

Indigent Defense

Funding & System Actors

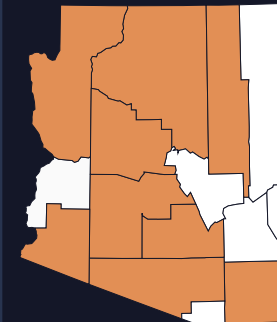
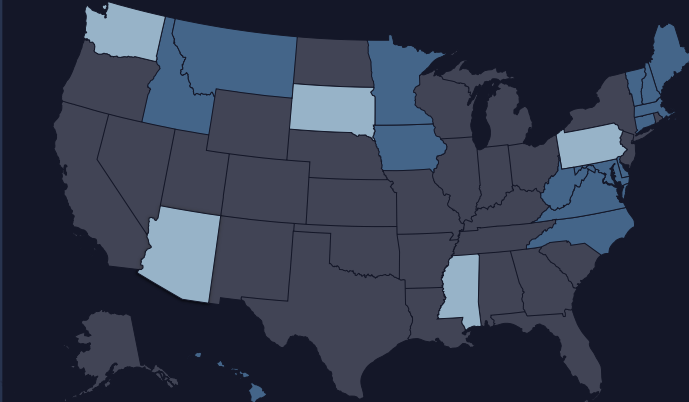
Criminal Justice System

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 a fair trial.**

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 **exclusively funded by the state** and the remaining 30 are a **combination of state and local funding.**²

State Indigent Defense Funding Models



remaining counties exclusively utilizes contract legal counsel to provide indigent defendants with representation.³



County Supervisors Association
Dec. 2024

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).⁶
 - 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 FY 2013 to FY 2021.
 - 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 defense.¹¹
- 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

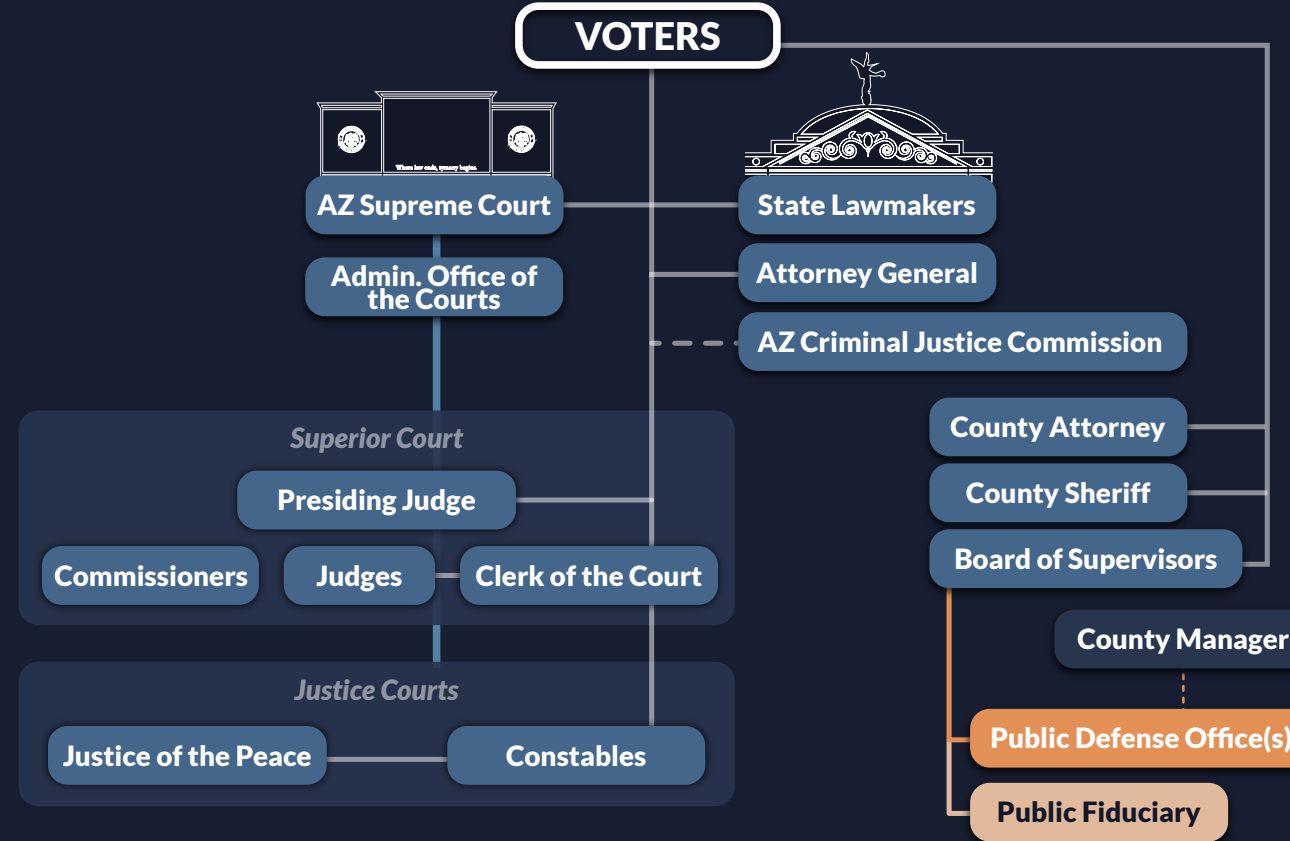
Established constitutional right to counsel, U.S. Supreme Court rulings set requirements for court appointed counsel, agencies provide grant funding opportunities.

