . . [T]he assistance of counsel is essential for purposes of waiver proceedings, [and] we hold now that it is equally essential for the determination of delinquency, carrying with it the awesome prospect of incarceration in a state institution until the juveniles reaches the age of 21.” *Id.* at 36.

The appointed lawyer cannot be merely a warm body with a bar card.¹⁰ The attorney must be effective,¹¹ subjecting the prosecution’s case to “the crucible of meaningful adversarial testing.”¹²

Most importantly, providing and protecting this constitutional right is a constitutional obligation of the states – not local governments – under the due process clause of the Fourteenth Amendment.¹³ Every state must have a system for ensuring that each indigent defendant who faces the possible loss of their liberty is given effective counsel.

In *United States v. Cronin*, the U.S. Supreme Court explains that deficient indigent defense systems can make any lawyer – even the best attorney – perform in ways that result in the constructive denial of the right to counsel.¹⁴ The Court explains that, when a lawyer provides representation in an indigent defense system that enables the constructive denial of counsel, the lawyer is presumptively ineffective.¹⁵ As the Seventh Circuit Court of Appeals noted over 30 years ago in *Wahlberg v. Israel*, “if the state is not a passive spectator of an inept defense, but a cause of the inept defense, the burden of showing prejudice [under *Strickland*] is lifted. It is not right that the state should be able to say, ‘sure we impeded your defense – now prove it made a difference.’”¹⁶

When a state chooses to delegate its right to counsel responsibilities to its counties, the state must guarantee not only that those local governments and officials are capable of providing effective representation but also that they are in fact doing so.¹⁷ Because the “responsibility to provide

¹⁰ As the Court noted in *Strickland v. Washington*, 466 U.S. 668, 685 (1984), “[t]hat a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command.”

¹¹ *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (“It has long been recognized that the right to counsel is the right to the effective assistance of counsel.”). To be effective, an attorney must be reasonably competent, providing to the particular defendant in the particular case the assistance demanded of attorneys in criminal cases under prevailing professional norms, such as those “reflected in American Bar Association standards and the like.” *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984).

¹² *United States v. Cronin*, 466 U.S. 648, 656 (1984).

¹³ *Gideon v. Wainwright*, 372 U.S. 335, 341-45 (1963) (“[T]hose guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. . . . [A] provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory upon the States by the Fourteenth Amendment. . . . [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”).

¹⁴ *United States v. Cronin*, 466 U.S. 648, 659-60 (1984) (“[I]f counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. . . . Circumstances of that magnitude may be present on some occasions when, although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. *Powell v. Alabama*, 287 U.S. 45 (1932), was such a case.”); *Strickland v. Washington*, 466 U.S. 668, 683 (1984) (“The Court has considered Sixth Amendment claims based on actual or constructive denial of the assistance of counsel altogether, as well as claims based on state interference with the ability of counsel to render effective assistance to the accused.”) (citing *United States v. Cronin*, 466 U.S. 648 (1984)).

¹⁵ *United States v. Cronin*, 466 U.S. 648, 657-62 (1984).

¹⁶ *Walberg v. Israel*, 766 F.2d 1071, 1076 (7th Cir. 1985).

¹⁷ Cf. *Robertson v. Jackson*, 972 F.2d 529, 533 (4th Cir. 1992) (although administration of a food stamp program was turned over to local authorities, “‘ultimate responsibility’ . . . remains at the state level.”); *Osmunson v. Idaho*, 17 P.3d 236, 241 (Idaho 2000) (where a duty has been delegated to a local agency, the state maintains “ultimate responsibility” and must step in if the local agency cannot provide the necessary services); *Claremont School Dist. v. Governor*, 794 A.2d 744 (N.H. 2002) (“While the State may delegate [to local school districts] its duty to provide a constitutionally adequate education, the State may not abdicate its duty in the process.”); Letter and white paper from American Civil Liberties Union Foundation *et al* to the Nevada Supreme

defense services rests with the state,” national standards unequivocally declare “there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.”¹⁸

Indigent Defense Services in South Dakota: South Dakota delegates the state’s indigent defense responsibility to county commissions in each of its 66 counties. South Dakota does not have a state entity that administers or oversees indigent defense services.¹⁹ Instead, counties are responsible for either establishing and maintaining a public defender office or establishing a system for court appointed attorneys to provide indigent defense services.²⁰ Only three counties have established public defender offices: Lawrence, Minnehaha, and Pennington.²¹

Counties are also responsible for funding indigent defense services, although a very small portion of each county’s indigent defense expenses is reimbursed by the state.²² Private appointed attorneys are paid hourly.²³ The effective rate as of January 1, 2023, is \$107 per hour.²⁴ Reimbursements for costs like travel and expert witnesses must be approved by the trial court.²⁵ All claims for compensation must be “reasonably necessary.”²⁶ Local governments can recoup the costs of representation by requiring the defendant to reimburse the county or municipal treasurer for the costs of representation through an order issued by the circuit or magistrate judge.²⁷ To address South Dakota’s current and projected shortage of lawyers practicing in small communities and rural areas, the state legislature created Project Rural Practice, a program administered by the state court that provides qualifying attorneys a financial incentive to practice in certain rural areas.²⁸ Under this program, counties pay 35% of the cost of the financial incentive, and the state pays the remaining 65% of the cost.²⁹

Methodology: The Sixth Amendment Center independently and objectively evaluates indigent defense systems using Sixth Amendment case law and national standards for right to counsel services as the uniform baseline measurements for providing attorneys to indigent defendants, along with the requirements of state, local and federal laws. The use of standards as a basis for

Court, regarding Obligation of States in Providing Constitutionally-Mandated Right to Counsel Services (Sept. 2, 2008) (“While a state may delegate obligations imposed by the constitution, ‘it must do so in a manner that does not abdicate the constitutional duty it owes to the people.’”); Ruling on Demurrers in Phillips v. California, No. 15CECG02201 at 4 (Cal. Super. Ct. Fresno County filed Apr. 13, 2016) (“If the State created an indigent defense system that is systematically flawed and underfunded, . . . the State remains responsible, even if it delegated this responsibility to political subdivisions.”).

¹⁸ AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 2 cmt. (2002).

¹⁹ S.D. CODIFIED LAWS § 23A-40-7 (2023).

²⁰ S.D. CODIFIED LAWS § 23A-40-7 (2023).

²¹ *A new task force could examine issues with court appointed attorneys across South Dakota*, ARGUS LEADER (Jan. 18, 2023), <https://www.argusleader.com/story/news/politics/2023/01/18/lawmakers-mull-summer-study-for-centralized-public-defenders-office/69818357007>.

²² S.D. CODIFIED LAWS § 23A-40-8 (2023); S.D. CODIFIED LAWS § 23A-40-20 (2023).

