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DEPARTMENT OF ADMINISTRATION
WV PUBLIC DEFENDER SERVICES

INDIGENT DEFENSE COMMISSION

REPORT TO THE LEGISLATURE

JANUARY 15, 2009

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STATE OF WEST VIRGINIA

JOE MANCHIN, III
GOVERNOR

ROBERT W. FERGUSON, JR
CABINET SECRETARY

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER SERVICES
ONE PLAYERS CLUB DR SUITE 301
CHARLESTON WV 25311
304-558-3905
FAX 304-558-1098

JOHN A. ROGERS
EXECUTIVE DIRECTOR

15 January 2009

Hon. Earl Ray Tomblin
President, State Senate
State Capitol

Hon. Richard Thompson
Speaker, House of Delegates
State Capitol

Re: Report of Indigent Defense Commission

Dear President Tomblin and Speaker Thompson:

As Chairman of the Indigent Defense Commission, it is my privilege to submit to the Legislature the Commission's report as required by W.Va. Code 29-21-3b.

The Commission would like to take this opportunity to express its appreciation to Governor Manchin and to the Legislature for the opportunity to comment on the important issues herein. We look forward to fulfilling the various other duties and responsibilities set forth in the authorizing statute.

Again, thank you for the opportunity to be of service to the cause of the rule of law.

Sincerely,

John A. Rogers
Chairman, Indigent Defense Commission

Cc: Hon. Joe Manchin
Robert W. Ferguson, Jr.
Hon. Walt Helmick
Hon. Jeff Kessler
Hon. Harry Keith White
Hon. Carrie Webster
Hon. Brent D. Benjamin

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Introduction/ Executive Summary

Since the decision of the United States Supreme Court in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), states have grappled with the difficulties of providing adequate counsel to indigent persons accused of crimes. While the right to counsel has expanded to include abuse and neglect cases, juvenile petitions and other non-criminal matters, the underlying issue of funding indigent defense remains.

In West Virginia, the provision of indigent defense was entrusted to what is now Public Defender Services in 1981. The agency was authorized to provide services by contract, by payment to private appointed counsel or by full-time Public Defender offices established in every Circuit by W.Va. Code 29-21-1, et seq. Practically, the decision as to whether to "activate" a specific office was left to the discretion of local residents in that the County Commission and the local Bar President are responsible for appointing members of the local Public Defender Corporation; the Governor can only appoint a Chair. While many Circuits were eager to establish offices, considerable opposition arose in a few areas, including some areas where Public Defender offices could be cost-effective.

The Indigent Defense Commission was established 1 July 2008 pursuant to H.B. 4022, enacted during the 2008 legislative session. The Commission was charged with a number of advisory and oversight duties, including the submission to the Legislature of this report. By 15 January 2009 the Commission was directed to report on the "feasibility and need for the creation of additional public defender offices; the activation of public defender corporations; the formation of multi-circuit or regional public defender corporations; or the dissolution of public defender corporations...." W.Va. Code 29-21-3b(g).

The Commission notes that this issue and related concerns have been studied repeatedly over the last fifteen years, resulting in no fewer than four published reports (see appendix for excerpts). Numerous legislative interim studies have also been made, none of which has resulted in legislation or changes to the system until the passage of H.B. 4022 during the 2008 Regular Session of the Legislature despite the Legislative Auditor's recommendation of more Public Defender offices in January, 1999.

For the reasons detailed below the Commission makes the following recommendations:

(1) Effective 1 July 2009, or sooner, the Legislature should require the activation of the following Public Defender Corporations:

4th Judicial Circuit (Wood/Wirt Counties; office in Parkersburg)
16th Judicial Circuit (Marion County; office in Fairmont)
17th Judicial Circuit (Monongalia County; office in Morgantown)
26th Judicial Circuit (Lewis/Upshur Counties; office in Buckhannon).

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(2) Effective 1 July 2009, or sooner, the Legislature should increase the hourly rate of compensation to private appointed counsel to $75 for out of court and $105 for in court work so as to allow for inflation since the last statutory increase in 1990.

(3) The West Virginia Supreme Court of Appeals and the West Virginia State Bar should advise the Governor and the Legislature annually as to needed changes or improvements to the indigent defense system, and should include at a minimum recommendations as to hourly rates of compensation for private appointed counsel.

(4) Public Defender Services should devise a system to alert judges to private counsel billings which appear to be consistently higher than average. Local and regional panels should be defined so as to clarify that attorneys in the county wherein the case arises are favored.

(5) Any lawyer who represents indigents in eligible proceedings should be required to complete a minimum number of relevant CLE hours during each two-year CLE cycle. The West Virginia Supreme Court of Appeals and the West Virginia State Bar should recommend the appropriate number of hours.

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Recommendation 1:

Effective 1 July 2009, or sooner, the Legislature should require the activation of the following Public Defender Corporations:

4th Judicial Circuit (Wood/Wirt Counties; office in Parkersburg)
16th Judicial Circuit (Marion County; office in Fairmont)
17th Judicial Circuit (Monongalia County; office in Morgantown)
26th Judicial Circuit (Lewis/Upshur Counties; office in Buckhannon).

Cost Effectiveness:

The Commission notes that private counsel billings are very low by any measure, partly as a result of the woefully inadequate hourly rate currently allowed. However, the Commission finds that Public Defender offices are still able to operate at a lower cost (see statistical summaries, excerpted from the FY 2008, 2007, 2006 and 2005 Public Defender Services Annual Reports, Appendix A). Multiple years were reviewed so as to allow for interruptions in payment and lateness in private billings; presumably if all private billings were 100% current, the comparison would be even clearer since private billings increase, on average, every fiscal year, even with a static hourly rate. While Public Defender costs also increase annually, Public Defenders cost less than private counsel.

The Commission recognizes some difficulty in comparing separate systems using different billing and reporting mechanisms. Private attorney billing is usually not done until completion of a case. Exceptions are allowed in unusual circumstances and in the areas of abuse and neglect and juvenile matters where billing is allowed after an intermediate disposition (in recognition of the many months and years which these cases can consume). These latter matters are currently counted under the total number of claims submitted. "Supplemental" and "direct billings (to experts, investigators and others) in all types of cases are subtracted in an alternative data set to show the costs attributable to each case.

Public Defender offices do not bill on a case by case basis but are funded prospectively for the entire fiscal year. Since cases are ongoing from one fiscal year to another, costs per case are shown first as "cases represented," which includes new cases in a given fiscal year plus those cases which are carried over from the previous year. In addition, the costs of only new cases opened during the fiscal year are shown, as well as the costs of only the cases closed during the fiscal year.

The Commission finds the conclusion inescapable: Public Defender offices are fiscally prudent by any measure. Though it must be noted that individual attorneys' billings may approach the cost effectiveness of Public Defender costs in some instances, that rare result is explainable by the totally inadequate rate of hourly compensation currently

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available to private counsel. An inflation-adjusted rate allowing the same relative level of compensation as in 1989 would make Public Defenders overwhelmingly more cost-effective than appointed counsel.

The Commission reviewed data showing prospective Public Defender Circuits' annual hourly billings. Allowing for variations in billing currency (some bills are received long after the fiscal year in which work was performed; in the last two fiscal years more than half of bills paid were for work done in previous years), the Commission concluded that the work load, based on hourly billings, was sufficient to put a full-time Public Defender office in the following Circuits:

4th Judicial Circuit (Wood/Wirt Counties; office in Parkersburg)
16th Judicial Circuit (Marion County; office in Fairmont)
17th Judicial Circuit (Monongalia County; office in Morgantown)
26th Judicial Circuit (Lewis/Upshur Counties; office in Buckhannon)

In addition to the total workload being sufficient, the Commission finds that the average billings in these Circuits were sufficiently high to allow for cost savings on a per case basis. The Commission notes that the Legislature's own Performance Evaluation and Review Division recommended more Public Defender offices ten years ago (see Preliminary Performance Review of Public Defender Services, Performance Evaluation and Review Division, January, 1999; Appendix A) and strongly recommends that further delay and unnecessary costs be avoided by imposition ("activation" in statutory language; see W.Va. Code 29-21-3b) of these offices as of 1 July 2009. Other studies have made similar recommendations (see "Indigent Access to Justice in West Virginia," WV Public Affairs Reporter. Vol. 20, No.1, Winter/Spring 2003; also, excerpt from The Final Report; Commission on the future of the West Virginia Judiciary; December 1, 1998; Appendix A).

The Legislature should, by appropriate action, require that Public Defender offices be opened in the above Circuits and that Corporation Boards be appointed in these areas within sixty days of the effective date of legislative action, whether made effective immediately or delayed until 1 July 2009. The Commission finds that further delay is harmful to both the clientele served and to efforts to fund this system; to that end, legislation should be made effective immediately.

In response to the Statement of Opposition to Indigent Defense Commission Report, included in Appendix C, the Commission notes that the costs of retirement for Public Defender employees are fully paid by current contributions by the employer and the employees. The Public Employees Retirement System (PERS), unlike the separate primary and secondary school retirement system, is adequately funded and should incur no future additional liability to the State. While it is true that an obligation is thereby created, absent some catastrophic event, no further state funds should be necessary to fulfill that obligation. Further, all Public Defender costs have always been reported and are part of the reported per hour and per case costs as shown in Public Defender Services' annual reports.

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Finally, the Statement notes that per capita costs in Public Defender areas are in some instances higher for similar populations. The Statement omits the fact that similar populations often have vastly different case loads. The Commission finds that the measure of per capita costs does not reflect either efficiency or cost-effectiveness of Public Defender operations, but merely indicates the level of funding compared with the population. Public Defender offices are always situated in areas with sufficient numbers and complexities of cases to justify their existence, regardless of population. Per capita costs are inevitably higher in those areas because there are more cases, and sometimes more complex cases, as compared with the population in other areas. Costs per case and costs per hour are the starting point for comparing Public Defender effectiveness, followed by considerations of quality, as discussed below. When costs increase following initiation of a Public Defender office, the cause is always increased cases or a change in the mix of cases.

Note on Public Defender Cost Saving:

Savings generated by Public Defender offices should not be confused with an absolute drop in the need for funding. While Public Defender offices clearly save money, future savings should be viewed as cost avoidance.

Absolute cost savings can only be shown where total caseloads and the mix of cases (felony, misdemeanor, etc.) remain the same from year to year. Since these variables continue to change, usually trending higher, absolute savings cannot be expected. (See Estimated Savings from Public Defender Offices, Appendix A for estimate of Public Defender savings to date.)

Quality; Public Defenders:

In February, 2002, the American Bar Association promulgated its Ten Principles of a Public Defense Delivery System. (See Appendix A). This statement seeks to establish the basic operating parameters critical for an effective indigent defense system. The first principle is:

> *The public defense function, including the selection, funding and payment of defense counsel, is independent.*

In its discussion the ABA states that *"the public defense function should be.....subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense."*

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Clearly, only a Public Defender office, supervised at the local level, can ensure the independence necessary for fulfillment of this principle. While influence may be indirect in most cases, the current private appointed system is heavily dependent on judicial oversight of all work for payment purposes. Litigation decisions may not be influenced directly, but the specter of judicial review of billings creates an undue risk of judicial influence over the course of litigation completely absent from prosecutorial functions. Both judges and defense counsel should be free of this potential and sometimes real conflict.

The Commission finds that the remaining nine principles can also be more likely of fulfillment in a full-time Public Defender office. Issues of screening of clients, control of caseload, conditions of representation, proper assignment of counsel, parity with prosecution resources, attendance at continuing education and supervision of counsel can only be addressed reliably within the structure of a Public Defender office.

No commonly accepted quality measures exist by which Public Defender offices can be compared with private counsel. Clearly, the comparison is made even more difficult with respect to private attorneys since client confidentiality shields all but the most superficial inquiry as to effectiveness.

In 1999 the Executive Director of Public Defender Services commissioned a study by the Spangenberg Group to address legislative concern over rising costs. The Legislature had previously issued a performance audit of Public Defender Services. (See Indigent Defense Task Force Report, January 14, 2000; see also Performance Evaluation and Review Division's Preliminary Performance Review, January, 1999; Appendix A). This study looked at many aspects of the two systems (Public Defenders and private counsel) currently used to deliver indigent defense. In addition to exhaustive statistical analysis, one thousand twenty-eight surveys were sent to judges, prosecuting attorneys, Public Defenders and private appointed counsel.

One finding of that report was that judges are at least as well satisfied with Public Defender offices as with private counsel. Thirty-two judges responded, sixteen in current Public Defender Circuits and 16 in non-Public Defender Circuits. The conclusions were somewhat in favor of Public Defenders. Eighty-one percent (81%) of judges in Public Defender Circuits were satisfied with their system while seventy-five percent (75%) in non-Public Defender offices expressed satisfaction with their system.

Further, the Commission recognizes that the legal profession has become increasingly more specialized in recent years for the same reasons that physicians have specialized: increasing complexity and the need for efficiency in providing services. The Commission notes that persons specializing in the same sort of work on a daily basis will usually become more effective. While some private counsel spend a substantial amount of time on indigent defense, all Public Defenders spend all of their time on indigent defense. The Commission believes that this fact leads to the conclusion that Public Defenders, on average, are more effective in their work than private counsel, further strengthening the argument for more Public Defender offices.

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The Commission finds Public Defender offices bring the additional advantage that staff attorneys are supervised and can be guided by their Chief Defender, as well as mentored by key experienced staff attorneys. The average experience in Public Defender offices is impressive. Of a total of 121 lawyers budgeted in FY 2009, 39 have more than twenty years' experience; 44 have between ten and twenty years' experience; and an additional 29 have between five and ten years' experience. Only 9 attorneys have less than five years' experience. Most of this experience has been focused primarily, even exclusively, in the areas of indigent defense. While experience is not the only factor in determining competence, it is clearly a myth that Public Defenders tend to be young and inexperienced. In addition, staff turnover is very low, allowing for substantial "institutional memory," a factor invaluable in dealing with the quirks of local practice.

Opening of Additional Public Defender Offices:

The Commission finds that the same advantages of cost and competence (see section Quality: Public Defenders, below) apply in other Circuits but that logistical limitations require that no more than four offices open in this fiscal year. The Commission notes, however, that other Circuits may be ripe for implementation and recommends that action be taken in succeeding fiscal years. Those Circuits are:

20th Judicial Circuit (Randolph, office in Elkins)
27th Judicial Circuit (Wyoming, office in Pineville)
29th Judicial Circuit (Putnam, office in Winfield)

In addition, the Commission notes that several remaining Circuits which appear to have sufficient caseload to justify Public Defender offices are also multi-county Circuits. Caseloads within each County of these Circuits are sometimes marginal at best. Further study should be devoted to alternative delivery systems in these Circuits, perhaps using permanent part-time attorneys who retain their own law offices (thereby saving considerable start-up costs). These Circuits are:

14th Judicial Circuit (Braxton, Clay, Gilmer and Webster)
19th Judicial Circuit (Barbour/Taylor)
21st Judicial Circuit (Grant, Mineral and Tucker)
22d Judicial Circuit (Hampshire, Hardy and Pendleton)

Recommendation 2:

Effective 1 July 2009, or sooner, the Legislature should increase the hourly rate of compensation to private appointed counsel to $75 for out of court and $105 for in court work so as to allow for inflation since the last increase in 1990.

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Appointed Counsel Rates:

Pursuant to the constitutional minimums established by Jewell v. Maynard, 383 S.E.2d 531 (1989), the Legislature passed amendments to W.Va. Code 29-21-1, et seq., which raised the hourly rate for indigent defense by private appointed counsel from $20 out of court and $25 in court, to $45 dollars out of court and $65 dollars in court. This rate became effective 1 July 1990.

Since that time, the rate of inflation has resulted in a cumulative increase of 63.2%. In current dollars, the 1990 rate would be be approximately $75 for out of court work, $105 for in court work.. In addition, an estimated equivalent rate for attorneys paid a state salary is $87.05 to $126.22 per hour. (See Reimbursement Rate Calculations of Current Value (1990—2008), Appendix B).

Other states have recognized the problem of inadequate compensation and have increased their hourly rates. (See: Rates of Compensation for Court-Appointed Counsel in Capital Cases at Trial: A State by State Overview; June 2007, Spangenberg Group, prepared for the ABA; also, Rates of Compensation for Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State by State Overview, ibid., Appendix B.) Some states now pay as much as $150 an hour in capital cases. Federal hourly rates range from $100 per hour for noncapital cases to $170 for capital cases (See web page from Federal Public Defender for Southern District of West Virginia, Appendix B).

The Commission finds that the rate of compensation is now so low that the basic constitutional right to due process is in jeopardy. According to a 2004 West Virginia State Bar survey, $45/$65 an hour is the lowest rate charged by attorneys who charge by the hour. Only 1.4% of the 942 attorneys responding charge that amount (See excerpt from 2004 West Virginia State Bar Membership Survey Results, Appendix B.)

Clearly, by any reasonable standard the current hourly rates are substandard. Some attorneys have now withdrawn from indigent defense practice (see letters from Justice Albright, Judge Ronald E. Wilson and Cathryn A. Nogay, Appendix B). It is reasonably foreseeable that others will soon follow.

Recommendation 3:

The West Virginia Supreme Court of Appeals and the West Virginia State Bar should advise the Governor and the Legislature annually as to needed changes or improvements to the indigent defense system, and should include at a minimum recommendations as to hourly rates of compensation.

During the 2009 Regular Session the Legislature should raise the hourly rates to a minimum of $75 for out of court work, $105 for in court work. Further, to avoid lengthy delays in raising rates in the future, the Supreme Court should be assigned the task of reviewing rates annually and making recommendations to the Legislature.

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The Commission further recommends that both the West Virginia Supreme Court and the West Virginia State Bar annually advise the Legislature as to the state of indigent defense and other changes needed to ensure the protection of the constitutional rights of all citizens.

Recommendation 4:

Public Defender Services should devise a system to alert judges to private counsel billings which appear to be consistently higher than average. Local and regional panels should be defined so as to clarify that attorneys in the county wherein the case arises are favored.

The current process for payment of attorneys' fees and expenses requires the submission to Public Defender Services of a court order directing PDS to pay counsel and other service providers. Despite the substantial reductions in payable amounts routinely made by PDS (currently in excess of $740,000 per year), the Commission recognizes the limited role Public Defender Services is allowed to play in reviewing payments.

Therefore, the Commission recommends that Public Defender Services submit regular reports to judges noting patterns of billing which appear to be excessive or unusual. The Commission commends PDS for the current practice of reporting average payments for particular offenses and offense categories (felony, misdemeanor, abuse and neglect, etc.)

In addition, the Commission strongly recommends that judges appoint private counsel from local county or Circuit bar members. The statutory order of appointment, which currently places the "local panel" first after Public Defender offices, should be followed. The Legislature should amend W.VA. Code 29-21-9 so as to define local and regional panels to mean persons residing in the county or Circuit, or adjoining counties or Circuits, respectively; and to require that judges make a finding, to be included on the order of appointment, as to why any lawyer is appointed from outside the local county or Circuit. In addition, judges should be given clear statutory authority to reduce billings or refuse to authorize payment of questionable claims, as well as to remove anyone from the appointment panels at their discretion.

Recommendation 5:

Any lawyer who represents indigents in eligible proceedings should be required to complete a minimum number of relevant CLE hours during each two-year CLE cycle. The West Virginia Supreme Court of Appeals and the West Virginia State Bar should recommend the appropriate number of hours.

The Commission notes that oversight over private appointed counsel is inconsistent and uneven and completely out of the control of Public Defender Services. In order to encourage quality representation, the Commission recommends that the West Virginia Supreme Court of Appeals and the West Virginia State Bar require a minimum number of

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relevant continuing education hours be completed within each CLE two year cycle. The course requirements should be approved as satisfactory by the Bar's Continuing Education Commission and be considered as part of the current required number of hours

The Commission notes that Public Defender Services already offers 8-10 CLE programs per year, most of which are open to any member of the Bar. PDS currently offers new attorney training to full-time Public Defenders and will explore ways to make new attorney training available to private attorneys.

Afterword

The Commission would like to applaud the Legislature's efforts in advancing the cause of indigent defense by establishing this commission. The Commission also wishes to recognize the Governor's initiatives in ensuring the rule of law and the availability of constitutional protections to all persons regardless of their financial circumstances. The Commission looks forward to a long and beneficial collaboration in implementation of these and other future recommendations.

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The Indigent Defense Commission respectfully approves and submits this report as required this day, the 15th of January, 2009.

(Also see my SPARK report)

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West Virginia Public Defender Services

Indigent Defense Commission
As of January 15, 2009

The Honorable **Andrew A. McQueen**, Esq.	Term Ends 06/30/2009 (Retired Judge)
William B. Richardson, Jr., Esq.	Term Ends 06/30/2009 (Attorney, 1st Congressional District)
Joseph M. Ward, Esq.	Term Ends 06/30/2010 (Attorney, 2nd Congressional District)
Robert E. Richardson, Esq.	Term Ends 06/30/2010 (Attorney, 3rd Congressional District)
Adrienne Worthy	Term Ends 06/30/2011 (Non-Lawyer)
James Strawn	Term Ends 06/30/2011 (Mental Illness Advocate)
Cathryn S. Nogay, Esq.	Term Ends 06/30/2012 (Abuse & Neglect Attorney)
Deborah A. Lawson, Esq.	Term Ends 06/30/2012 (Chief Defender)
John "Jack" A. Rogers, Esq. WV Public Defender Services	Non-expiring Term (Chairman of Commission)

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APPENDIX A

WV Public Defender Services Statistical Summaries, FY 2008-2005

Preliminary Performance Review of Public Defender Services
Office of Legislative Services

"Indigent Access to Justice in West Virginia" by John C. Kilwein
The West Virginia Public Affairs Reporter

The Final Report
Commission on the Future of the West Virginia Judiciary

Estimated Savings from Public Defender Offices
WV Public Defender Services

Ten Principles of a Public Defense Delivery System
American Bar Association

Report of the Indigent Defense Task Force
January 11, 2000

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
STATISTICAL SUMMARY
APPOINTED COUNSEL FISCAL YEAR 2008

Total Number of Claims Paid	30,288
Total Number of Direct Expense Claims Paid	1,603
Total Number of Hours Paid	422,423
Total Amount Paid In Claims	$22,775,831.90
Total Fees Paid to Counsel	$20,425,071.97
Total Expenses Paid	$2,350,759.93
Average Total Cost Per Claim	$751.98
Average Counsel Fee Per Claim	$674.36
Average Expenses Per Claim	$77.61
Percent of Total Funds Paid Attributable To Fees	89.68%
Percent of Total Funds Paid Attributable To Expenses	10.32%
Average Total Cost Per Hour	$53.92
Total Hours In-Court	70,802
Total Hours Out-Of-Court	351,621
Percent of Total Hours In-Court	16.76%
Percent of Total Hours Out-Of-Court	83.24%

NOTE: Figures represent payments made for non-abuse & neglect vouchers received from January 12, 2007 to December 31, 2007. Abuse & neglect vouchers through May 30, 2008. (Payments made over 11.36 months.)

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
STATISTICAL SUMMARY
APPOINTED COUNSEL FISCAL YEAR 2008
WITHOUT DIRECT EXPENSES AND SUPPLEMENTAL VOUCHERS

Total Number of Claims Paid	28,131
Total Number of Supplemental Claims Paid	550
Total Number of Direct Expense Claims Paid	1,603
Total Number of Hours Paid	422,423
Total Amount Paid In Claims	$22,775,831.90
Total Fees Paid to Counsel	$20,425,071.97
Total Expenses Paid	$2,350,759.93
Average Total Cost Per Claim	$809.63
Average Counsel Fee Per Claim	$726.07
Average Expenses Per Claim	$83.56
Percent of Total Funds Paid Attributable To Fees	89.68%
Percent of Total Funds Paid Attributable To Expenses	10.32%
Average Total Cost Per Hour	$53.92
Total Hours In-Court	70,802
Total Hours Out-Of-Court	351,621
Percent of Total Hours In-Court	16.76%
Percent of Total Hours Out-Of-Court	83.24%

NOTE: Figures represent payments made for non-abuse & neglect vouchers received from January 12, 2007 to December 31, 2007. Abuse & neglect vouchers through May 30, 2008. (Payments made over 11.36 months.)

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
STATISTICAL REPORT
PUBLIC DEFENDER CORPORATIONS FY2007/2008
PENDING

Total Number of Cases Opened	32,696
Total Number of Cases Closed	32,281
Total Number of Cases Represented during FY 2007	45,640
Total Amount Disbursed to Corporations	$13,656,719.00
Average Total Cost Per Cases Represented	$299.23
Average Total Cost Per Cases Opened	$417.69
Average Total Cost Per Cases Closed	$423.06
Total Number of Hours Worked during FY2007	239,010.30
Average Total Cost Per Hour	$57.14
Total In Court Hours Worked	50,439.70
Total Out of Court Hours Worked	124,740.40
Total Administrative Hours Worked	63,830.20
Percent of Total In Court Hours	21.10%
Percent of Total Out of Court Hours	52.19%
Percent of Total Administrative Hours	26.71%

Due to the current upgrade for TimeMatters software this information is in draft form only and has not been verified. Finalization of data will occur by January 31, 2009. This information is not intended for final publication.

