

FLORIDA TAXWATCH REPORT

**WHY
TAXPAYERS
SHOULD
CARE ABOUT
WORKFORCE
INSTABILITY
WITH
FLORIDA'S
PUBLIC
DEFENDERS
AND STATE
ATTORNEYS**

March 2023





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DEAR TAXPAYERS,

For nearly two decades, assistant public defender and assistant state attorney compensation has been a point of contention for legal professionals. Salaries for assistant public defenders and assistant state attorneys in Florida have increased over the years; however, they have not increased at the same rate as inflation or the general cost of living in Florida. The search for higher pay continues to be a driving force for assistant public defenders and assistant state attorneys who choose to leave and work elsewhere.

In 2004, Florida TaxWatch published a report that discussed higher pay for assistant public defenders and assistant state attorneys to reduce turnover rates. In March 2014, Florida TaxWatch published its latest report on assistant public defenders' and assistant state attorneys' salaries, and almost a decade later, compensation for assistant public defenders and assistant state attorneys is still an issue.

Florida TaxWatch undertakes this independent research project to update its 2004 and 2014 reports on salaries for assistant public defenders and to gain a better understanding of how low salaries, heavy caseloads, limited work flexibility, and high turnover rates for assistant public defenders and assistant state attorneys impact these critical positions and the Florida taxpayers they serve and represent.

Florida TaxWatch looks forward to working with policy makers during the 2023 legislative session and beyond to address the compensation and workplace issues for assistant public defenders and assistant state attorneys in Florida and, to find ways to build a sustainable framework for salaries to meet inflation and cost of living increases, and to stabilize this important workforce.

Sincerely,

Dominic M. Calabro
President & CEO

INTRODUCTION

One of the fundamental responsibilities of government is to ensure the safety and welfare of those in its care. This includes indigents who are accused of wrongdoing and who would otherwise be unable to afford a private attorney to defend them. It is essential that, in all criminal prosecutions, the accused is afforded all rights under Amendment VI of the U.S. Constitution, including the right to a speedy trial and the right to have the assistance of competent defense counsel, even if they cannot afford it.

The right to have the assistance of competent defense counsel is implemented through 20 offices of public defenders, one in each judicial circuit. Public defenders and their appointed staff are licensed attorneys who are paid by the state to represent indigent defendants in criminal cases. Their prosecutorial counterparts in each judicial circuit are the state attorneys. State attorneys and their appointed staff are the chief prosecuting officers of all criminal trial courts in their respective circuit and are responsible for seeing that the laws of Florida are faithfully executed.

It is essential that the Office of the Public Defender and the Office of the State Attorney in each judicial circuit be properly staffed and supported to make this system work. Providing competitive wages, flexible working conditions, and manageable caseloads, while maintaining low rates of employee turnover, is critical to maintaining a viable job market and a sustainable and competent workforce for these state agencies. Unfortunately, this is not the case in Florida. Both Assistant Public Defenders (APDs) and their Assistant State Attorney (ASA) counterparts are experiencing low salaries and punishing caseloads, which contribute to high rates of employee turnover and frustrating judicial outcomes for those that are represented.

In 2004 and 2014, Florida TaxWatch published research reports on APD and ASA salaries and, almost a decade later, salaries for APDs and ASAs is still an issue. Florida TaxWatch undertakes this independent research project to update its 2004 and 2014 reports on salaries for APDs and ASAs and to gain a better understanding of how low salaries, heavy caseloads, limited work flexibility, and high turnover rates for state attorneys and public defenders affect the workforce stability of these critical positions and the Florida taxpayers they serve and represent.

WORKFORCE INSTABILITY

The job of an APD or ASA is complex and demanding. APDs are required to conduct investigations, perform legal research, visit crime scenes, file motions, conduct and review discovery, and communicate with their clients, all in preparation to go to court. ASAs are required to work closely with police investigators, secure witness testimony, maintain communications with victims and their family members, and manage every phase of an investigation. Continuing legal education and other certifications may be required to stay on top of new techniques and legal requirements, or to develop or refine the attorney's skills and abilities.