²³ *Court Appointed Attorney Guidelines*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, <https://ujs.sd.gov/uploads/docs/CourtAppointedAttorneyGuidelines.pdf> (last visited Mar. 17, 2023).

²⁴ *Court Appointed Attorney Guidelines*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, <https://ujs.sd.gov/uploads/docs/CourtAppointedAttorneyGuidelines.pdf> (last visited Mar. 17, 2023).

²⁵ *Court Appointed Attorney Guidelines*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, <https://ujs.sd.gov/uploads/docs/CourtAppointedAttorneyGuidelines.pdf> (last visited Mar. 17, 2023).

²⁶ *Duffy v. Circuit Court for Seventh Judicial Circuit*, 676 N.W.2d 126, 2004 S.D. 19 (S.D. 2004).

²⁷ S.D. CODIFIED LAWS § 23A-40-10 (2023).

²⁸ *Rural Attorney Recruitment Program 2023 Annual Report*, UNIFIED JUDICIAL SYSTEM STATE OF SOUTH DAKOTA, <https://ujs.sd.gov/uploads/RARPreport.pdf>. The program was approved in 2013 and made permanent in 2019. It provides an incentive of about \$12,000 per year over five years, for a total of \$62,568 per attorney.

²⁹ *Rural Attorney Recruitment Program 2023 Annual Report*, UNIFIED JUDICIAL SYSTEM STATE OF SOUTH DAKOTA, <https://ujs.sd.gov/uploads/RARPreport.pdf>.

evaluation of government services is familiar to most governmental officials. After all, for many decades policymakers have ordered minimum safety standards in all proposals to build a brand-new courthouse, provide a fleet of city buses, or construct a new state highway overpass. Our Constitution demands that the threat of taking an individual's liberty is given at least the same level of concern and care.

To help policymakers who may not be versed in the standards imposed by Sixth Amendment constitutional law, the American Bar Association (ABA) promulgated the *Ten Principles of a Public Defense Delivery System (Ten Principles)*. As the ABA explains, these principles represent “fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.”³⁰

Although each indigent defense project is tailored to the specific needs of the jurisdiction being evaluated, all 6AC assessments employ the following four primary approaches:

- **Legal research and analysis:** Every state in the country has its own substantive and procedural law – through its constitution, statutes, rules, regulations, and case law – that operates differently than that of every other state. In addition, counties, and cities, as well as the courts located within them, often have their own governing laws, rules, and policies. Relevant state and local law will be independently researched and analyzed, along with its interactions with federal law and national standards, in order to understand and explain the workings of the indigent representation system within the state.
- **Data collection and analysis:** Information about how a jurisdiction provides right to counsel services exists in various forms, from statistical information to policies and procedures. Relevant hard copy and electronic information, including copies of indigent defense contracts, policies, and procedures, will be obtained, and analyzed.
- **Court observations:** Evaluating how right to counsel services work in any jurisdiction requires an understanding of the interaction between at least three critical phenomena: (a) the procedures an individual defendant experiences as their case advances from arrest through disposition; (b) the process the defense attorney experiences while representing that individual at the various stages of the case; and (c) the substantive laws and procedural rules that govern the justice systems in which indigent representation is provided. Courtroom observations will be conducted to clarify these processes.
- **Interviews:** No individual component of the criminal justice system operates in a vacuum. Rather, the policy decisions of one component necessarily affect another. Because of this, interviews, via zoom or in-person, will be conducted with a broad cross-section of stakeholder groups. Interviews will be conducted with stakeholders, including appointed attorneys, trial court judges, prosecutors, court clerks, and law enforcement.

Because limitations of time and resources prevent most any evaluation from considering every court, indigent defense system, and public defense provider in a given state, it is important that

³⁰ AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002).

the study look closely at a representative segment of services throughout South Dakota. Scientific samples are based on evaluating 10% of a state’s counties – i.e., 6-7 counties in South Dakota. The evaluation will be of adult trial-level services. To prevent accusations of cherry-picking either the very best or the very worst jurisdictions for in-depth study, the 6AC requests the South Dakota Indigent Legal Services Task Force to identify a relevant sample of counties to be studied that reflect geographic, population, and indigent defense delivery system diversity if an evaluation is approved.

For this draft plan, 6AC chose seven counties, one from each of the state’s seven judicial circuits to develop a preliminary budget: First Circuit (Douglas County); Second Circuit (Minnehaha County); Third Circuit (Beadle County); Fourth Circuit (Meade County); Fifth Circuit (Roberts County); Sixth Circuit (Gregory County); and Seventh Circuit (Oglala Lakota County).

Sketches of Indigent Defense Services in the Sample Counties:

First Circuit - Douglas County: Douglas County has a population of 2,828³¹ and is the 48th least populous county in South Dakota (tied with Perkins County).³² Douglas County has an 11.4% poverty rate, lower than the 12.3% poverty rate in South Dakota.³³ The median income in Douglas County is \$66,750, approximately \$3,000 higher than the \$63,920 median income in the state.³⁴

In addition to the presiding judge, the First Judicial Circuit has five circuit judges and two full-time magistrate judges appointed by the presiding judge.³⁵ Court clerk magistrates also serve each county in the circuit.³⁶ The presiding judge is assisted by a circuit court administrator and a chief court services officer.³⁷ The First Judicial Circuit had 16,362 criminal filings³⁸ and held eight jury trials and 61 bench trials (“court trials”) in FY 2021.³⁹

Indigent representation services in Douglas County are provided by private attorneys appointed by the court on a case-by-case basis at a fixed rate of \$107 per hour.⁴⁰ The First Judicial Circuit has its own court-appointed attorney voucher form for appointed counsel to submit itemized

³¹ *QuickFacts Douglas County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/douglascountysouthdakota,SD/BZA010221> (last visited June 23, 2023).

³² *South Dakota: 2020 Census*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/south-dakota-population-change-between-census-decade.html> (last visited June 23, 2023).

³³ *QuickFacts Douglas County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/douglascountysouthdakota,SD/BZA010221> (last visited June 23, 2023).

³⁴ *QuickFacts Douglas County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/douglascountysouthdakota,SD/BZA010221> (last visited June 23, 2023).

³⁵ *First Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/First_Circuit/Default.aspx (last visited June 23, 2023). See also S.D. Codified Laws § 16-12B-1.1 (2023).

³⁶ *First Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/First_Circuit/Default.aspx (last visited June 23, 2023).

³⁷ *Seventh Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/Seventh_Circuit/Default.aspx (last visited June 23, 2023).

³⁸ *FY2021 Annual Report* (2021), SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, available at <https://ujs.sd.gov/uploads/annual/fy2021/FY2021AnnualReportSummary.pdf>.

