

County Supervisors Association Dec. 2024

riminal Justice System

The Sixth Amendment to the U.S. Constitution requires that anyone facing criminal prosecution has the right to have an attorney present at any critical stages of the legal process. The Supreme Court has ruled that if the accused cannot afford an attorney, the court must appoint one to ensure

The requirements regarding the provision of indigent defense counsel is largely left to the individual states, who have adopted a variety of models.1

Arizona is one of only five states that fund public defense exclusively at the local level. 15 states are ex ded by the state and the remaining 30 are a combin of state and local funding.2

State Indigent Defense Funding Models





Arizona Indigent Defense

n Arizona, Boards of Supervisors with most also maintaining several other offices. These counties also itilize contract legal counsel when n house capacity is reached, or if there is a conflict of interest.

The Superior Court in the remaining counties exclusively utilizes contract legal counsel to provide indigent defendants with representation.3

State Support for Indigent Defense

- The only meaningful state funding for felony or misdemeanor indigent defense cases in Arizona is the **State Aid to Indigent Defense Fund** (SATIDF) established by A.R.S. § 11-588. 4
- A portion of these funds is dispersed by the Arizona Criminal Justice Commission (ACJC) to the counties based on **population and the three**year average of cases filed in the county's respective superior court.⁵
- In FY 2024, a total of \$700,000 was distributed to counties with awards ranging from \$1,200 (Greenlee) to \$409,400 (Maricopa).
- From FY 2011 to FY 2021, the state legislature swept these monies and diverted them to fund other state obligations. While the state also diverted the State Aid to County Attorney Funds (SATCAF), it restored those funds in FY 2013, amounting to \$7.5 million more in state aid to county attorneys' offices compared to indigent defense from
- Since FY 2022, the appropriation to the SATIDF was \$700,000, while the SATCAF received \$973,700. However, actual disbursements to county attorneys from ACJC were just under \$700,000.7
- Local Fill the Gap revenues generated from court fees in the local superior and justice courts - also go to support indigent defense, along with the county attorney and courts. 8

Statutory Funds for Indigent Defense

- Outside of fees that go towards funding the State Aid to Indigent Defense Fund and the Public Defender Training Fund, public defenders do not have access to any statutorily siloed funds to support their work in criminal proceedings.
- This is in contrast to other local actors in the criminal justice system, like the County Attorney and Sheriffs. Respectively, these agencies have access to 9 and 16 different statutory funds for various purposes.
- The limited availability of statutory funds for indigent defense leaves the **county general funds responsible for almost 95%** of this constitutionally mandated function in FY 2024.

Grant Opportunities for Indigent Defense

- There are limited federal grant opportunities to support indigent defense operations for criminal cases. 9
- The Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program is a federal grant that covers eight broad areas, including law enforcement, prosecution, and indigent defense. All states and territories are eligible for Byrne JAG funds, including local government entities and tribes.
- ACJC received, on average, \$3.75 million annually in JAG grants from FY 2015 to FY 2023. These funds are utilized for the state's Drug, Gang & Violent Crime Control program. 10
- Grants are distributed to local law enforcement agencies, county attorneys offices, state agencies and the Administrative Office of the Courts.
- In FY 2022 and FY 2023, no funds were expended on indigent
- While counties are eligible for direct JAG grants from the Office of Justice Programs, only two counties received grants in FY 2022 and FY 2023 for amounts under \$50,000. The remaining \$2.4 million in local solicitations for Arizona went to municipal or tribal governments.

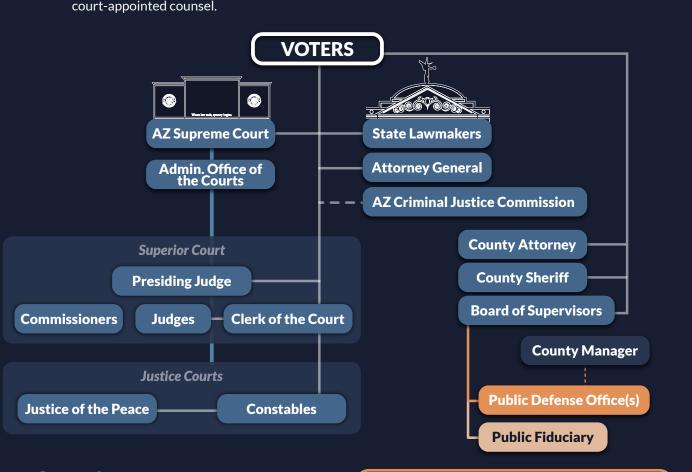
Federal Government & U.S. Constitution

Established constitutional right to counsel, U.S. Supreme Court rulings set requirements for court appointed counsel, agencies provide grant funding opportunities.