Courts & Judicial Officers

Sets rules and processes for when defendants are assigned county-funded counsel, sets procedures for counsel appointments, when additional staff are appointed at county or city expense, determines if defendants must pay for a portion of costs for court-appointed counsel.

State Lawmakers

Establishes criminal code, determines special fund sources, appropriates state funds, sets statutory framework for public defense - including salary minimum, statutory requirements for counsel.



County Attorney

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

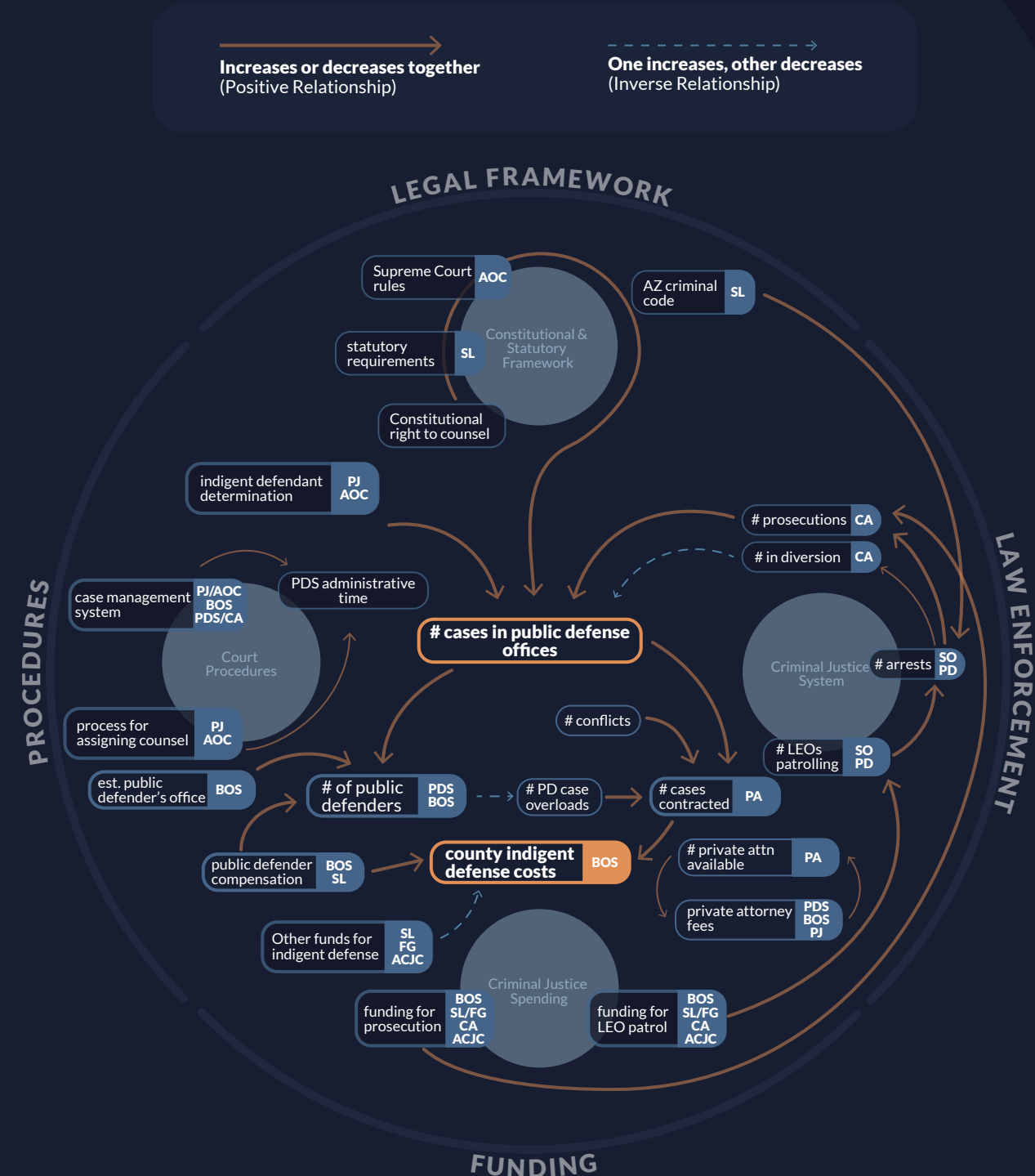
County Sheriff & Law Enforcement Offices