The development and honing of the knowledge, skills, and abilities necessary to become an effective APD or ASA takes several years. Unfortunately, the combination of crushing caseloads, low salaries, limited work flexibility, and high rates of turnover causes many APDs and ASAs to leave the Public Defender's Office or the State Attorney's Office in favor of private sector jobs or other less stressful, better-paying public sector attorney jobs.

As shown in Figure 1, the number of cases filed each year that require the involvement of an APD or ASA has increased almost 17 percent since 2014. In addition to these increasing caseloads over the years, case complexity and reliance on technology contribute to the level of effort and expertise that is required for ASA and APD positions.

Salaries

Florida remains in the bottom ten percent for average compensation for APDs and ASAs throughout the United States. As of 2021, the average national starting salary for assistant state attorneys was \$66,802, and for assistant public defenders was \$65,939.¹ As shown in Table 1, 95 percent of Florida's 20 circuit courts still pay less than the national average salary for an assistant state attorney. Eighty-five percent of assistant public defenders' average starting salaries in Florida are below the national average starting salary.²

Florida TaxWatch also looked at how the average starting salaries for APDs and ASAs in Florida compare to states in close geographic proximity; states with similar populations; and states with similar crime rates per capita (see Table 2). These comparisons allow for a more accurate assessment of whether the current level of compensation is competitive compared to other states

¹ ZipRecruiter, "What Is the Average Public Defender Salary by State," retrieved from <https://www.ziprecruiter.com/Salaries/What-Is-the-Average-Public-Defender-Salary-by-State>, accessed on February 15, 2023.

² Note: The information provided is only a snapshot of the requested data. The figures are not necessarily the starting salaries in each office but are indicative of the lowest salary for that position at the time the snapshot is taken. Individual offices may have a policy in place for starting salaries but that would not be reflective in these reports. These numbers do not include the appellate offices.

TABLE 1.

APD Starting Salary		ASA Starting Salary	
CIRCUIT COURT	APD AVERAGE STARTING SALARY	CIRCUIT COURT	ASA AVERAGE STARTING SALARY
1	\$57,690.00	1	\$64,000.00
2	\$55,000.00	2	\$55,000.00
3	\$56,000.00	3	\$60,852.00
4	\$60,000.00	4	\$55,500.00
5	\$60,000.00	5	\$60,000.00
6	\$65,000.00	6	\$55,000.00
7	\$57,000.00	7	\$65,000.00
8	\$53,500.00	8	\$52,738.00
9	\$60,000.00	9	\$60,000.00
10	\$72,959.00	10	\$65,000.00
11	\$60,000.00	11	\$60,000.00
12	\$60,000.00	12	\$62,000.00
13	\$62,500.00	13	\$61,000.00
14	\$51,500.00	14	\$55,000.00
15	\$63,000.00	15	\$60,000.00
16	\$73,389.00	16	\$80,000.00
17	\$60,000.00	17	\$60,000.00
18	\$57,690.00	18	\$57,690.00
19	\$67,000.00	19	\$60,000.00
20	\$57,000.00	20	\$60,000.00
AVERAGE	\$60,461.40	AVERAGE	\$60,439.00

Source: Justice Administration Commission 2014-2022

with similar characteristics for APDs and ASAs.

As shown in Table 2, of the three states in close proximity to Florida, Georgia and Mississippi offer higher average starting salaries than Florida for ASAs, but only Georgia offers higher average starting salaries than Florida for APDs. The average starting salaries for APDs and ASAs in Alabama are lower than average starting salaries for APDs and ASAs in Florida. Looking at states with similar population sizes, both Texas and New York offer significantly higher average starting salaries for APDs and ASAs than Florida. Pennsylvania, however, offers slightly lower average starting salaries for APDs and ASAs than Florida. Of the three states with comparable per capita crime rates, only Georgia offers higher average starting salaries for APDs and ASAs than Florida.