³⁹ Chief Justice Steven R. Jensen & State Court Administrator Gregory Sattizahn, *South Dakota Courts State Fiscal Year 2021 Annual Statistical Report of the South Dakota Unified Judicial System* (Oct. 2021), available at <https://ujs.sd.gov/uploads/annual/fy2021/FY2021AnnualReportEntireReport.pdf>.

⁴⁰ *Court Appointed Attorney Guidelines*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, (Nov. 4, 2022), available at <https://ujs.sd.gov/uploads/docs/CourtAppointedAttorneyGuidelines.pdf>.

vouchers detailing fees and expenses for each individual case.⁴¹ The voucher requires court-appointed attorneys to detail type of action, status of case, charges and personal information, and itemized expenses.⁴² Appointed counsel must submit their vouchers to the court within 30 days of the completion of a case.⁴³

As of 2023, there are four private attorneys who accept court appointments in Douglas County.⁴⁴ In FY 2020, 11 appointments were made in Douglas County.⁴⁵ In FY 2020, Douglas County did not appropriate any funds to court appointed attorneys, nor did it list any indigent defense expenditures in its legislative audit.⁴⁶ In FY 2020, the Unified Justice System collected a total of \$1,562 (\$1,104 was paid by defendants, which was remitted to Douglas County).⁴⁷

Second Circuit - Minnehaha County: The Second Judicial Circuit is the largest judicial circuit by population, with a total population of about 267,555 residents, and it includes Lincoln and Minnehaha counties.⁴⁸ Minnehaha County is the most populous county in South Dakota⁴⁹ with a population of 203,971.⁵⁰ Minnehaha County's poverty rate is 9.5%, lower than the 12.3% poverty rate in South Dakota.⁵¹ The median income in Minnehaha County is \$66,502, slightly higher than the South Dakota median of \$63,920.⁵²

In addition to the presiding judge, the Second Judicial Circuit has 11 circuit judges and four full-time magistrate judges who are appointed by the presiding judge.⁵³ The Second Judicial Circuit had 44,663 criminal filings⁵⁴ and held 61 trials and 170 bench trials ("court trials") in FY 2021.⁵⁵

⁴¹ *Court Appointed Attorney Guidelines*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, (Nov. 4, 2022), available at <https://ujs.sd.gov/uploads/docs/CourtAppointedAttorneyGuidelines.pdf>. See also UJS010, Voucher for Compensation and Expenses of Court Appointed Attorney, available at https://ujs.sd.gov/First_Circuit/Local_Forms_And_Policies/Default.aspx (last visited June 23, 2023).

⁴² UJS010, Voucher for Compensation and Expenses of Court Appointed Attorney, available at https://ujs.sd.gov/First_Circuit/Local_Forms_And_Policies/Default.aspx (last visited June 23, 2023).

⁴³ *Court Appointed Attorney Guidelines*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, (Nov. 4, 2022), available at <https://ujs.sd.gov/uploads/docs/CourtAppointedAttorneyGuidelines.pdf>.

⁴⁴ *South Dakota Indigent Defense Task Force Survey Report*, County Administrator (June 2023).

⁴⁵ *Table B-3 Court-Appointed Cases and Costs – FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB/B3CourtAppointedCosts.pdf> (last visited June 23, 2023).

⁴⁶ State of South Dakota Department of the Legislative Audit, Douglas County Audit Report For the Two Years Ended December 21, 2020 (2021), available at <https://legislativeaudit.sd.gov/reports/County/DouglasCounty2020-2019.pdf>. However, it is also reported that Douglas County paid \$15,391 in expenditures. *Table B-2 County Expenditures and Repayment for Court-Appointed Attorneys - FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB/B2CountyExpenditures.pdf> (last visited June 23, 2023).

⁴⁷ *Table B-2 County Expenditures and Repayment for Court-Appointed Attorneys - FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB/B2CountyExpenditures.pdf> (last visited June 23, 2023).

⁴⁸ *Second Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/Second_Circuit/Links/Counties.aspx (last visited June 7, 2023).

⁴⁹ *South Dakota: 2020 Census*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/south-dakota-population-change-between-census-decade.html> (last visited June 5, 2023).

⁵⁰ *QuickFacts Minnehaha County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/minnehahacountysouthdakota,SD/PST045222> (last visited June 5, 2023).

⁵¹ *QuickFacts Minnehaha County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/minnehahacountysouthdakota,SD/PST045222> (last visited June 5, 2023).

⁵² *QuickFacts Minnehaha County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/minnehahacountysouthdakota,SD/PST045222> (last visited June 5, 2023).

⁵³ *Bench Personnel by Judicial Circuit as of April 1, 2021*, Appendix B Fiscal Year 2020 Annual Report, <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB/B1BenchPersonnel.pdf>. See also S.D. Codified Laws § 16-12B-1.1 (2023).

⁵⁴ *Counties, Circuits, and FY2021 Caseload, FY2021 Annual Report*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM (2021).

⁵⁵ Chief Justice Steven R. Jensen, State Court Administrator Gregory Sattizahn, *South Dakota Courts State Fiscal Year 2021 Annual Statistical Report of the South Dakota Unified Judicial System* (Oct. 2021).

Indigent defense representation in Minnehaha County is provided by public defenders and private attorneys. Primary representation is provided by the Minnehaha County Public Defender's Office, with the office providing 72% of all representation in the county.⁵⁶ Conflict representation is provided by the Office of the Public Advocate, which provides 20% of the representation in the county.⁵⁷ In matters where the Minnehaha County Public Defender's Office and the Office of the Public Advocate have a conflict of interest, the court appoints private attorneys from a list of attorneys on a case-by-case basis, providing approximately 8% of the representation in the county.⁵⁸

Individuals must fill out a written application to receive an appointed attorney.⁵⁹ The county does not provide appointed counsel to indigent defendants in class 2 misdemeanors, petty offenses, municipal ordinance violations, and in magistrate court where the court has determined there is no possibility of imprisonment.⁶⁰

The Minnehaha County Public Defender's has 27 full-time staff employees, including one full-time attorney to handle appeals only, six paralegals, and seven administrative assistants.⁶¹ The public defender office does not have any investigators, social workers, or receptionists on staff.⁶² Full-time staff attorneys are paid approximately a \$86,465 - \$176,883 salary range.⁶³ In FY 2022, the Minnehaha County Public Defender's Office was appointed to 8,106 new cases: 3,640 felony cases, 3,874 misdemeanor cases, two capital cases, 567 juvenile delinquency cases, and 23 appeals.⁶⁴

The 2022 budget (January 1 – December 31, 2022) appropriated \$4,332,219 to the Minnehaha County Public Defender's Office, \$1,308,108 to the Office of the Public Advocate, and \$2,100,330 to private attorneys.⁶⁵ The 2023 provisional budget (January 1, 2023 – December 21, 2023) increased slightly, appropriating \$5,042,721 to the Minnehaha County Public Defender's Office, \$1,502,706 to the Office of the Public Advocate, and \$2,100,330 to private attorneys.⁶⁶

⁵⁶ *Right to Counsel*, Guidelines to Determine Eligibility for Indigent Defense Services, https://www.minnehahacounty.gov/dept/pd/obtaining_lawyer/obtaining_lawyer.php. South Dakota Indigent Defense Task Force, Minnehaha County Presentation (Mar. 31, 2023).