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.

Board of Supervisors

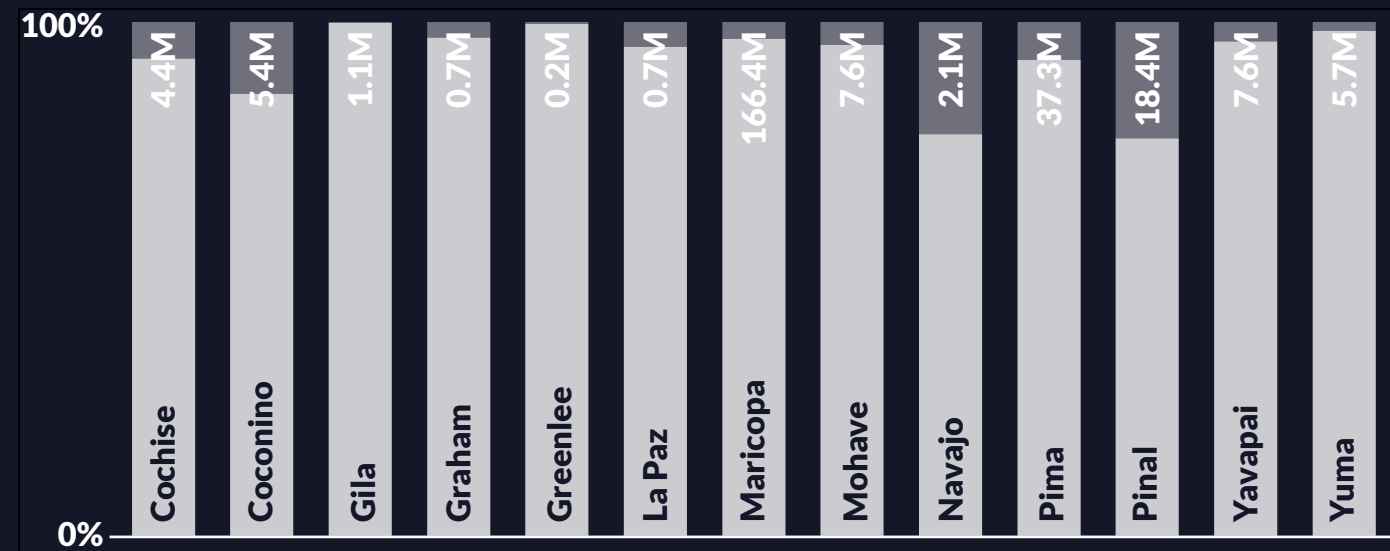
Establishes public defense office(s), appoints public defender, sets county budget & tax rate, sets salary budget & FTE count for public defense departments, HR policies, determines if public defenders can accept certain appointments.