Total amount disbursed includes payments made on behalf of Corporations to audit providers; Office of Technology; State Auditor's Office; and West Services

Administrative Hours include Holiday, Sick and Annual leave hours paid to Corporation Attorneys

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
SUMMARY REPORT FOR ATTORNEY HOURS/FEES/EXPENSES
FISCAL YEAR 2008

CIRCUIT	ATTORNEY TOTAL HOURS	ATTORNEY FEE AMOUNT IN $	ATTORNEY EXPENSE AMOUNT IN $	DIRECT EXPENSE AMOUNT IN $	EXPENSE AMOUNT IN $	GRAND TOTAL AMOUNT IN $
01 CIRCUIT	27,912.6	1,326,168.50	68,914.28	36,053.58	104,967.86	1,431,136.36
02 CIRCUIT	6,785.2	328,933.00	18,513.99	11,957.75	30,471.74	359,404.74
03 CIRCUIT	10,314.8	491,448.00	51,599.70	24,597.84	76,197.54	567,645.54
04 CIRCUIT	33,970.0	1,617,980.00	107,729.41	330,483.41	438,212.82	2,056,192.82
05 CIRCUIT	17,089.0	835,609.50	33,446.23	53,181.12	86,627.35	922,236.85
06 CIRCUIT	17,842.0	896,882.00	23,525.31	19,974.42	43,499.73	940,381.73
07 CIRCUIT	12,103.1	589,491.50	23,287.95	35,932.57	59,220.52	648,712.02
08 CIRCUIT	6,531.2	313,168.00	7,037.67	24,883.38	31,921.05	345,089.05
09 CIRCUIT	21,401.8	1,043,481.00	72,905.19	51,923.30	124,828.49	1,168,309.49
10 CIRCUIT	12,826.7	621,539.95	32,452.32	43,253.52	75,705.84	697,245.79
11 CIRCUIT	4,837.2	229,158.00	13,557.10	5,609.83	19,166.93	248,324.93
12 CIRCUIT	4,795.4	231,134.50	9,659.50	8,928.30	18,587.80	249,722.30
13 CIRCUIT	27,650.0	1,341,005.17	39,923.89	86,758.64	126,682.53	1,467,687.70
14 CIRCUIT	19,317.9	931,545.50	84,636.78	11,727.44	96,364.22	1,027,909.72
15 CIRCUIT	11,115.7	536,186.50	17,210.82	11,126.90	28,337.72	564,524.22
16 CIRCUIT	18,564.9	867,990.40	18,902.73	82,342.72	101,245.45	969,235.85
17 CIRCUIT	15,397.5	730,265.00	18,073.70	37,157.64	55,231.34	785,496.34
18 CIRCUIT	5,558.6	260,103.00	13,605.97	7,327.25	20,933.22	281,036.22
19 CIRCUIT	15,000.9	697,148.50	13,661.71	2,106.92	15,768.63	712,917.13
20 CIRCUIT	8,948.3	430,087.50	13,692.04	1,937.04	15,629.08	445,716.58
21 CIRCUIT	9,148.3	438,343.50	18,054.54	16,919.50	34,974.04	473,317.54
22 CIRCUIT	11,713.6	577,960.00	25,858.38	42,465.27	68,323.65	646,283.65
23 CIRCUIT	22,852.0	1,133,736.00	54,460.13	201,632.82	256,092.95	1,389,828.95
24 CIRCUIT	12,231.8	622,329.00	44,912.38	3,557.06	48,469.44	670,798.44
25 CIRCUIT	15,413.1	774,103.50	38,281.57	32,232.95	70,514.52	844,618.02
26 CIRCUIT	15,657.4	746,277.00	37,696.97	27,607.24	65,304.21	811,581.21
27 CIRCUIT	10,108.4	483,331.95	32,613.01	93,233.04	125,846.05	609,178.00
28 CIRCUIT	2,403.2	117,096.00	6,960.25	261.09	7,221.34	124,317.34
29 CIRCUIT	10,307.8	493,747.00	26,255.49	26,003.23	52,258.72	546,005.72
30 CIRCUIT	9,633.7	474,887.00	19,874.38	2,240.00	22,114.38	497,001.38
31 CIRCUIT	4,990.6	243,935.50	21,588.61	8,452.16	30,040.77	273,976.27
STATE	422,422.7	20,425,071.97	1,008,892.00	1,341,867.93	2,350,759.93	22,775,831.90

WEST VIRGINIA PUBLIC DEFENDER SERVICES
AVERAGE COST BY CASE TYPE
FISCAL YEAR 2008

CIRCUIT	FELONY	MISD	MENTAL HYGIENE	JUVENILE	PAROLE PROBAT REV	TERM ABUSE	HABEAS SUP. CT.	OTHER	CIRCUIT AVERAGE
01 CIRCUIT	1,898.70	422.97	112.61	605.77	517.99	1,612.04	2,223.76	776.41	$1,068.81
02 CIRCUIT	1,187.64	379.48	169.02	481.16	522.94	1,230.06	2,331.74	1,811.64	$658.25
03 CIRCUIT	1,637.33	493.29	195.25	925.00	630.21	1,126.10	2,970.53	431.80	$915.56
04 CIRCUIT	754.33	503.13	104.98	460.70	390.89	791.95	1,345.38	404.92	$590.86
05 CIRCUIT	1,166.65	453.63	157.91	626.57	431.73	853.48	1,406.41	572.93	$758.42
06 CIRCUIT	1,027.32	367.20	97.73	279.69	600.32	880.53	1,728.09	552.21	$448.66
07 CIRCUIT	1,046.35	236.60	0.00	630.84	568.82	1,110.97	3,281.04	311.54	$518.97
08 CIRCUIT	1,935.15	471.91	192.50	1,114.50	1,580.21	1,226.77	1,568.55	1,981.08	$1,259.45
09 CIRCUIT	1,155.79	371.70	199.78	1,004.85	507.95	1,137.20	2,497.75	578.45	$895.26
10 CIRCUIT	1,076.97	470.63	91.98	798.24	788.00	882.32	0.00	753.95	$843.10
11 CIRCUIT	1,633.47	510.56	113.02	237.67	769.50	1,423.71	2,004.26	836.25	$1,176.90
12 CIRCUIT	668.00	220.89	0.00	523.38	294.33	1,075.08	3,084.12	0.00	$808.16
13 CIRCUIT	856.29	340.01	0.00	549.25	473.39	939.49	2,045.23	737.08	$671.71
14 CIRCUIT	1,445.07	435.85	239.92	944.12	936.61	1,513.94	2,098.61	402.87	$1,017.73
15 CIRCUIT	885.06	405.29	143.96	538.23	409.54	1,333.84	1,469.04	286.47	$799.61
16 CIRCUIT	1,074.91	384.51	102.59	795.36	352.26	1,270.08	1,755.15	335.09	$689.85
17 CIRCUIT	1,206.81	455.24	103.06	794.53	384.86	1,388.14	539.37	365.71	$663.43
18 CIRCUIT	1,431.20	608.09	0.00	874.08	791.01	1,656.12	3,681.89	2,200.17	$1,364.25
19 CIRCUIT	1,035.09	463.68	175.65	477.98	595.44	1,232.29	560.16	469.87	$735.72
20 CIRCUIT	916.12	411.68	125.28	983.24	293.49	1,617.66	1,849.61	285.03	$784.71
21 CIRCUIT	728.02	314.68	115.32	295.59	310.69	1,082.44	1,839.24	363.32	$496.14
22 CIRCUIT	1,233.33	334.14	201.51	930.87	479.98	1,851.40	4,265.40	281.96	$867.49
23 CIRCUIT	1,294.45	383.53	398.67	891.14	887.51	1,625.23	1,659.17	595.02	$1,307.46
24 CIRCUIT	1,019.66	430.30	337.06	406.79	610.24	1,064.77	2,387.34	1,109.18	$879.16
25 CIRCUIT	1,439.79	358.29	230.70	626.37	576.95	1,239.87	3,225.78	686.83	$986.70
26 CIRCUIT	1,225.39	450.41	157.48	566.66	532.27	1,298.97	1,885.02	456.34	$625.74
27 CIRCUIT	853.20	379.57	216.90	358.74	529.90	882.07	8,766.00	1,665.81	$637.22
28 CIRCUIT	854.55	175.28	58.88	498.41	0.00	860.79	1,646.96	1,198.70	$698.41
29 CIRCUIT	1,153.86	372.35	196.94	702.82	571.07	1,257.56	1,039.73	462.53	$664.24
30 CIRCUIT	891.25	401.46	184.11	640.07	857.23	1,465.48	1,319.93	420.22	$943.08
31 CIRCUIT	821.16	218.01	131.06	646.39	248.98	1,317.19	6,420.75	268.40	$650.77
STATE AVERAGE	1,085.89	396.12	132.51	607.01	489.27	1,177.73	1,948.37	493.38	$751.98

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
APPOINTED COUNSEL CLAIMS PAID BY CASE TYPE
FISCAL YEAR 2008

CIRCUIT	FELONY	MISD	MENTAL HYGIENE	JUVENILE	PAROLE PROBAT REV	TERM ABUSE	HABEAS SUP. CT.	OTHER	TOTAL CLAIMS
01 CIRCUIT TOTAL	212	191	311	77	19	509	14	6	1,339
02 CIRCUIT TOTAL	77	50	233	30	9	134	4	9	546
03 CIRCUIT TOTAL	111	209	15	36	28	174	5	42	620
04 CIRCUIT TOTAL	758	1,373	213	212	97	663	47	117	3,480
05 CIRCUIT TOTAL	315	221	109	100	62	369	12	28	1,216
06 CIRCUIT TOTAL	354	147	963	221	25	322	28	36	2,096
07 CIRCUIT TOTAL	167	732	0	145	23	163	3	17	1,250
08 CIRCUIT TOTAL	91	72	2	11	2	93	2	1	274
09 CIRCUIT TOTAL	392	217	129	49	58	421	15	24	1,305
10 CIRCUIT TOTAL	148	125	4	55	13	476	0	6	827
11 CIRCUIT TOTAL	44	28	19	9	2	103	4	2	211
12 CIRCUIT TOTAL	63	62	0	5	4	174	1	0	309
13 CIRCUIT TOTAL	601	782	0	145	54	563	18	22	2,185
14 CIRCUIT TOTAL	228	344	10	95	14	265	12	42	1,010
15 CIRCUIT TOTAL	107	175	53	93	28	225	19	6	706
16 CIRCUIT TOTAL	314	441	177	152	62	199	20	40	1,405
17 CIRCUIT TOTAL	236	433	207	113	34	117	5	39	1,184
18 CIRCUIT TOTAL	45	23	0	37	9	83	4	5	206
19 CIRCUIT TOTAL	158	290	18	214	39	221	3	26	969
20 CIRCUIT TOTAL	97	221	23	79	29	99	7	13	568
21 CIRCUIT TOTAL	221	327	25	187	69	97	10	18	954
22 CIRCUIT TOTAL	152	287	25	70	42	123	8	38	745
23 CIRCUIT TOTAL	285	123	3	87	20	513	23	9	1,063
24 CIRCUIT TOTAL	108	100	71	48	11	405	11	9	763
25 CIRCUIT TOTAL	167	148	27	146	39	311	13	5	856
26 CIRCUIT TOTAL	178	257	453	117	31	224	11	26	1,297
27 CIRCUIT TOTAL	223	424	4	41	2	258	1	3	956
28 CIRCUIT TOTAL	60	34	4	13	0	63	3	1	178
29 CIRCUIT TOTAL	203	357	44	114	25	45	6	28	822
30 CIRCUIT TOTAL	120	140	14	27	6	201	7	12	527
31 CIRCUIT TOTAL	121	159	14	40	5	79	1	2	421
STATE TOTAL	6,356	8,492	3,170	2,768	861	7,692	317	632	30,288

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
STATISTICAL SUMMARY
APPOINTED COUNSEL FISCAL YEAR 2007

Total Number of Claims Paid	23,560
Total Number of Direct Expense Claims Paid	1,256
Total Number of Hours Paid	299,834
Total Amount Paid In Claims	$16,190,449.06
Total Fees Paid to Counsel	$14,492,953.36
Total Expenses Paid	$1,697,495.70
Average Total Cost Per Claim	$687.20
Average Counsel Fee Per Claim	$615.15
Average Expenses Per Claim	$72.05
Percent of Total Funds Paid Attributable To Fees	89.52%
Percent of Total Funds Paid Attributable To Expenses	10.48%
Average Total Cost Per Hour	$54.00
Total Hours In-Court	50,020
Total Hours Out-Of-Court	249,814
Percent of Total Hours In-Court	16.68%
Percent of Total Hours Out-Of-Court	83.32%

NOTE: Figures represent payments made for vouchers received from July 1, 2006 to January 11, 2007. (Payments made over 11.5 months.)

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
STATISTICAL SUMMARY
APPOINTED COUNSEL FISCAL YEAR 2007
WITHOUT DIRECT EXPENSES AND SUPPLEMENTAL VOUCHERS

Total Number of Claims Paid	21,786
Total Number of Supplemental Claims Paid	518
Total Number of Direct Expense Claims Paid	1,256
Total Number of Hours Paid	299,834
Total Amount Paid In Claims	$16,190,449.06
Total Fees Paid to Counsel	$14,492,953.36
Total Expenses Paid	$1,697,495.70
Average Total Cost Per Claim	$743.16
Average Counsel Fee Per Claim	$665.24
Average Expenses Per Claim	$77.92
Percent of Total Funds Paid Attributable To Fees	89.52%
Percent of Total Funds Paid Attributable To Expenses	10.48%
Average Total Cost Per Hour	$54.00
Total Hours In-Court	50,020
Total Hours Out-Of-Court	249,814
Percent of Total Hours In-Court	16.68%
Percent of Total Hours Out-Of-Court	83.32%

NOTE: Figures represent payments made for vouchers received from July 1, 2006 to January 11, 2007. (Payments made over 11.5 months.)

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
STATISTICAL REPORT
PUBLIC DEFENDER CORPORATIONS FY2006/2007

Total Number of Cases Pending July 1, 2006	13,219
Total Number of Cases Opened	31,450
Total Number of Cases Closed	31,153
Total Number of Cases Represented during FY 2007	44,669
Total Amount Disbursed to Corporations	$10,000,000.00
Average Total Cost Per Cases Represented	$223.87
Average Total Cost Per Cases Opened	$317.97
Average Total Cost Per Cases Closed	$321.00
Total Number of Hours Worked during FY2007	229,709.00
Average Total Cost Per Hour	$43.53
Total In Court Hours Worked	50,795.60
Total Out of Court Hours Worked	115,661.10
Total Administrative Hours Worked	63,252.30
Percent of Total In Court Hours	22.11%
Percent of Total Out of Court Hours	50.35%
Percent of Total Administrative Hours	27.54%

Total amount disbursed includes payments made on behalf of Corporations to audit providers; Office of Technology; State Auditor's Office; and West Services

Administrative Hours include Holiday, Sick and Annual leave hours paid to Corporation Attorneys

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
SUMMARY REPORT FOR ATTORNEY HOURS/FEES/EXPENSES
FISCAL YEAR 2007

CIRCUIT	ATTORNEY TOTAL HOURS	ATTORNEY FEE AMOUNT IN $	ATTORNEY EXPENSE AMOUNT IN $	DIRECT EXPENSE AMOUNT IN $	EXPENSE AMOUNT IN $	GRAND TOTAL AMOUNT IN $
01 CIRCUIT	15,545.8	736,008.50	35,626.58	46,116.03	81,742.61	817,751.11
02 CIRCUIT	5,028.5	243,046.50	16,537.55	5,604.89	22,142.44	265,188.94
03 CIRCUIT	5,747.2	273,012.00	15,211.21	34,312.49	49,523.70	322,535.70
04 CIRCUIT	31,194.7	1,482,937.50	70,439.42	253,304.28	323,743.70	1,806,681.20
05 CIRCUIT	14,568.5	713,766.50	33,239.10	30,669.78	63,908.88	777,675.38
06 CIRCUIT	12,186.7	608,477.50	22,030.62	21,280.24	43,310.86	651,788.36
07 CIRCUIT	10,301.7	498,626.50	17,378.59	27,991.03	45,369.62	543,996.12
08 CIRCUIT	5,224.5	250,394.50	7,531.82	17,047.86	24,579.68	274,974.18
09 CIRCUIT	14,127.4	691,131.00	56,619.38	36,347.54	92,966.92	784,097.92
10 CIRCUIT	6,208.6	298,827.00	19,545.07	12,506.05	32,051.12	330,878.12
11 CIRCUIT	3,158.9	151,414.50	4,034.26	17,281.60	21,315.86	172,730.36
12 CIRCUIT	2,051.0	97,707.00	4,123.45	8,000.00	12,123.45	109,830.45
13 CIRCUIT	21,247.8	1,031,150.50	28,569.62	84,032.69	112,602.31	1,143,752.81
14 CIRCUIT	11,830.6	570,911.00	51,823.04	8,328.13	60,151.17	631,062.17
15 CIRCUIT	7,675.5	363,617.50	19,540.03	11,788.18	31,328.21	394,945.71
16 CIRCUIT	15,166.0	712,753.36	14,133.84	53,907.97	68,041.81	780,795.17
17 CIRCUIT	10,812.6	516,091.00	21,298.96	37,824.20	59,123.16	575,214.16
18 CIRCUIT	4,403.8	207,799.00	10,217.01	11,280.73	21,497.74	229,296.74
19 CIRCUIT	12,180.4	572,986.00	15,409.26	10,071.20	25,480.46	598,466.46
20 CIRCUIT	7,422.6	358,411.00	12,801.92	2,254.19	15,056.11	373,467.11
21 CIRCUIT	8,725.8	417,841.00	12,265.59	10,445.00	22,710.59	440,551.59
22 CIRCUIT	9,046.6	446,951.00	20,662.92	22,465.33	43,128.25	490,079.25
23 CIRCUIT	14,893.4	742,929.00	32,394.75	108,686.02	141,080.77	884,009.77
24 CIRCUIT	6,200.8	314,874.00	23,506.63	1,872.80	25,379.43	340,253.43
25 CIRCUIT	10,778.7	537,469.50	16,272.63	19,579.09	35,851.72	573,321.22
26 CIRCUIT	8,780.0	421,844.00	19,608.93	4,850.40	24,459.33	446,303.33
27 CIRCUIT	7,741.1	369,611.50	41,334.16	62,750.49	104,084.65	473,696.15
28 CIRCUIT	1,299.6	64,194.00	2,654.16	0.00	2,654.16	66,848.16
29 CIRCUIT	8,015.2	392,168.00	14,931.66	32,494.00	47,425.66	439,593.66
30 CIRCUIT	5,139.1	251,675.00	7,646.88	3,466.69	11,113.57	262,788.57
31 CIRCUIT	3,131.2	154,328.00	14,722.57	18,825.19	33,547.76	187,875.76
STATE	299,834.2	14,492,953.36	682,111.61	1,015,384.09	1,697,495.70	16,190,449.06

WEST VIRGINIA PUBLIC DEFENDER SERVICES
AVERAGE COST BY CASE TYPE
FISCAL YEAR 2007

CIRCUIT	FELONY	MISD	MENTAL HYGIENE	JUVENILE	PAROLE PROBAT REV	TERM ABUSE	HABEAS SUP. CT.	OTHER	CIRCUIT AVERAGE
01 CIRCUIT	1,489.62	403.58	100.10	498.90	444.16	1,914.28	2,660.98	549.47	$881.20
02 CIRCUIT	1,158.26	329.46	161.92	475.61	636.14	1,454.02	5,524.35	2,080.53	$635.94
03 CIRCUIT	1,163.47	533.94	237.05	930.41	762.41	1,194.65	1,776.11	400.91	$827.01
04 CIRCUIT	646.24	544.63	122.33	461.92	370.14	875.62	1,441.44	309.10	$570.83
05 CIRCUIT	1,091.33	417.41	149.20	943.48	691.07	913.96	1,826.86	535.04	$749.93
06 CIRCUIT	921.80	346.21	88.98	268.45	506.91	803.65	2,287.62	479.57	$407.88
07 CIRCUIT	1,133.04	281.38	0.00	630.45	632.77	1,188.58	1,805.17	391.37	$626.72
08 CIRCUIT	1,631.35	416.78	220.75	507.83	661.72	1,404.29	3,041.11	237.77	$1,140.97
09 CIRCUIT	1,037.83	319.35	163.46	750.71	491.87	1,039.67	1,849.08	762.37	$698.22
10 CIRCUIT	969.51	371.88	137.50	628.18	837.45	630.88	1,082.53	538.09	$672.52
11 CIRCUIT	1,331.46	371.37	86.59	601.02	702.58	1,354.60	3,506.72	602.86	$867.99
12 CIRCUIT	989.01	300.44	385.55	815.04	356.79	1,469.74	1,192.53	269.10	$784.50
13 CIRCUIT	990.46	357.73	110.32	641.94	534.28	957.79	1,154.98	551.51	$693.18
14 CIRCUIT	1,016.28	346.86	129.38	804.17	1,186.52	1,417.86	2,480.13	249.06	$705.89
15 CIRCUIT	1,638.99	547.91	131.71	653.52	467.02	1,440.46	2,916.31	432.72	$984.90
16 CIRCUIT	1,175.11	385.90	102.33	641.38	529.46	1,336.80	1,429.72	284.99	$671.36
17 CIRCUIT	1,114.44	419.19	102.56	766.23	502.50	1,413.54	2,539.34	362.27	$578.69
18 CIRCUIT	1,399.42	609.73	141.00	915.80	395.21	1,965.92	4,808.61	901.76	$1,442.12
19 CIRCUIT	1,110.24	388.61	208.15	467.48	368.92	1,525.78	1,338.54	506.65	$771.22
20 CIRCUIT	848.09	336.07	145.25	658.40	391.92	1,209.99	1,598.64	700.32	$624.53
21 CIRCUIT	700.67	316.11	108.80	276.28	351.01	1,720.95	2,027.67	958.20	$527.61
22 CIRCUIT	1,152.28	357.87	251.88	983.56	413.98	1,232.76	224.50	273.97	$701.11
23 CIRCUIT	1,260.13	434.24	0.00	739.78	726.39	1,623.78	3,137.11	513.00	$1,321.39
24 CIRCUIT	1,062.77	402.25	298.49	392.23	590.04	892.82	4,634.76	327.05	$754.44
25 CIRCUIT	1,135.09	367.73	175.24	684.62	488.01	1,540.70	2,527.35	631.75	$960.34
26 CIRCUIT	703.76	376.69	132.10	372.73	496.37	1,108.09	1,137.35	634.87	$474.79
27 CIRCUIT	1,491.50	446.86	279.21	680.28	0.00	1,283.34	0.00	923.89	$823.82
28 CIRCUIT	542.59	237.31	66.25	340.02	249.11	672.23	1,914.93	180.78	$448.65
29 CIRCUIT	1,039.68	346.04	175.73	483.89	364.29	977.44	3,010.31	291.65	$528.99
30 CIRCUIT	718.09	427.33	171.50	660.21	564.75	1,446.49	1,296.23	735.85	$973.29
31 CIRCUIT	933.44	228.61	99.87	441.83	416.45	1,116.02	2,115.99	461.47	$604.10
STATE AVERAGE	**1,020.28**	**402.15**	**124.37**	**567.19**	**493.74**	**1,195.97**	**2,230.50**	**439.88**	**$687.20**

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
APPOINTED COUNSEL CLAIMS PAID BY CASE TYPE
FISCAL YEAR 2007

CIRCUIT	FELONY	MISD	MENTAL HYGIENE	JUVENILE	PAROLE PROBAT REV	TERM ABUSE	HABEAS SUP. CT.	OTHER	TOTAL CLAIMS
01 CIRCUIT TOTAL	153	134	302	67	28	220	12	12	928
02 CIRCUIT TOTAL	58	51	197	23	11	68	4	5	417
03 CIRCUIT TOTAL	93	120	23	35	26	66	2	25	390
04 CIRCUIT TOTAL	716	1,357	226	230	88	383	46	119	3,165
05 CIRCUIT TOTAL	323	294	97	65	19	209	5	25	1,037
06 CIRCUIT TOTAL	275	58	780	216	18	207	30	14	1,598
07 CIRCUIT TOTAL	161	425	0	125	19	113	5	20	868
08 CIRCUIT TOTAL	83	73	6	11	1	59	6	2	241
09 CIRCUIT TOTAL	341	248	200	51	37	213	14	19	1,123
10 CIRCUIT TOTAL	127	93	2	16	10	238	2	4	492
11 CIRCUIT TOTAL	45	19	45	24	6	51	3	6	199
12 CIRCUIT TOTAL	37	57	1	6	4	31	3	1	140
13 CIRCUIT TOTAL	455	639	3	153	23	332	18	27	1,650
14 CIRCUIT TOTAL	222	386	13	106	10	101	7	49	894
15 CIRCUIT TOTAL	74	107	43	53	21	80	16	7	401
16 CIRCUIT TOTAL	238	396	174	109	49	161	8	28	1,163
17 CIRCUIT TOTAL	190	381	219	85	30	51	7	31	994
18 CIRCUIT TOTAL	40	11	1	34	12	49	6	6	159
19 CIRCUIT TOTAL	166	219	33	169	28	146	3	12	776
20 CIRCUIT TOTAL	142	235	18	86	24	72	4	17	598
21 CIRCUIT TOTAL	173	304	25	200	42	69	10	12	835
22 CIRCUIT TOTAL	163	295	20	60	30	88	1	42	699
23 CIRCUIT TOTAL	183	53	0	113	14	278	27	1	669
24 CIRCUIT TOTAL	71	71	72	32	12	180	7	6	451
25 CIRCUIT TOTAL	150	85	38	125	28	157	8	6	597
26 CIRCUIT TOTAL	153	215	307	75	20	140	10	20	940
27 CIRCUIT TOTAL	132	315	6	35	0	84	0	3	575
28 CIRCUIT TOTAL	35	31	18	7	2	50	1	5	149
29 CIRCUIT TOTAL	154	421	45	109	32	48	3	19	831
30 CIRCUIT TOTAL	52	66	3	14	2	119	7	7	270
31 CIRCUIT TOTAL	102	102	8	48	10	32	2	7	311
STATE TOTAL	5,307	7,261	2,925	2,482	656	4,095	277	557	23,560

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WV PUBLIC DEFENDER SERVICES
STATISTICAL REPORT
APPOINTED COUNSEL FY 2005/2006

Total Number of Claims Paid	26,358
Total Number of Direct Expense Claims Paid	1,313
Total Number of Hours Paid	310,458
Total Amount Paid in Claims	$16,779,798.27
Total Fees Paid to Counsel	$15,030,072.45
Total Expenses Paid	$1,749,725.82
Average Total Cost Per Claim	$636.61
Average Counsel Fee Per Claim	$570.23
Average Expenses Per Claim	$66.38
Percent of Total Claims Attributable to Fees	89.57%
Percent of Total Claims Attributable to Expenses	10.43%
Average Total Cost Per Hour	$54.05
Total Hours In-Court	52,972
Total Hours Out-of-Court	257,486
Percent of Total Hours In-Court	17.06%
Percent of Total Hours Out-of-Court	82.94%

NOTE: Figures represent payments made for 9 months. Claims received from July 1, 2005 to March 3, 2006 for activity 788 and March 31, 2006 for activity 568.

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WV PUBLIC DEFENDER SERVICES
STATISTICAL REPORT
APPOINTED COUNSEL FY 2005/2006
WITHOUT DIRECT EXPENSES AND SUPPLEMENTAL VOUCHERS

Total Number of Claims Paid	24,630
Total Number of Supplemental Claims Paid	415
Total Number of Direct Expense Claims Paid	1,313
Total Number of Hours Paid	310,458
Total Amount Paid in Claims	$16,779,798.27
Total Fees Paid to Counsel	$15,030,072.45
Total Expenses Paid	$1,749,725.82
Average Total Cost Per Claim	$681.27
Average Counsel Fee Per Claim	$610.23
Average Expenses Per Claim	$71.04
Percent of Total Claims Attributable to Fees	89.57%
Percent of Total Claims Attributable to Expenses	10.43%
Average Total Cost Per Hour	$54.05
Total Hours In-Court	52,972
Total Hours Out-of-Court	257,486
Percent of Total Hours In-Court	17.06%
Percent of Total Hours Out-of-Court	82.94%

NOTE: Figures represent payments made for 9 months. Claims received from July 1, 2005 to March 3, 2006 for activity 788 and March 31, 2006 for activity 568.