⁵⁷ *Right to Counsel*, Guidelines to Determine Eligibility for Indigent Defense Services, https://www.minnehahacounty.gov/dept/pd/obtaining_lawyer/obtaining_lawyer.php. South Dakota Indigent Defense Task Force, Minnehaha County Presentation (Mar. 31, 2023).

⁵⁸ *Right to Counsel*, Guidelines to Determine Eligibility for Indigent Defense Services, https://www.minnehahacounty.gov/dept/pd/obtaining_lawyer/obtaining_lawyer.php. South Dakota Indigent Defense Task Force, Minnehaha County Presentation (Mar. 31, 2023).

⁵⁹ *Right to Counsel*, Guidelines to Determine Eligibility for Indigent Defense Services, https://www.minnehahacounty.gov/dept/pd/obtaining_lawyer/obtaining_lawyer.php.

⁶⁰ *Right to Counsel*, Guidelines to Determine Eligibility for Indigent Defense Services, https://www.minnehahacounty.gov/dept/pd/obtaining_lawyer/obtaining_lawyer.php.

⁶¹ South Dakota Indigent Defense Taskforce Hearing Notes, Listening Session USD Knudson School of Law – Vermillion (June 6, 2023).

⁶² South Dakota Indigent Defense Task Force Survey Report, Public Defender (June 2023).

⁶³ South Dakota Indigent Defense Task Force Survey Report, Public Defender (June 2023).

⁶⁴ South Dakota Indigent Defense Task Force Survey Report, Public Defender (June 2023).

⁶⁵ *Annual Budget for Minnehaha County, SD*,

<https://www.minnehahacounty.gov/dept/au/budgetFinance/officialBudget/2022AnulBdgt.pdf> (last visited June 23, 2023).

⁶⁶ *Provisional Budget for Minnehaha County, SD*,

<https://www.minnehahacounty.gov/dept/au/budgetFinance/provisionalBudget/2023ProvBdgt.pdf>

(last visited June 23, 2023). South Dakota Indigent Defense Task Force, Minnehaha County Presentation (Mar. 31, 2023).

In FY 2022, total expenditures by the public defender office, public advocate, and private attorneys was \$6,459,889, with the following breakdown: public defender (\$3,821,419), public advocate (\$1,308,108), and private attorneys (\$1,330,362).⁶⁷ The average cost per case was: public defender (\$471.78), public advocate (\$585.02), and private (\$1,380.04).⁶⁸ In FY 2020, the Unified Judicial System collected a total of \$357,018 (\$173,407 was paid by defendants, which was remitted to Minnehaha County).⁶⁹

Third Circuit - Beadle County: Beadle County has a population of 19,376⁷⁰ and is the 11th most populous county in South Dakota.⁷¹ Beadle County has a poverty rate of 12.7%, slightly higher than the 12.3% poverty rate in South Dakota.⁷² The median income in Beadle County is \$56,692, lower than the \$63,920 median income in the state.⁷³

In addition to the presiding judge, the Third Judicial Circuit has five circuit judges and two full-time magistrate judges appointed by the presiding judge.⁷⁴ The Third Judicial Circuit had 20,252 criminal filings⁷⁵ and held nine jury trials (four felonies and five class 1 misdemeanors) and 81 bench trials (“court trials”) in FY 2021.⁷⁶

Indigent defense representation in Beadle County is provided by “a cooperative contract among local defense attorneys.”⁷⁷ One law firm manages the contract, but the work is “divided among various firms in the county.”⁷⁸ The firm “polices both the billings and assignments of cases” among the various law firms.⁷⁹ The state’s attorney in Beadle County believes that this system is a “significant improvement over the prior system where they utilized a court appointed attorney list.”⁸⁰

⁶⁷ South Dakota Indigent Defense Task Force, Minnehaha County Presentation (Mar. 31, 2023).

⁶⁸ South Dakota Indigent Defense Task Force, Minnehaha County Presentation (Mar. 31, 2023).

⁶⁹ *Table B-2 County expenditures and repayment for court-appointed attorneys – FY2020*, Fiscal Year 2020 Annual Report, available at <https://uj.s.sd.gov/uploads/annual/fy2020/AppendixB.pdf> (last visited June 7, 2023).

⁷⁰ *QuickFacts Beadle County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/beadlecountysouthdakota,SD/BZA010221> (last visited July 5, 2023).

⁷¹ *South Dakota: 2020 Census*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/south-dakota-population-change-between-census-decade.html> (last visited July 5, 2023).

⁷² *QuickFacts Beadle County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/beadlecountysouthdakota,SD/BZA010221> (last visited July 5, 2023).

⁷³ *QuickFacts Beadle County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/beadlecountysouthdakota,SD/BZA010221> (last visited July 5, 2023).

⁷⁴ *Third Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://uj.s.sd.gov/Third_Circuit/Default.aspx (last visited July 5, 2023). See also S.D. CODIFIED LAWS § 16-12B-1.1 (2023).

⁷⁵ *FY2021 Annual Report* (2021), SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, available at <https://uj.s.sd.gov/uploads/annual/fy2021/FY2021AnnualReportSummary.pdf>.

⁷⁶ Chief Justice Steven R. Jensen & State Court Administrator Gregory Sattizahn, *South Dakota Courts State Fiscal Year 2021 Annual Statistical Report of the South Dakota Unified Judicial System* (Oct. 2021), available at <https://uj.s.sd.gov/uploads/annual/fy2021/FY2021AnnualReportEntireReport.pdf>.

⁷⁷ South Dakota Indigent Defense Taskforce Hearing Notes, Listening Session Crossroads Convention Center – Huron (June 12, 2023).

⁷⁸ South Dakota Indigent Defense Taskforce Hearing Notes, Listening Session Crossroads Convention Center – Huron (June 12, 2023).

⁷⁹ South Dakota Indigent Defense Taskforce Hearing Notes, Listening Session Crossroads Convention Center – Huron (June 12, 2023).

⁸⁰ South Dakota Indigent Defense Taskforce Hearing Notes, Listening Session Crossroads Convention Center – Huron (June 12, 2023).