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



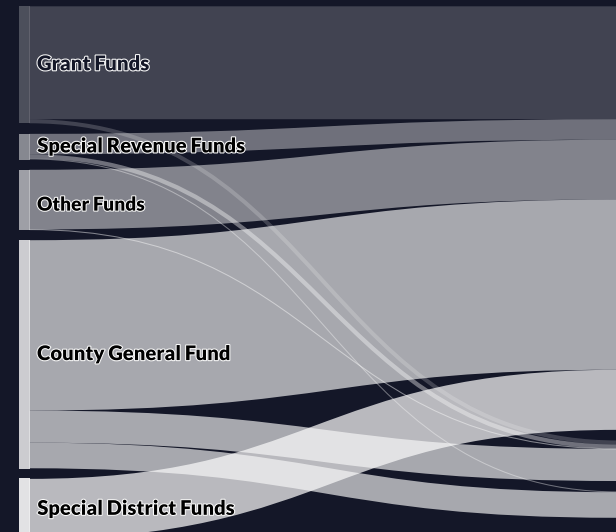
Unlike other aspects of the AZ criminal justice system, indigent defense is funded almost exclusively by the county general fund.¹²

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

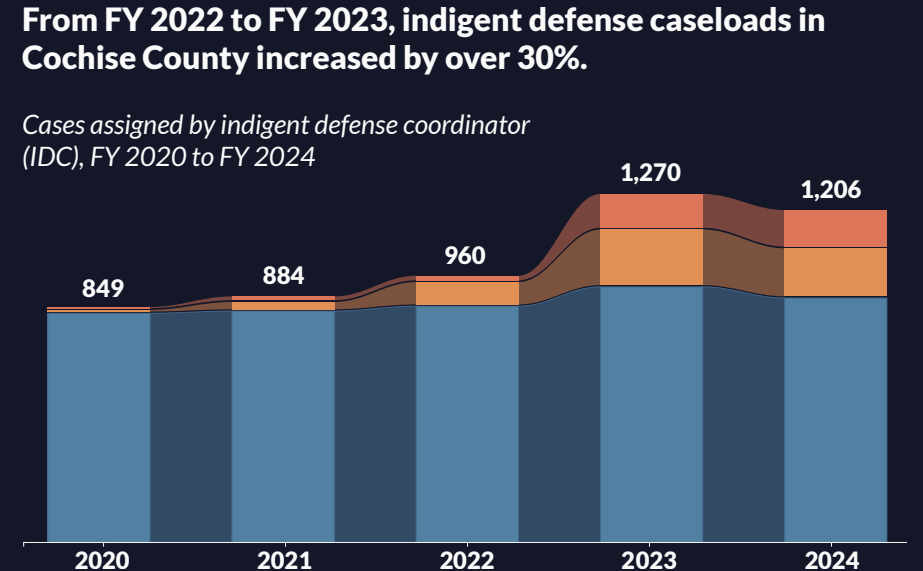
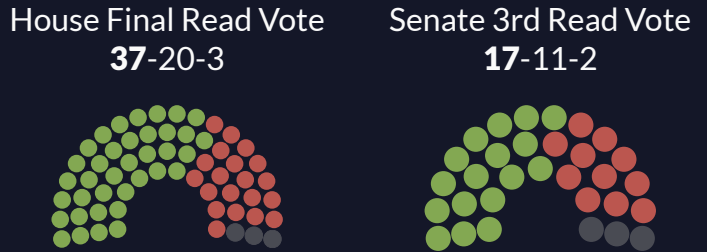
Indigent defense caseloads and costs are largely driven by factors outside of the various indigent defense offices' control. This case study provides an example of how state policy choices impacted local operations and costs in Cochise County from FY 2020 through FY 2024.¹⁵