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WV PUBLIC DEFENDER SERVICES
STATISTICAL REPORT
PUBLIC DEFENDER CORPORATIONS FY 2005/2006

Total Number of Cases Pending July 1, 2005	11,848
Total Number of Cases Opened	30,941
Total Number of Cases Closed	27,694
Total Number of Cases Represented during FY 2006	42,789
Total Number of Charges Associated with Cases Pending July 1, 2005	23,717
Total Number of Charges Associated with Cases Opened	58,382
Total Number of Charges Associated with Cases Closed	51,418
Total Number of Charges Associated with Cases Represented	82,099
Total Amount Disbursed for Corporations	$12,744,662
Average Total Cost Per Cases Represented	$297.85
Average Total Cost Per Opened Cases	$411.90
Average Total Cost Per Closed Cases	$460.20
Total Number of Hours During FY 2006	223,474
Average Total Cost Per Hour	$57.03
Total Hours In-Court	49,042
Total Hours Out-of-Court	118,024
Total Hours Administrative	56,408
Percent of Total Hours In-Court	21.95%
Percent of Total Hours Out-of-Court	52.81%
Percent of Total Hours Administrative	25.24%

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
SUMMARY REPORT FOR ATTORNEY HOURS/FEES/EXPENSES
FISCAL YEAR 2006

CIRCUIT	ATTORNEY TOTAL HOURS	ATTORNEY FEE AMOUNT IN $	ATTORNEY EXPENSE AMOUNT IN $	DIRECT EXPENSE AMOUNT IN $	EXPENSE AMOUNT IN $	GRAND TOTAL AMOUNT IN $
01 CIRCUIT	18,390.0	873,612.00	43,709.12	50,904.63	94,613.75	968,225.75
02 CIRCUIT	2,871.7	140,348.50	4,453.06	4,382.79	8,835.85	149,184.35
03 CIRCUIT	8,212.3	389,039.50	30,517.95	27,002.51	57,520.46	446,559.96
04 CIRCUIT	33,832.3	1,606,635.50	78,082.04	245,148.41	323,230.45	1,929,865.95
05 CIRCUIT	15,882.9	777,256.50	40,448.85	29,881.93	70,330.78	847,587.28
06 CIRCUIT	13,597.3	669,822.50	30,953.87	72,280.36	103,234.23	773,056.73
07 CIRCUIT	9,777.6	472,607.50	14,659.59	8,760.79	23,420.38	496,027.88
08 CIRCUIT	6,267.8	299,974.50	6,855.57	6,368.51	13,224.08	313,198.58
09 CIRCUIT	10,236.4	504,166.90	52,873.15	46,380.34	99,253.49	603,420.39
10 CIRCUIT	8,962.2	437,639.00	13,125.27	49,468.64	62,593.91	500,232.91
11 CIRCUIT	4,145.0	197,619.00	11,583.70	1,731.55	13,315.25	210,934.25
12 CIRCUIT	2,542.3	121,979.50	6,010.29	220.00	6,230.29	128,209.79
13 CIRCUIT	21,108.2	1,039,076.50	23,565.86	64,972.82	88,538.68	1,127,615.18
14 CIRCUIT	10,146.1	492,312.50	44,133.15	37,123.00	81,256.15	573,568.65
15 CIRCUIT	6,669.0	318,974.45	12,178.95	19,738.56	31,917.51	350,891.96
16 CIRCUIT	14,006.0	659,859.00	17,015.39	54,378.09	71,393.48	731,252.48
17 CIRCUIT	15,344.0	731,572.50	28,848.07	37,173.05	66,021.12	797,593.62
18 CIRCUIT	5,540.4	264,776.00	22,298.30	15,655.48	37,953.78	302,729.78
19 CIRCUIT	6,302.7	296,709.50	3,850.93	1,530.94	5,381.87	302,091.37
20 CIRCUIT	6,288.6	308,425.00	10,890.48	4,146.75	15,037.23	323,462.23
21 CIRCUIT	9,276.3	444,545.50	15,257.78	15,496.60	30,754.38	475,299.88
22 CIRCUIT	7,252.5	354,380.50	16,656.41	9,905.48	26,561.89	380,942.39
23 CIRCUIT	19,143.3	951,478.50	65,966.71	81,559.74	147,526.45	1,099,004.95
24 CIRCUIT	5,548.1	279,052.50	26,296.11	1,065.82	27,361.93	306,414.43
25 CIRCUIT	9,100.7	451,259.50	13,319.50	26,156.81	39,476.31	490,735.81
26 CIRCUIT	8,033.4	391,623.00	21,438.22	10,509.05	31,947.27	423,570.27
27 CIRCUIT	9,371.8	448,093.00	29,837.31	64,739.13	94,576.44	542,669.44
28 CIRCUIT	2,228.9	110,268.50	4,276.01	2,787.24	7,063.25	117,331.75
29 CIRCUIT	8,637.5	417,254.50	16,961.21	6,685.74	23,646.95	440,901.45
30 CIRCUIT	7,584.2	376,240.10	10,957.36	1,707.51	12,664.87	388,904.97
31 CIRCUIT	4,158.8	203,470.50	20,888.14	13,955.20	34,843.34	238,313.84
STATE	310,458.2	15,030,072.45	737,908.35	1,011,817.47	1,749,725.82	16,779,798.27

WEST VIRGINIA PUBLIC DEFENDER SERVICES
AVERAGE COST BY CASE TYPE
FISCAL YEAR 2006

CIRCUIT	FELONY	MISD	MENTAL HYGIENE	JUVENILE	PAROLE PROBAT REV	TERM ABUSE	HABEAS SUP. CT.	OTHER	CIRCUIT AVERAGE
01 CIRCUIT	1,779.51	454.00	91.24	509.72	403.55	1,634.26	2,519.09	2,513.12	$839.74
02 CIRCUIT	926.34	291.57	167.34	708.34	0.00	1,199.58	0.00	909.32	$438.78
03 CIRCUIT	1,294.58	457.58	179.54	719.52	529.84	1,048.28	1,592.59	418.83	$780.70
04 CIRCUIT	696.28	494.99	121.19	416.28	451.26	964.99	1,856.13	403.47	$555.04
05 CIRCUIT	1,318.37	442.75	169.02	627.07	571.34	961.65	2,307.49	617.47	$816.56
06 CIRCUIT	1,029.52	312.08	74.84	271.05	489.60	1,021.04	2,403.29	416.47	$408.16
07 CIRCUIT	715.97	263.11	138.43	668.50	807.99	1,080.83	1,716.02	639.24	$566.24
08 CIRCUIT	1,710.61	498.99	179.31	582.78	882.87	1,147.52	8,214.17	203.75	$1,278.36
09 CIRCUIT	1,203.29	274.69	122.46	831.85	482.27	921.42	3,003.07	316.45	$802.42
10 CIRCUIT	1,149.75	309.34	85.99	327.73	596.98	1,056.76	1,008.81	678.31	$813.39
11 CIRCUIT	1,604.54	358.45	95.66	563.19	269.01	1,283.75	2,690.14	226.30	$958.79
12 CIRCUIT	1,044.30	238.54	0.00	406.33	0.00	854.75	721.63	1,058.22	$772.35
13 CIRCUIT	957.33	378.69	107.09	468.91	613.05	1,131.77	1,456.95	490.71	$426.16
14 CIRCUIT	1,082.06	346.04	147.55	689.13	504.80	1,245.15	1,055.08	218.96	$669.27
15 CIRCUIT	1,275.89	451.23	133.98	429.24	364.66	1,484.32	2,128.24	291.16	$841.47
16 CIRCUIT	786.65	337.89	121.61	748.31	517.96	1,196.75	1,562.96	332.19	$551.06
17 CIRCUIT	1,249.23	389.00	102.15	673.33	415.07	1,539.26	1,737.00	524.67	$612.12
18 CIRCUIT	1,571.11	483.14	0.00	697.31	708.08	1,791.59	1,458.90	381.27	$1,288.21
19 CIRCUIT	730.63	324.26	193.19	324.51	403.08	860.46	625.50	380.60	$480.27
20 CIRCUIT	615.93	325.16	106.50	538.80	323.70	982.11	412.65	395.25	$500.72
21 CIRCUIT	710.10	335.03	106.56	321.21	405.17	1,939.12	2,561.77	307.87	$576.12
22 CIRCUIT	861.84	297.26	160.34	741.10	367.94	1,094.29	2,566.49	373.09	$583.37
23 CIRCUIT	1,433.32	662.33	0.00	646.94	608.37	1,966.13	2,244.66	1,072.06	$1,453.71
24 CIRCUIT	1,267.28	394.08	170.49	464.94	445.96	934.21	2,140.08	331.18	$733.05
25 CIRCUIT	1,363.65	396.06	182.14	643.80	572.83	1,447.00	3,587.05	626.36	$915.55
26 CIRCUIT	1,222.21	354.35	110.87	450.33	481.21	980.25	1,698.03	361.96	$452.53
27 CIRCUIT	923.09	363.62	133.98	468.37	658.93	793.35	2,119.05	240.62	$584.14
28 CIRCUIT	707.42	202.64	78.06	366.71	316.11	803.46	2,156.97	372.25	$620.80
29 CIRCUIT	803.93	344.10	178.22	550.78	521.42	1,073.65	1,057.91	316.81	$511.49
30 CIRCUIT	797.67	289.02	167.74	788.07	651.90	1,331.96	1,595.50	803.25	$871.98
31 CIRCUIT	859.63	217.06	157.08	494.26	255.16	1,104.44	2,371.19	263.91	$595.78
STATE AVERAGE	**1,034.19**	**382.63**	**109.43**	**506.37**	**494.28**	**1,202.85**	**2,115.33**	**498.22**	**$636.61**

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
APPOINTED COUNSEL CLAIMS PAID BY CASE TYPE
FISCAL YEAR 2006

CIRCUIT	FELONY	MISD	MENTAL HYGIENE	JUVENILE	PAROLE PROBAT REV	TERM ABUSE	HABEAS SUP. CT.	OTHER	TOTAL CLAIMS
01 CIRCUIT TOTAL	191	233	376	87	14	222	10	20	1,153
02 CIRCUIT TOTAL	26	35	202	20	0	52	0	5	340
03 CIRCUIT TOTAL	143	224	8	58	21	84	2	32	572
04 CIRCUIT TOTAL	745	1,471	390	277	63	386	42	103	3,477
05 CIRCUIT TOTAL	301	258	129	60	36	216	15	23	1,038
06 CIRCUIT TOTAL	298	125	935	289	23	157	40	27	1,894
07 CIRCUIT TOTAL	155	386	7	133	31	137	3	24	876
08 CIRCUIT TOTAL	73	50	16	27	2	67	8	2	245
09 CIRCUIT TOTAL	273	205	38	33	24	160	8	11	752
10 CIRCUIT TOTAL	150	121	34	47	7	248	1	7	615
11 CIRCUIT TOTAL	57	22	47	10	8	66	5	5	220
12 CIRCUIT TOTAL	64	41	0	2	0	49	5	5	166
13 CIRCUIT TOTAL	404	462	1,309	147	15	265	27	17	2,646
14 CIRCUIT TOTAL	207	333	30	106	17	103	8	53	857
15 CIRCUIT TOTAL	96	112	38	61	15	72	15	8	417
16 CIRCUIT TOTAL	280	380	278	115	52	149	27	46	1,327
17 CIRCUIT TOTAL	285	405	337	102	45	92	1	36	1,303
18 CIRCUIT TOTAL	58	26	0	40	16	80	10	5	235
19 CIRCUIT TOTAL	85	230	17	143	21	117	2	14	629
20 CIRCUIT TOTAL	91	219	45	155	15	94	3	24	646
21 CIRCUIT TOTAL	177	284	26	210	33	73	10	12	825
22 CIRCUIT TOTAL	151	300	18	35	32	86	7	24	653
23 CIRCUIT TOTAL	194	86	0	114	15	309	28	10	756
24 CIRCUIT TOTAL	73	80	52	50	14	139	6	4	418
25 CIRCUIT TOTAL	131	95	49	112	22	109	4	14	536
26 CIRCUIT TOTAL	108	151	412	101	26	102	16	20	936
27 CIRCUIT TOTAL	240	492	3	50	6	130	5	3	929
28 CIRCUIT TOTAL	60	33	5	17	6	59	5	4	189
29 CIRCUIT TOTAL	199	411	42	108	27	38	8	29	862
30 CIRCUIT TOTAL	117	89	23	32	4	165	7	9	446
31 CIRCUIT TOTAL	126	143	15	44	8	54	5	5	400
STATE TOTAL	5,558	7,502	4,881	2,785	618	4,080	333	601	26,358

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WV PUBLIC DEFENDER SERVICES
STATISTICAL REPORT
APPOINTED COUNSEL FY 2004/2005

Total Number of Claims Paid	25,508
Total Number of Direct Expense Claims Paid	1,186
Total Number of Hours Paid	288,578
Total Amount Paid in Claims	$15,736,944.43
Total Fees Paid to Counsel	$13,978,101.95
Total Expenses Paid	$1,758,842.48
Average Total Cost Per Claim	$616.94
Average Counsel Fee Per Claim	$547.99
Average Expenses Per Claim	$68.95
Percent of Total Claims Attributable to Fees	88.82%
Percent of Total Claims Attributable to Expenses	11.18%
Average Total Cost Per Hour	$54.53
Total Hours In-Court	49,605
Total Hours Out-of-Court	238,972
Percent of Total Hours In-Court	17.19%
Percent of Total Hours Out-of-Court	82.81%

NOTE: Figures represent payments made for 11.25 months. Claims received from July 1, 2004 to March 24, 2005.

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WV PUBLIC DEFENDER SERVICES

STATISTICAL REPORT

APPOINTED COUNSEL FY 2004/2005

WITHOUT DIRECT EXPENSES AND SUPPLEMENTAL VOUCHERS

Total Number of Claims Paid	23,852
Total Number of Supplemental Claims Paid	470
Total Number of Direct Expense Claims Paid	1,186
Total Number of Hours Paid	288,578
Total Amount Paid in Claims	$15,736,944.43
Total Fees Paid to Counsel	$13,978,101.95
Total Expenses Paid	$1,758,842.48
Average Total Cost Per Claim	$659.77
Average Counsel Fee Per Claim	$586.03
Average Expenses Per Claim	$73.74
Percent of Total Claims Attributable to Fees	88.82%
Percent of Total Claims Attributable to Expenses	11.18%
Average Total Cost Per Hour	$54.53
Total Hours In-Court	49,605
Total Hours Out-of-Court	238,972
Percent of Total Hours In-Court	17.19%
Percent of Total Hours Out-of-Court	82.81%

NOTE: Figures represent payments made for 11.25 months. Claims received from July 1, 2004 to March 24, 2005.

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WV PUBLIC DEFENDER SERVICES
STATISTICAL REPORT
PUBLIC DEFENDER CORPORATIONS FY 2004/2005

Total Number of Cases Pending July 1, 2004	4,254
Total Number of Cases Opened	28,675
Total Number of Cases Closed	27,628
Total Number of Cases Represented during FY 2005	32,929
Total Number of Charges Associated with Cases Pending July 1, 2004	7,989
Total Number of Charges Associated with Cases Opened	54,299
Total Number of Charges Associated with Cases Closed	50,984
Total Number of Charges Associated with Cases Represented	62,288
Total Amount Disbursed for Corporations	$12,773,436
Average Total Cost Per Cases Represented	$387.91
Average Total Cost Per Opened Cases	$445.46
Average Total Cost Per Closed Cases	$462.34
Total Number of Hours During FY 2005	220,463
Average Total Cost Per Hour	$57.94
Total Hours In-Court	47,298
Total Hours Out-of-Court	114,879
Total Hours Administrative	58,286
Percent of Total Hours In-Court	21.45%
Percent of Total Hours Out-of-Court	52.11%
Percent of Total Hours Administrative	26.44%

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
SUMMARY REPORT FOR ATTORNEY HOURS/FEES/EXPENSES
FISCAL YEAR 2005

CIRCUIT	ATTORNEY TOTAL HOURS	ATTORNEY FEE AMOUNT IN $	ATTORNEY EXPENSE AMOUNT IN $	DIRECT EXPENSE AMOUNT IN $	EXPENSE AMOUNT IN $	GRAND TOTAL AMOUNT IN $
01 CIRCUIT	15,502.1	736,731.50	38,812.45	141,439.57	180,252.02	916,983.52
02 CIRCUIT	4,864.1	238,432.50	7,986.09	855.50	8,841.59	247,274.09
03 CIRCUIT	8,179.7	386,810.50	27,732.51	24,620.99	52,353.50	439,164.00
04 CIRCUIT	26,371.8	1,254,215.00	69,332.66	207,777.48	277,110.14	1,531,325.14
05 CIRCUIT	11,035.5	543,469.50	18,393.56	5,922.89	24,316.45	567,785.95
06 CIRCUIT	10,224.0	509,596.00	18,074.56	19,181.08	37,255.64	546,851.64
07 CIRCUIT	8,268.2	394,873.00	10,360.34	2,637.84	12,998.18	407,871.18
08 CIRCUIT	6,740.6	326,811.50	9,443.57	15,896.80	25,340.37	352,151.87
09 CIRCUIT	8,628.5	429,732.50	60,851.10	42,786.29	103,637.39	533,369.89
10 CIRCUIT	8,238.6	398,983.00	22,160.32	16,111.39	38,271.71	437,254.71
11 CIRCUIT	3,587.7	172,096.50	5,342.56	5,324.85	10,667.41	182,763.91
12 CIRCUIT	2,719.9	130,773.50	7,411.92	4,525.28	11,937.20	142,710.70
13 CIRCUIT	16,797.7	832,628.75	12,948.85	49,094.65	62,043.50	894,672.25
14 CIRCUIT	11,296.9	542,885.00	40,310.00	2,228.85	42,538.85	585,423.85
15 CIRCUIT	6,903.7	327,098.50	21,690.81	45,658.83	67,349.64	394,448.14
16 CIRCUIT	18,072.4	853,679.50	16,881.06	75,738.41	92,619.47	946,298.97
17 CIRCUIT	14,666.7	695,394.20	28,182.18	44,980.30	73,162.48	768,556.68
18 CIRCUIT	2,880.4	137,740.00	14,130.74	15,454.00	29,584.74	167,324.74
19 CIRCUIT	6,395.4	299,639.00	2,478.25	4,523.99	7,002.24	306,641.24
20 CIRCUIT	7,129.9	345,097.50	14,980.25	5,988.82	20,969.07	366,066.57
21 CIRCUIT	8,744.5	417,814.50	20,082.99	15,540.48	35,623.47	453,437.97
22 CIRCUIT	9,733.4	477,897.00	17,160.83	30,587.29	47,748.12	525,645.12
23 CIRCUIT	13,568.2	679,829.00	34,211.03	159,979.78	194,190.81	874,019.81
24 CIRCUIT	6,680.5	329,792.50	22,030.65	14,421.19	36,451.84	366,244.34
25 CIRCUIT	11,069.6	547,994.00	17,817.26	45,106.39	62,923.65	610,917.65
26 CIRCUIT	9,433.9	462,153.50	22,065.36	13,848.00	35,913.36	498,066.86
27 CIRCUIT	6,438.4	308,019.00	21,154.80	65,014.09	86,168.89	394,187.89
28 CIRCUIT	3,342.8	164,536.00	5,495.61	0.00	5,495.61	170,031.61
29 CIRCUIT	9,850.9	478,406.00	17,813.88	10,542.32	28,356.20	506,762.20
30 CIRCUIT	7,563.5	374,545.50	11,178.02	2,724.70	13,902.72	388,448.22
31 CIRCUIT	3,648.3	180,427.50	12,865.11	20,951.11	33,816.22	214,243.72
STATE	**288,577.6**	**13,978,101.95**	**649,379.32**	**1,109,463.16**	**1,758,842.48**	**15,736,944.43**

WEST VIRGINIA PUBLIC DEFENDER SERVICES
AVERAGE COST BY CASE TYPE
FISCAL YEAR 2005

CIRCUIT	FELONY	MISD	MENTAL HYGIENE	JUVENILE	PAROLE PROBAT REV	TERM ABUSE	HABEAS SUP. CT.	OTHER	CIRCUIT AVERAGE
01 CIRCUIT	1,982.44	463.40	111.77	793.23	500.52	1,260.58	3,462.38	1,762.23	$870.83
02 CIRCUIT	1,232.83	254.86	170.92	594.22	601.29	754.51	2,072.50	581.03	$482.96
03 CIRCUIT	1,111.22	463.39	273.72	755.96	370.59	1,165.52	1,210.13	422.81	$761.12
04 CIRCUIT	643.64	455.01	110.97	345.37	399.37	836.42	960.91	323.44	$466.73
05 CIRCUIT	1,023.75	353.05	167.17	535.64	355.27	1,116.19	1,661.47	346.13	$648.90
06 CIRCUIT	829.67	270.05	57.97	204.11	543.28	833.34	1,765.34	489.08	$296.72
07 CIRCUIT	878.52	306.52	60.45	653.55	579.28	1,001.87	1,195.06	1,921.90	$586.87
08 CIRCUIT	1,619.80	530.51	281.25	793.76	541.50	2,095.22	7,689.65	512.24	$1,504.92
09 CIRCUIT	1,534.40	293.86	107.10	842.63	507.60	864.04	1,734.36	367.02	$837.32
10 CIRCUIT	967.58	257.92	86.16	404.97	679.93	963.89	3,682.05	772.61	$692.96
11 CIRCUIT	1,062.04	329.51	108.23	512.55	617.42	1,125.76	1,569.64	991.90	$728.14
12 CIRCUIT	1,502.60	316.32	0.00	459.66	565.42	1,105.82	0.00	705.84	$932.75
13 CIRCUIT	712.92	363.42	103.62	450.23	694.22	882.64	1,964.71	442.60	$349.48
14 CIRCUIT	1,043.99	354.90	313.07	799.82	838.57	1,345.24	1,485.97	350.85	$764.26
15 CIRCUIT	1,419.48	576.47	132.34	672.60	735.41	1,474.82	3,556.15	513.75	$1,071.87
16 CIRCUIT	1,230.41	354.28	128.41	673.57	517.41	1,362.61	1,420.50	442.66	$674.96
17 CIRCUIT	1,418.32	408.25	107.40	801.17	439.09	1,708.80	2,522.34	441.42	$699.32
18 CIRCUIT	1,244.93	771.08	0.00	857.87	501.38	1,457.84	3,793.26	806.94	$1,382.85
19 CIRCUIT	619.20	283.77	190.84	309.04	211.66	758.14	3,594.78	347.45	$433.11
20 CIRCUIT	987.40	304.99	98.51	556.96	410.51	1,509.27	1,034.36	325.77	$666.79
21 CIRCUIT	803.72	309.82	108.19	298.99	402.35	1,586.06	2,600.75	1,020.13	$611.10
22 CIRCUIT	1,276.99	306.05	137.07	926.46	426.55	1,184.38	1,413.58	469.52	$749.85
23 CIRCUIT	1,162.34	471.31	0.00	550.72	457.02	1,391.27	2,007.49	567.76	$1,089.80
24 CIRCUIT	1,596.73	598.48	101.29	300.82	549.75	1,030.40	3,201.18	595.23	$789.32
25 CIRCUIT	1,507.07	444.50	153.65	585.76	489.70	1,425.04	3,037.05	585.92	$954.56
26 CIRCUIT	939.58	358.92	126.80	617.82	655.76	902.70	1,614.28	400.69	$436.14
27 CIRCUIT	877.93	352.20	238.86	313.41	0.00	842.16	351.38	0.00	$545.97
28 CIRCUIT	995.49	293.78	55.75	805.62	216.07	1,004.68	1,934.17	403.37	$829.42
29 CIRCUIT	828.90	363.18	170.56	539.64	380.04	1,096.43	1,473.33	693.91	$515.53
30 CIRCUIT	827.40	310.82	127.16	701.58	488.17	1,532.50	1,761.37	193.00	$976.00
31 CIRCUIT	752.22	237.51	170.76	459.44	173.44	1,158.79	1,319.20	807.79	$543.77
STATE AVERAGE	**1,050.02**	**376.88**	**107.94**	**509.64**	**484.62**	**1,143.23**	**2,037.96**	**547.25**	**$616.94**

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
APPOINTED COUNSEL CLAIMS PAID BY CASE TYPE
FISCAL YEAR 2005

CIRCUIT	FELONY	MISD	MENTAL HYGIENE	JUVENILE	PAROLE PROBAT REV	TERM ABUSE	HABEAS SUP. CT.	OTHER	TOTAL CLAIMS
01 CIRCUIT TOTAL	210	143	374	65	27	203	10	21	1,053
02 CIRCUIT TOTAL	73	65	233	31	3	98	1	8	512
03 CIRCUIT TOTAL	175	213	22	54	16	65	5	27	577
04 CIRCUIT TOTAL	676	1,293	504	280	74	294	44	116	3,281
05 CIRCUIT TOTAL	244	270	124	63	21	128	7	18	875
06 CIRCUIT TOTAL	247	129	994	254	16	164	26	13	1,843
07 CIRCUIT TOTAL	108	340	4	113	21	89	7	13	695
08 CIRCUIT TOTAL	70	63	4	19	2	67	6	3	234
09 CIRCUIT TOTAL	186	166	57	39	24	143	12	10	637
10 CIRCUIT TOTAL	138	90	111	56	2	224	8	2	631
11 CIRCUIT TOTAL	65	57	41	11	6	63	4	4	251
12 CIRCUIT TOTAL	54	52	0	5	3	34	0	5	153
13 CIRCUIT TOTAL	342	421	1,323	174	29	237	25	9	2,560
14 CIRCUIT TOTAL	188	293	12	109	10	120	11	23	766
15 CIRCUIT TOTAL	94	107	12	51	18	66	14	6	368
16 CIRCUIT TOTAL	267	365	274	208	55	174	22	37	1,402
17 CIRCUIT TOTAL	216	435	210	78	22	87	9	42	1,099
18 CIRCUIT TOTAL	25	17	0	12	1	54	8	4	121
19 CIRCUIT TOTAL	125	221	19	194	16	122	1	10	708
20 CIRCUIT TOTAL	117	169	41	121	11	78	2	10	549
21 CIRCUIT TOTAL	169	200	27	200	35	88	10	13	742
22 CIRCUIT TOTAL	176	282	16	48	37	109	8	25	701
23 CIRCUIT TOTAL	236	96	0	101	25	311	25	8	802
24 CIRCUIT TOTAL	87	76	112	48	11	119	8	3	464
25 CIRCUIT TOTAL	190	96	49	158	21	96	7	23	640
26 CIRCUIT TOTAL	134	164	521	109	35	148	9	22	1,142
27 CIRCUIT TOTAL	191	397	4	44	0	85	1	0	722
28 CIRCUIT TOTAL	67	31	4	16	5	73	2	7	205
29 CIRCUIT TOTAL	214	417	92	170	31	19	13	27	983
30 CIRCUIT TOTAL	86	83	21	36	4	143	24	1	398
31 CIRCUIT TOTAL	137	145	16	46	4	37	4	5	394
STATE TOTAL	**5,307**	**6,896**	**5,221**	**2,913**	**585**	**3,738**	**333**	**515**	**25,508**

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STATE OF WEST VIRGINIA

Department of Administration
PRELIMINARY PERFORMANCE REVIEW OF PUBLIC DEFENDER SERVICES

Maximum Use of Public Defender Corporations Needed to Control Costs

Inadequate Monitoring of Improvement Needs, Compliance, and Quality of Legal Services

---

OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex

CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890

January 1999

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STATE OF WEST VIRGINIA

Department of Administration
PRELIMINARY PERFORMANCE REVIEW OF PUBLIC DEFENDER SERVICES

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WEST VIRGINIA LEGISLATURE

Performance Evaluation and Research Division

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Antonio E. Jones, Ph.D.
Director

January 10, 1999

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Public Defender Services*, which will be reported to the Joint Committee on Government Operations on Sunday, January 10, 1999. The issues covered herein are *"Maximum Use of Public Defender Corporations Needed to Control Costs; and Inadequate Monitoring of Improvement Needs, Compliance, and Quality of Legal Services."*

We conducted an exit conference with Public Defender Services on December 33, 1998 and the Agency response was received on January 5, 1999.

Should you have any questions, let me know.

Sincerely,

Antonio E. Jones

AEJ/wsc

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Executive Summary

This preliminary performance review of the **Public Defender Services**, originally Public Legal Services Counsel, was established July 1, 1981, by West Virginia **Code** §29-21-1, and given the responsibility for administering the provision of legal representation to indigent persons.

Issue Area 1: Rising Costs in Public Defender Services Warrants Maximizing the Use of Public Defenders Instead of Private Attorneys.