In FY 2020, Beadle County indigent defense expenditures totaled \$294,0248.32.⁸¹ The state’s attorney expenditures totaled \$504,106.91, and law enforcement’s expenditures totaled 2,007,959.22.⁸² In FY 2020, the Unified Judicial System collected a total of \$64,296 (\$57,978 was paid by defendants, which was remitted to Beadle County).⁸³

Fourth Circuit - Meade County: Meade County has a population of 29,851⁸⁴ and is the sixth most populous county,⁸⁵ and the largest county by landmass,⁸⁶ in South Dakota. Meade County has a poverty rate of 9.3%, lower than the 12.3% poverty rate in South Dakota.⁸⁷ The median income in Meade County is \$68,242, approximately \$5,000 higher than the \$63,920 median income in the state.⁸⁸

In addition to the presiding judge, the Fourth Judicial Circuit has three circuit judges and two law-trained magistrate judges appointed by the presiding judge.⁸⁹ The presiding judge is assisted by an appointed circuit court administrator and a chief court services officer.⁹⁰ Each county in the Fourth Judicial Circuit also has its own court clerk magistrates.⁹¹ In FY 2021, the Fourth Judicial Circuit had 12,968 criminal filings⁹² and held 11 jury trials (nine felonies and two class 1 misdemeanors) and 54 bench trials (“court trials”).⁹³

Indigent representation services in Meade County are provided by private attorneys appointed by the court on a case-by-case basis at a fixed rate of \$107 per hour.⁹⁴ There are five attorneys listed as certified court-appointed defense attorneys in Sturgis, one in Piedmont, and one in Faith.⁹⁵ There are nine attorneys listed as certified abuse and neglect attorneys in Sturgis and one in

⁸¹ *Table B-3 Court-appointed cases and costs – FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB.pdf> (last visited July 5, 2023).

⁸² State of South Dakota Department of the Legislative Audit, *Beadle County Audit Report For the Two Years Ended December 21, 2020 (2021)*, available at <https://legislativeaudit.sd.gov/reports/County/BeadleCounty2020-2019.pdf>

⁸³ *Table B-2 County expenditures and repayment for court-appointed attorneys – FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB.pdf> (last visited June 7, 2023).

⁸⁴ *QuickFacts Meade County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/meadecountysouthdakota,SD/PST045222> (last visited June 21, 2023).

⁸⁵ *South Dakota: 2020 Census*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/south-dakota-population-change-between-census-decade.html> (last visited June 21, 2023).

⁸⁶ Listening Session, South Dakota Indigent Defense Task Force (May 22, 2023); See also *History of Meade County*, MEADE COUNTY, <https://www.meadecounty.org/history-of-meade-county> (last visited June 21, 2023).

⁸⁷ *QuickFacts Meade County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/meadecountysouthdakota,SD/PST045222> (last visited June 21, 2023).

⁸⁸ *QuickFacts Meade County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/meadecountysouthdakota,SD/PST045222> (last visited June 21, 2023).

⁸⁹ *Fourth Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/Fourth_Circuit/Links/Counties.aspx (last visited June 21, 2023).

⁹⁰ *Fourth Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/Fourth_Circuit/Links/Counties.aspx (last visited June 21, 2023).

⁹¹ *Fourth Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/Fourth_Circuit/Links/Counties.aspx (last visited June 21, 2023).

⁹² *Counties, Circuits, and FY2021 Caseload, FY2021 Annual Report*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM (2021).

⁹³ Chief Justice Steven R. Jensen, State Court Administrator Gregory Sattizahn, South Dakota Courts State Fiscal Year 2021 Annual Statistical Report of the South Dakota Unified Judicial System (Oct. 2021).

⁹⁴ Listening Session, South Dakota Indigent Defense Task Force (May 22, 2023).

⁹⁵ *Certified Attorneys*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, <https://ujs.sd.gov/Attorneys/Certified.aspx> (last visited June 21, 2023).

Black Hawk.⁹⁶ Appointed attorneys are compensated \$1 per mile for traveling for a case, which is an issue as Meade County is the largest county in South Dakota by landmass.⁹⁷

In FY 2020, Meade County appropriated \$375,000 from its General Fund to Court Appointed Attorneys.⁹⁸ In FY 2020, Meade County indigent defense expenditures totaled \$329,804.45.⁹⁹ The average payment per case appointment in FY 2020 was \$501.99.¹⁰⁰ In FY 2020, the Unified Justice System collected a total of \$29,051 (\$10,510.07 was paid by defendants, which was remitted to Meade County).¹⁰¹

Fifth Circuit - Roberts County: Roberts County has a population of 10,149.¹⁰² Roberts County is the 17th most populous county in South Dakota.¹⁰³ Roberts County has a poverty rate of 17.6%, higher than the 12.3% poverty rate in South Dakota.¹⁰⁴ The median income in Roberts County is \$53,618, lower than the \$63,920 median income in the state.¹⁰⁵ The Sisseton Wahpeton Sioux Tribe lives in parts of Roberts County¹⁰⁶ that includes the Lake Traverse Reservation.¹⁰⁷ In addition to the presiding judge, the Fifth Judicial Circuit has three circuit judges and one full-time magistrate judge who is appointed by the presiding judge.¹⁰⁸ The Fifth Judicial Circuit had 11,995 criminal filings¹⁰⁹ and held two jury trials and 15 bench trials (“court trials”) in FY 2021.¹¹⁰

Roberts County contracts with two private attorneys to provide counsel to indigent defendants, and appoints private attorneys compensated at \$107/hour as needed outside of the contract.¹¹¹ Two certified court-appointed defense attorneys are listed as available in Sisseton, as well as one

⁹⁶ *Certified Attorneys*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, <https://ujs.sd.gov/Attorneys/Certified.aspx> (last visited June 21, 2023).

⁹⁷ Listening Session, South Dakota Indigent Defense Task Force (May 22, 2023); See also *History of Meade County*, MEADE COUNTY, <https://www.meadecounty.org/history-of-meade-county> (last visited June 21, 2023).

⁹⁸ State of South Dakota Department of the Legislative Audit, Meade County Audit Report For the Two Years Ended December 21, 2020 (2021), available at <https://legislativeaudit.sd.gov/reports/County/MeadeCounty2020-2019.pdf>.

⁹⁹ State of South Dakota Department of the Legislative Audit, Meade County Audit Report For the Two Years Ended December 21, 2020 (2021), available at <https://legislativeaudit.sd.gov/reports/County/MeadeCounty2020-2019.pdf>.

¹⁰⁰ *Table B-3 Court-Appointed Cases and Costs – FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB/B3CourtAppointedCosts.pdf> (last visited June 21, 2023).