Most new APDs and ASAs are recent law school graduates, and many of these are looking to join the workforce with average student loan debts in six-figures.³ The crippling student loan debts, coupled with Florida’s

high cost of living,⁴ make it extremely difficult for an ASA or APD to survive, given the low average starting salaries. It is important to note that proposed budget recommendations for fiscal year 2023-24 include special pay increases for specific hard-to-hire work classes (e.g., teachers, first responders, law enforcement, etc.). Although ASAs are included in this special hard-to-hire pay package, APDs are currently excluded. The exclusion of APDs would further widen the salary gap between APDs and ASAs, thereby making it more difficult to recruit and retain competent and experienced APDs.

Limited Work Flexibility

The COVID-19 pandemic reshaped the way work is done. The ability to work from home is a relatively new experience for many workers who have jobs that can be done remotely. This has afforded many workers greater choice and flexibility and has made businesses and other organizations more agile and competitive. Although some

³ In November 2022, the average law school graduate owed \$180,000 in student loans. See Melanie Hanson, “Average Law School Debt,” retrieved from <https://educationdata.org/average-law-school-debt>, accessed January 11, 2023.

⁴ As of December 2022, rent for a one-bedroom, one-bathroom apartment costs an average of \$1,698 per month in Florida. At an average national starting salary for assistant public defenders of \$65,939 per year, this rental represents approximately 31 percent of the assistant public defender’s monthly salary.

TABLE 2.

GROUP 1: GEOGRAPHIC PROXIMITY COMPARISON		
STATE	ASA AVERAGE STARTING SALARY FL: \$60,439	APD AVERAGE STARTING SALARY FL: \$60,461
Alabama	\$51,562	\$48,000
Georgia	\$64,920	\$62,602
Mississippi	\$65,111	\$55,000

GROUP 2: POPULATION COMPARISON		
STATE	ASA AVERAGE STARTING SALARY FL: \$60,439	APD AVERAGE STARTING SALARY FL: \$60,461
Texas	\$67,821	\$69,499
New York	\$71,138	\$73,440
Pennsylvania	\$60,000	\$57,000

GROUP 3: CRIME PER CAPITA COMPARISON		
STATE	ASA AVERAGE STARTING SALARY FL: \$60,439	APD AVERAGE STARTING SALARY FL: \$60,461
Georgia	\$64,920	\$62,602
Pennsylvania	\$60,000	\$57,000
Ohio	\$57,000	\$58,000

Source: www.biglawinvestor.com

of the work done by APDs can be done remotely (e.g., legal research, review discovery, etc.), much of the work done by APDs (e.g., conducting investigations, visiting and communicating with clients, visiting crime scenes, court time, etc.) cannot be done remotely.

This is especially true for APDs who have a substantial portion of their clients in custody. Many APDs conduct client interviews in person at a correctional facility because they do not have the technology to communicate with incarcerated clients, and because remote options do not afford the appropriate level of confidentiality that in-person client interviews do. Remote work for APDs and ASAs is highly unrealistic, as Matt Metz, a public defender in the 7th Judicial Circuit court, states:

“... the state level assistant public defenders cannot work remotely in a significant way. Our clientele are often homeless AND phoneless. They often walk into our office without an appointment and if we are not available to talk to them when they arrive, we might not see them again until court.”⁵

As the workforce continues to recover from the 2022 "Great Resignation," conversations around the ability of employees to work remotely and to achieve a better work-life balance will continue to be top of mind for most people.⁶ For professionals such as APDs and ASAs, who have a duty to serve the public and where individuals depend on them to work in offices open to the public, more flexible working conditions becomes an even larger issue.

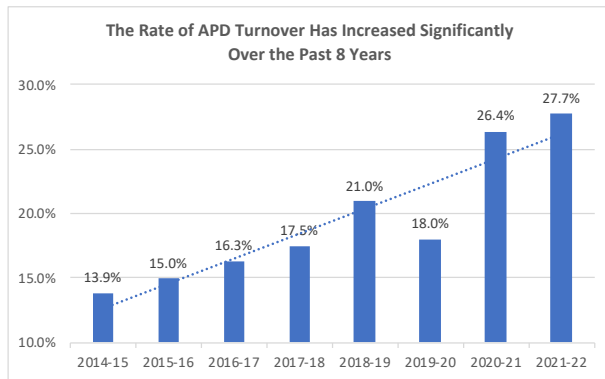
Turnover

The combination of crushing caseloads, low salaries, and limited work flexibility combine to create high rates of employee turnover among APDs and ASAs. As shown in Figures 1 and 2, turnover among APDs and ASAs, respectively, has increased significantly since fiscal year 2014-15. For APDs (Figure 1), the turnover rate has more than doubled over this period of time.

