

Inadequate Provision for Indigent Defense Helps Drive up Jail and Court Costs In Georgia

Costs of jailhouse time

There were 18,851¹ inmates awaiting trial in Georgia county jails on any given day in October 2002. At an average cost of \$35 per day², counties are spending up to \$659,785 a day — \$240,821,525 a year — housing prisoners awaiting trial. By providing indigent inmates with prompt access to lawyers after arrest, the cost of incarcerating those who qualify for bail or pre-trial diversion could be reduced or avoided.

In one case, cited by the Southern Center for Human Rights, one person charged with smoking in public in Fulton County was held for 16 days at a cost to the county of \$720. In other cases, individuals have been held for up to 83 days for public drunkenness at a cost of up to \$3,735. With access to counsel, jail time might have been reduced to zero.

Costs of jail overcrowding

In October 2002, according to the Department of Community Affairs, 52 county jails were over capacity — some by as much as 170 percent. On average, 59% of inmates were simply waiting for their cases to be tried. In many counties the rate was much higher. A substantial percentage of individuals awaiting trial are indigent persons waiting to be assigned a lawyer, especially in rural areas.³

The problem of large numbers of inmates being held awaiting trial is especially severe in jails that are over capacity, like the following counties.⁴

County	% Over Capacity	% Inmates Awaiting Trial	No. Inmates Awaiting Trial
Fayette	181	49	122
Cherokee	170	74	249
Muscogee	57	56	502
Bulloch	36	51	74
Cobb	16	72	1658

Costs of inefficiency in court proceedings

Considerable amounts of court time are now lost in paperwork, tracking inmates through the corrections system and locating panel attorneys. A benefit of a public defender office in particular is the consolidation of court time, since one attorney will handle several pleas or motions or probation revocations one after the other. The cost of certain parts of an investigation are reduced; for example where the public defender office has a systematized method of acquiring initial incident reports from the police department, less effort and time are expended per report. The same efficiencies of scale apply to other functions as well — obtaining arrest warrants, the actual filing of motions, visits to the jail to see several inmates at once, etc.⁵

Many counties with overflowing jails house inmates in jails in neighboring counties. Delays in finding the inmates who have been moved, arranging attorney visits and bringing inmates to court for trial can lead to postponements and waste court time.

In the 76 counties that use a panel of attorneys for indigent cases, some court clerks in both adult and juvenile courts may spend hours trying to find attorneys able or willing to take a case. Court time is also wasted when attorneys who have been appointed to a case are unable to appear on the date set in the calendar because of conflicts. The cost of such delays and of extended incarceration is even greater in court systems that only meet for two weeks a month or a few times a year.

* This fact sheet was prepared by the Administrative Office of the Courts of Georgia. It is not part of the report of the Supreme Court Commission on Indigent Defense nor of the report prepared by The Spangenberg Group.

Costs of lost income and tax revenue

Nationally, 64% of jail inmates were employed before their most recent arrest — 49% full-time and 15% part-time or occasionally. It is apparent that there may be a substantial income loss to individuals and their families — and, in some cases, to the state in tax revenues — when indigent defendants are held unnecessarily in jail.

More than one third of jail inmates had income of more than \$1,000 a month (14% had more than \$2,000). Almost 20% received between \$600 and \$1,000 a month. The remainder had income up to \$600 a month. In each category, the majority relied on public, i.e. indigent, defenders.⁶

Costs of Class Action Lawsuits

The Southern Center for Human Rights has filed a number of class action lawsuits against Georgia counties alleging unfair and unconstitutional treatment of indigent defendants. The Commission on Indigent Defense noted that a number of counties are considering lawsuits against the state, alleging that Georgia has failed to adequately fund indigent defense. Defending such lawsuits can be expensive and time-consuming.

Two suits filed by the Center are presently ongoing against Coweta County and Fulton County and cities within Fulton's borders.

The cost of defending these actions can be substantial. For example, one official in Fulton County estimated the county has three lawyers working on the case at any given time, devoting 30 to 40 hours a week on average for the length of the case, which may proceed for two to three years. In smaller counties, which lack Fulton's in-house resources, the impact could be more severe.

Potential Costs Due to Recent Rulings

In *Alabama v. Shelton*, a landmark ruling issued in May 2002, the U.S. Supreme Court held that courts cannot impose a suspended sentence that could result in a jail term if indigent defendants were not offered the right to a lawyer at trial. Georgia's municipal, state and probate courts that handle thousands of "minor" offenses like traffic cases, where suspended sentences or probation are often handed down, could be dramatically affected. While the full impact of *Alabama v. Shelton* is still being examined⁷, the ruling could force counties and cities to provide public defenders even for misdemeanors, making it still more urgent that Georgia find an efficient, cost-effective way to provide indigent defense services.

A case now before the U.S. District Court, Northern District of Georgia is already seeking to apply Alabama v. Shelton to municipalities within Fulton County and to the county itself. The case, Smith et al v. Fulton County Board of Commissioners et al, seeks to enforce the rights of indigent defendants to legal counsel in municipal courts within Fulton County and in Fulton State Court. The outcome of the case could affect municipalities and counties throughout Georgia.

¹ Georgia Department of Community Affairs. Inmate counts are reported for the first Thursday of the month.

² Average amount one county charges another for housing inmates per day. Range is \$25 to \$45. (Some counties may have informal arrangements among sheriffs with no charges.) Source: Georgia Department of Community Affairs estimate. Residents of Georgia counties pay \$37.09 per capita on average for current operations (excluding capital expenditures) of county jails. Dooly County residents pay the highest amount per capita, \$109.48. Source: Georgia Department of Community Affairs, Office of Research and Communications, Expenditures for County Jail Operations: FY 2001.

³ The Spangenberg Group. Status of Indigent Defense in Georgia: A Study for the Chief Justice's Commission on Indigent Defense. November 2002.

⁴ Georgia Department of Community Affairs. County Jail Inmate Population Report. October 2002.

⁵ Russell C. Gabriel, Director, Legal Aid Clinic, University of Georgia

⁶ Bureau of Justice Statistics Special Report. "Defense Counsel in Criminal Cases." NCJ 179023. November 2000.

⁷ A full report on the impact of *Alabama v. Shelton* on Georgia is being prepared for the Chief Justice's Commission on Indigent Defense by The Spangenberg Group.