Courts & Judicial Officers

State Lawmakers

Sets rules and processes for when defendants are Establishes criminal code, determines special fund assigned county-funded counsel, sets procedures sources, appropriates state funds, sets statutory for counsel appointments, when additional staff are framework for public defense - including salary appointed at county or city expense, determines minimum statutory requirements for counsel. if defendants must pay for a portion of costs for



Prosecutes criminal cases, exercises discretion on which cases are prosecuted and what charges are brought, may establish diversion programs.

County Sheriff & Law Enforcement Offices Arrests and detains individuals accused of criminal

offenses, conducts investigations related to criminal cases, operates jail facilities, determines number of law enforcement officers on patrol or investigating cases.

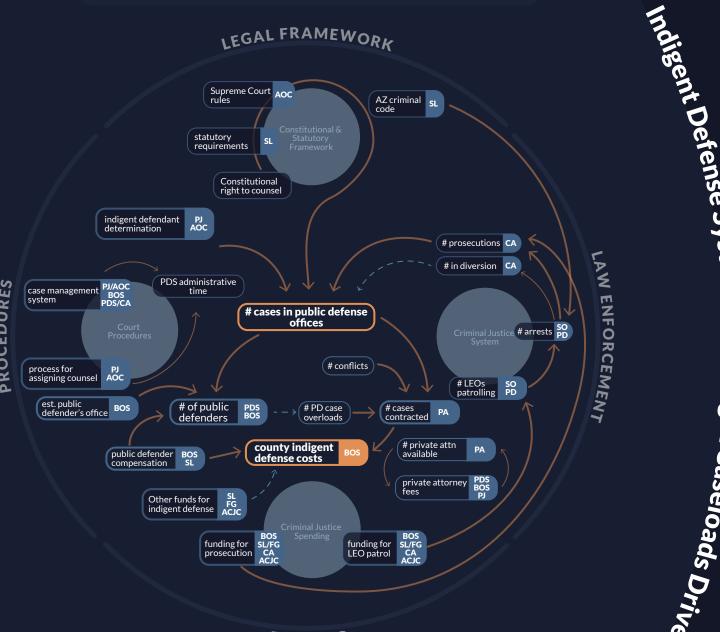
Public defenders are the only primary actor in the system that are not directly elected, or subject to retention elections.

Board of Supervisors

Establishes public defense office(s), appoints public defender, sets county budget & tax rate, sets salary budget & FTE count for public defense departments, HR policies, determines if public defenders can accept certain appointments.

Increases or decreases together (Positive Relationship

One increases, other decreases (Inverse Relationship)



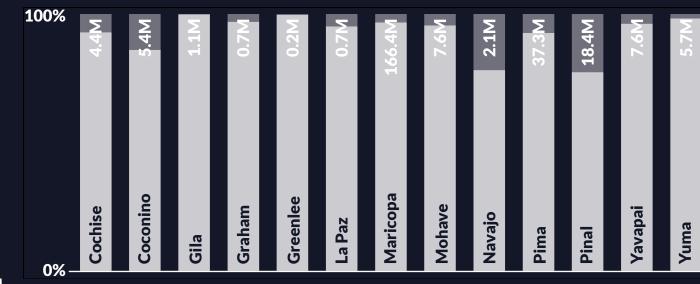
FUNDING

AOC - Administrative Office of Courts PJ - Presiding Judge BOS - County Board of Supervisors SL - State Lawmakers FG - Federal Government CA - County Attorney

SO/PD - Sheriff's Office and/or Police Dept LEO - Law Enforcement Officers PDS - Public Defense Department(s) ACJC - AZ Criminal Justice Commission PA - Private Attornevs

Unlike other aspects of the AZ criminal justice system, indigent defense is funded almost exclusively by the county general fund. 12

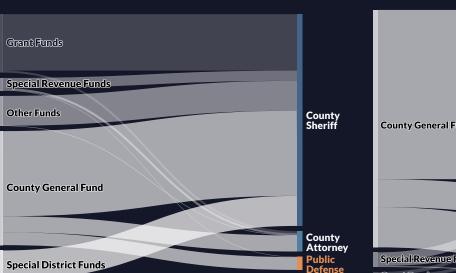
FY 2024 Share of County Indigent Defense Expenditures, by **General Fund** and All Other Funds Labels indicate total indigent defense expenditures across all funds.