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

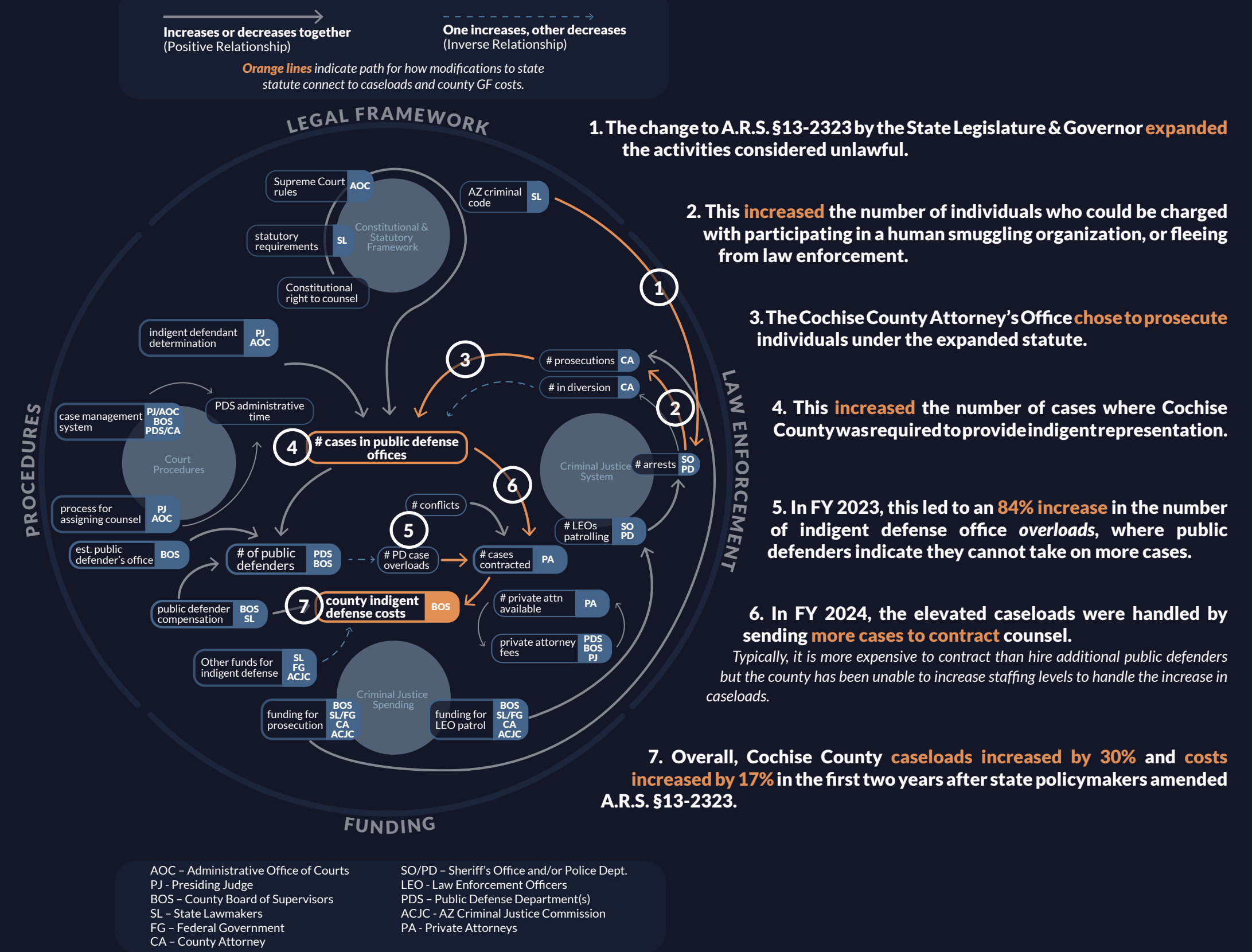
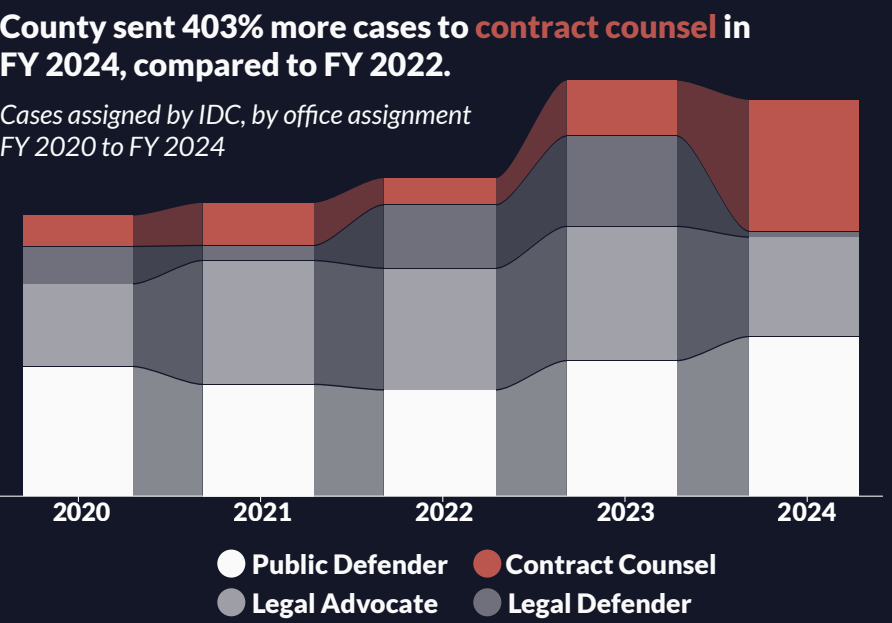
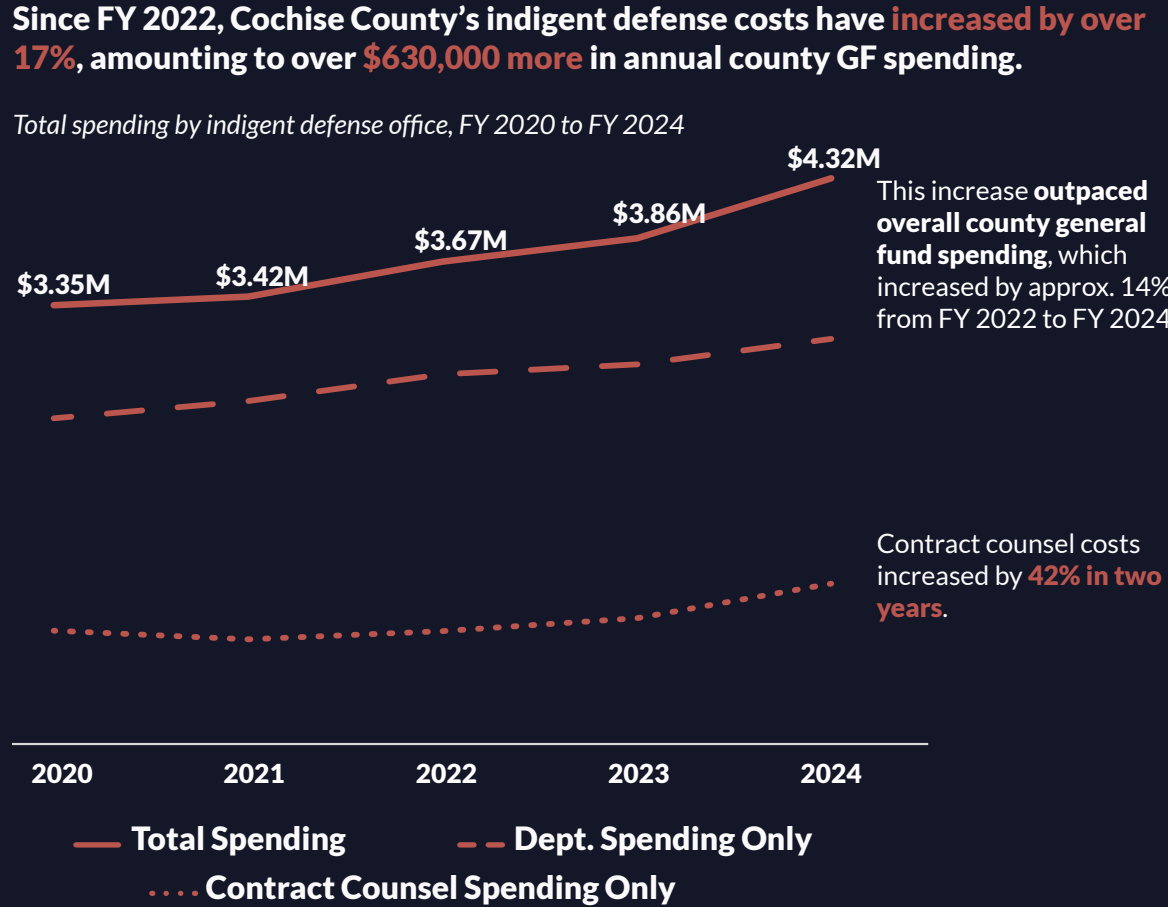
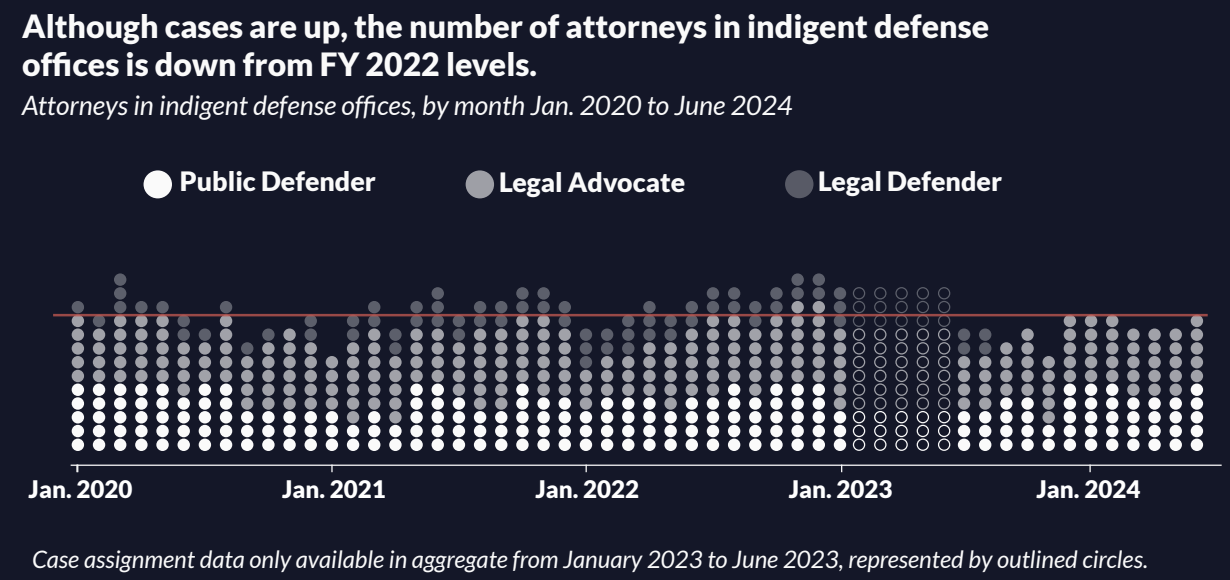
In 2022, the Arizona State Legislature passed HB 2696 which, among other provisions, modified the definition of *participating in a human smuggling organization (HSO)* in the criminal code to include transporting or procuring transport for a person with the intent to either conceal the person from law 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



Cases with **only charges related to human smuggling or fleeing law enforcement** grew from 17 in FY 2022 to 124 and 134 in FY 2023 and FY 2024, respectively.

Cases **including charges related to human smuggling or fleeing law enforcement, along with other charges**, grew from 82 in FY 2022 to 204 and 176 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.



Endnotes

- 1 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 Id.
- 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”.
- 5 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
- 7 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>
- 10 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>
- 11 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
- 12 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.
- 13 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.
- 14 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/>
- 15 All caseload, cost and staffing data provided by Cochise County Indigent Defense Coordinator, September 2024. Analysis conducted by County Supervisors Association.