Public Defender Services provides publicly funded legal representation for indigent clients. These are clients who meet certain income guidelines and cannot afford legal representation. There are 15 *Public Defender Corporations* (PDC's) representing 15 of the 31 circuit courts in the state (see Appendix A). There are currently 102 public defenders employed in PDC's. The central office, located in Charleston, employees eight full-time staff.

When private attorneys are used to represent indigent clients, it generally costs the state more than if public defenders are used. The primary reason for the higher cost is a recent court case that established rates of compensation for private attorneys. These rates are currently in statute. To some extent private attorneys are needed particularly when PDC's have conflicts of interest. However, the reliance on private attorneys can be reduced by (1) providing public defenders to circuit courts that do not have PDC's, (2) by increasing public defenders in offices where caseload levels require heavier use of private attorneys, and (3) by having multiple PDC's in large circuits to reduce conflicts of interest and to reduce caseload problems.

The Public Defender Services Office established the goal of having public defenders represent 65% of cases in those circuits that have a PDC. The agency has accomplished this goal in those circuits. However, since there are circuits that do not have PDC's, the statewide percentage of cases closed by public defenders in FY 1997 is 54%.

The state has done well in expanding the public defender system to its current level. With more than half the number of closed cases worked by public defenders, the state has experienced significant cost savings. This is illustrated in that PDC expenditures have increased by $4.5 million since FY 1994, but total expenditures have increased by only $2.2 million because private attorneys were used less. However, the Legislative Auditor believes that data supports increasing the number of PDC's and adding additional PDC's in large circuits to reduce conflicts of interest and excessive caseloads, thereby cutting costs of Public Defender Services.

The Legislative Auditor estimates that a cost savings could be realized by expanding the number of public defenders and corporations into all 31 judicial circuits. The potential cost savings assumes at a minimum the opening of a new PDC in each of the 16 circuits that do not currently have a corporation office, and at a maximum savings estimate assuming that the use of private attorneys is eliminated and public defenders handle every case. **According to calculations by the Legislative Auditor the expansion of Public Defender Services could realize a savings ranging from $2,205,706 to $7,468,789.**

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Objective, Scope and Methodology

This preliminary performance review of the Public Defender Services was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended. A preliminary performance review is a means to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency. According to the West Virginia Sunset Law, the review will help the Joint Committee on Government Operations determine the following:

- IF THE AGENCY WAS CREATED TO RESOLVE A PROBLEM OR PROVIDE A SERVICE;
- IF THE PROBLEM HAS BEEN SOLVED OR THE SERVICE HAS BEEN PROVIDED;
- THE EXTENT TO WHICH PAST AGENCY ACTIVITIES AND ACCOMPLISHMENTS, CURRENT PROJECTS AND OPERATIONS AND PLANNED ACTIVITIES AND GOALS ARE OR HAVE BEEN EFFECTIVE;
- IF THE AGENCY IS OPERATING EFFICIENTLY AND EFFECTIVELY IN PERFORMING ITS TASKS;
- THE EXTENT TO WHICH THERE WOULD BE SIGNIFICANT AND DISCERNABLE ADVERSE EFFECTS ON THE PUBLIC HEALTH, SAFETY OR WELFARE IF THE AGENCY WERE ABOLISHED;
- IF THE CONDITIONS THAT LED TO THE CREATION OF THE AGENCY HAVE CHANGED;
- THE EXTENT TO WHICH THE AGENCY OPERATES IN THE PUBLIC INTEREST;
- WHETHER OR NOT THE OPERATION OF THE AGENCY IS IMPEDED OR ENHANCED BY EXISTING STATUTES, RULES, PROCEDURES, PRACTICES OR ANY OTHER CIRCUMSTANCES BEARING UPON THE AGENCY'S CAPACITY OR AUTHORITY TO OPERATE IN THE PUBLIC INTEREST, INCLUDING BUDGETARY, RESOURCE AND PERSONNEL MATTERS;
- THE EXTENT TO WHICH ADMINISTRATIVE AND/OR STATUTORY CHANGES ARE NECESSARY TO IMPROVE AGENCY OPERATIONS OR TO ENHANCE THE PUBLIC INTEREST;
- WHETHER OR NOT THE BENEFITS DERIVED FROM THE ACTIVITIES OF THE AGENCY OUTWEIGH THE COSTS;
- WHETHER OR NOT THE ACTIVITIES OF THE AGENCY DUPLICATE OR OVERLAP WITH THOSE OF OTHER AGENCIES, AND IF SO, HOW THE ACTIVITIES COULD BE CONSOLIDATED;
- WHETHER OR NOT THE AGENCY CAUSES AN UNNECESSARY BURDEN ON ANY CITIZEN BY ITS DECISIONS AND ACTIVITIES;
- WHAT THE IMPACT WILL BE IN TERMS OF FEDERAL INTERVENTION OR LOSS OF FEDERAL FUNDS IF THE AGENCY IS ABOLISHED.

The methodology included surveying the Chief Public Defenders in all 15 of the Public Defender Corporations, analyzing and compiling data obtained from the Public Defender Services Annual Reports, letters of requests to the executive director, and a legal opinion from the Legislative Auditor's Legal Division. This preliminary review complied with **Generally Accepted Government Auditing Standards (GAGAS).**

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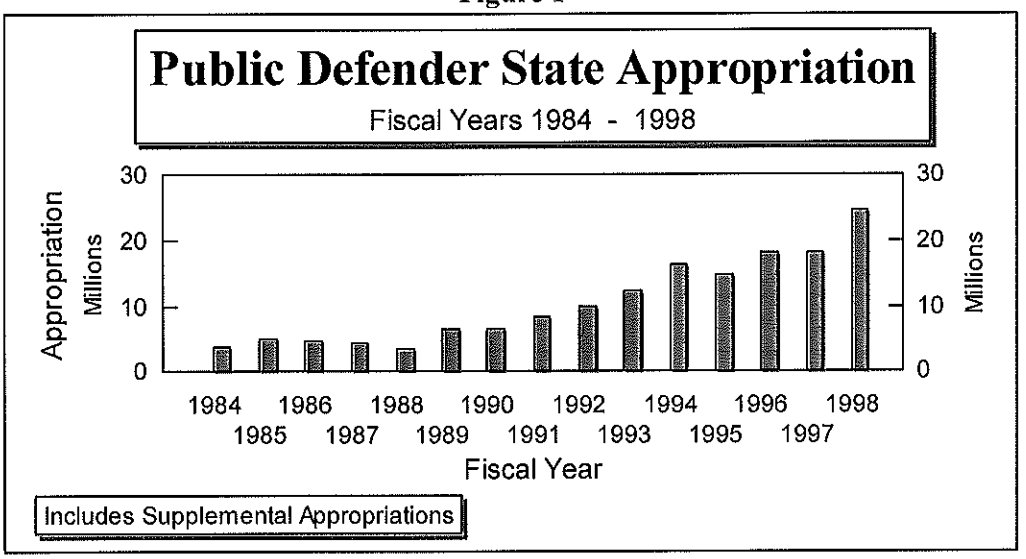
Issue Area 1: Rising Costs in Public Defender Services Warrants Maximizing the Use of Public Defenders Instead of Private Attorneys

Public Defender Services provides publicly funded legal representation for indigent clients. These are clients who meet certain income guidelines and cannot afford legal representation. There are 15 *Public Defender Corporations* (PDC's) representing 15 of the 31 circuit courts in the state (see Appendix A). There are approximately 102 public defenders employed by the state in these PDC's. Sixteen circuit courts do not have a PDC (see Appendix A). Since these circuits are without public defenders, private attorneys are assigned to indigent clients. Private attorneys bill Public Defender Services for these cases. Even in circuits that have public defenders, there is still a need to assign private attorneys either because a PDC would have a conflict of interest if it takes a case, or public defenders cannot take on additional cases because of excessive caseloads.

Rising Costs of the Public Defender Program

A major concern in the Public Defender Program is the significant growth of its budget. Since 1984, Public Defenders Services appropriation has increased from $3.8 million to $24.6 million in 1998 (see Figure 1). **The average annual growth rate of the budget over this time period is 17.2%.** The cost of the program began to rise around fiscal year 1991, which happens to be the year in which the hourly rates paid to private attorneys were increased by a court ruling.

Figure 1



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Funds Often Exhausted Before End of Fiscal Year

As a result of rising costs, it is not uncommon for the agency to require additional funding before the fiscal year ends to avoid exhausting the initial appropriation. Consequently, to avoid exhausting the budget, the agency often has to withhold paying some private attorneys for legal services rendered until additional funding is received. Table 1 provides a history of the agency's initial and supplemental appropriations. Since 1984, there has been eight years in which a supplemental appropriation was needed. The last four have been significant increases, averaging around $4 million or 28% of the initial appropriation.

Table 1
Initial & Supplemental Appropriations

Year	Initial Appropriation	Supplemental Appropriation	Total Appropriation
1984	3,614,406	190,657	3,805,063
1985	4,364,047	627,000	4,991,047
1986	4,371,940	480,000	4,851,940
1987	4,529,009	0	4,529,009
1988	3,504,104	0	3,504,104
1989	4,859,000	1,800,000	6,659,000
1990	6,461,538	0	6,461,538
1991	8,464,285	0	8,464,285
1992	9,903,868	0	9,903,868
1993	12,388,490	0	12,388,490
1994	12,138,490	4,138,488	16,276,978
1995	14,631,529	0	14,631,529
1996	14,631,529	3,500,000	18,131,529
1997	14,635,794	3,400,000	18,035,794
1998	18,635,794	6,000,000	24,635,794

Rising Costs Caused by Rising Cases & Higher Rates for Private Attorneys

The Legislative Auditor's Office performed a regression analysis on actual expenditures of the Public Defender Services to determine what major factors are responsible for the rise in costs.

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Table 1 shows the results. The TOTAL CASES variable represents all closed cases for public defenders and all private attorney cases in which the agency made payments. The COURT CASE variable measures the effects of a 1989 Supreme Court ruling that effectively raised the hourly rate at which private attorneys are presently paid. Prior to the ruling, the hourly rate for out-of-court work was $20, and the hourly rate for in-court work was $25. The ruling raised the rates to $45 and $65 respectively, effective at the start of fiscal year 1991. However, the full impact on expenditures did not materialize substantially until FY 1992.

The COURT CASE variable measures the difference between expenditures before and after the court case.[1] The results indicate that on average, expenditures for the 1992-1997 period are $4.1 million higher than the 1984-1991 period. Furthermore, the TOTAL CASES variable indicates that on average, each case adds about $414 to total expenditures. **These two variables account for nearly 97% of the variation in total expenditures, suggesting that they are the primary factors in the rise in costs.**

Table 2
Regression Analysis on Public Defender Total Expenditures
1984 - 1997

Independent Variables	Regression Coefficient	T-Value*
TOTAL CASES	$414.7	7.51
COURT CASE	$4,170,610	4.58
R-Squared = 0.968 *Both variables are significant at the 95% confidence interval.		

Caseload Increases Correspond With Rising Appropriation

There has been a significant rise in the number of cases that Public Defender Services has represented. Figure 2 shows the growth in the number of cases that public defenders have closed and cases for which payments have been made to private attorneys.[2] The pattern of caseload growth follows closely to the growth in the state appropriation. For example, in 1984 and 1988 caseloads were at the lowest levels which corresponds with the lowest appropriation amounts for those same years. Cases dropped in 1995 as did the state appropriation. Furthermore, Figure 2 clearly shows that cases began to rise significantly around 1989, which is close to when the state appropriation

[1] *For years prior to FY 1992, the COURT CASE variable equals zero, and from 1992 to 1997 the variable equals one.*

[2] *Caseload data are available only through 1997.*

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began to rise.

Figure 2

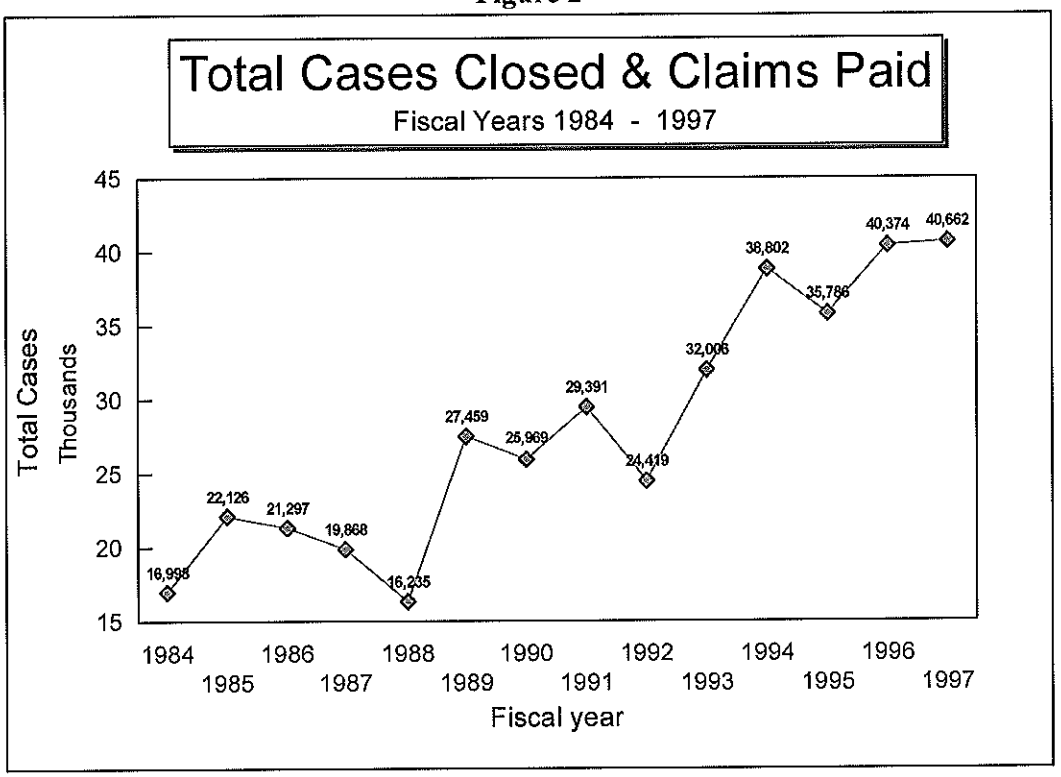


Table 3 compares the average annual growth rates for the periods of 1984-97 and 1993-97. From 1984 to 1997 cases grew on average by 9.2% a year, compared to 15.7% in appropriations for the same period. The higher growth rate in appropriations is largely explained by the change to higher private attorney hourly rates in the middle of the period. The period of 1993-97 are years in which the hourly rate for private attorneys was unchanged. In this period, growth in cases and appropriations was considerably closer. Growth in costs is also influenced by changes other than caseload, such as changes in the composition of certain cases that may be more or less expensive to represent, or the number of hours to represent cases may change. In any case, caseload is a major factor in rising costs.

Table 3
Comparison of Average Annual Growth Rates
Cases vs. Appropriation

	Total Cases	Appropriation	Difference
1984-1997 Growth Rates	9.2%	15.7%	6.5
1993-1997 Growth Rates	11.6%	14.0%	2.4

Caseload data shown in Figure 2 do not include cases that were ongoing in each year. That is, besides cases that are closed there are ongoing cases each year that are incurring costs during the

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current year and will carry over into the next fiscal year depending on when they were opened. Table 4 shows all represented cases for 1994 through 1997.[3]

Table 4
Total Represented Cases (Closed, Paid, and Ongoing Cases)

	FY 1994	FY 1995	FY 1996	FY 1997
Paid & Closed Cases	38,802	35,786	40,374	40,662
Ongoing Cases	6,289	9,563	11,984	16,051
Total Represented Cases	**45,091**	**45,349**	**52,358**	**56,713**

Public Defender Caseload and The Crime Rate

West Virginia has the distinction of having the lowest crime rate in the nation. It would seem that a low crime rate would be associated with declining caseloads for Public Defender Services. However, the crime rate index is misleading with respect to Public Defender caseloads for several reasons.

1) ***Offenses vs. Arrests***

The crime rate, as reported to the Federal Bureau of Investigation through Uniform Crime Reports, is an index that is based on reported "offenses" as opposed to "arrest." The large majority of offenses do not result in an arrest. Public Defender caseloads are impacted by the number of arrests, not reported offenses.

Furthermore, the growth rates between offenses and arrests can be significantly higher or lower between the two categories, as Table 5 indicates. In addition, the crime index represents only "Part I" offenses which are the following seven categories of "serious" offenses: *Criminal Homicide; Forcible Rape; Robbery; Felonious Assault; Breaking and Entering; Larceny Theft; and Motor Vehicle Theft.* There are "Part II" offenses that are seldom heard about which comprise 20 categories of offenses, such as *Minor Assaults; Forgery; Vandalism; Receiving or Possessing Stolen Property; Gambling; Carrying a Weapon; Driving Under the Influence; Disorderly Conduct; etc.*[4] For 1995 and 1996, arrests for all crime offenses grew by eight to nine percent, whereas offenses dropped in 1995 and increased slightly in 1996.

It should also be noted that although arrests may decline in some years, certain types of arrests could be increasing that may result in a court case. For example, a Part II offense is Narcotic

[3] *Includes only ongoing cases for public defenders. Ongoing cases for private attorneys do not become known until the agency is billed. There are exceptions in which private attorneys receive payments for an ongoing case if it is expensive and lengthy. Total represented cases are available only for these years.*

[4] *Part II offenses are reported only when an arrest has actually been made as opposed to Part I offenses.*

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Drug arrests. These arrests have nearly tripled between 1984 and 1996, going from 1,699 arrests in 1984 to 4,376 in 1996. Moreover, narcotic drug arrests have increased each year between 1989 and 1996. A steady rise in these types of cases that could result in a court cases would cause caseloads for Public Defender Services to rise.

Table 5
West Virginia Criminal Offenses & Arrests

Year	Part I Offense	Percent Change	Part I & Part II Arrests	Percent Change
1984	44,882	---	66,824	---
1985	42,538	-5.22%	64,429	-3.58%
1986	43,930	3.27%	65,802	2.13%
1987	41,592	-5.32%	63,485	-3.52%
1988	42,208	1.48%	59,203	-6.74%
1989	43,875	3.95%	61,994	4.71%
1990	44,891	2.32%	66,797	7.75%
1991	47,964	6.85%	67,861	1.59%
1992	47,231	-1.53%	63,552	-6.35%
1993	46,033	-2.54%	59,873	-5.79%
1994	46,008	-0.05%	59,847	-0.04%
1995	44,878	-2.46%	64,792	8.26%
1996	45,374	1.11%	70,746	9.19%

Source: Crime In West Virginia, Uniform Crime Reporting, West Virginia State Police

2) ***Many Public Defender Cases are Unrelated to the Crime Rate***

At least 30% of Public Defender cases do not result from arrests, therefore they are unrelated to the crime rate. These types of cases are shown in Table 6. Mental hygiene cases involve issues of competency. Most juvenile cases do not result from arrests. These cases have doubled since 1984. Paternity issues deal with establishing the paternity of a child to determine child support. Parole or probation revocation occurs because of violations to parole or probation. Most abuse cases do not result from arrests. In some cases termination of parental rights may be involved. Cases in the "other" category include appeals, habeas corpus, extradition, and contempt. Habeas corpus cases result after individuals have been convicted of a crime and they challenge the validity of their conviction or sentence. Since 1984, cases that are unrelated to the crime rate have risen by 82%. These cases represented 31% of the total caseload in 1997.

Furthermore, many misdemeanor cases do not result from arrests. In many cases a summons

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is issued requiring a person to appear in court. When these types of misdemeanor cases are added to those of Table 6, the percentage of cases that have no direct correlation to current crime statistics exceeds 30%.

Table 6
Public Defender Caseload Unrelated to the Crime Rate

	1984	1997	Change	Percentage Change
Mental Hygiene	3,274	3,937	663	20.2%
Juvenile	2,435	4,888	2,453	100.7%
Paternity	85	97	12	14.1%
Parole/Probation Revocation	206	536	330	160.2%
Abuse	564	2,095	1,531	271.4%
Other	422	1,192	770	182.4%
Totals	**6,986**	**12,745**	**5,759**	**82.4%**

3) Multiple Offenses in Single Incidents

In addition, arrests could involve multiple offenses. West Virginia's crime report currently includes only one offense per incident. If more than one offense occurred in an incident, the offense with the highest penalty is reported, the others are excluded. However, an incident with multiple offenses could result in multiple cases for Public Defender Services. A new crime reporting system is being implemented called the National Incident-Based Reporting System (NIBRS) which is intended to capture more information on each incident, such as the number of victims, the number of offenders and the number of offenses. Only nine states have completely implemented NIBRS. A study on these nine states, and individual state studies suggest that multiple offenses in a single incident is not a large percent of total incidents. For all nine states, only 5% of incidents involved multiple offenses. Although multiple offenses in single incidents may explain some of the lack of correlation between the crime rate and Public Defender caseloads, it is not likely a significant factor.

4) Under Reporting of Crime Statistics

Finally, crime statistics may be under reported. This is a distinct possibility, however, it is not known to what extent under reporting exists. If crime statistics are under reported, then public defender caseload would be higher than the crime rate suggests, depending on the extent of under reporting.

Causes for the Rise in Public Defender Caseloads

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In examining the causes of the high growth in public defender caseloads, the Legislative Auditor found several factors. The most important of these factors are as follows:

1) Criminalization and Creation of New Misdemeanor Offenses.
2) Increases in Arrests Correlates with Increases in Public Defender Caseload.
3) Federal cases not prosecuted at the Federal Level are tried at the State Level.

Cause #1: ***Growth in Misdemeanor Cases is a Factor***

In 1984, Public Defender Services closed 16,998 cases. By 1997, that number has grown to 40,662, for an increase of 23,664 cases. Of these 23,664 cases, 14,915 (or 63%) were misdemeanor cases (see Figure 3). These cases by far had the largest growth during this time. The second highest are felony cases. An analysis of the growth in misdemeanor cases by county indicates that it has been uniform statewide, no particular area of the state has experienced significantly more growth than other areas of the state.

Figure 3

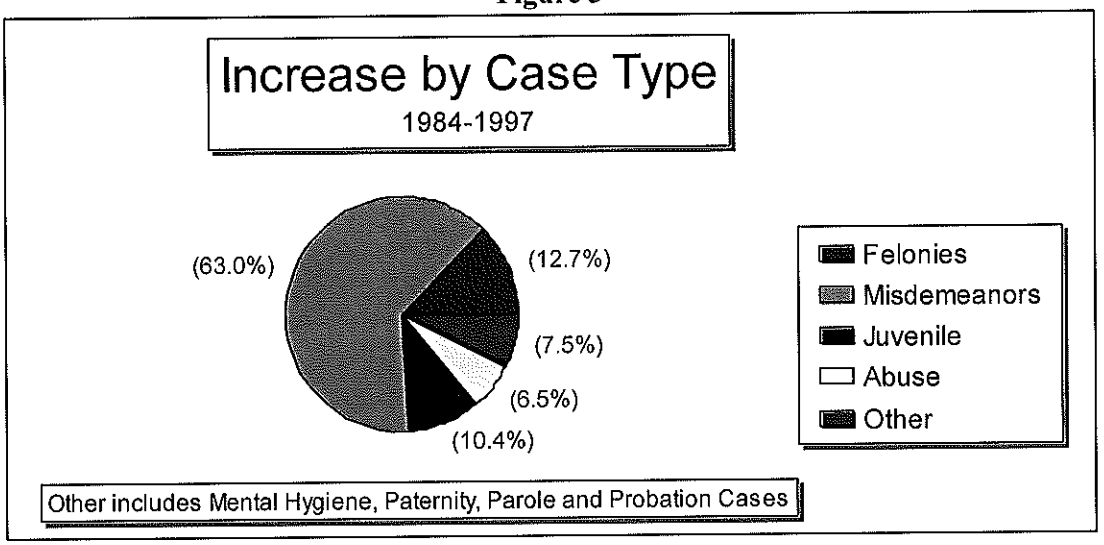


Table 7 shows the number of misdemeanor and felony cases for private attorneys and public defenders from 1984 to 1997. Misdemeanors have increased nearly four-fold. In 1984 misdemeanor cases were 30% of the total caseload. By 1997, they were 50% of total caseload. Felony cases have risen from 5,000 to approximately 8,000. Juvenile cases have risen from around 2,400 in 1984 to about 5,000 in 1997. Abuse cases have gone from about 500 in 1984 to about 2,000 in 1997.

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The average cost for private attorneys to represent those cases assigned to them has risen significantly in large part because of the higher hourly rate.[5] In 1984, the average cost and number of hours to close a misdemeanor case was $137 and 6 hours, respectively. The cost began to rise in 1991 after the higher rates became effective. Compared to the old rates, average costs for misdemeanors nearly tripled, while the average number of hours has remained fairly constant. The average cost for felony cases has nearly tripled, rising from a little more than $400 a case in 1984 to over $1,100 a case. The number of hours to work these cases has remained about the same.

Table 7
Total Misdemeanors & Felony Cases
Average Costs & Hours Worked For Private Attorneys

Year	Total Misdemeanors	Avg. Cost Appointed Counsel	Avg. Hours Appointed Counsel	Total Felonies	Avg. Cost Appointed Counsel	Avg. Hours Appointed Counsel
1984	5,242	$137	6.2	4,750	$408	17.3
1985	7,244	144	6.5	5,589	423	18.1
1986	7,489	138	6.2	4,941	433	18.4
1987	6,981	133	6.0	4,638	432	17.9
1988	5,729	127	5.8	3,537	416	17.1
1989	6,021	127	5.8	3,604	417	17.1
1990	10,126	130	5.9	5,511	405	16.2
1991	11,590	234	5.6	6,563	620	15.1
1992*	n/a	281	5.5	n/a	815	15.4
1993*	n/a	n/a	n/a	n/a	n/a	n/a
1994	16,551	299	5.9	8,314	890	15.8
1995	15,661	334	6.6	7,463	1,047	18.5
1996	18,301	336	6.7	7,705	1,205	20.9
1997	20,157	350	7.0	7,760	1,106	19.7

***Data not available**

One explanation for the growth in misdemeanor cases could be the creation of new misdemeanors or the criminalization of misdemeanors. A criminalized misdemeanor imposes a monetary penalty and the possibility of jail time. Misdemeanors that only impose a monetary penalty

[5] *Although misdemeanor and felony cases are totals for both private attorneys and public defenders, the average cost to close these cases and the average number of hours were not available for the entire time period for public defenders. Consequently, average costs and hours are only for private attorneys for their cases.*

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do not fall into this category. The importance of this is that if a misdemeanor carries the possibility of jail time, then a public defender can be assigned if the defendant is eligible. Non-criminal misdemeanors would not require a public defender.

There are approximately 743 misdemeanors in statute.[6] Of this number, 316 have been amended between 1984 and 1997. The amount of time to review each of these code cites prevented the Legislative Auditor's Office from determining how each misdemeanor offense was amended. It is not known whether the amendment added new offenses, criminalized the offense by adding jail time to the offense, increased or removed jail time, or simply made language changes. However, there were many misdemeanor offenses that the Legislative Auditor's Office examine because there was only one year of amendments to review for each offense. These are misdemeanor offenses that appeared in statute for the first time between 1980 and 1998.[7] The Legislative Auditor found that 160 new misdemeanors were added to the state code between 1980 and 1998 (see Appendix A). Of this number, 147 carried the possibility of jail time and the remaining 13 were monetary fines.