¹⁰¹ *Table B-2 County Expenditures and Repayment for Court-Appointed Attorneys - FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB/B2CountyExpenditures.pdf> (last visited June 21, 2023).

¹⁰² *QuickFacts Roberts County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/robertscountysouthdakota,SD/PST045222> (last visited June 8, 2023).

¹⁰³ *South Dakota: 2020 Census*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/south-dakota-population-change-between-census-decade.html> (last visited June 8, 2023).

¹⁰⁴ *QuickFacts Roberts County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/robertscountysouthdakota,SD/PST045222> (last visited June 8, 2023).

¹⁰⁵ *QuickFacts Roberts County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/robertscountysouthdakota,SD/PST045222> (last visited June 8, 2023).

¹⁰⁶ *Sisseton Wahpeton Sioux Tribe*, SOUTH DAKOTA DEPARTMENT OF TRIBAL RELATIONS, <https://sdtribalrelations.sd.gov/tribes/Sisseton-Wahpeton-Oyate.aspx> (last visited June 8, 2023).

¹⁰⁷ *My Tribal Area*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/tribal/?st=46&aianihh=1860> (last visited June 8, 2023).

¹⁰⁸ *Bench Personnel by Judicial Circuit as of April 1, 2021*, Appendix B Fiscal Year 2020 Annual Report, <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB/B1BenchPersonnel.pdf>. See also S.D. Codified Laws § 16-12B-1.1 (2023).

¹⁰⁹ *Counties, Circuits, and FY2021 Caseload, FY2021 Annual Report*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM (2021).

¹¹⁰ Chief Justice Steven R. Jensen, State Court Administrator Gregory Sattizahn, South Dakota Courts State Fiscal Year 2021 Annual Statistical Report of the South Dakota Unified Judicial System (Oct. 2021).

¹¹¹ Listening Session, South Dakota Indigent Defense Task Force (May 17, 2023).

certified abuse and neglect attorney.¹¹² Many attorneys are from Roberts County, but conflict attorneys may be called in from Brown County or Codington County as necessary.¹¹³

The Sisseton Wahpeton Oyate has a Public Defender's Office that was created in 2000 to provide tribal members with defense counsel regardless of income.¹¹⁴ The Sisseton Wahpeton Oyate's public defenders provide legal services in state, federal, and tribal court, as well as in juvenile, abuse and neglect, involuntary commitment, and tribal housing cases.¹¹⁵ The Sisseton Wahpeton Oyate Public Defender's Office appears to be the only tribal office in South Dakota to provide public defenders to tribal members in this format.¹¹⁶

In FY 2020, 77 indigent defense court appointments were made in Roberts County.¹¹⁷ In 2021, the Roberts County State's Attorney's office prosecuted 1,017 cases labeled class misdemeanor one or above and prosecuted 839 of the same types of cases in 2022.¹¹⁸

In FY 2020, Roberts County appropriated \$106,510 from its general fund to court appointed attorneys.¹¹⁹ In FY 2020, Roberts County indigent defense expenditures totaled \$106,509.78.¹²⁰ The average payment per case appointment in FY 2020 was \$1,383.¹²¹ In FY 2020, the Unified Judicial System collected a total of \$65,153 (\$59,737 was paid by defendants, which was remitted to Roberts County).¹²² In the first three months of 2023, Roberts County spent roughly \$110,000 on indigent defense.¹²³

Sixth Circuit – Gregory County: Gregory County has a population of 3,962¹²⁴ and is the 39th most populous county in South Dakota.¹²⁵ Gregory County has a 14.2% poverty rate, higher than

¹¹² *Fifth Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIARY SYSTEM, <https://uj.s.sd.gov/Attorneys/Certified.aspx> (last visited June 8, 2023).

¹¹³ Listening Session, South Dakota Indigent Defense Task Force (May 17, 2023).

¹¹⁴ *Public Defender's Office*, SISSETON WAHPETON OYATE, <https://www.swo-nsn.gov/departments/justice-department/public-defender/> (last visited June 8, 2023).

¹¹⁵ *Public Defender's Office*, SISSETON WAHPETON OYATE, <https://www.swo-nsn.gov/departments/justice-department/public-defender/> (last visited June 8, 2023).

¹¹⁶ *The Tribes of South Dakota*, SOUTH DAKOTA DEPARTMENT OF TRIBAL RELATIONS, <https://sdtribalrelations.sd.gov/tribes/nine-tribes.aspx> (last visited Jun 8, 2023).

¹¹⁷ *Table B-3 Court-appointed cases and costs – FY2020*, Fiscal Year 2020 Annual Report, available at <https://uj.s.sd.gov/uploads/annual/fy2020/AppendixB/B3CourtAppointedCosts.pdf> (last visited June 8, 2023).

¹¹⁸ Listening Session, South Dakota Indigent Defense Task Force (May 17, 2023).

¹¹⁹ State of South Dakota Department of the Legislative Audit, Roberts County Audit Report For the Two Years Ended December 31, 2020, available at <https://roberts.sdcounties.org/files/2023/02/Roberts-County-Audit-2020-2019.pdf> (last visited June 15, 2023).

¹²⁰ State of South Dakota Department of the Legislative Audit, Roberts County Audit Report For the Two Years Ended December 31, 2020, available at <https://roberts.sdcounties.org/files/2023/02/Roberts-County-Audit-2020-2019.pdf> (last visited June 15, 2023).

¹²¹ *Table B-3 Court-appointed cases and costs – FY2020*, Fiscal Year 2020 Annual Report, available at <https://uj.s.sd.gov/uploads/annual/fy2020/AppendixB.pdf> (last visited June 15, 2023).

¹²² *Table B-2 County Expenditures and Repayment for Court-Appointed Attorneys - FY2020*, Fiscal Year 2020 Annual Report, available at <https://uj.s.sd.gov/uploads/annual/fy2020/AppendixB.pdf> (last visited June 15, 2023).

¹²³ Listening Session, South Dakota Indigent Defense Task Force (May 17, 2023).

¹²⁴ *QuickFacts Gregory, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/gregorycountysouthdakota,SD/BZA010221> (last visited July 5, 2023).

