

THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Alabama ¹	\$40	\$60	None			Alabama Code § 15-12-21(d).
Arizona	Varies Maricopa County: \$125 Pima County: Lead Counsel: \$75 Co-counsel: \$60		Varies Maricopa County: None Pima County: Lead Counsel: \$15,000 Co-counsel: \$7,500	Yes		Arizona Revised Statute Ann. § 13-4013 (A) grants authority to local court.
Arkansas	\$90-\$110		None			Arkansas Code Ann. § 16-87-211 authorizes the Public Defender Commission to set the rates.
California	Varies Los Angeles: Varies Sacramento: \$150 San Mateo: Lead Counsel: \$125 Co-counsel: \$115		None			California Penal Code § 987.2 grants authority to local courts.
Colorado	\$85 ²		\$15,000	Yes		Rates set by Chief Justice Directive 04-04, per Colo. Rev. Stat. § 21-2-105.
Connecticut	\$75		None			Conn. Gen. Stat. § 51-291(12) grants authority to the State Public Defender.
Delaware	\$60		None			Delaware Code Ann. 29§4065 grants authority to court; Rule 44 of Rules of Criminal Procedure.

¹ In addition to the hourly rate set by statute, pursuant the *May v. State* counsel may also request an hourly overhead for "expenses reasonably incurred." The average and presumptive hourly rate for overhead costs is \$30, which is almost always granted by the judge.

² This hourly rate excludes travel, which is paid at \$54 per hour plus \$0.33 per mile.

THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Florida	N/A		\$15,000	Yes	Yes	Fla. Stat. § 27.5304 sets maximums and states that flat fee amounts "shall be established annually in the General Appropriations Act."
Georgia	\$95 ³		None			Official Code of Georgia § 17-12-8(b)(9) grants authority to the Georgia Public Defender Standards Council.
Idaho	Varies Ada County (Boise): \$40 \$50		None			Idaho Code § 19-860(b) grants authority to local judge.
Illinois	\$145.39 ⁴		None			725 Illinois Compiled Statutes 124/10
Indiana	\$101		None			Indiana Rules of Criminal Procedure Rule 24.
Kansas	\$150		None			K.S.A. 22-4501 et. Seq. grants authority to Kansas Board of Indigents' Defense Services.
Kentucky	\$75		\$30,000 per attorney	Yes		Kentucky Rev. Stat. Ann § 31.235 grants authority to the Department of Public Advocacy.

³ Hourly rate may be raised to previous rate of \$125 given sufficient funding.

⁴ While the Illinois Compiled Statutes sets the maximum hourly compensation rate at \$125, it allows that the rate "shall be automatically increased or decreased, as applicable, by a percentage equal to the percentage change in the consumer price index-u during the preceding 12-month calendar year."

THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Louisiana	Varies New Orleans: \$110 Caddo Parish: \$75		None			Louisiana Revised Statutes § 15-144 et. seq.
Maryland	\$50		None			Ann. Code of Maryland Art. 27 § 6(d) grants Public Defender authority to promulgate administrative law.
Mississippi	Varies		\$2,000 plus overhead which are presumptively set at \$25 per hour ⁵	No	Varies	Miss. Code. Ann. § 99-15-17 authorizes local judge; <i>Wilson v. State</i> , 574 So.2d 1338 (1990)
Missouri	N/A ⁶		None			Missouri Rev. Stat. § 600.017 allows PD Commission to approve fee schedule.
Montana	\$120		None			Administrative Rules of Montana Title 2.69.601 authorizes PD Commission to establish rates.
Nebraska	Varies. Range is from \$60-\$100. Douglas County (Omaha): \$65 \$80 Lancaster County (Lincoln): \$85		None			Nebraska Revised Statutes § 29-3905 grants authority to local judge.
Nevada	\$125		\$20,000	Yes		Nevada Rev. Stat. § 7.125

⁵ In practice, judges do not strictly follow the statutory maximum.

⁶ The Missouri State Public Defender has a separate death penalty unit that handles the majority of capital cases. When a conflict arises, the case is transferred to another regional public defender office.

THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
New Hampshire	\$60 ⁷		\$15,000	Yes		N.H. Constitution Part II, Art. 73A grants authority to the State Supreme Court; New Hampshire Supreme Court Rule 47.
New Jersey	\$75		None			N.J. Statutes Ann. § 2A:158A-7(h) authorizes Public Defender to set rates.
New Mexico	N/A		Lead counsel: \$24,500; Co-counsel: \$12,500	Yes	Yes	New Mexico Statutes Ann. § 31-15-7(11) authorizes Chief Public Defender to formulate a fee schedule.
New York ⁸	Pre-notice: Lead counsel: \$100, Co-counsel: \$75; Post-notice: Lead counsel: \$125, Co-counsel: \$100 ⁹		None			December 1998 Order of the New York Court of Appeals, pursuant to N.Y. Judiciary Law § 35-b (5)(a)

⁷ Because the death penalty is pursued so infrequently in New Hampshire, a separate rate for assigned counsel handling capital cases is not established. The rate listed in the table is the same as the assigned counsel rate in felony cases.

⁸ Existing death penalty statute declared unconstitutional by New York's high court in 2004.

⁹ Rates vary depending on whether work is done before the prosecutor announces his/her intention to seek the death penalty (pre-notice), or if the work is done after the prosecutor's decision to seek the death penalty (post-notice).

THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
North Carolina	Provisional counsel: \$85; All other counsel: \$95		None			General Statutes of North Carolina § 7A-498.5 grants authority to the Office of Indigent Defense Services.
Ohio	Varies State public defender recommends: \$95		\$75,000 ¹⁰	Yes		Ohio Revised Code Ann. § 120.33 grants local board of county commissioners authority to set rate; Ohio Revised Code Ann. § 120.04 authorizes public defender to recommend rates and set per case maximum.
Oklahoma ¹¹	Lead counsel: \$60 Co-counsel: \$50	Lead counsel: \$80 Co-counsel: \$70	Lead counsel: \$20,000 Co-counsel: \$5,000	Yes		22 Oklahoma Statutes § 1355.4 grants authority to the Executive Director of the Oklahoma Indigent Defense System.
Oregon ¹²	Lead counsel: \$55; Co-counsel: \$40		None			Oregon Rev. Statutes § 151.216(f)(C) grants authority to the Public Defense Services Commission.

¹⁰ The maximum rate set by the Ohio Public Defender is the rate at which the office will provide some reimbursement.

¹¹ Rates and maximums apply only to conflict and overload cases within the Oklahoma Indigent Defense System. Tulsa County and Oklahoma County have separate public defender programs.

¹² Rates apply only to cases that do not use contract attorneys; contractors handle the majority of cases in Oregon.

THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Pennsylvania	Varies		Varies	Varies	Varies	16 Penn. Statutes § 9960.7 grants authority to trial court judge.
South Carolina ¹³	\$50	\$75	\$25,000	Yes		South Carolina Code § 16-3-26
South Dakota	\$78		None			South Dakota Supreme Court sets rates, which are then incorporated into statute. S.D.C.L. § 23A-40-8
Tennessee	Lead counsel: \$75; Co-counsel: \$60	Lead counsel: \$100; Co-counsel: \$80	None			Tennessee Supreme Court Rule 13 § 3.
Texas	Varies Bexar County (San Antonio): Out of court: \$80; Lead counsel (trial): \$150, Co-counsel (trial): \$140 Dallas County: \$100 El Paso County: Lead counsel (trial): \$50 out of court, \$125 in court; Co-counsel (trial): \$50 out of court, \$100 in court		Varies		Varies	Texas Code of Criminal Procedure Art. 26.05 grants authority to local judge.
Utah	Varies ¹⁴		Varies		\$100,000 per case for attorneys in risk pool	Utah Code Ann. § 77-32-304.5 grants authority to county/municipality.

¹³ While compensation rates are set by statute, judges often raise rates to \$90-\$110 and waive the maximum for "good cause shown."

¹⁴ All counties in Utah use some sort of contract system for appointment of counsel. Counties also have the option of paying into a risk pool, the Indigent Capital Defense Trust Fund.

THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Virginia	\$125		None			Virginia Supreme Court sets rate.
Washington	Varies Recommended by State Bar Committee on Public Defense: no less than \$125 King County: \$75 Pierce County: \$90		Varies	Varies	Varies	RCW § 36.26.090 grants authority to court; RCW § 10.101.030 requires counties to adopt standards including rates of compensation.
Wyoming	Varies: Up to \$60, no less than \$35	Varies: Up to \$100	None			Wyoming Rules of Criminal Procedure Rule 44(e) sets range; Wyoming Code § 7-6-109 grants authority to court.
U.S. Government	\$163		None			21 U.S.C. § 848(q)(10)(A)