A large percentage of misdemeanor cases are traffic-related. The Legislative Auditor's Office examined all 1997 affidavits used by circuits 1, 5 and 30. Affidavits contain income information for defendants to determine if they are eligible for a public defender. They also include the offense the defendant is charged with. In cases involving misdemeanor charges in circuits 5 and 30, 42% were for driving under the influence of alcohol or a narcotic drug (DUI's), driving with a suspended driver's license, and other traffic violations. In circuit 1, these types of traffic violations were 39% of all misdemeanors. In addition, circuit 1 affidavits for felony cases showed that 21% were for third-offense DUI's.

Cause #2: ***Increases in Arrests are Associated with Increases in Public Defender Cases***

There is a correlation between the agency's caseload and the total number of arrests in the state. The correlation coefficient between these two variables is 0.557, which indicates that increases in arrests statewide are associated with increases in the agency's caseload. The correlation is moderate, nevertheless arrests are a factor. Figure 4 shows the trends of arrests and Public Defender caseload. Arrests declined between 1984 and 1988 which corresponds with the drop in the agency's cases over the same period. Arrests increased from 1989 to 1991 which again corresponded to increases in caseload for the same years. In 1992, arrests dropped as did the caseload. However, arrests declined in 1993 and 1994, while cases increased in those years. Arrests increased significantly in 1995 and 1996 which was consistent with the higher caseload for 1995 through 1997. It is possible that there is some amount of lag time between these variables, however, there is an obvious relationship that should be expected.

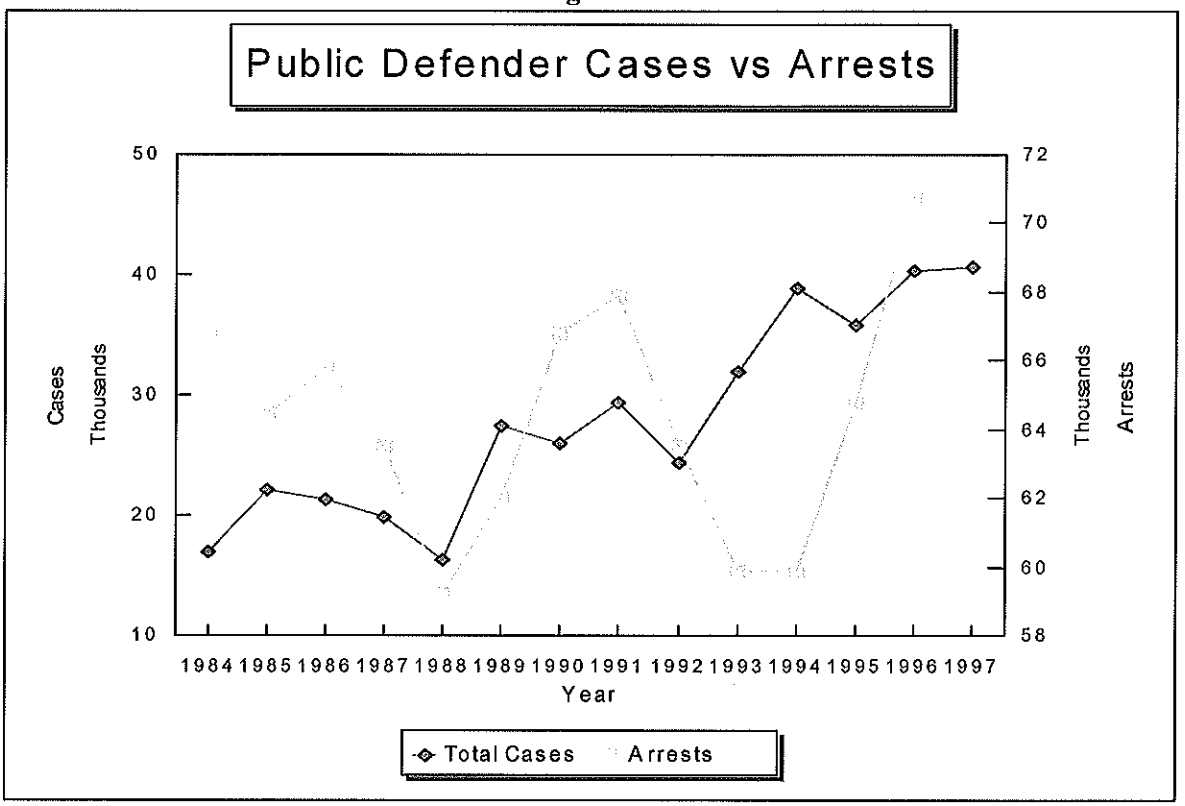
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[6]*The West Virginia State Police provided the Legislative Auditor with a comprehensive list of felonies and misdemeanors.*

[7]*Some of these code sections already existed but they were amended substantially and were reenacted. So it appears that they appeared in statute for the first time in a particular year.*

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Figure 4

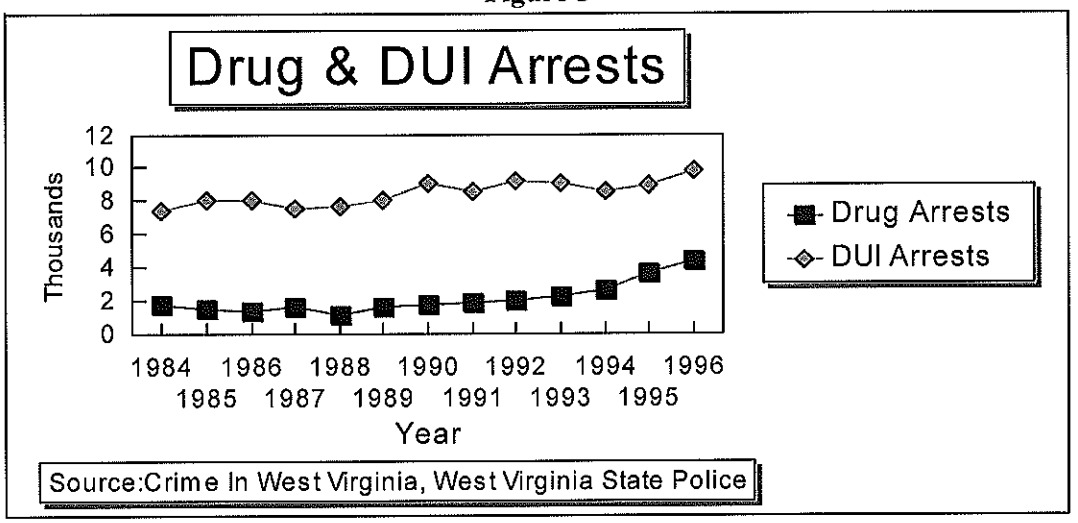


Drug Arrests & DUI's are Rising

Another cause for the increase in misdemeanor cases is the growth in drug and DUI arrests, which in most cases would result in misdemeanor offenses. Figure 5 shows that from 1984 to 1988 drug arrests were on a downward trend, going from about 1,700 arrests in 1984 to 1,130 in 1988. However, from 1989 to 1996 drug arrests have increased each year. The largest increase was 44% in 1989, while increases of 20% in 1994, 35% in 1995, and 22% in 1996 have occurred. DUI arrests grew by 12% in 1990, however, since then the trend has been upward but not as great as drug arrests.

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Figure 5



Cause #3 ***Cases not Prosecuted at the Federal Level May be Prosecuted at the State Level***

Criminal arrests occurring in West Virginia that involve offenses that violate federal law can in most cases be tried in state or federal courts. The federal government has U.S. Attorney offices located in each state to determine whether or not to prosecute a case in federal court. West Virginia has two U.S. Attorney offices, one located in Charleston and the other located in Wheeling. The Charleston office represents counties in the Southern District, and the Wheeling office represents counties in the Northern District.

Cases involving a federal violation are generally referred to an U.S. Attorney's office by law enforcement agencies. The U.S. Attorney's office reviews cases it receives to determine if it will prosecute. The decision to prosecute may be based on the evidence or it may be based on whether the case fits the types of cases the U.S. Attorney wants to pursue. Cases that do go to federal court may also have a federal public defender assigned. If the U.S. Attorney's office decides not to prosecute a case, it may be prosecuted in state court or it may not be prosecuted at all if there is a lack of evidence. If the case is prosecuted in a state court, a state public defender may be assigned.

The state Public Defender Services caseload is influenced to some extent by the U.S. Attorney's decision whether to prosecute a case or not. The current U.S. Attorney for the Southern District, who was appointed in the beginning of 1994, has stated publicly that her office has a different approach with respect to drug-related offenses than her predecessor, whose tenure was from 1987 to 1993. Small, street-level drug offenses are not prosecuted by her office to the same magnitude as her predecessor. This could result in more drug-related cases being tried in state courts that could also result in the need for state public defenders.

The Legislative Auditor examined the extent to which the Southern District U.S. Attorney's approach has affected the caseload of the state's public defender program. Table 8 shows the number of cases referred to the Northern and Southern U.S. Attorneys' offices.

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Table 8
Caseload of U.S. Attorneys' Offices and Federal Public Defenders

Year	Northern District		Southern District		
	Cases Referred	Cases Prosecuted	Cases Referred	Cases Prosecuted	Federal Public Defender Cases
1984	321	193	1,287	221	248
1985	524	135	902	182	131
1986	450	182	1,270	321	161
1987	n/a	n/a	n/a	n/a	174
1988	396	218	1,243	394	230
1989	570	268	1,143	464	193
1990	366	259	1,386	446	268
1991	n/a	n/a	n/a	n/a	329
1992	632	276	1729	445	370
1993	440	226	1246	455	369
1994	421	214	953	371	386
1995	373	198	884	257	428
1996	339	197	717	296	337

Source: U.S. Department of Justice, Bureau of Justice Statistics

The number of cases referred to the Southern District has dropped since 1994. From 1988 to 1993, the average annual referrals to the Southern District was 1,349 cases, compared to 851 annual referrals from 1994 to 1996. Cases prosecuted has also dropped in the Southern District from an annual average of 440 cases from 1988 to 1993, to 308 from 1994 to 1996.

Table 9 shows the number of drug cases referred and prosecuted for the Northern and Southern Districts. Referrals to the current Southern U.S. Attorney are down compared to her predecessor. The annual average referrals was 549 between 1988 and 1993, compared to 241 for the 1994-96 period. This could suggest that law enforcement agencies do not refer certain drug cases to the Southern U.S. Attorney if it is understood that they will not likely be prosecuted. Drug cases prosecuted were 236 cases, on average, between 1988 and 1993, and 157 between 1994 and 1996.

Table 9
Drug Cases of U.S. Attorneys' Offices

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Year	Northern District		Southern District	
	Drug Cases Referred	Drug Cases Prosecuted	Drug Cases Referred	Drug Cases Prosecuted
1984	65	81	278	50
1985	140	59	251	58
1986	143	67	447	152
1987	n/a	n/a	n/a	n/a
1988	183	129	468	172
1989	283	158	521	238
1990	157	152	688	299
1991	n/a	n/a	n/a	n/a
1992	341	187	631	248
1993	206	272	437	224
1994	193	130	249	234
1995	198	118	239	100
1996	159	126	236	138

Source: U.S. Department of Justice, Bureau of Justice Statistics
* Cases prosecuted may exceed cases referred because of cases carried over from a previous year.

It is possible that Public Defender Services has experienced an increase in cases due to fewer cases being prosecuted at the federal level. However, judging from the number of cases involved, it is likely not a significant factor. The difference between the number of cases prosecuted by the current and previous Southern U.S. Attorneys is a few hundred cases each year.

Maximized Use of Public Defender Corporations Needed to Control Costs

Growth in caseload has greatly influenced the growth in Public Defender expenditures. However, the 1989 Supreme Court ruling which increased the hourly reimbursement rate for appointed counsels has also impacted costs substantially. As a result of this court ruling, it is more expensive to provide legal representation to indigent clients using appointed counsels as opposed to using state employed public defenders. Table 7 of this report showed that when the higher reimbursement rates became effective, private attorney costs to represent misdemeanor and felony cases nearly tripled. The average cost to close a case by appointed counsel was $546 in FY 1997,

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while the average cost to close a case by public defenders ranges from $200 to $300.[8]

The Legislature has addressed the higher costs for private attorneys by expanding the use of state employed public defenders. Table 10 shows the growth in the number of public defender corporations and budgeted positions since 1989.

Table 10

Fiscal Year	Public Defender Corporations	Number of Public Defenders (Budgeted Positions)
1989	4	10
1990	10	36
1991	11	38
1992	11	40
1993	11	44
1994	12	65
1995	14	78
1996	15	91
1997	15	102

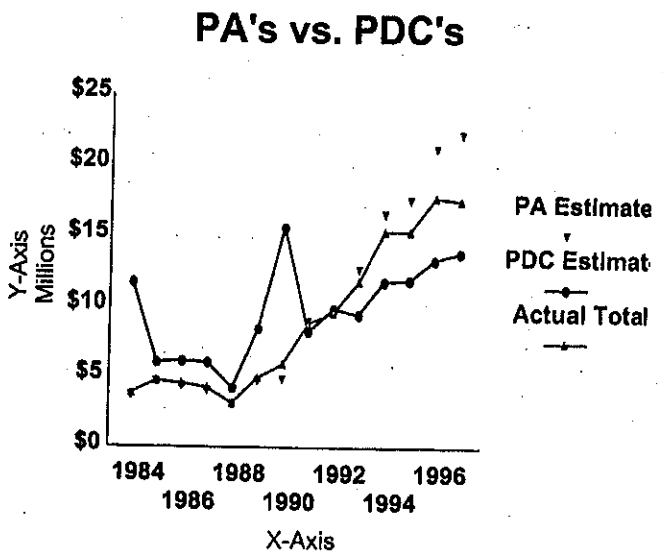
As a result of this expansion, **the Legislature has actually slowed the growth of public defender expenditures despite the relatively high growth rate that has occurred.** Although this seems contradictory because of rising costs, the fact is that if appointed counsels had been used exclusively, the costs of the system would have been much higher. This is illustrated below in Figure 6. Prior to the court case in 1989, it was more expensive to use PDC's than appointed counsels. Once the higher rates became effective in 1991, private attorneys became more expensive. The higher costs in 1990 for PDC's represent start-up costs as PDC's were expanded. In fiscal year 1997, the state appropriation was approximately $18 million. For that year 40,662 cases were closed, of which 55% were closed by state public defender corporations (PDC's), and the remaining 45% were closed by private attorneys (PA's). Had all of these cases been closed by PA's at their average costs, the system would have cost the state $22.2 million. Conversely, had these cases been

[8] *Data limitations make it impossible to know the exact average costs for public defenders to close a case.*

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closed exclusively by PDC's, the cost would have been about $13.8 million.[9] The **difference between an exclusive system of PA's and PDC's is close to $8 million annually.**

Figure 6



It is not likely that the state can go to a system that uses PDC's exclusively. The West Virginia *Code* §29-21-9(b) states that in circuits where a public defender office operates, the Public Defender Corporation will be appointed as legal defense:

[9] *Cost estimates to close cases for PA's were based on the average costs for each type of case times the total number of each type of case. Cost estimates to close cases for PDC's was based on the average cost to close all types of cases times the total number of cases. This latter method was used because the agency does not know exactly how much it cost PDC's to close a case in each year.*

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> *...unless such appointment is not appropriate due to a conflict of interest or unless the public defender corporation board of directors or the public defender, with the approval of the board, has notified the court that the existing caseload cannot be increased without jeopardizing the ability of defenders to provide effective representation.*

After contacting Chief Public Defenders (heads of PDC's), the Legislative Auditor concluded that these indeed are the primary reasons that PA's receive cases. Some PDC's cited conflict as the **only** reason that PA's in their respective circuit receive cases, while others included excessive caseload as well as conflict as the main reasons that PA's receive cases.

Also, six of the 15 judicial circuits that have PDC's do not handle mental hygiene cases and three PDC's do not handle abuse/neglect cases. These types of cases are largely assigned to private attorneys for various reasons. One reason for a PDC not taking these cases is because it could cause a conflict within a corporation with criminal cases such as sexual assault and domestic battery that stem from an abuse/neglect case. One Chief Public Defender indicated that another reason is that these cases take up a lot of court time and a smaller office needs to be free to work on the heavy criminal caseload. Another reason is that in some areas of the state, private attorneys who handle these types of cases have more experience than public defenders, so judges assign them to private counsel. In some instances where a PDC does not handle abuse/neglect cases or mental hygiene cases, the Chief Public Defender or Court Administrator simply do not know the reason.

Multiple PDC's Should be Considered

Undoubtedly, conflicts of interest will continue to be an issue. Therefore, private attorneys are necessary to handle the conflict cases under the current system. However, there are PDC's that currently have excessive caseloads according to some Chief Public Defenders. Therefore, greater use of existing PDC's is possible through expansion of public defenders. For example, the 13th Circuit, which is located in Kanawha County, had a total of 6,379 cases that were closed in FY 1997. Of these, 45% were handled by private attorneys. This could be the result of conflict of interest or excessive caseload. In this case, the Legislature should consider establishing a second PDC to minimize conflict of interest and to reduce excessive caseloads. A legal opinion from Legislative Services states that Public Defender Services has the authority to create multiple PDC's in circuits that warrant them. The purpose in this is to reduce the reliance on PA's in order to realize cost savings.

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Furthermore, there are 16 circuits without PDC's. These circuits use private attorneys exclusively. In 1997, there were nearly 10,000 cases in these circuits that cost $5.5 million to close. The Legislative Auditor estimates that a cost savings could be realized by expanding the number of public defenders and corporations into all 31 judicial circuits. **This expansion could result in a cost savings between $2.2 million to close to $8 million annually.** The upper range is based on the exclusive use of PDC's, while the lower range is based on the assumption that PA's would be assigned the same average ratio (28%) of cases that are assigned in circuits that have PDC's. Given that the exclusive use of PDC's is not possible, the cost savings will be less than $8 million. The exact amount obviously depends on the use of private attorneys. If PA's are used for the same percentage of cases as circuits that have PDC's, then the cost savings will be closer to $2 million.

Other Reasons for Disparity of Costs

The Legislative Auditor conducted a survey of all 14 Public Defender Corporations (PDC's). The survey consisted of contacting the 14 chief defenders and one senior attorney in the 15 judicial circuits that comprise the 14 PDC's. The public defenders were asked to give their reasons why there is such a disparity of costs between the private attorneys and the PDC's. After analyzing the results of the survey, some of the reasons for the disparity became quite apparent. The chief defenders were all in agreement that the public defenders have more familiarity, are more specialized, and do not spend nearly as much time doing out-of-court research. The public defenders do not have to "re-invent the wheel", therefore they are more cost effective and are more efficient.

The Legislative Auditor also hypothesized that one reason for the disparity could be that private attorneys received the more difficult and lengthier cases, such as murder cases. According to the Public Defender Corporations, this is not true. Several of the Chief Defenders stated that Public Defender Corporations handle the more difficult cases. Public Defender Services' data also supports this assertion. Thus, private attorneys are spending significantly more time than the public defenders, while costing more. The private attorneys spend an average of 19.7 hours per felony case at an average cost of $56 per hour, while the public defenders spend an average of 6.81 hours at an average cost of $44 per hour. Also, the private attorneys spend an average of 7.01 hours per misdemeanor case at an average cost of about $50 an hour, and the public defenders spend an average of 2.12 hours per misdemeanor case at an average cost of $44 an hour.

Conclusion

The total appropriation for Public Defender Services has reached approximately $24,000,000 in FY98. The rising costs can be attributed to rising caseload and the higher reimbursement rate for private attorneys. The rise in caseload can be partially attributed to an increase in arrests for a few years. However, the higher reimbursement rate for private attorneys has made it more costly to have cases represented by private attorneys than public defenders. Thus, the Legislative Auditor recommends that the Legislature maximize the use of Public Defender Corporations. The Legislative Auditor contends that additional public defenders and Public Defender Corporations could reduce the costs of Public Defender Services.

Recommendation 1:

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In order to control rising costs, the Legislature should consider hiring additional public defenders in existing PDC's and create full-time or part- time PDC's in every judicial circuit.

Recommendation 2:

The Legislature should also consider establishing multiple PDC's in circuits that warrant them.

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Issue Area 2: **PUBLIC DEFENDER SERVICES DOES NOT ADEQUATELY MONITOR IMPROVEMENT NEEDS, COMPLIANCE, AND QUALITY OF LEGAL SERVICES AS REQUIRED BY STATUTE**

A primary purpose of Public Defender Services is to "*provide high quality legal assistance to indigent persons*" (§29-21-1). Achieving this purpose would provide "*rights and privileges guaranteed to all citizens*" by the U.S. and state constitutions, and it "*reaffirms the faith of our citizens in our government of laws.*" The agency's principal charge is "*the development and improvement of programs by which the state provides legal representation to indigent persons*" (§29-21-4). To accomplish this purpose, the agency's statute requires it to monitor the delivery of legal services to ensure for quality, compliance and improvement (§29-21, sections 3, 4, 6 and 13a). This issue examines the extent to which the agency collects data to monitor the delivery of legal services.

Each year, Public Defender Services publishes an annual report with data summarizing the yearly workload of Public Defender Corporations, and the number of hours billed and claims paid to private attorneys. While these data are important and useful, **the Legislative Auditor found that the State office lacks management information that monitors the quality of services, compliance with the Code, and improvement needs.** Public Defender Services needs information that will allow comparisons of performance with private attorneys and between Public Defender Corporations. The latter comparison will allow evaluation of the performance of respective corporations and determination of improvements needed.

Monitoring of Private Attorney Expenses is Needed to Reduce Abuse

When a person is determined eligible for publicly funded legal representation, the circuit judge makes the decision whether to appoint a public defender or private counsel. When private attorneys are appointed, they submit a voucher for work performed to the appointing court. The court is required to review the voucher to determine if the expense claims are reasonable, necessary and valid. The voucher is then forwarded to Public Defender Services with an order approving payment. Currently, **Public Defender Services relies completely on the courts to determine the reasonableness of the private attorney's expense claims.** The executive director stated in a letter regarding this process:

> *determination is primarily a question for the circuit judge who orders this office to pay ... a certain level of judgment must be used to determine what seems reasonable. Only the circuit judge can exercise that judgment.*

This statement places certain financial responsibilities entirely in the hands of circuit judges. Although the court is responsible for reviewing expense claims, the executive director also has a fiduciary responsibility by statute. According to WVC §29-21-13a(g):

The executive director shall refuse to requisition payment for any voucher which is not in conformity with record keeping, compensation or other provisions of this article and in such

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circumstance shall return the voucher to the court or to the service provider for further review or correction.

Also, WVC §29-21-6(d) states that:

> *The agency shall establish and the executive director or his designate shall operate an accounting and auditing division to require and monitor the compliance with this article by public defender corporations and other persons or entities receiving funding or compensation from the agency.*

Therefore, the executive director has the overall responsibility to require and monitor compliance of anyone receiving compensation from the agency. When the agency was asked how it monitored the disparity in money received by private attorneys compared to public defenders, the executive director wrote:

> *You ask how we "monitor" whether the difference in costs between private counsel and public defenders are "justified". That question shows a fundamental misunderstanding of the limited authority vested with this agency. Since the appointment of counsel is a matter entirely in the hands of circuit judges, it does not matter whether I think a cost is "justified." Once appointment is made to a private attorney, that attorney continues with the case until relieved by the judge for good cause shown. No one in either the Public Defender offices nor this office has any say whatsoever over who represents whom in a given case. This questions assumes a management control which resides exclusively with the circuit judges.*

The Legislative Auditor agrees that it would be difficult to verify attorney time, and the statutory authority may be limited in this area. Currently, Public Defender Services restricts monitoring to examining each voucher for duplication of time, errors in calculating total number of hours worked, and other types of errors in filling out the forms.

However, the Legislature and the agency should consider taking a broader approach to monitoring compliance to include comparisons of expense claims with statewide averages of private attorneys for similar cases. **Courts do not have this information available in reviewing claim vouchers, therefore, Public Defender Services can assist them in their review by providing statewide averages.** When private attorney expenses that are excessive and unjustified are not challenged, the agency becomes viewed by private attorneys as a "*rubber stamp*," which encourages abuse.

For example, assume an attorney claims $1,000 in expenses for a type of case that has a statewide average of $300. This should immediately send up a red flag that signals the possibility of a lack of compliance with accurate compensation. At this point, the executive director can do two things statutorily: 1) The attorney can be notified of the excessive amount compared to statewide averages, and documentation or explanations can be requested (§29-21-13a(e); or 2) the voucher can be returned to the court with notification of the excessive amount and a request for an explanation. If unjustified excessive expense claims persists, the executive director could suggest to the circuit

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judge that future use of the attorney be discontinued or limited.

Management controls of private attorney expenses should not reside exclusively with the courts. The effect of notifying attorneys and courts of excessive billing is to incorporate a system that will signal to all private attorneys that their billings are being monitored and compliance is being required. This in turn should discourage abuse, and lower costs. The agency can provide courts with statewide averages for each type of case to assist them in reviewing vouchers. If attorney explanations or circumstances satisfy the court, then the voucher may still be approved. However, **challenging expense claims based on statewide averages is a vast improvement over the current system in which payment is made because it does not matter if a cost is justified or not.**

The Legislative Auditor reviewed the bills of 35 attorneys making over $50,000 from Public Defender Services in FY97. PERD found that 10 of those attorneys had an average cost per case over $900 (shown in Table 1). While these attorneys may not be over-billing the agency, the possibility of abuse may be present, and the agency should be concerned with these numbers. As a note, some of these 35 attorneys did have per case averages well below the statewide average of $546.

Table 11
Sample Attorneys with Average Cost Per Claim
Over $900

	Total Amount	Number of Claims	Average Cost Per Claim
Attorney 1	$135,703	145	$936
Attorney 2	$50,059	50	$1,001
Attorney 3	$70,768	69	$1,026
Attorney 4	$59,160	54	$1,096
Attorney 5	$56,317	47	$1,198
Attorney 6	$139,312	113	$1,233
Attorney 7	$107,024	72	$1,486
Attorney 8	$96,797	58	$1,669
Attorney 9	$54,621	31	$1,762
Attorney 10	$52,241	26	$2,009
Totals	**$822,002**	**665**	**$1,236**
Statewide Average			**$546**

The Executive Director of Public Defender Services does not feel that he has adequate authority to challenge claim vouchers. The Legislature should consider providing clearer statutory authority to challenge claim vouchers that exceed a certain statewide average, depending on the type of case. This would institute a system that is more accountable and cost-effective.

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Measuring the Quality of Legal Services is Needed

Public Defender Services has six categories in which they classify types of cases. One category - felonies - includes murders, and all other types of felony crimes. The Legislative Auditor requested from Public Defender Services, the number of murder cases tried in FY97. The agency provided the number of murder cases assigned to private appointed counsel, but not for public defenders. The executive director stated that the Legislative Auditor "*could obtain that information by contacting each Public Defender office.*" According to the information provided, there were 154 murder cases assigned to private attorneys, costing $716,011 or an average of $4,649 per case.

Since murder is a serious crime and such cases are lengthy and more complicated, they represent a good basis of comparison with private attorneys, in terms of time, costs, and conviction rates. This could also identify potential workload problems for Public Defender offices that may have a disproportionate number of murder cases.