⁵ Matt Metz, public defender in the 7th Judicial Circuit Court, January 2023.

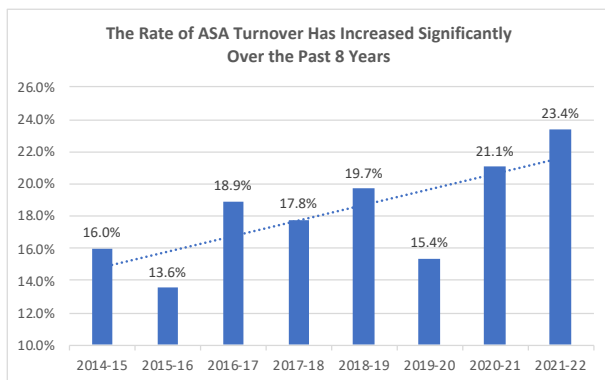
⁶ Florida TaxWatch, "Wage Growth and Talent Attraction in the Pandemic Labor Market," retrieved from <https://floridatxwatch.org/Research/Full-Library/wage-growth-and-talent-attraction-in-the-pandemic-labor-market>, accessed on January 12, 2023.

FIGURE 1.



Source: Justice Administrative Commission

FIGURE 2.



Source: Justice Administrative Commission

Constantly hiring and training new employees costs the average employer anywhere from 30 percent to 200 percent of the departing person's salary.⁷ For example, the national average salary for an ASA or APD with five years of experience is \$75,700 annually. If that individual left their position, it would cost anywhere from \$22,710 to \$151,400 for state attorney and public defender offices to replace that individual.

When an APD or ASA leaves, their caseloads have to be absorbed by the remaining staff, many of whom are less experienced, until a replacement is hired. Placing higher caseloads on more inexperienced APDs and ASAs increases their stress and job dissatisfaction and accelerates the turnover of the remaining APDs and ASAs. Placing higher caseloads on more inexperienced APDs and ASAs also greatly increases the likelihood that something (or someone) will “fall through the cracks,” resulting in an unfavorable judicial outcome and damaging the public’s trust in the criminal justice system.

When vacant ASA and APD positions are finally filled, the low average starting salaries virtually guarantee that the successful new hire will be fresh out of law school.

Attending law school during the pandemic meant online coursework and training, with little to no exposure to traditional training methods, limited interaction with other legal professionals, and limited time actually being in a courtroom. Appearing in court is a large part of an ASA’s and APD’s job. Often, they are in court five days a week, so having the requisite social and legal skills to speak to clients, judges, attorneys, and to maneuver through the judicial proceed is a skill that many recent law school graduates lack due to the pandemic. This also greatly increases the likelihood that something (or someone) will “fall through the cracks,” resulting in an unfavorable judicial outcome and damaging the public’s trust in the criminal justice system.

EFFECTS ON JUDICIAL OUTCOMES

Some who read this report will be unaware that this critical class of well-educated and highly skilled workers is not well-compensated when compared to other skilled workers. But it is important that we not take our eye off the prize for one minute--- making sure that, in all criminal prosecutions, the accused is afforded all rights under Amendment VI of the U.S. Constitution, including the right to a speedy trial and the right to have the assistance of competent defense counsel.