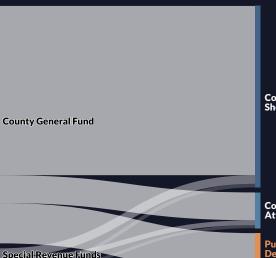


County Sheriffs, Attorneys have access to additional statutory funds not available to indigent defense offices, receive more state and federal grant funding. 13

Cochise County, FY 2024 Expenditures by Fund

Pima County, FY 2024 Expenditures by Fund





Indigent Defense



Case Study Cochise County

County Supervisors Association Dec. 2024

Summary

Indigent defense caseloads and costs are largely driven by factors outside of the various indigent defense offices' control. This case study provides an example of how state policy choices impacted local operations and costs in Cochise County from FY 2020 through FY 2024. 1

Cochise County Indigent Defense Structure

Prior to FY 2024. Cochise County had three indigent defense offices, the Public Defender, Legal Advocate and Legal Defender. Cases that could not be handled within those three offices due to conflicts of interest or high caseloads were contracted out to private law firms. In FY 2024, the county eliminated the Legal Defender due to staffing challenges.

Legislative Background

In 2022, the Arizona State Legislature passed HB 2696 which, among other provisions, modified the definition of participating in a human smuggling organization (HSO) in the criminal code to include transporting or procuring transport for a person with the intent to either conceal the person from law enforcement, or assist the person in fleeing law enforcement that is attempting to lawfully arrest or detain the person. Laws 2022, Ch. 197 became effective on September 24, 2022.14

Senate 3rd Read Vote

17-11-2

House Final Read Vote **37**-20-3

From FY 2022 to FY 2023, indigent defense caseloads in Cochise County increased by over 30%.



FY 2024, respectively.

Cases with only charges Cases including charges related to human smuggling or fleeing law or fleeing law enforcement enforcement, along with other charges grew from 17 in FY 2022 to grew from 82 in FY 2022 to 204 and 176 124 and 134 in FY 2023 and in FY 2023 and FY 2024, respectively.

All other cases increased slightly, from 867 in FY 2022 to 939 and 897 in FY 2023 and FY 2024, respectively.

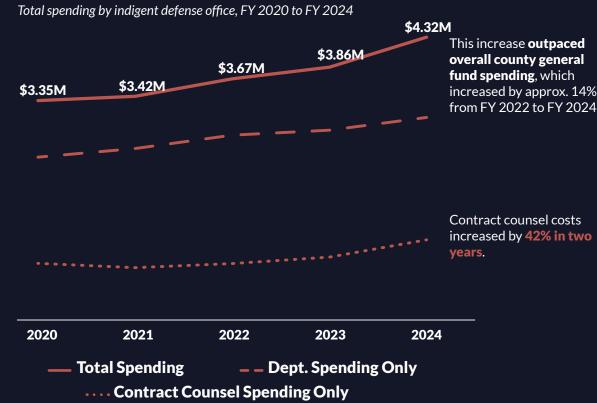
Although cases are up, the number of attorneys in indigent defense offices is down from FY 2022 levels.

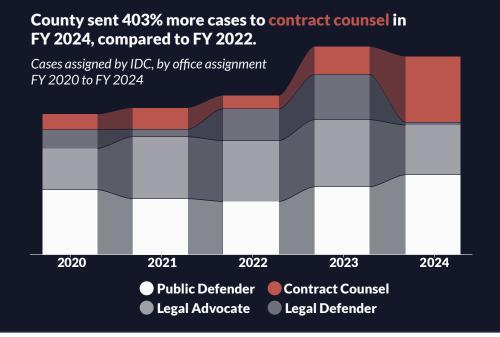
Attorneys in indigent defense offices, by month Jan. 2020 to June 2024



Case assignment data only available in aggregate from January 2023 to June 2023, represented by outlined circles.

Since FY 2022, Cochise County's indigent defense costs have increased by over 17%, amounting to over \$630,000 more in annual county GF spending.

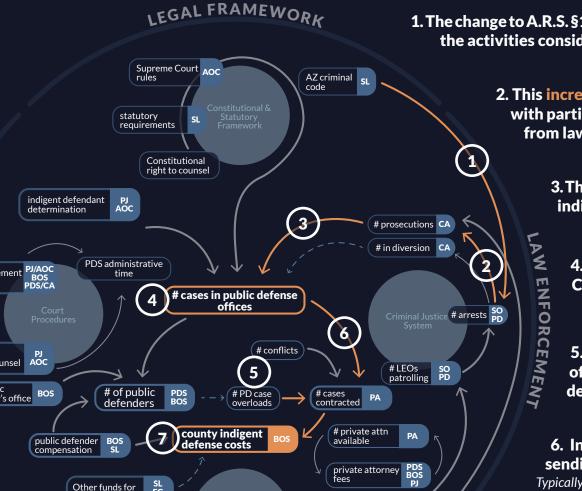




Increases or decreases together (Positive Relationship)

One increases, other decreases

Orange lines indicate path for how modifications to state statute connect to caseloads and county GF costs.