¹²⁵ *South Dakota: 2020 Census*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/south-dakota-population-change-between-census-decade.html> (last visited July 5, 2023).

the 12.3% poverty rate in South Dakota.¹²⁶ The median income in Gregory County is \$44,654, lower than the \$63,920 median income in the state.¹²⁷

In addition to the presiding judge, the Sixth Judicial Circuit has three circuit judges and one magistrate judge appointed by the presiding judge.¹²⁸ The Sixth Judicial Circuit had 8,230 criminal filings¹²⁹ and held six jury trials (five felonies and one class 1 misdemeanor) and 10 bench trials (“court trials”) in FY 2021.¹³⁰

Indigent defense representation is provided by five private attorneys who are either on contract with the county or are appointed on a case-by-case basis.¹³¹ Four of the private attorneys provide court appointed representation in other counties within the Sixth Judicial Circuit and the First Judicial Circuit.¹³²

In FY 2020, Gregory County indigent defense expenditures totaled \$63,219.48.¹³³ The state’s attorney expenditures totaled \$93,268.57, and law enforcement’s expenditures totaled 472,521.86.¹³⁴ In FY 2020, the Unified Judicial System collected a total of \$23,050 (\$20,242.17 was paid by defendants, which was remitted to Gregory County).¹³⁵

Seventh Circuit – Oglala Lakota County: Oglala Lakota County has a population of 13,669.¹³⁶ Oglala Lakota County is the 15th most populous county in South Dakota.¹³⁷ Oglala Lakota County’s poverty rate is 43.5%, higher than the 12.3% poverty rate in South Dakota.¹³⁸ The median income in Oglala Lakota County is \$33,192, approximately \$30,000 lower than the

¹²⁶ *QuickFacts Gregory, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/gregorycountysouthdakota,SD/BZA010221> (last visited July 5, 2023).

¹²⁷ *QuickFacts Gregory, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/gregorycountysouthdakota,SD/BZA010221> (last visited July 5, 2023).

¹²⁸ *Sixth Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/Sixth_Circuit/Default.aspx (last visited July 5, 2023). See also S.D. CODIFIED LAWS § 16-12B-1.1 (2023).

¹²⁹ *FY2021 Annual Report* (2021), SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, available at <https://ujs.sd.gov/uploads/annual/fy2021/FY2021AnnualReportSummary.pdf>.

¹³⁰ Chief Justice Steven R. Jensen & State Court Administrator Gregory Sattizahn, *South Dakota Courts State Fiscal Year 2021 Annual Statistical Report of the South Dakota Unified Judicial System* (Oct. 2021), available at <https://ujs.sd.gov/uploads/annual/fy2021/FY2021AnnualReportEntireReport.pdf>.

¹³¹ *South Dakota Indigent Defense Task Force Survey Report*, County Administrator (June 2023)

¹³² *South Dakota Indigent Defense Task Force Survey Report*, County Administrator (June 2023)

¹³³ *Table B-3 Court-appointed cases and costs – FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB.pdf> (last visited July 5, 2023).

¹³⁴ State of South Dakota Department of the Legislative Audit, *Gregory Audit Report For the Two Years Ended December 21, 2020* (2021), available at <https://legislativeaudit.sd.gov/reports/County/GregoryCounty2020-2019.pdf>

¹³⁵ *Table B-2 County expenditures and repayment for court-appointed attorneys – FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB.pdf> (last visited July 5, 2023).

¹³⁶ *QuickFacts Oglala Lakota County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/oglalalakotacountysouthdakota,SD/BZA010221> (last visited June 23, 2023). The Oglala Sioux Tribe states that its population is 37,985.

¹³⁷ *South Dakota: 2020 Census*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/south-dakota-population-change-between-census-decade.html> (last visited June 23, 2023).

¹³⁸ *QuickFacts Oglala Lakota County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/oglalalakotacountysouthdakota,SD/BZA010221> (last visited June 23, 2023).

\$63,920 median income in the state.¹³⁹ For years, Oglala Lakota County was the poorest county in the United States.¹⁴⁰

In addition to the presiding judge, the Seventh Judicial Circuit has seven circuit judges and four full-time magistrate judges appointed by the presiding judge.¹⁴¹ The Seventh Judicial Circuit had 15,415 criminal filings¹⁴² and held 20 jury trials (16 felonies and four class 1 misdemeanors) and 76 bench trials (“court trials”) in FY 2021.¹⁴³

Because Oglala Lakota County is located entirely within the Pine Ridge Indian Reservation, and therefore held in trust by the federal government, only 14.15% of the county’s land base is taxable.¹⁴⁴ Only 2.5% of the population in Oglala Lakota County pays property taxes, and the county budget allows for expenditures of only \$29.96 per person.¹⁴⁵ “If we are to have an emergency of any kind, an Indigent burial, or anyone jailed for trial, we have no way to pay for it.”¹⁴⁶ With limited revenue generated in the county, Oglala Lakota County contracts for services with Fall River County to provide many state and federally mandated services.¹⁴⁷

Oglala Lakota County has no courthouse of its own; instead, the Fall River County Circuit Court serves Oglala Lakota County.¹⁴⁸ The judge generally sits in Fall River County for Circuit Court every other Friday, with some exceptions.¹⁴⁹ In FY 2020, 238 appointments were made in Fall River and Oglala Lakota Counties combined.¹⁵⁰ Indigent representation services in Oglala Lakota County are provided by private attorneys appointed on a case-by-case basis at a fixed hourly rate of \$107/hour or on contract with either Oglala Lakota or Fall River County.¹⁵¹ Of the 46 private attorneys on the court-appointed attorney roster in the Seventh Judicial Circuit, 11 are on the roster to accept appointments in Oglala Lakota County, all of whom are also on the roster

¹³⁹ *QuickFacts Oglala Lakota County, South Dakota*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/oglalalakotacountysouthdakota,SD/BZA010221> (last visited June 23, 2023).

¹⁴⁰ *Oglala Lakota County, South Dakota*, available at <https://oglalalakota.sdcounties.org/files/2010/07/OLC-Govt-Responsibilities.pdf> (last visited June 23, 2023).

¹⁴¹ *Seventh Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/Seventh_Circuit/Links/Contacts.aspx (last visited June 23, 2023). *See also* S.D. CODIFIED LAWS § 16-12B-1.1 (2023).

¹⁴² *FY2021 Annual Report* (2021), SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, available at <https://ujs.sd.gov/uploads/annual/fy2021/FY2021AnnualReportSummary.pdf>.

¹⁴³ Chief Justice Steven R. Jensen & State Court Administrator Gregory Sattizahn, *South Dakota Courts State Fiscal Year 2021 Annual Statistical Report of the South Dakota Unified Judicial System* (Oct. 2021), available at <https://ujs.sd.gov/uploads/annual/fy2021/FY2021AnnualReportEntireReport.pdf>.

¹⁴⁴ *Oglala Lakota County, South Dakota*, available at <https://oglalalakota.sdcounties.org/files/2010/07/OLC-Govt-Responsibilities.pdf> (last visited June 23, 2023).

¹⁴⁵ *Oglala Lakota County, South Dakota*, available at <https://oglalalakota.sdcounties.org/files/2010/07/OLC-Govt-Responsibilities.pdf> (last visited June 23, 2023).