The instability of the APD workforce threatens to adversely affect the judicial outcomes for many of their clients. Workforce instability resulting from high caseloads, low salaries, and high employee turnover rates limits the ability or willingness of the APD to give their clients the attention their case deserves. APDs seldom have the time or the resources needed to properly and thoroughly work a case--- to do the necessary investigative research, visit crime scenes, question witnesses, secure expert witnesses and subject matter experts. Many Public Defender’s and State Attorney’s offices are staffed with young, inexperienced attorneys who are not familiar with many of the issues they have to address. Too little time, too few resources, and too little experience oftentimes translate into too many plea deals and too many unfavorable judicial outcomes.

⁷ William Mahan, Work Institute, “Breaking Down the Direct Costs of Employee Turnover,” retrieved from <https://workinstitute.com/breaking-down-the-direct-costs-of-employee-turnover/>, accessed on January 27, 2023.

CONCLUSIONS AND RECOMMENDATIONS

An adequately compensated, well-trained, and supported system of public defenders and state attorneys is one of the cornerstones of Florida’s judicial system. For decades now, APDs and ASAs have faced low pay, punishing caseloads, and limited work flexibility, which have combined to produce the high turnover rates we see today.

High caseloads and turnover rates (especially in the Public Defender’s Office) are not good for the accused, not good for the accused’s family, and not good for the attorney. High caseloads and turnover translate to lower quality of services provided to the accused and their families. This, in turn, reduces the levels of confidence and trust between the accused and their attorney and creates greater instability. Manageable caseloads and fair compensation can make a real difference in an APD’s ability to stay in their job, engage clients, deliver quality services, and ultimately achieve positive judicial outcomes for indigents accused of crimes and their families.

Florida TaxWatch believes that an adequately compensated, well-trained, equipped, and supportive workforce of APDs and ASAs will promote a stable workforce. Florida TaxWatch believes that a substantial increase in the starting salaries for Florida’s APDs and ASAs is necessary so that the justice system functions efficiently, and community members can access legal counsel and representation from licensed professionals. **Florida TaxWatch supports additional funding for APD and ASA salaries, as well as more manageable caseloads.**

While increasing the starting salaries for APDs and ASAs will not solve the turnover rate problem entirely, it does serve as a starting point for hiring more competitive applicants for these crucial roles. Increasing wages for current APDs and ASAs also allows the development of a tenured staff instead of facing constant retention issues after a few years of attorneys working for the state and deciding to work in a different sector with higher wages. Now is the time to invest in public safety so competent attorneys can be retained and continue providing essential legal services to Floridians.

WHEN IT COSTS MORE TO PAY LESS

OFTEN DEPARTURES CREATE MAJOR GAPS IN OFFICE COVERAGE. THIS CREATES A NUMBER OF ORGANIZATIONAL PROBLEMS WHICH INCLUDE:⁸

- Lowered productivity – trial preparation is lost and must be repeated.
- Overworked remaining staff—caseloads are redistributed to other ASAs and APDs already carrying full caseloads.
- Lost knowledge – organizational and CLE training is forfeited, as well as courtroom development and mentoring.
- Training costs – replacement ASAs and APDs must be onboarded and trained anew.
- Interviewing costs – senior leaders at SA and PD offices must conduct rounds of timely interviews to find most qualified applicants.
- Recruitment – job openings must be advertised and applications and background inquiries conducted.
- Case interruptions – delays must be granted when requested by APDs new to a case, and ASAs who inherit case must become familiar with status of plea negotiations and potential trial.
- Victim and witness frustration—victims anxious for justice get frustrated by delays and replacement attorneys, witness memory fades, witnesses move or get transferred, and defense case preparation, continuity and confidence can be lost.
- Justice delayed or denied – case results can be altered when new ASA and APD takeover a case.

⁸ Dan McCarthy, Florida TaxWatch Center for Smart Justice, “When It Costs More to Pay Less,” retrieved from <https://floridatxwatch.org/Research/Full-Library/when-it-costs-more-to-pay-less>, accessed on March 6, 2023

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ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

Florida TaxWatch is supported by voluntary, tax-deductible donations and private grants. Donations provide a solid, lasting foundation that has enabled Florida TaxWatch to bring about a more effective, responsive government that is accountable to the citizens it serves since 1979.

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The findings in this Report are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.


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