- 1. The change to A.R.S. §13-2323 by the State Legislature & Governor expanded the activities considered unlawful.
 - 2. This increased the number of individuals who could be charged with participating in a human smuggling organization, or fleeing from law enforcement.
 - 3. The Cochise County Attorney's Office chose to prosecute individuals under the expanded statute.
 - 4. This increased the number of cases where Cochise Countywas required to provide in digent representation.
 - 5. In FY 2023, this led to an 84% increase in the number of indigent defense office overloads, where public defenders indicate they cannot take on more cases.
 - 6. In FY 2024, the elevated caseloads were handled by sending more cases to contract counsel.

Typically, it is more expensive to contract than hire additional public defenders but the county has been unable to increase staffing levels to handle the increase in

7. Overall, Cochise County caseloads increased by 30% and costs increased by 17% in the first two years after state policymakers amended A.R.S. §13-2323.

Indigent Defense System Map Funding & Cost Drivers

Cochise County Case Study - 2024

This system map is designed to provide policy makers with a visual represention of the actors and key cost drivers within the criminal justice system, specifically related to indigent representation. The map on this page is highlighted to demonstrate the connection between state policy choices related to the criminal code, and local indigent defense caseloads and costs.

FUNDING

PJ - Presiding Judge BOS - County Board of Supervisors

CA - County Attorney

process for

PA - Private Attorneys

AOC - Administrative Office of Courts

FG - Federal Government

PDS - Public Defense Department(s) ACJC - AZ Criminal Justice Commission

LEO - Law Enforcement Officers

SO/PD - Sheriff's Office and/or Police Dept.

Endnotes

- National Institute of Justice. (2023). Gideon at 60: A Snapshot of State Public Defense Systems and Paths to System Reform. Office of Justice Programs. Retrieved from https://www.ojp.gov/pdffiles1/nij/307325.pdf
- 2 ld.
- 3 CSA Survey of County Public Defense Offices, 2022. Data not available for Apache, Greenlee or Navajo Counties. Information retrieved from county budget data.
- 4 As required by A.R.S. § 41-2410, the state also funds a distribution to counties for juvenile dependency proceedings, however these funds must be used "for the processing of juvenile dependency cases".
- A.R.S. § 41-2409 outlines the formula the ACJC must utilize in distributing the State Aid to Indigent Defense Fund.
- 6 Arizona Criminal Justice Commission (2024). FY 2024 State Aid to Indigent Defense Fund, Quarter 1,2,3,&4. Retrieved from https://www.azcjc.gov/Portals/0/Documents/pubs/finance/FY24_Qtr4_Aid_To_Indigent_Defense.pdf
- Joint Legislative Budget Committee (2024). FY 2025 JLBC Baseline, Arizona Criminal Justice Commission. Retrieved from https://www.azjlbc.gov/25baseline/jus.pdf
- 8 A.R.S. §41-2421 outlines the revenues subject to distribution, the recipients and the process for the Board of Supervisors and County Treasurer to disperse the funds.
- 9 Bureau of Justice Assistance (2024). Indigent Defense Projects and Programs Fact Sheet. Retrieved from https://bja.ojp.gov/doc/fact-sheet-indigent-defense.pdf
- Arizona Criminal Justice Commission (2024). Drug, Gang & Violent Crime. Retrieved on October 23, 2024 from https://www.azcjc.gov/Programs/Drug-Gang-Violent-Crime-Control/EDGE-Reports
- Arizona Criminal Justice Commission (2023). FY2023 EDGE Report (p. 20). Retrieved from https://www.azcjc.gov/Portals/0/Documents/pubs/FY2023_EDGE_Report_Final.pdf
- Preliminary FY 2024 county expenditures on indigent defense offices or contracts. Budget data provided by individual counties. Analysis conducted by CSA. Navajo County Other Fund expenditures includes a municipal IGA. Pinal County Other Fund expenditures includes capital project related to public defender building.
- Preliminary FY 2024 Cochise and Pima County expenditures on indigent defense offices (including contract counsel and Pima County public fiduciary), county attorney and sheriffs' departments (including jail facilities). Budget data provided by individual counties. Analysis conducted by CSA.
- A.R.S. §13-2323, as amended by Laws 2022 Ch. 197 Sec. 4 (HB 2696) retrieved from https://apps.azleg.gov/BillStatus/BillOverview/77757. General effective date for the 55th Legislature, 2nd Regular Session retrieved from https://www.azleg.gov/general-effective-dates/
- All caseload, cost and staffing data provided by Cochise County Indigent Defense Coordinator, September 2024. Analysis conducted by County Supervisors Association.