The Legislative Auditor also requested from the agency the conviction rates of clients represented by the agency and private attorneys for felony cases. The Executive Director could not provide this information for the following reason:

> *Since this number does not measure either efficiency or effectiveness in any meaningful manner, it is not kept. The vast majority of clients are found guilty.*

Conviction rates can measure effectiveness of Public Defender Corporations. A primary method of measuring the quality of service provided by public defenders is to compare their performance with private attorneys and with other public defenders. If private attorneys have a consistently lower conviction rate than public defenders that is statistically significant, this would suggest that private attorneys either provide better legal defense for their clients or receive a different type of case than public defenders. The use of monitoring conviction rates for outliers (extreme values) can be a benefit. Consequently, **the State office of Public Defender Services does not know whether Public Defender Corporations provide as adequate, better, or worse a defense as private attorneys.** Furthermore, conviction rates can be compared between Public Defender Corporations to determine performance. Ultimately, the purpose of collecting conviction rates would be to identify possible deficiencies and areas of improvement, as specified by statute (§29-21-4), which states:

> *The agency shall have as its principal purpose the development and improvement of programs by which the state provides legal representation to indigent persons.*

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Caseload Data and Caseload Standards are Needed

In order to maximize the use of public defenders, Public Defender Services needs to know why private attorneys are assigned by judges instead of public defenders. As Issue One indicated, Public Defender Corporations performed 54% of closed cases in fiscal year 1997. This percentage can be higher and it would lead to significant cost savings. There are two primary reasons that private attorneys are assigned cases: 1) conflicts; and 2) caseload. The executive director should know when caseload problems in a corporation inhibit cases from being assigned to it.

Public Defender Services indicated that it does not keep data showing what percent of cases are assigned to private attorneys due to caseload or conflict. A response to a request for that information was as follows:

> *...this number is not kept since it is meaningless. In Circuits where Public Defenders operate, virtually all assignment to private counsel are made because of conflicts.*

This statement is inconsistent with statements made by some Chief Public Defenders and a Court Administrator. In discussions with Public Defender Corporations, seven of the responding 12 circuits stated that conflicts were the only reason that a case is assigned to private counsel. However, five circuits indicated that caseload is also a factor. Raleigh County's (10th Circuit) Chief Defender wrote that "*excessive caseload is a problem in my office at the present time.*" In Raleigh County, mental hygiene cases are assigned to private attorneys for reasons other than conflict of interest. Logan County's Chief Defender (7th Circuit) responded that:

> *There are approximately 4,000 misdemeanors issued each year in Logan County. It is impossible for this office to handle that number of cases because of staff limitations and conflicts....The main reason private attorneys handle misdemeanors is because of the necessity for their participation because of the sheer number and our staff limitations to handle all those cases.*

The Court Administrator for Kanawha County (13th Circuit) indicated that conflict and caseload are the two primary reasons. Kanawha County's Chief Defender also stated that excessive caseload was a factor. Also in Kanawha County, public defenders are not assigned mental hygiene or child abuse cases. The Chief Defender for Kanawha County has expressed his office's availability for those types of cases to the court, but to no avail and without explanation. Harrison county's (15th Circuit) Chief Defender stated that:

> *There have been other occasions when the number of cases that we were being assigned to exceeded the ability of the attorneys at the Public Defender's Office to adequately handle all the cases, and I have asked the court to assign a percentage of the cases to private counsel to alleviate the problem on a temporary basis.*

Finally, in Wayne County (24th Circuit), mental hygiene cases and abuse and neglect cases are assigned exclusively to private counsels in part because of caseload reasons.

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The fact is that for some circuits, excessive caseloads are experienced and they usually result in cases being assigned to private counsel. The executive director's response that virtually all assignments to private counsel are made because of conflicts shows a lack of awareness of caseload issues at the local level. When asked if the agency uses caseload standards, the executive director stated that he strongly disagrees with the practice, despite the establishment of caseload standards by national groups. Caseload standards can be used to determine if Public Defender offices need additional staffing. This is critical if the agency has the goal of maximizing the use of public defenders and improving the quality of legal services.

In summary, conflicts and caseload should be the only reasons that private attorneys receive cases. However, the executive director does not acknowledge that excessive caseload is a reason that private attorneys receive cases. According to some Chief Public Defenders, excessive caseload is indeed a problem and has yet to be addressed. Since certain case types are assigned to private attorneys for caseload reasons, it is important that caseload standards be established to help monitor the amount of cases that each Public Defender Corporation is handling and to help pinpoint which Corporations have an excessive amount of cases, which would dictate a need for additional staff.

Comparisons Between Public Defenders and Private Attorney are Inadequate

In order to evaluate the quality of legal services of public defenders, there is a need to compare public defenders with private attorneys. This type of comparison is required by WVC §29-21-6(d) which states:

> *The accounting and auditing division shall require each public defender corporation to periodically report on the billable and nonbillable time of its professional employees, including time utilized in administration of the respective offices, so as to compare such time to similar time expended in nonpublic law offices for like activities.*

The Executive Director was asked how he complies with this statute. His response was stated that "*A direct comparison with private lawyers is somewhat difficult to make.*" The agency collects aggregate data that combines billable, nonbillable and administrative time, for private attorneys and public defenders. However, these three segments of time are not collected separately, therefore, a detailed comparison cannot be made. Similarly, the agency was asked for what portion of time is spent in travel or conducting legal research. Again, the data are not collected in this type of detail. Essentially, the agency is not in compliance with WVC §29-21-6(d).

In addition, the agency does not adequately show an accurate comparison of average costs per case between private attorneys and public defenders. Average costs for private attorneys are based primarily on closed cases. However, the agency does not compile the same statistics for public defenders. In fact, the agency uses an inflated figure in its annual reports comparing private attorney claims (which are generally closed cases) to cases represented by public defenders, which includes closed cases, new cases, and carryover cases from the previous year. The lack of comparable data makes it difficult to formulate an accurate comparison of cost-effectiveness between private attorneys and public defenders.

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Conclusion

The State office of Public Defender Services lacks management information to monitor the quality, compliance, and improvement of legal representation. In effect, **the agency does not know if its public defenders are providing quality legal representation.** The agency does not collect sufficient data that measure the effectiveness of public defenders, or to compare performance between Public Defender Corporations and private attorneys.

Also, there is risk of abuse in the payment system for private attorneys because of the limitation of monitoring expense claims to checking computation errors. The agency needs to challenge expense claims that are excessive compared to statewide averages. This practice is within the agency's statutory authority and it will discourage abuse and lower costs. Caseload standards are not used, nor are caseload data compiled. Caseload data is important to know in order to achieve the maximum use of public defenders and to ensure the quality of legal representation. The agency also needs to improve its data collection to provide comparisons between public defenders and private attorneys, as required by law.

Recommendation 3:

Public Defender Services should begin gathering data that can be used to measure the quality of legal representation. Conviction rates, court and out-of-court time, research time, costs, etc., of felony cases should be collected for public defenders and private attorneys. Statistical analysis should be conducted to determine if differences between public defenders, private attorneys, and within Public Defender Corporations are statistically significant. The agency should also develop data on costs, billable and nonbillable time, and administrative time that is comparable for a meaningful and accurate comparison between public defenders and private attorneys. The agency should implement caseload standards for Public Defender Corporations to identify staffing needs and monitor threats to quality legal representation.

Recommendation 4:

Public Defender Services should develop a system that uses statewide average private attorney expense claims for each case category to compare with individual private attorney expense claims for similar cases. The agency should consider providing each circuit court with these statewide averages to assist them in determining if private attorney expenses are reasonable or necessary. The agency should require additional documentation to justify an expense claim that exceeds the average by an established percentage. The agency should develop a dialogue with courts and private attorneys that intends to discourage any continuance of unjustified excessive expense claims of attorneys.

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Recommendation 5:

Public Defender Services should monitor the reasons for private attorneys being assigned cases rather than Public Defenders Corporations to assist in maximizing the use of public defenders.

Recommendation 6:

The Legislature should consider a statutory amendment to give Public Defender Services the authority to challenge claim vouchers that exceed a certain percentage of statewide averages for each category of case type.

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APPENDIX A:
Current Public Defender Corporations

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Current Public Defender Corporations

Fiscal Year 1998

LEGEND

County Boundary

Circuits Represented by Public Defender Corporations

Numbers indicate judicial circuit

1st Circuit: Brooke, Hancock, Ohio
10th Circuit: Raleigh
12th Circuit: Fayette
2nd Circuit: Marshall, Tyler, Wetzel
13th Circuit: Kanawha
15th Circuit: Harrison
3rd Circuit: Calhoun, Jackson, Roane
22nd Circuit: Berkeley, Jefferson, Morgan
6th Circuit: Cabell
24th Circuit: Wayne
7th Circuit: Logan
25th Circuit: Nicholas
8th Circuit: McDowell
26th Circuit: Mingo
9th Circuit: Mercer

Redistricting Office

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APPENDIX B:
Misdemeanor Offenses Created Between 1980 and 1998

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Misdemeanor Offenses Created Between 1980 and 1998

Number	Description	WV *Code*
1	1st/ 2nd Domestic Assault (by Threats)	61-2-28
2	1st/ 2nd Domestic Assault (w/ Display of Weapon)	61-2-28
3	1st/ 2nd Domestic Assault (w/o Display of Weapon)	61-2-28
4	3rd Domestic Assault (w/o Display of Weapon)	61-2-28
5	1st/ 2nd Domestic Battery (w/ Display of Weapon)	61-2-28
6	Assault of an Officer (w/ Display of Weapon)	61-2-10B
7	Assault of an Officer (w/o Display of Weapon)	61-2-10B
8	1st/2nd Stalking (Credible Threat w/o Display of Weapon)	61-2-9A
9	1st/2nd Stalking (Credible Threat w/ Display of Weapon)	61-2-9A
10	1st/2nd Stalking (Harass/ Follow)	61-2-9A
11	1st/ 2nd Domestic Battery (w/ Display of Weapon)	61-2-28
12	1st Battery of Officer (w/ Display of Weapon)	61-2-10B
13	1st Battery of Officer (w/o Display of Weapon)	61-2-10B
14	Assault on Athletic Official (w/ Display of Weapon)	61-2-15A
15	Assault on Athletic Official (w/o Display of Weapon)	61-2-15A
16	Battery on Athletic Official (w/ Display of Weapon)	61-2-15A
17	Battery on Athletic Official (w/o Display of Weapon)	61-2-15A
18	Obtaining Confidential Public Information	61-3C-11
19	Theft of Cable TV Services	61-3D-2
20	Possession of Counterfeit or Unauthorized Access Device	61-3C-13
21	False Statements on Application for Wine License/ Renewal	60-8-25
22	Unauthorized Access to Computer Services	61-3C-5
23	Possession of Computer Data/ Programs (< or = $5000) w/o Authority	61-3C-6
24	Unlawful Acquisition of Cable TV Services	61-3D-2
25	Falsify Concealed Weapons License Application	61-7-4
26	Improper Obtaining of Confidential Information by Employee	61-3C-11
27	Possession of Computer Software, Programs or Supplies w/o Authority	61-3C-9
28	Alter, Destroy, Etc. of Computer Equipment	61-3C-7
29	Wrongful Injuries to Timber (=<$1000)	61-3-52
30	Failure to Submit Required Information to Board of Pharmacy	60A-9-7
31	Refusal to Submit Required Information to Board of Pharmacy	60A-9-7
32	Submission of False Information to Board of Pharmacy	60A-9-7
33	Illegal Disclosure of Board of Pharmacy Information	60A-9-7

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34	Transport into State a Controlled Substance w/ Intent to Deliver/ Manufacture	60A-4-409
35	Indecent Exposure	61-8-9
36	Failure to Meet Obligation or Provide for the Support of a Minor	61-5-29
37	Wine Distributor Discriminating in Sales, Price, Etc.	60-8-31
38	Furnishing or Buying Wine/ Liquor for a Minor (<21)	60-8-21A
39	Selling Wine in Unsealed Packages	60-8-21
40	Selling Wine on Credit	60-8-22
41	Distributor Selling Wine at Greater Price	60-8-31
42	Selling Wine During Non - Business Hours	60-8-34
43	Selling or Giving Beer to Someone Intoxicated, Insane, or Habitually Drunk	11-16-18
44	Operation of Private Club by Someone Other than License Holder	11-16-18
45	Exclusive Distributor Franchise Agreements Prohibited	60-8-30
46	Wine Distributor Transporting or Delivering on Sunday or Election Day to Retailer	60-8-31
47	Misrepresentation of Age (<21) to Purchase Wine/ Liquor	60-8-20A
48	Failure to Appear for Misdemeanor Charges	62-1C-17B
49	Failure to Appear as Witness	62-1C-17B
50	Violation of Bail Condition - Crime Between Family/ Household Members	62-1C-17C
51	Violation of Work Release for Misdemeanor Conviction	62-11A-4
52	Violate Bail (Presence at Home)	62-1C-17C
53	Violate Bail (Threats)	62-1C-17C
54	Violate Bail (Assault w/ Display of Weapon)	62-1C-17C
55	Violate Bail (Assault w/o Display of Weapon)	62-1C-17C
56	Violate Bail (Batter w/ Display of Weapon)	62-1C-17C
57	Violate Bail (Batter w/o Display of Weapon)	62-1C-17C
58	Violate Bail (Malicious, Unlawful Assault)	62-1C-17C
59	1st Offense for Carrying a Concealed Weapon w/o a License	61-7-3
60	Possession of a Deadly Weapon by a Prohibited Person	61-7-7
61	1st Offense for Possession of a Deadly Weapon by a Minor	61-7-8
62	Possession of a Machine Gun	61-7-9
63	Display of a Deadly Weapon for Sale or Hire	61-7-10
64	Parent or etc. Failing to Report the Possession of a Deadly Weapon by a Minor	61-7-11A
65	Possession of a Weapon on the Premises of a Court of Law or Family Law Master	61-7-11

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66	Failure to Regard the Limiting of Possession of Firearms on Premises	61-7-14
67	Manufacture, Purchase, Etc. of a Hoax Bomb	61-3E-7
68	Computer Invasion of Privacy	61-3C-12
69	Misuse of a Tax Exemption Certificate	11-9-8
70	Keeping or Using Live Birds to Shoot at	61-8-19A
71	Indecent Exposure	61-8-9
72	Disturb Schools, Societies or Other Assemblies	61-6-14
73	Failure to Carry ID Card With Concealed Weapon License	61-7-4
74	Discrimination Against an Employee Summoned for Jury Duty	61-5-25A
75	Unauthorized Disruption of Computer Services	61-3C-8
76	Unauthorized Disclosure of Computer Security Information	61-3C-10
77	Sale or Transfer of a Device or Plan intended for Acquisition of Diversion	61-3D-3
78	Possession of Computer Information w/o Authority	61-3C-9
79	Wearing a Mask, Hood or Face Covering	61-6-22
80	Providing False Information Regarding a Child's Injuries	61-8D-7
81	Failure to Register as a Sex Offender	61-8F-8
82	Neglect or Permitting Neglect of an Incapacitated Adult by Care giver	61-2-29
83	Violation of a Domestic Violence Petition Order (threatening)	48-2A-10D
84	Violation of a Domestic Violence Petition Order (assault/battery/ w/o display of weapon)	48-2A-10D
85	Violation of a Domestic Violence Petition Order (assault/ battery w/ display of weapon)	48-2A-10D
86	Impersonation of a Law Enforcement Officer	61-1-9
87	Causing Injury to a Law Enforcement Animal	19-20-24
88	Purchasing Prescription Drugs from Other than a Licensed Vendor)	60A-8-6
89	Misrepresentation of Age (<21) at Private Club	60-7-12A
90	Private Club Furnishing Alcohol to Under Aged (<21)	60-7-12A
91	Misrepresentation of Age (<21) at Private Club(Possession of False ID)	11-16-19
92	Misrepresentation of Age (<21) to Purchase Liquor	60-3A-24
93	Misrepresentation of Age (<21,Possession of False ID) to Purchase Liquor	60-3A-24
94	Misrepresentation of Age (<21) or Possession of False ID to Attempt to Purchase Beer	11-16-19
95	Purchase, Consumption, Possession, Selling, or Serving of Beer to Someone Under Age (<21)	11-16-19

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96	(Possession of False ID) Misrepresentation of Age (<21) to Purchase Wine/Liquor	60-8-20A
97	Selling Beer to Minors	11-16-18
98	Buying Beer or Furnishing Beer to Minors	11-16-19
99	Selling or Consuming Beer at Licensed Premises after Hours	11-16-18
100	Selling Beer for Something Other than Cash	11-16-18
101	Transportation of Beer to Licensed Retailer on Sunday	11-16-18
102	Beer Brewer Giving Equipment/Supplies to Licensed Retailer	11-16-18
103	Beer Licensee Permitting Lewd, Immoral Entertainment, Conduct or Practice on Establishment	11-16-18
104	Beer Licensee Obstructing View of the Interior of Premises	11-16-19
105	Liquor Manufacture, Import, Sell, Etc. w/o a License	11-16-18
106	Selling of Beer Acquired from Other than a Licensed Distributor, Manufacturer or Brewer	11-16-18
107	Beer Licensee Permitting Loud, Disorderly Conduct on Establishment	11-16-18
108	Beer Retailer Employment of Someone Whose Liquor License is Revoked	11-16-18
109	Beer Distributor Selling, Possessing, Etc. Except in Original Container	11-16-18
110	Beer Licensee to Permit a Crime on Premises	11-16-18
111	Class B Retailer Permitting the Consumption of Beer on Premises	11-16-18
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APPENDIX C:
Agency Response

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Antonio E. Jones, Ph.D.
Director

December 30, 1998

John A. Rogers, Director
Public Defender Services
Building 3, Room 220
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0730

Dear Director Rogers:

This is to transmit a copy of the Preliminary Performance Review of Public Defender Services. We would appreciate your response by close of business January 5, 1999. If you have questions related to factual errors or need clarification on any part of the report, please let me know.

Thank you for your cooperation.

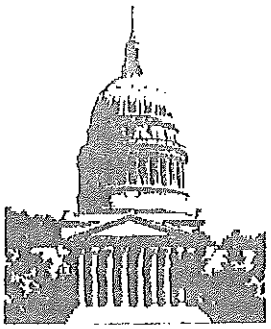
Sincerely,

Antonio E. Jones

Joint Committee on Government and Finance

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Indigent Access to Justice in West Virginia

John C. Kilwein

One of the most basic promises that any civilized society makes to its citizens is access to a court system where they can resolve their disputes in a non-violent manner. Whether these systems evolved from the Romano-Germanic code, England's common law, or other non-European conceptions of justice, all court systems make the same fundamental bargain with their citizens: give up your right to prosecute your dispute with another by any means and society will provide a fair and impartial tribunal to resolve those conflicts.

Given its English heritage, the legal system in the United States is adversarial. Those involved in a legal dispute are responsible for researching and presenting a case to the court that is both truthful and favorable to their position. The court will hear two competing, biased versions of the truth and will determine what it believes occurred to give rise to the dispute and apply the law to that version. In this adversarial trial, both sides have the ability to not only present their versions of the truth, but also to challenge their opponent's. These competing narratives are compiled using witness testimony and evidence in a courtroom battle that is conducted within the bounds of a very complicated rule system, the law. One final principle must be added to this very simplistic description of ideal American justice: justice is blind to legally irrelevant litigant characteristics such as race, gender, ethnicity, and class.

Obviously, the ideal of equal justice under the law is a work in progress in the United States. Both history and social science show us that Americans have suffered, and continue to suffer, unequal justice before the law based solely on immutable characteristics such as race, gender, and ethnicity (Tushnet 1987; Eisenstein 1988; and Engel 1987). These same disciplines also make clear that American justice can vary based strictly on a litigant's economic status (Galanter 1975).

At its most basic level, class disadvantage may result from a judge or juror's prejudice against the poor, a prejudice that exists in and out of the courtroom. More pernicious is the disadvantage that poor litigants face in securing legal representation. Success in the American adversarial courtroom is based in large part on understanding the law and using it to one's advantage. Put more simply, success in an American court is based on effective legal representation, i.e., having a lawyer, preferably a good one. Securing effective representation requires money and like many goods and services, those who have more money can often secure better-quality representation.

Some might see the connection between wealth and the ability to secure legal representation as an obvious and legitimate manifestation of our free-market system; after all, the rich can afford to live in nicer homes, drive larger cars, and eat fancier food. Most Americans probably accept that those with more can consume these material goods in greater quantities. But, if asked, many of those same people would probably be uncomfortable with the notion that access to fair justice should vary by wealth. It is fair to say that this discomfort makes sense; access to legal representation is different than access to material goods. Without access to counsel, one of society's most basic bargains, i.e., reject individual violence and bring your disputes to a fair court for resolution, becomes a rigged bargain that makes a mockery of basic American ideals. To lessen this gap between ideals and reality, concerned Americans and their national and state governments have developed a number of legal assistance systems that provide free legal representation to some poor litigants.

This article examines the current status of legal assistance for the poor in West Virginia. It begins by examining how legal assistance for the poor is defined and what systems have been developed to provide these services. Next, the article explores briefly some of the debates that have surrounded the provision of legal assistance for the poor. The article then describes and assesses existing West Virginian legal assistance programs for the poor in the civil and criminal justice systems. The article concludes with a look to the future of legal assistance in West Virginia, especially with regard to its future funding.

Systems for Providing Legal Assistance to the Poor

Given the popularity of television and movie police and courtroom dramas, most Americans are familiar with the script of the so-called Miranda warnings given to a defendant at arrest. Among these Miranda rights are the right to counsel and the right to have that counsel provided to you free of charge if you are unable to pay for it yourself. This right to free legal assistance for indigent criminal defendants was created by the U.S. Supreme Court in 1963 in the landmark case of *Gideon v. Wainwright*, 372 US 335. In *Gideon* and its progeny[1], the Supreme Court interpreted the Constitution's Sixth Amendment right to a fair and speedy trial and the assistance of counsel for defense a right for all Americans, regardless of their economic status. In deciding *Gideon*, the Court surveyed a legal landscape in 1963 where it was possible for an innocent defendant to be convicted of a felony simply because (s)he could not afford legal counsel. In 1963, access to free legal counsel, and the quality of that representation, varied from state to state. In some areas, service was provided solely by private, philanthropic efforts and, in others, through a partnership between these private entities and local government. Prior to 1963, indigent persons dealing with the legal system, in a civil or criminal matter, essentially had three options available to them: pro se representation, pro bono publico representation by a private attorney, and assistance from a legal aid organization.

Pro se representation was, and continues to be, the worst of these alternatives, because the litigant acts in his/her own behalf against a professional attorney, creating a very lopsided legal adversarial battle. Luckier litigants were able to secure the services of a private attorney without charge because the attorney was acting for the public good (pro bono publico). An attorney's obligation to provide some legal assistance pro bono stems from his or her professional responsibilities. In exchange for its monopoly over the provision of legal services in the United States, the organized bar has traditionally promised to meet the legal needs

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of all Americans, including those who cannot pay for counsel. In reality, the provision of pro bono representation by private attorneys has never come close to meeting the demand for such services. Legal aid societies have tried to fill this void.

At first, legal aid societies were created to meet the legal needs of specific types of litigants, for example women and children or recent immigrants from Germany. But, gradually, they expanded to serve a broader range of poverty-stricken communities. By 1963, these societies had spread to a substantial portion of the country. As with most social welfare programs, public or private, demand for the legal aid far outstripped the societies' capabilities to provide it.

As private entities, legal aid societies relied almost exclusively on private funds to operate. Support came from local charities, local bar associations, other private donors, and city and county governments. They operated independently of each other and utilized staff attorneys who worked solely for the societies to provide legal assistance to the poor. Because legal aid societies were heavily dependent on local bar associations and business leaders for support, they tended to pursue a relatively tame and non-controversial practice that focused almost exclusively on meeting the individual needs of their clients in cases that would not upset their sponsors. In civil court, this translated into a focus on family law cases (e.g., divorce, child custody and support) and an avoidance of cases that might challenge prominent local businesses or government officials (e.g., landlord-tenant and credit cases). In the criminal court, legal aid societies tended to represent defendants who faced the most serious charges, creating a sort of legal triage.

In addition to avoiding controversial cases, legal aid societies established very restrictive eligibility criteria to assure the bar that those clients who could pay for legal representation would not be served. Finally, it is important to note that the service legal aid societies provided was not an entitlement or a right. The societies were the sole determiners of who did and who did not receive representation. Legal aid societies continue to operate in many parts of the country, although their relative importance declined with the development of government funding for legal assistance in the 1960s.

The 1960s brought about two revolutionary changes to the legal assistance landscape: the aforementioned *Gideon* decision by the U.S. Supreme Court and President Lyndon Johnson's "War on Poverty." *Gideon* and its progeny created a new constitutional right for indigent criminal defendants, regardless of whether their prosecutors were federal or state. Practically speaking, *Gideon* required both levels of government to develop apparatuses to provide for this representation. Two basic delivery models were established by the state and federal governments, a staff model and a judicare model. In the staff model, the government funds the creation of an organization that hires attorneys, often referred to as public defenders, to provide representation to indigent criminal defendants. These focus solely on criminal defense and the defenders earn an annual salary that is not linked to the number of clients served. In the judicare model (the legal equivalent of the Medicare model of patient care), the government pays private attorneys an hourly fee to represent indigent criminal defendants. All fifty states and the federal government meet their *Gideon* obligation to indigent defendants through the use of combined systems, i.e., both public defenders and judicare.

The revolution in civil legal assistance occurred as a result of President Johnson's (D, 1963-1968) declaration of war on poverty in the 1960s. The war was actually a concerted effort by the federal government to use substantial budget surpluses to target some of the root causes of poverty, e.g., poor access to education, job training, employment, health care, safe and affordable housing, and legal assistance. The key program charged with fighting Johnson's domestic war was the Office of Economic Opportunity (OEO) and in 1967 its director, Sargent Shriver, agreed to fund the Legal Services Program, an experimental program designed to increase indigent access to the justice system.

The Legal Services Program was designed to be a conduit of federal money to local, independent providers of free legal services to the poor. The Program established guidelines for the recipient programs and key among these was the expectation that they would undertake a more activist litigation strategy on behalf of their clients than had the legal aid societies that preceded them. In other words, the legal services programs were designed to not only represent individuals, but to also use legal strategies to attack systemic conditions that hurt the poor. For example, suing an unfair landlord in one class action suit with a hundred litigants was encouraged as opposed to undertaking one hundred individual suits on behalf of affected tenants. The Legal Services Program allowed existing legal aid societies to apply for its funding, but with the condition that they adopt a more activist approach. Almost all recipient programs used the staff model. In addition, the Program quickly determined that its funds could not be used to provide criminal representation because the states already had a constitutional responsibility to provide this assistance. Instead, the Legal Services Program used its funding to increase access to civil legal assistance nationwide. What the Legal Services Program did not do was establish a right to civil legal assistance. With a few special exceptions, for example, a hearing to determine whether a parent will lose custody of her/his children, Americans do not have a constitutional or statutory right to counsel in civil cases.

President Richard Nixon (R, 1969-1973) dismantled the Office of Economic Opportunity. Many of its programs were discontinued, some programs, like Head Start, were spun off to other departments, and, in 1974, the Legal Services Program became an independent, federal corporation, the Legal Services Corporation (LSC). The Legal Services Corporation has been successful at expanding access to civil legal assistance nationwide. Today, it funds 179 programs that operate in all fifty states and the U.S. commonwealths and territories.

It would be an understatement to point out that LSC has had its share of controversy (Kilwein 1999). At first, some private attorneys feared that it might put them out of business. However, LSC and its recipients are now strongly supported by the vast majority of the local bar and the American Bar Association. But, the Legal Services Corporation continues to experience political opposition from conservatives and targets of its programs' litigation. Opposing litigants, like state and local government and businesses that deal with the poor, have opposed LSC for an obvious reason: LSC funded lawyers have been effective against them in court. When legal services attorneys sue a corporate farm for failing to provide migrant workers with adequate and safe drinking water and toilet facilities in the fields or force a school district to open its doors to disabled students, they not only

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achieve the program's mission, they alienate powerful political actors. These actors have used their political influence to limit LSC and its programs.