¹⁴⁶ *Oglala Lakota County, South Dakota*, available at <https://oglalalakota.sdcounties.org/files/2010/07/OLC-Govt-Responsibilities.pdf> (last visited June 23, 2023).

¹⁴⁷ *Oglala Lakota County, South Dakota*, available at <https://oglalalakota.sdcounties.org/files/2010/07/OLC-Govt-Responsibilities.pdf> (last visited June 23, 2023).

¹⁴⁸ *Seventh Judicial Circuit*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, https://ujs.sd.gov/Seventh_Circuit/Links/Countries.aspx?zXhfH74aee%2fsjHI04Jgg%2bWS90ifVhPi6SHe%2frZLwHQo%3d (last visited June 23, 2023).

¹⁴⁹ *Oglala Lakota County, South Dakota*, SOUTH DAKOTA COUNTIES, <https://oglalalakota.sdcounties.org/clerk-of-court/circuit-court/> (last visited June 23, 2023).

¹⁵⁰ *Table B-3 Court-Appointed Cases and Costs – FY2020*, Fiscal Year 2020 Annual Report, available at <https://ujs.sd.gov/uploads/annual/fy2020/AppendixB/B3CourtAppointedCosts.pdf> (last visited June 23, 2023).

¹⁵¹ *Court Appointed Attorney Guidelines*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, Nov. 4, 2022, at 2.

in Fall River County.¹⁵²

There are no certified court-appointed defense attorneys in any Oglala Lakota County cities, and there is one certified abuse and neglect attorney in Pine Ridge and one in Kyle.¹⁵³ The Pine Ridge Reservation at one point had a public defender office funded by the Department of Justice’s Tribal Courts Assistance Program, however it is unclear whether the public defender was able to practice in state court as well as tribal court, or only in tribal court.¹⁵⁴ In 2009 the DOJ grant expired, and the Oglala Lakota Tribe was only able to fund the public defender office through 2010, after which it closed.¹⁵⁵

In FY 2019, Oglala Lakota County appropriated \$6,750 from its general fund to court appointed attorneys.¹⁵⁶ In FY 2019, Oglala Lakota County indigent defense expenditures totaled \$7,157.06.¹⁵⁷ In FY 2020, the Unified Justice System collected a total of \$68,410 from Fall River and Oglala Lakota Counties combined (\$58,905.61 was paid by defendants, which was remitted to the counties).¹⁵⁸

Timeline:

	2023					2024					
	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Background Research and Planning											
Review of Statutes, Court Rules and Caselaw											
Data Collection & Analysis											
Zoom Interviews											
Travel for court observations											
Report Writing											

References

1. Senator Lisa Kiem
State of Maine
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(207) 418-2552

Maine was the only state in the country that provided all indigent defense services through private attorneys. Other states have moved away from using solely private attorneys, because it is difficult to predict and contain costs in a private attorney system and difficult to provide quality

¹⁵² South Dakota Indigent Defense Task Force, Court Appointed Attorney Roster, Seventh Judicial Circuit (2023).
¹⁵³ Attorneys, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, <https://uj.s.sd.gov/Attorneys/Certified.aspx> (last visited June 23, 2023).
¹⁵⁴ Dominique Alan Fenton, *Poor on a Native American Reservation? Good Luck Getting a Lawyer.*, The Marshall Project (June 13, 2016), <https://www.themarshallproject.org/2016/06/13/poor-on-a-native-american-reservation-good-luck-getting-a-lawyer>.
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¹⁵⁶ State of South Dakota Department of the Legislative Audit, Oglala Lakota County Audit Report For the Two Years Ended December 21, 2019 (202), available at <https://legislativeaudit.sd.gov/reports/County/OglalaLakotaCounty2019-2018.pdf>.
¹⁵⁷ State of South Dakota Department of the Legislative Audit, Oglala Lakota County Audit Report For the Two Years Ended December 21, 2019 (2020), available at <https://legislativeaudit.sd.gov/reports/County/OglalaLakotaCounty2019-2018.pdf>.
¹⁵⁸ Table B-2 County Expenditures and Repayment for Court-Appointed Attorneys - FY2020, Fiscal Year 2020 Annual Report, available at <https://uj.s.sd.gov/uploads/annual/fy2020/AppendixB/B2CountyExpenditures.pdf> (last visited June 23, 2023).

oversight. The Maine Commission on Indigent Legal Services (MCILS) is tasked with overseeing indigent defense services, but undue political interference with MCILS resulted in underfunding. Moreover, MCILS was expected to oversee the representation by, and cost of, nearly 600 attorneys, handling more than 30,000 cases each year in 47 courthouses presided over by approximately 90 justices, judges, and magistrates – all with a staff of just three people. Based on 6AC technical assistance, in 2018 Maine expanded the number and type of government officials authorized to appoint commission members to MCILS to comport with national standards on independence of the defense function. The same legislation authorized and funded a 6AC evaluation for the Maine Legislative Judiciary Committee.

The 6AC’s 2019 evaluation, *The Right to Counsel in Maine*, recommended that Maine: (a) authorize and fund MCILS at a level sufficient to employ state government attorneys and support staff in a statewide appellate defendant office and in a trial level public defender office; (b) enact a statutory ban on all public defense contracts that create financial disincentive to effective representation; and (c) bar communications between prosecutors and unrepresented defendants.

MCILS subsequently banned all flat fee contracting, instituted better financial controls, implemented performance standards, and employed its first ever full-time public defenders to provide representation in rural areas that suffered from lawyer shortages.

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Prior to 6AC involvement, the responsibility for administering and funding trial-level indigent defense services in Michigan was an entirely local government function. State government had no entity dedicated to determining whether the state’s obligation to provide effective defender services was being met by its counties and cities, and local government generally fell short of the mark due to excessive caseload, no supervision, and undue political & judicial interference.

Based on 6AC technical assistance, a Governor’s Advisory Commission issued a 2012 report defining the state’s indigent defense system as an “uncoordinated, 83-county patchwork quilt,” with each county “dependent on its own interpretation of what is adequate” given limited local funding. In 2013, Michigan enacted a comprehensive legislative package creating the Michigan Indigent Defense Commission (MIDC) – empowered to develop, monitor, and enforce standards statewide. Statutorily required standards include: independence of the defense function; time sufficiency and workload controls; attorney/client confidentiality; attorney qualification, training, and supervision; and continuous representation. Local governments submit plans on how best to meet MIDC standards. If approved, the state is responsible for covering the difference between existing local funding and the amount to implement the standards.

In the first year of state funding, Michigan augmented local funding by more than double. MIDC standards led 32 of 83 counties to create public defender offices. Pre-reform there were just three public defender offices in the state.

Cost Proposal: See attached Spreadsheet.