Political conservatives have criticized LSC for being a remaining vestige of what they perceive to be the failed experiment in liberal social engineering ushered in by efforts like the "War on Poverty." These critics have argued that LSC programs short-circuit the democratic process by allowing liberal interest groups to gain policy victories not through the ballot box but by court decree. Conservatives, in and out of Congress, along with some business and government actors, have attempted to eliminate LSC funding throughout its existence. While they have failed in that effort, they have been successful, during President Reagan's (R, 1981-1989) term and again in 1996, in cutting LSC's funding and severely limiting how local programs can litigate on behalf of the clients.

Recurring Debates in Providing Legal Assistance to the Poor

As the preceding, and very brief, introduction to the provision of legal assistance in the United States indicates, there are a number of recurring policy questions that surround legal assistance, which are often debated in a very charged political atmosphere. These debates have been present in West Virginia or have had an effect on the provision of legal assistance in the Mountain State, and for that reason it is worthwhile to review them briefly. One debate will not be considered in this article: whether a society should use the government's taxing and spending power to fund legal assistance for the poor. While some conservative and libertarian interest groups call for the complete elimination of government-funded legal assistance, this article is based on the normative premise that failing to provide legal assistance to indigent citizens would fundamentally delegitimize the American justice system. Finally, the reader should note that some of these debates are more relevant for criminal and others for civil legal assistance.

Service Style: Impact vs. Individual

One of the most basic questions surrounding the provision of civil legal assistance has centered on how to meet the poor's legal needs.[2] For some this might seem to be a strange debate. After all, the adversarial legal system pits two opposing litigants in a courtroom battle. Representing one of these litigants would seem to be a discrete service delivered to an individual client. In fact, some legal cases are pursued with more in mind than justice for an individual client; they are pursued because they may bring about a broader policy change. These so-called impact cases seek to change the law and/or the behavior of societal actors that consistently adversely affect the poor as a group over time.

The pursuit of impact work and other legal strategies (e.g., testimony before legislative and administrative bodies on behalf of statutory and administrative rule changes) to bring about policy change was one of the hallmarks of the move from legal aid to legal services. In addition to serving the individual needs of clients, legal services attorneys were to search for good test cases and class action suits that might bring about policy change.

An example of legal assistance impact work can be found in the West Virginia legal services class-action case of *Sites v. McKenzie*, 423 F. Supp. 1190, brought to the federal district court in 1976. In this case, legal services attorneys represented the plaintiff, Mr. Thomas Sites, and all others who were similarly situated. At the time of the suit, Mr. Sites was seventy-six years old and had been incarcerated for forty-five years in either the West Virginia Penitentiary or Weston State Hospital, a mental health facility. Mr. Sites was convicted of first degree murder and sentenced to life imprisonment in 1931. During his custody, Mr. Sites had been summarily transferred between prison and Weston on four different occasions. As a result of these transfers, Mr. Sites had been denied parole reviews that were accorded to prisoners who were not being treated in the mental health system. The legal services attorneys argued that Mr. Sites, and others like him, had been denied constitutional guarantees to due process by the State through the summary nature of his transfers and the denial of probation reviews. The court ruled in favor of the state.

Prior to 1982, the local legal services programs varied in terms of how much impact work they did. Some programs were very active in impact litigation. For example, the California Rural Legal Assistance program was very prominent in impact litigation on behalf of migrant farm workers nationwide. Others maintained a mix of impact and individual representation. Still others focused almost exclusively on individual representation because local demand was so heavy and/or the local bar and bench opposed a more activist approach. It should be noted that some supporters of legal services point out that the distinction between impact and individual casework can be an artificial one, in that "good" individual cases can bring about policy change. Proponents of an impact approach counter that more concerted policy change can be brought about by a purposive search for those individual cases with the greatest potential to effect policy change.

While the legal services community debated LSC's merits, opponents in Congress sought to limit LSC and its recipients' ability to engage in impact work. Between 1974 and 1995, Congress prohibited LSC and its recipients from representing minors without their parents' consent, and litigating over desegregation, abortion, political issues, and the Selective Service System. The so-called Republican Revolution of 1994 gave the Republicans control of both the House and the Senate. And, in 1996, that power was used to fundamentally reshape the Legal Services system. The 1996 amendments essentially prevented legal services programs from engaging in any impact work. They were forbidden from attempting to influence policy, broadly defined as any output of federal, state or local government; they could no longer independently lobby legislative bodies; and were prevented from utilizing class action suits. Substantively, legal services attorneys were barred from cases dealing with prison conditions, public housing, or systemic aspects of the welfare system. They could represent an individual client who had an individual dispute with a welfare agency. In short, these changes have created an LSC and local programs that look more like the legal aid system that existed prior to 1967. In response to this reality, some former legal services programs and attorneys decided to break their connection to LSC funding and its attendant restrictions. So-called non-LSC programs began to develop across the country, receiving funding from state governments, universities, state bar associations, private philanthropic groups and attorneys' fees awarded in cases they win. These non-LSC programs focus almost exclusively on the impact work that is now off-limits to LSC programs.

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Delivery Models: Judicare vs. Salaried Model

Another debate that has surrounded legal assistance in the United States is how to secure and pay attorneys for representing the poor. This debate has essentially been associated with the criminal legal assistance system, because the OEO Legal Services Program made a decision very early in its existence to fund almost exclusively salaried programs. As was mentioned previously, the choice essentially comes down to paying private attorneys an hourly fee to represent criminal defendants (the judicare model) or establishing an agency that hires attorneys to work exclusively for that agency providing criminal defense (the salaried model).

All U.S. jurisdictions must use some combination of the two models, if for no other reason than conflicts of interest arise when two or more defendants are charged with involvement in the same criminal offense. In such a case, it becomes difficult, if not impossible, for the same public defender office to handle all defendants, and so some are referred to private attorneys. Most U.S. jurisdictions also recognize that very rural and sparsely populated areas of the country do not have the critical mass of cases necessary to support a full-time public defender's office, and therefore rely on judicare. In some states though, this debate has taken on a livelier tone with proponents of each system touting what they perceive to be its advantages and the other system's disadvantages.

Supporters of judicare and salaried systems both claim to provide higher quality of services. While the debate is ongoing, the empirical evidence leans in favor of the salaried model. For example, the Virginia State Crime Commission found that defendants represented by court-appointed lawyers received significantly longer sentences than those represented by public defenders (Masters 2001). A number of factors help explain this outcome. First, the hourly amount offered by states to court-appointed counsel is often so low that it attracts relatively new and inexperienced attorneys who are eager for work or more seasoned attorneys who can do no better. Second, regardless of the quality of the court-appointed lawyer, there are advantages that come with specialization. Salaried public defenders focus on criminal defense and have senior staff to call upon for assistance in difficult cases. Many private court-appointed lawyers, on the other hand, do both civil and criminal work to make ends meet, and may need significantly more time to do the research needed to represent their criminal clients. It should be noted that there are very dedicated private attorneys who provide excellent representation to their indigent clients through the judicare system. Likewise, many public defender offices are poorly funded and understaffed and cannot provide effective representation because public defenders carry crushing caseloads.

Funding Legal Assistance

Governments have significant latitude in determining just how much they will spend for constitutionally mandated criminal defense representation. A common problem in criminal defense work is that some states set the hourly wage for court-appointed counsel at such a low rate that it reduces the pool of potential court-appointed defenders. Table 1 underscores the disparity in compensation rates paid to private attorneys in criminal defense appointments. Maryland's is one of the lowest in the nation, while Virginia's is the highest. Most states impose a per case maximum payment, but almost all states allow the trial judge to waive this ceiling.

Table 1

Hourly Rates of Compensation for Appointed Counsel, WV and Contiguous States, 2002

State	Office/Court Hourly Rate (Non-Violent/Violent)	Case Maximum
Kentucky	$45/$50	$1,800
Maryland	$30/$50	$1,000
Ohio	$50/$60	$2,500 to $8,000
Pennsylvania	$40/$75	n/a
Virginia	$90/$90	$445 to $1,235
West Virginia	$45/$65	$3,000

Source: The Spangenberg Group, 2002. *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview*, October. Note: Case maximums in Ohio and Virginia vary by the nature of the case.

Texas has provided a number of chilling examples of what can occur when compensation rates are set very low. Appointed Texas defense lawyers have slept and/or were visibly intoxicated in the courtroom during capital murder trials.

Civil legal assistance providers also face the difficult problem of convincing governments and private entities to fund what may be morally valuable, but not required by law. In 2003, the key sources of funding for civil legal assistance are the federal government, through LSC, state governments, IOLTA programs, private foundations, and attorneys' fees. A combination of political factors and a slow economy have reduced funding from all of these sources.

Given its highly charged political history, the Legal Services Corporation's budget has experienced both significant gains and cuts over the past 20 years. Overall, even with an 8.7 percent increase in 2001, its budget has failed to keep up with inflation (see Table 2).

Table 2

Annual LSC Appropriations 1980-2001

Grant Year	Annual LSC Appropriation($)	Percentage Change from Prior Year
1980	$300,000,000	11.1%
1981	321,300,000	7.1%
1982	241,000,000	-25.0%
1983	241,000,000	0.0%
1984	275,000,000	14.1%
1985	305,000,000	10.9%
1986	292,363,000	-4.1%
1987	305,500,000	4.5%
1988	305,500,000	0.0%
1989	308,555,000	1.0%
1990	316,525,000	2.6%
1991	328,182,000	3.7%
1992	350,000,000	6.6%
1993	357,000,000	2.0%
1994	400,000,000	12.0%
1995	400,000,000	0.0%
1996	278,000,000	-30.5%
1997	283,000,000	1.8%
1998	283,000,000	0.0%
1999	300,000,000	6.0%
2000	303,000,000	1.0%
2001	329,300,000	8.7%

Source: Legal Services Corporation, 2002. *Annual LSC Appropriations, 1980-2001*. Washington, D.C.: Legal Services Corporation. Available on-line at: http://www.lsc.gov/pressr/pr_aLSCA.htm.

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To fill in the gap left by cuts to LSC's budget, many state governments have stepped in to provide significant independent funding for civil legal assistance. In addition, private philanthropic organizations continue to be an important source of funding for civil legal assistance.

The two main funding efforts made by states are direct appropriations and establishing court fees and fines that generate revenue for legal services programs. Table 3 shows that there is considerable variation among the states in this funding. Among the states contiguous to West Virginia, Ohio is the leader at $5.9 million and West Virginia is at the bottom with $150,000. New Jersey's $12 million combined commitment to civil legal aid is the highest in the nation. Twenty-two states, including West Virginia, have no court fees or fines dedicated to civil legal aid, twenty states appropriate no state funds, and seven (Alabama, Arkansas, Connecticut, Idaho, Mississippi, South Dakota, and Wyoming) provide no funding assistance to civil legal services.

Table 3

Direct and Indirect State Contributions to Civil Legal Aid, WV and Contiguous States, 2002

State	State Appropriations (in millions)	State Imposed Court Fees and FinesTo Civil (in millions)	Total State Contribution Legal Aid (in millions)
Kentucky	$1.5	$1.2	$2.7
Maryland	$0.5	$2.3	$2.8
Ohio	n/a	$5.9	$5.9
Pennsylvania	$2.6	$2.8	$5.4
Virginia	$1.625	$2.55	$4.175
West Virginia	$0.15	n/a	$0.15

Source: American Bar Association, 2001. *Project to Expand Resources for Legal Services* (PERLS). Washington, D.C.: American Association Bar. Available on-line at: http://www.abanet.org/legalservices/sclaid/sclaid_chart.html.

All fifty states have Interest on Lawyers' Trust Accounts (IOLTA) programs, which, nationwide, provided more than $160 million in 2001 for legal assistance to the poor. IOLTA programs mandate that when lawyers hold money in trust for a client for short periods of time, they deposit that money into a statewide account that collects interest, which is then distributed to legal assistance providers statewide. The IOLTA mechanism currently faces a serious legal challenge before the U.S. Supreme Court. The Washington Legal Foundation, a conservative public interest law firm which has long opposed LSC, has challenged the constitutionality of IOLTA accounts as an unconstitutional taking of private property (*Phillips v. Washington Legal Foundation*). If the Court agrees with the Foundation's constitutional logic, it could result in a substantial cut in available funding.

Attorneys' fees are other important sources of funding. Many federal laws provide judges the opportunity to award lawyers' fees to counsel who successfully sue defendants engaged in discriminatory or negative behavior. The logic behind these types of "private attorney general" laws is that the government cannot pursue every possible wrong in civil court. However, it can provide an economic incentive to private attorneys to bring them to court. The 1996 amendments to the LSC Act disallowed any LSC program from accepting these lawyers' fees.

Providing Legal Assistance to the Poor in West Virginia - Civil Legal Assistance

West Virginia has a proud legal services history, and at one time was home to four excellent LSC-funded programs. West Virginia's Legal Services programs have consistently compared favorably with programs nationwide. The Legal Aid Society of Charleston was founded in 1952 and eventually became an LSC program. Three other LSC programs were created in the 1970s during the high point of Legal Services funding: North Central Legal Aid based in Morgantown, the Appalachian Research and Defense Fund based in Charleston, and the West Virginia Legal Services Plan, which provided service to the northern part of the state.

On January 1, 2002 LAS of Charleston, the Appalachian Research and Defense Fund, and the Legal Services Plan were merged to create one statewide LSC grantee, Legal Aid of West Virginia (LAWV). It was designed by the former agencies' board members to be a truly statewide organization, although it is based in Charleston. It maintains eleven offices throughout the state (Beckley, Charleston, Clarksburg, Huntington, Lewisburg, Logan, Martinsburg, Parkersburg, Princeton, Westover, and Wheeling). As of December 2002, it had a staff of 103, including thirty-nine attorneys, twenty-two paralegals, eight behavioral health advocates, twelve long-term care regional ombudsmen, nineteen clerical and support staff and three statewide managers.

In 2002, LAWV's total budget was $6.226 million. It received funding from LSC (49%), IOLTA (7%), TANF (15%), Violence Against Women Act (federal) (9%), Ombudsman Program (7%), Behavioral Health Advocates (6%), fundraising (2.4%), and United Way and other local sources (7%). The program faces significant funding cuts in 2003. First, LSC, as mandated by law, cut LAWV's funding by over $411,000 because according to the 2000 Census, West Virginia's poverty population fell since the last census. Second, due to the poor economic environment, the IOLTA fund will yield roughly $300,000 less for civil legal aid in 2003.

Legal Aid of West Virginia's program priorities are fairly standard for most LSC-funded programs. First, it has an important partnership with the West Virginia Coalition Against Domestic Violence and its thirteen regional domestic violence programs to provide legal assistance to victims of domestic violence. These efforts are partially funded with federal money included in the *Violence Against Women Act*, as well as some state funding.

Legal Aid of West Virginia has worked with the thirteen regional domestic violence programs to provide legal assistance to victims who need it, either by a LAWV attorney or private counsel. In addition, LAWV provides legal training to the regional domestic violence programs' staff to enable them to assist their clients with their legal problems. These problems can include the need for a protective order, access to new housing, access to benefits, divorce and custody assistance, and other legal complications that surround domestic violence.

Since 1991, LAWV and its predecessors have maintained the Long-term Care Regional Ombudsman Program. The Ombudsman Program's twelve staff members spend most of their time investigating complaints made by residents of the state's long-term care facilities. Specifically, the program investigated cases of patient dumping, physical and financial abuse of patients, and neglect. In 2001, the staff closed 1,320 complaints and made 854 unannounced monitoring

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visits. The Behavioral Health Advocacy Program provides similar assistance to mental health patients who are in the state's two mental health facilities (Bateman and Sharpe Hospitals) and in the community.

In addition to these targeted at-risk groups, LAWV provides assistance to poor West Virginians. According to LSC regulations, LAWV clients' income must be at or below 125% of the federal poverty guidelines. For example, a family of three cannot make more than $18,288 annually to qualify for LAWV services. Legal Aid of West Virginia represents clients who are facing housing problems such as foreclosure, eviction, or substandard living conditions. Legal Aid of West Virginia represents people who have been denied social security, Medicare, Medicaid, unemployment compensation, disability assistance, and other government benefits. In addition, LAWV deals with their clients' access to education and vocational training. Finally, LAWV represents individuals involved in consumer debt conflicts. In 2001, LAWV assisted over 10,000 clients. In addition to this work, LAWV operated the Pro Bono Project in collaboration with the West Virginia Bar Association. Statewide, over 1,200 private attorneys have signed up to provide at least ten hours per year in pro bono assistance. In 2001, the Project served 2,425 clients.

Mountain State Justice was formed in 1996 by former LSC attorneys in West Virginia in the wake of the 1996 LSC Amendments discussed previously. It was started with seed money from the West Virginia Bar Foundation's IOLTA fund and other private sources. Today, it supplements these sources with lawyers' fees awards. Mountain State Justice is a non-LSC program designed to pursue impact litigation. Recently, the program has focused a significant amount of its attention on consumer debt issues, environmental degradation, including valley-fills, and mine safety.

West Virginia Senior Legal Aid, Inc. is the former North Central Legal Aid Society. Today, with federal funding, it provides telephone advice to, and maintains a website for, senior West Virginians who have legal concerns, their caretakers, and their advocates in local senior centers. West Virginia Senior Legal Aid does not provide legal representation.

Clearly, the West Virginia Bar Association has figured prominently in the development and funding of civil legal assistance in the Mountain State. During its existence, the Bar Association's IOLTA program has distributed over $8 million to West Virginia legal services programs. It has distributed another $1.6 million to Senior Legal Aid, Mountain State Justice, the Court Appointed Special Advocate program, and the WVU Appalachian Center for Law. The West Virginia Bar Association is partnered with Legal Aid of West Virginia to maintain the Pro Bono Project. The Bar Association also provides all West Virginians, regardless of their financial status, access to free legal advice from volunteer lawyers every Tuesday evening from 6 p.m. to 8 p.m. at (800) 642-3617.

Criminal Legal Assistance

Criminal defense assistance is provided in West Virginia through a mixed system, judicare and salaried public defenders, which vary among the state's thirty-one judicial districts. The statewide provision of both types of indigent defense is funded by a state governmental agency, West Virginia Public Defender Services.

Until 1989, indigent criminal defense was provided by a very meager judicare system, which paid a private attorney $20 per hour for out-of-court work, and $25 per hour in court, with a total per case limit of $1,000 (except for life imprisonment cases). In addition, circuit judges had the power to compel private attorneys to provide representation at these rates. In 1989, the West Virginia Supreme Court of Appeals fundamentally changed this system with its *Jewell v. Maynard* (181 W.Va. 571) decision. The Court decided that it was unconstitutional to require a private attorney to work more than ten percent of his or her work year in forced, court-appointed cases. In addition, the Court raised the hourly rates to $45 per hour for out-of-court and $65 per hour for in-court work and ordered the legislature to either raise the per-case limit to $3,000 or eliminate it altogether. Following this decision, state support for criminal defense assistance to the poor moved from near the bottom of compensation rates to the middle of the pack.

The West Virginia Legislature created Public Defender Services in 1990 and mandated that, in addition to funding judicare representation, it negotiate with local judges and lawyers to establish local public defender corporations with salaried staffs throughout the state. Public Defender Services acts as a conduit between the state and local providers of criminal legal aid. While Public Defenders Services tries to foster local discussions on how best to provide criminal legal aid, ultimately those decisions are left to the circuit bench, who consult with the local bar. In practice, the judges of the circuits have two choices available to them: devise a system to find and pay private attorneys to represent indigent clients or establish an independent public defender corporation with salaried staff for their circuit. It must be stressed that the legislature placed significant power in the circuit bench. The local public defender corporations are independent of Public Defender Services and the other local corporations across the state, with their own local boards of directors, made up of representatives of the local bar, bench and general public. Public Defender Services has imposed statewide client income eligibility guidelines; for example, a defendant with a family of three must make no more than $18,480 annually to qualify for assistance. The judicare systems are also very decentralized. Circuit judges are responsible for determining who qualifies for assigned counsel, making assignments, and determining what the assigned counsel is owed for his or her work. Judges are also empowered to waive the $3,000 per case cap, which many routinely do.

As of December 2002, there were seventeen local public defender corporations operating in eighteen of the state's thirty-one judicial circuits (the 1st - Brooke, Hancock, and Ohio, the 2nd - Marshall, Tyler, and Wetzel, the 5th - Calhoun, Jackson, Roane, and Mason, the 6th/24th - Cabell and Wayne, the 7th - Logan, the 8th - McDowell, the 9th - Mercer, the 10th - Raleigh, the 11th - Greenbrier, the 12th - Fayette, the 13th - Kanawha, the 15th - Harrison, the 18th - Preston, the 23rd - Berkeley, Jefferson, and Morgan, the 25th - Boone and Lincoln, the 28th - Nicholas, and the 30th - Mingo). Public Defender Services would like to see local corporations created in seven additional circuits (the 4th - Wood and Wirt, 16th - Marion, 17th - Monongalia, 20th - Randolph, 22nd - Pendleton, Hardy, and Hampshire, 26th - Lewis and Upshur, and the 29th - Putnam). Public Defender Services has no desire to see local defender corporations

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established in the remaining six judicial circuits due to their low populations.

The creation of the proposed additional public defender corporations has been prevented by local bar politics, i.e., local attorneys have resisted yielding appointment work to a local public defender corporation. Proponents of these expansions argue that they will bring less expensive, more efficient and effective public defense to the state. In addition to the potential quality concerns raised earlier, salaried public defenders tend to be more cost-effective than their private counterparts. For example, Public Defender Services reported that for the first nine months of FY2001/2002 it reimbursed private lawyers $13.99 million for representation in 21,812 cases ($641.28 per case represented). During the same time period, it gave $11.34 million to public defender corporations to provide representation in 28,339 cases ($400.12 per case represented).

West Virginia Public Defender Services faced a significant funding shortfall in 2002, over $3 million and faces a similar shortfall in 2003. These shortfalls were the result of stabilizing caseloads and increasing case costs. The legislature had anticipated that crime rates would continue to decline as they had in 1999-2000 and cut Public Defender Services budget by ten percent. For now, Public Defender Services is dealing with this fiscal crisis by delaying payments to individual lawyers rather than to the local corporations, to prevent these programs from being forced to lay off staff counsel. Clearly, though, this is a temporary fix to a critical problem. It is unfair to deny lawyers payment for services rendered and continued shortfalls will send a message to the private bar that the state is an untrustworthy debtor and reduce the number and quality of lawyers willing to do court-appointed work.

The Future of Legal Assistance to the Poor in West Virginia

West Virginians should be proud of the yeoman work done by dedicated lawyers across the state to make our justice system fairer. West Virginia has an excellent legal aid infrastructure made up of quality programs that compare favorably to similar programs nationwide. The continuing and pressing problem facing providers of legal assistance to the poor in the Mountain State is limited funding. Unfortunately, as one scans the legal assistance horizon in West Virginia and the country as a whole, dark clouds loom. The federal government is again facing the possibility of dramatic budget deficits, as it cuts taxes, increases defense and security spending, and deals with an economic downturn. The federal surpluses of several years ago have vanished. It is therefore very reasonable to expect some cuts in federal funding for the Legal Services Corporation and other federal programs like TANF and the *Violence Against Women Act* that provide funding for legal services to the poor. Finally, the legal services community waits with bated breath to see what the U.S. Supreme Court will decide in the IOLTA case (*Phillips v. Washington Legal Foundation*).

The fiscal environment for legal assistance is no more hospitable in West Virginia. The State is facing a significant deficit and has asked state agencies to reduce their budgets by up to ten percent. West Virginia Public Defender Services was exempted from that cut, but given the constitutional mandate, the legislature will need to increase its funding just to meet existing shortfalls and future costs. It is possible to realize cost savings in the program by expanding the number of public defender offices, but the legislature would have to break the local impasses that have blocked this move thus far. The state could also save costs by cutting the hourly fee paid to private counsel. However, that action would make it more difficult to ensure that the indigent have equal access to quality representation.

As the civil legal assistance community looks to make up cuts that have already occurred at the national level and those that may yet come, the picture is even starker. At present, West Virginia is at the bottom of contributors to civil legal assistance. Moreover, given the state's fiscal difficulties, it is hard to imagine the legislature coming up with additional funding for civil legal aid in the near future. Recognizing this, some allies of legal services have proposed a non-tax, partial solution to the problem: a surcharge added to civil court filing fees that would go to civil legal assistance providers. The plan has been proposed in past legislative sessions and failed. In addition, even if the U.S. Supreme Court upholds IOLTA programs, the reality is that dropping interest rates have cut into that pool of funding. There is one bright spot for West Virginia's legal services community. In the wake of the most recent LSC cuts, two Charleston attorneys have spearheaded a campaign to raise $1.2 million in donations to make up some of the lost funding.

In the end, though, West Virginia faces an impending crisis in indigent legal assistance. Cuts at the national level will force cash-strapped states like West Virginia to decide whether they can continue to strive to keep one of society's most basic bargains: fair and equal access to the courts. The choices are difficult. On one side the state faces the need to raise taxes and/or fees to provide additional revenue for these services, tantamount to political suicide in today's political environment. On the other, West Virginia faces the prospect of a judicial system where success is determined by a litigant's net worth, rather than justice. The first choice is difficult and requires political courage. The second may be politically expedient, but is morally indefensible.

Notes

[1]The Court incrementally added to the Sixth Amendment's right to counsel over a twenty-year period. Today criminal defendants have a right to government-funded counsel in every important stage of the criminal trial process, including a right to counsel before being formally charged through to some appeals of trial court verdicts.

[2]This debate has been less important in the criminal defense sphere of legal assistance, because criminal defense, by definition, centers around defending an individual who is charged by the state with committing a crime. That is not to say that there is no impact criminal defense work undertaken in the United States. There are privately funded public interest law groups that do provide appellate representation to death-row inmates with the hope of not only saving the lives of their clients, but also limiting or striking down the use of capital punishment more generally.

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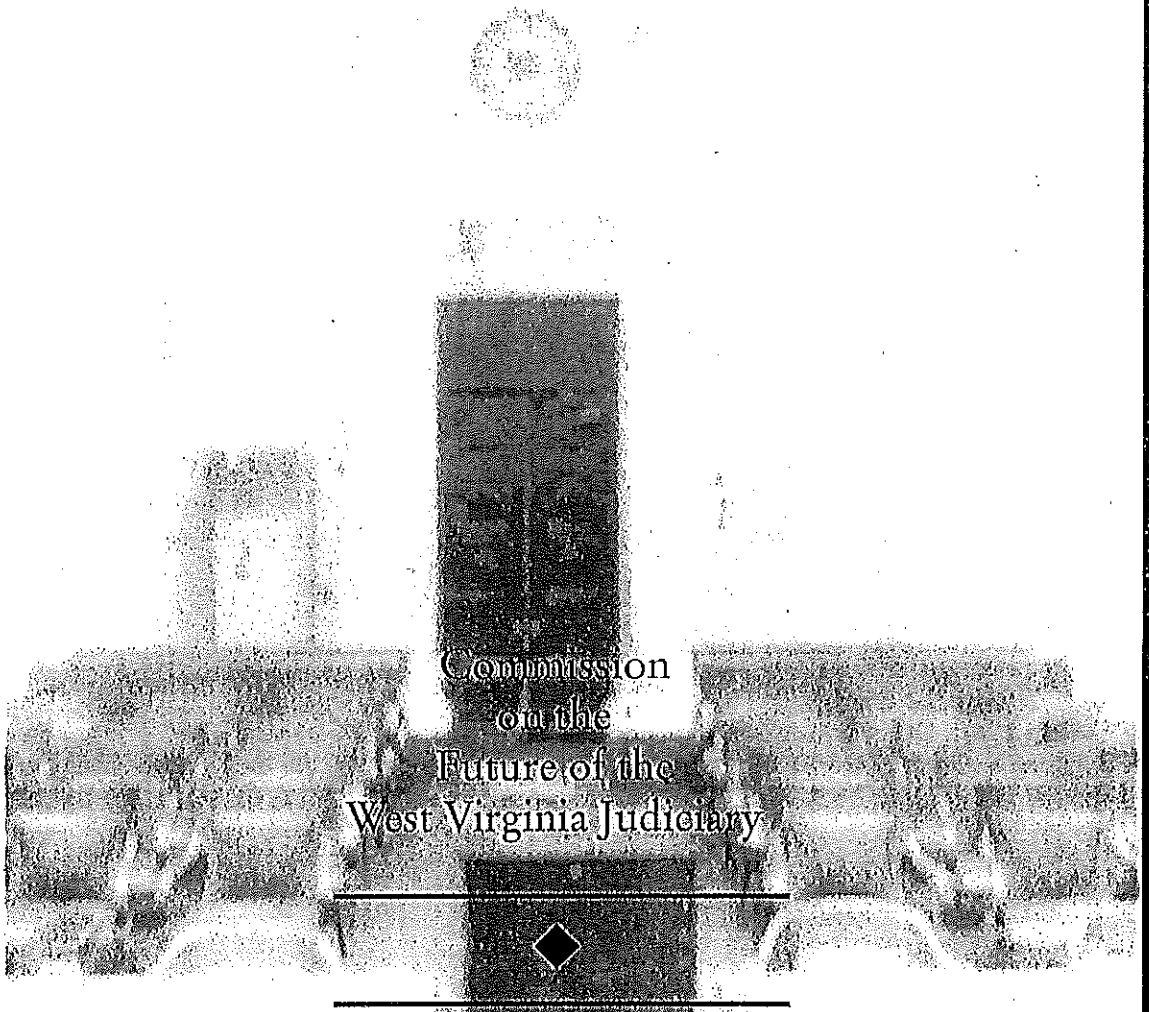
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The Final Report



Commission
on the
Future of the
West Virginia Judiciary

December 1, 1998

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" The courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay."

Constitution of West Virginia
Article 3, Section 17

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FOREWORD

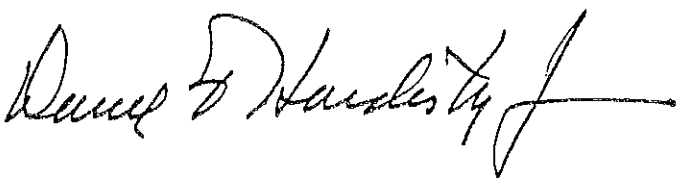
The thirty-eight members of the Commission on the Future of the West Virginia Judicial System represent a broad spectrum of West Virginians. Some of us are attorneys, business leaders, or labor leaders. Others are leaders from the executive, legislative, or judicial branches of State government. Some head civic organizations and educational institutions. We vary by age, sex, race, educational background, politics, the area of the State we call home, and in many other ways.

Despite our differences, we are united by our concern for the citizens of West Virginia and our belief that West Virginia's court system must change to meet the demands of our changing society and to better serve the citizens of this great State.

When the Supreme Court of Appeals appointed us to serve on this landmark Commission in August 1997, we dedicated ourselves to conducting a comprehensive review of the state of West Virginia's judicial system while keeping in mind the far-reaching implications of our task. We engaged in extensive information gathering. We held nine public hearings across West Virginia; surveyed all judicial officers and court personnel; distributed exit questionnaires to petit jurors; surveyed a random sample of State Bar members; conducted a statewide public opinion poll; and accepted submissions through the mail and E-mail. We thank the many West Virginians whose thoughtful contributions broadened and enhanced the recommendations in this report.

The Commission reached consensus on the vast majority of the recommendations found in this report; the only written dissent concerns the selection of judges. Some of these recommendations are directed to the Supreme Court of Appeals, others will require legislative action, and still others will require a coordinated effort between all three branches of government.

It is our hope that this report will be much more than a scholarly overview of West Virginia's court system. The implementation of the recommendations contained within this report will help create a system of justice that is accessible to all, timely in its decision-making, fair and equal in its treatment of those who use it, and accountable to the State's citizens.



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APPENDIX A

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

WHEREAS, the West Virginia Supreme Court of Appeals is committed to a court system which is fair, accessible, efficient, and accountable; and

WHEREAS, it is the responsibility of the Court as a public institution to ensure that it effectively meets the needs of the citizens which it serves; and

WHEREAS, the structure and procedures of the West Virginia Judicial System have not been subject to a thorough, critical examination since the "Judicial Reorganization Amendment" of 1974; and

WHEREAS, transformations in the social and cultural landscape in the ensuing twenty years have dramatically changed the nature of the problems which the court system is being asked to resolve;

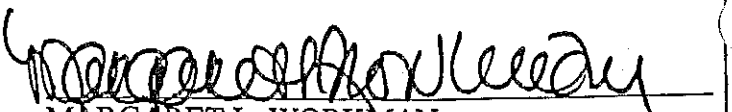
NOW, THEREFORE, IT IS ORDERED that the Chief Justice appoint a Commission on the Future of the West Virginia Judicial System and direct that it:

(1) Examine the trends, both internal and external to the court system, which are affecting the role of the court as an institution and the delivery of its services;
(2) Assess the performance of the court system in light of established standards of fairness, accessibility, timeliness, and accountability;
(3) Identify the strengths upon which to build as well as the obstacles to overcome to enable the court system to improve its performance;
(4) Make recommendations as to structural, organizational, and procedural changes that will ensure a just, effective, responsive, and efficient court system into the next century; and
(5) Develop a general plan to implement the recommendations; and

IT IS FURTHER ORDERED that in this endeavor the Commission consider the experiences and perspectives not only of the judicial officers and others who work within the system, but also those individuals, organizations, and agencies that are served by the court system; and

IT IS FURTHER ORDERED that the Commission submit its deliberations and recommendations to the Supreme Court of Appeals in the form of a final report by December 1, 1998.

ENTER: OCTOBER 2, 1997



MARGARET L. WORKMAN
CHIEF JUSTICE

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ISSUE 22: RESPONSIBILITY FOR INDIGENT DEFENSE REPRESENTATION

Under the Sixth Amendment to the United States Constitution and under Article 3, Section 14 of the West Virginia Constitution, an indigent person must be provided, without cost, an attorney to represent him or her in the defense of a criminal, juvenile or other case involving significant jeopardy to liberty or due process interests of the indigent individual. In West Virginia, the responsibility for indigent representation is carried out by two methods.

First, the appointed counsel system, utilizing private attorneys, operates in all 55 counties of the State. Approximately 800 appointed counsel and service providers are reimbursed annually by the West Virginia Office of Public Defender Services (PDS) for fees and expenses incurred in the representation of indigents. The PDS office now pays in excess of 28,000 bills per year.

The second method for providing indigent representation is through the Public Defender Corporation system, that is overseen by the PDS. The Public Defender system operates 18 offices in 15 circuits (involving 23 counties); each office operates as a non-profit legal corporation with its own board of directors. The system provides 102 full-time lawyers and 59 support personnel devoted exclusively to indigent defense.

The total number of cases handled by private appointed counsel and public defenders continues to increase, growing approximately 16% per year. This increase stems from a variety of causes including: significant increases in drug-related cases; increased filings involving domestic violence and child abuse and neglect; and the substantial increase in the number of State Police (over 200 new officers) that has resulted in more arrests.

In each of the past eight years, the Public Defender offices handled cases at the average rate of less than $200 per case.

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Private appointed counsel costs have risen yearly over the same period, currently averaging $545 per case. However, attorneys fees, whether charged by a public defender or appointed counsel, average $250 or less in almost half (48%) of all cases. Because caseloads have continued to increase dramatically over the past several years, budget shortages of the funds necessary for the payment for appointed counsel are a recurrent problem.

To ensure adequate and cost-effective indigent defense representation, the Commission makes the following recommendations:

22.1 The **Legislature** should consider alternate methods of compensation for appointed private attorneys, such as flat-rate contracts or part-time employment by Public Defender offices.

22.2 The **Legislature** should establish additional Public Defender offices in the counties most likely to achieve the greatest cost savings and to avoid negative economic impact on the local private bar.

22.3 Because conflicts of interest arise in many criminal cases, so that both the Public Defender office and private counsel must be appointed, the **Public Defender Corporations** in conjunction with **Public Defender Services** should establish a "separate-office method" to keep those cases in the Public Defender office.

22.4 The **Legislature** should establish a pilot project to study the accuracy of self-reported financial information on "client eligibility affidavits" used to determine whether or not an individual is indigent. The results of that program would indicate whether a statewide audit program would result in significant savings because fewer persons would qualify for free attorney representation.

22.5 The **Legislature** should review whether the current list of offenses where indigents must be provided counsel without cost involve some proceedings where appointed counsel is not constitutionally required. If such proceedings are identified, consideration should be given to eliminating them from the statutory list of cases where appointed counsel is required. Child abuse and neglect and mental hygiene proceedings should not be considered in the Legislature's review.

22.6 Under its rule-making authority, the **Supreme Court** should require that circuit and magistrate courts schedule hearings and other court appearances in criminal matters so as to reduce "waiting in court" time that increases costs in appointed counsel cases.

22.7 The **Legislature** should adjust penalties with regard to a number of minor offenses so as to avoid possible jail time and, therefore, the right to counsel.

22.8 The **Supreme Court** should require that all judges assess costs against all defendants whether or not the defendants are represented by a Public Defender.

Comments on the Commission's Deliberations: In view of the heightened

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vulnerability and needs of participants in child abuse and neglect and mental health proceedings, the Commission added the last sentence to recommendation 22.5 which removes child abuse and neglect and mental hygiene proceedings from the list of cases the Legislature should consider in its review.

Upon further review of these recommendations, the Commission added recommendation 22.8.

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WV PUBLIC DEFENDER SERVICES
Estimated Savings from Public Defender Offices

Savings calculated by taking the average cost of total private counsel billings (including supplemental and direct expenses), subtracting the average cost of Public Defender cases, including carry-over from previous years, then multiplying by the number of Public Defender cases.

The above method employs the only comparable data available throughout the period shown. Since FY 2000 more sophisticated measurements are available. This method overstates Public Defender savings in varying degrees from year to year due to counting cases not completed in the year in which they were opened in both that year and in the succeeding year. Private counsel billings are understated in that they include duplicates for a given case in the form of supplemental and direct expense billings.

This method is correct from a financial reporting standpoint in that Public Defender cases were funded in both fiscal years.

Fiscal Year	Average Costs	Savings
89/90	A/C $186.03 P/D $137.70 $48.33	X 2,726 = $131,747
90/91	A/C -$307.79 P/D -$202.49 $105.30	X 5,400 = $568,620.
91/92	A/C -$393.07 P/D -$202.59 $190.48	X 12,000* = $2,285,760
92/93	A/C -$396.25 P/D -$190.44 $205.81	X 13,442 = $2,766,498
93/94	A/C -$427.97 P/D -$188.34 $239.63	X 16,350 = $3,917,950
94/95	A/C -$492.95 P/D -$200.89 $292.06	X 23,948 = $6,994,252
95/96	A/C -$526.57 P/D -$197.28 $329.29	X 29,832 = $9,823,379
96/97	A/C -$543.93 P/D -$197.95 $345.98	X 38,299 = $13,250,688
97/98	A/C -$537.81 P/D $252.71 $285.10	X 34,677 = $9,886,413
98/99	A/C $526.92 P/D $258.78 $268.14	X 33,903 = $9,090,750
99/00	A/C-$562.95 P/D-$255.97 $306.98	X 36,461= $11,192,797

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00/01	A/C-$601.74 P/D-$339.43 $262.31	X	34,892=	$9,152,520
01/02	A/C-$641.28 P/D-$400.12 $241.16	X	28,339=	$6,834,233
02/03	A/C $623.05 P/D $428.31 $194.74	X	29,106=	$5,668,102
03/04	A/C $628.76 P/D $421.40 $207.36	X	30,312=	$6,285,496
04/05	A/C $616.94 P/D $387.91 $229.03	X	32,929=	$7,541,728
05/06	A/C $636.61 P/D $297.85 $338.76	X	42,789 =	$14,495,201
06/07	A/C $687.20 P/D $330.57 $356.63	X	44,669=	$15,930,305
07/08	A/C $751.98 P/D $299.23 $452.75	X	45,640=	$20,663,510

1989-2008 Total Savings: $156,479,949

* 1991-92 case load estimated

Public Defender Services
15 January 2009

Note: Using only closed cases could result in a decrease in the above figure by as much as 25% (maximum; less in some years). This method would underestimate Public Defender savings. However, even reducing the above by 25% results in a savings of $117,359,926.

Moreover, these numbers do not reflect any adjustment for inflation. Such an adjustment would more than offset any reduction to allow for use of work in progress. The cumulative effect of inflation since 1990 (using the U.S. Bureau of Labor consumer price index) is 63.2%. Each year shown above should be increased by an average of 3.5%, more in some years, less in others. For simplicity's sake, this calculation is not shown.

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TEN PRINCIPLES

OF A PUBLIC DEFENSE DELIVERY SYSTEM

February 2002

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.

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INTRODUCTION

The *ABA Ten Principles of a Public Defense Delivery System* were sponsored by the ABA Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed. 1992), which can be viewed on-line (black letter only) and purchased (black letter with commentary) by accessing the ABA Criminal Justice Section homepage at http://www.abanet.org/crimjust/home.html.

ACKNOWLEDGMENTS

The Standing Committee on Legal Aid and Indigent Defendants is grateful to everyone assisting in the development of the *ABA Ten Principles of a Public Defense Delivery System*. Foremost, the Standing Committee acknowledges former member James R. Neuhard, Director of the Michigan State Appellate Defender Office, who was the first to recognize the need for clear and concise guidance on how to design an effective system for providing public defense services. In 2000, Mr. Neuhard and Scott Wallace, Director of Defender Legal Services for the National Legal Aid and Defender Association, jointly produced a paper entitled "The Ten Commandments of Public Defense Delivery Systems," which was later included in the Introduction to Volume I of the U.S. Department of Justice's Compendium of Standards for Indigent Defense Systems. The *ABA Ten Principles of a Public Defense Delivery System* are based on this work of Mr. Neuhard and Mr. Wallace.

Special thanks go to the members of the Standing Committee and its Indigent Defense Advisory Group who reviewed drafts and provided comment. Further, the Standing Committee is grateful to the ABA entities that provided invaluable support for these Principles by co-sponsoring them in the House of Delegates, including: Criminal Justice Section, Government and Public Sector Lawyers Division, Steering Committee on the Unmet Legal Needs of Children, Commission on Racial and Ethnic Diversity in the Profession, Standing Committee on Pro Bono and Public Services. We would also like to thank the ABA Commission on Homelessness and Poverty and the ABA Juvenile Justice Center for their support.

L. Jonathan Ross
Chair, Standing Committee on
Legal Aid and Indigent Defendants

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ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Black Letter

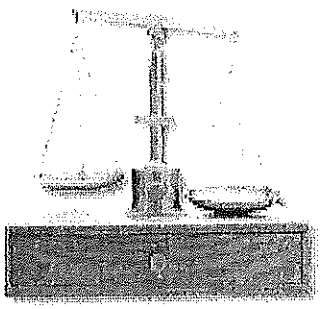
The public defense function, including the selection, funding, and payment of defense counsel, is independent.

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Defense counsel's workload is controlled to permit the rendering of quality representation.



Defense counsel's ability, training, and experience match the complexity of the case.

The same attorney continuously represents the client until completion of the case.

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

Defense counsel is provided with and required to attend continuing legal education.

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

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ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

With Commentary

The public defense function, including the selection, funding, and payment of defense counsel,[1] is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.[2] To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.[3] Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.[4] The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.[5]

Where the caseload is sufficiently high,[6] the public defense delivery system consists of both a defender office[7] and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.[8] The appointment process should never be *ad hoc*,[9] but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.[10] Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.[11]

Clients are screened for eligibility,[12] and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request,[13] and usually within 24 hours thereafter.[14]

Defense counsel is provided sufficient time and a confidential space within which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.[15] Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.[16] To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.[17]

Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.[18] National caseload standards should in no event be exceeded,[19] but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.[20]

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7 Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.[21]

8 The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.[22] The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

9 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.[23] Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.[24] Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases,[25] and separately fund expert, investigative, and other litigation support services.[26] No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.[27] This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

10 Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.[28]

11 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel,or contract defenders should be supervised and periodically evaluated for competence and efficiency.[29]

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NOTES

[1] "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

[2] National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D).

[3] NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

[2] Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

[5] ABA, *supra* note 2, Standard 5-4.1

[6] "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

[7] NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

[8] ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

[9] NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

[10] ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

[11] NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

[12] For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

[13] NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

[14] NSC, *supra* note 2, Guideline 1.3.

[15] American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

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[16] NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

[17] ABA Defense Function, *supra* note 15, Standard 4-3.1.

[18] NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

[19] Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). *See also* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter "Death Penalty"].

[20] ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

[21] Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

[22] NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

[23] NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). *See* NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

[24] ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

[25] NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

[26] ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

[27] ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

[28] NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

[29] NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

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WEST VIRGINIA PUBLIC DEFENDER SERVICES

REPORT OF THE INDIGENT DEFENSE TASK FORCE



JOHN A. ROGERS
EXECUTIVE DIRECTOR

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Recommendations of the West Virginia Indigent Defense Task Force

Introduction

Because of legislative concerns about the rising cost of providing legal defense services to West Virginia's indigent citizens, the West Virginia Indigent Defense Task Force was formed. The Executive Director of the West Virginia Public Defender Services requested the Task Force to evaluate West Virginia's indigent defense system and make recommendations for improving the quality and cost-effectiveness of those services it provides. The task force was composed of citizen volunteers from all areas and interests, including private attorneys, public defenders, prosecutors, and representatives of the legislative, executive and judicial branches of state government. The Task Force had the resources of the Public Defender Services Director and his staff, and The Spangenberg Group, a private consultant nationally recognized as an expert in this subject, to assist with the gathering of information, compilation of statistics, and analysis of public defender systems within the state and throughout the country. The primary resources used by the Task Force in its work, in addition to its valuable knowledge of the members, were the results of a questionnaire to the state's public and private defenders, prosecutors, and judges and the statistical information and analysis of the Spangenberg Group. In addition to the significant amount of time spent by individual members reviewing literature, studies, statistics, and other information, the Task Force held meetings on October 7, November 9, December 16, 1999, and January 14, 2000, which resulted in the consensus approval of the following recommendations. These recommendations reflect the Task Force's conclusion that West Virginia's Public Defender System, when compared to other systems in other states, is a good system which provides quality representation to the indigent at a reasonable cost to the taxpayers but which, through these recommendations, will be a significantly better system.

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Recommendation #1: **The Legislature Should Amend §29-21-13a to require That Court-Appointed Counsel Claims be Submitted Within Six Months after the Date of Service.**

The current policy of allowing court-appointed attorneys up to four years after a disposition of the case to submit payment vouchers is too lenient and prevents PDS from being able to present policymakers with timely and accurate indigent defense caseload and expenditure data. As it now stands, the Executive and Legislative branches are left to establish policies based upon indigent defense data that is over two and a half years old.

Many of the data problems highlighted in the Spangenberg report could be resolved if the law required court-appointed attorneys to submit vouchers within a reasonable time. The longer an attorney waits after the completion of the case to submit the voucher, the greater the probability for incomplete or inaccurate record keeping, the greater probability of payment and processing problems, and the greater the adverse impact on budgeting and effective cost monitoring and control. As such, we strongly urge the Legislature to reduce the window for submitting vouchers from four years to six months.

Recommendation #2: **The Legislature Should Establish a West Virginia Indigent Defense Advisory Commission**

The Task Force found the collaborative process involved in bringing together a broad based coalition to address indigent defense problems to be an effective way to improve the quality and cost-effectiveness of the indigent defense system. The Task Force believes that the indigent defense system can be substantially improved by continuing this process through the creation of a Public Defender Services Advisory Commission to aid the Executive Director in his mission. The Commission should be broad based, and include judges, legislators, prosecutors, court-appointed attorneys, public defenders and law enforcement representatives.

The Advisory Commission would provide advice, support, and guidance to the Executive Director of PDS on the following areas of concern: securing adequate financing; overseeing budget preparations; developing procedures to monitor the caseloads of public defenders; developing and

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instituting performance measures to permit qualitative reviews of each circuit's indigent defense system; establishing indigent defense standards and guidelines; evaluating the need for quality indigent defense services.

The Commission members should be chosen with regard to their experience and expertise in managing law-related organizations, and/or their expertise in fiscal and personnel management generally. Commission members should receive no compensation for servicing, except for reimbursable expenses for Commission meetings, to reduce the fiscal impact to the state. The Commission should meet upon the call of the Executive Director of PDS or the Commission chairman, but not less than twice a year.

The Commission appointments should be made from as broad a geographic area as possible. Some would serve by virtue of their position and others would serve a four-year term and could be reappointed to one additional four-year term. Perhaps most importantly, we believe the Commission members should be chosen to reflect a collaborative approach to criminal justice problem-solving, with a demonstrated commitment to the delivery of legal services to the indigent. As such, the Task Force proposes the following eleven-member Commission:

- The Administrator of the West Virginia Supreme Court of Appeals;
- Two retired or former circuit judges to be appointed by the President of the West Virginia Judicial Association and one to be appointed by the Chief Justice of the West Virginia Supreme Court of Appeals.
- One lawyer, experienced in providing legal services to the indigent, appointed by the
  President of the West Virginia State Bar;
- One current Chief Public Defender, appointed by the Executive Director of Public Defender Services;
- One lawyer currently engaged in court appointed criminal defense work, appointed
  by the Governor;
- The Director of the Prosecutor's Institute;
- The State Police Superintendent;
- One person experienced in providing education and training in the field of criminal
  justice, to be appointed by the Governor;
- Two non-lawyers who have a demonstrated commitment to the delivery of legal services to the indigent, one to be appointed by the President of the Senate, and one to be appoint by the Speaker of the House.

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The Task Force believes that it has gained substantial insight and provided valuable input with respect to the PDS over its short tenure and strongly believes that continued and regular oversight by a similarly constituted group would be of significant benefit in ensuring the overall goal of providing high quality, cost-effective legal services to indigent defendants in West Virginia. Also, if the other recommendations of the Task Force are implemented, on result should be the availability of much more reliable data and information with which to evaluate the PDS and make well-informed judgements about other possible changes that might increase its effectiveness and efficiency.

Recommendation #3: **The Legislature Should Increase the Amount of Money Allocated to PDS for the Specific Purpose of Hiring qualified MIS Staff & Increasing Salaries of PDS staff to a Competitive Level.**

Any organization that is vested with overseeing a $27 million dollar operation should be given the tools to ensure that the citizens of West Virginia are getting both qualitative and cost-efficient services for their money. For an operation that is almost entirely dependent on a computerized voucher processing and case-tracking system, we find the lack of Management Information System at PDS to be unwise and imprudent. A Management Information staff would assure timely creation, implementation, and continuation of essential computer support and the Management Information Specialist could also make site visits to assist Public Defender Corporations with their computers and case-tracking problems to reduce reliance on outside consultants. Additionally, PDS administration salaries are well below similar positions in comparable states. If PDS is expected to retain its knowledgeable staff, the salaries must be made competitive with other comparable state jobs. We recommend the Governor authorize the Executive Director to develop and submit a budget proposal which creates and funds an adequate Management Information System and appropriate salary support and we recommend the Legislature approve these funds.

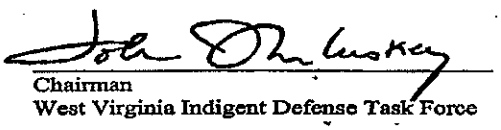
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Recommendation #4: **The Legislature Should be Requested to Adequately Fund the Auditing Division, the Resource Center, and Appellate Division of the PDS as Required by Statute.**

As highlighted in the Spangenberg Report, PDS's actual expenditures for the central office in FY 1989 were $383,643.14. Over ten years time, the central administration expenditure has actually decreased 2.52%, to $373,964.99. During the period from FY 1994- FY 1998, voucher processing increased 19.84% (from 28,741 to 34,442) and public defender caseload rose 124.64% (from 10,061 to 22,602). The PDS cannot fulfill its mission under these restrictions.

Public Defender Services provides funds to attorneys and other service providers who defend indigent defendants accused of crimes and other wrongdoings in order to ensure that constitutionally required due process protections are afforded to all citizens regardless of wealth. To accomplish this mission, West Virginia Code §29-21-6 requires PDS to operate an Auditing Division, a Resource Center and an Appellate Division. The Task Force believes that the failure to adequately fund these PDS functions has led to increased cost throughout the indigent defense system. We recommend that the Governor authorize the Executive Director of PDS to develop and submit a budget proposal which fully funds these functions, and we recommend the Legislature approve these funds.

RESPECTFULLY SUBMITTED



Chairman
West Virginia Indigent Defense Task Force

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Final Report
to the
West Virginia Indigent Defense Task Force

January 14, 2000

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Chapter 1

Introduction

Overview: Indigent Defense in West Virginia

Public Defender Services (PDS) is a statewide agency of the executive branch responsible for the administration, coordination and evaluation of local indigent defense programs in West Virginia's 31 judicial circuits. All funds for indigent defense in West Virginia are provided in a state general-fund appropriation. The Executive Director of PDS, appointed by the Governor with the consent of the Senate, is authorized to make grants to and contract with Public Defender Corporations in those judicial circuits in which the chief judge and/or the majority of active local bar members have determined a need for a public defender office. By statute, all Public Defender Corporations must have a Board of Directors consisting of appointees by the local county commission, the county bar association and the Governor. Currently, 24 of West Virginia's 55 counties are served by 16 Public Defender Corporations. The remaining 30 counties rely solely on assigned counsel to provide representation to indigent defendants. Since 1989, PDS has also been statutorily required to provide training and technical assistance to indigent defense providers and to operate an appellate division to represent indigent defendants in appeals in the state's supreme court.

Funding History of Public Defender Services

For several years, Public Defender Services has experienced recurring funding problems. The West Virginia Legislature appropriated the same amount of money ($14,210,905) for PDS in each of the three fiscal years FY 1995- FY 1997. At some point during each of those years, PDS depleted its resources and because of this, PDS carried a certain level of debt from year to year. During this same time period a combination of factors, including aq reported rise in drug-trafficking and domestic violence cases, new mandatory jail terms, changes to abuse and neglect representation policies and an increase in police hirings, resulted in a reported 33% increase in PDS's annual caseloads (up from 49,629 in FY 1995 to 66,034 in FY 1997).[1] Subsequently, PDS's accrued liability has grown from year to year. PDS closed FY 1995 with a debt of 3,795,053. In FY 1996, despite

[1] As reported in Public Defender Services Annual Reports.

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a supplemental state appropriation of $3.5 million, PDS finished the fiscal year with a debt level of approximately $4.5 million. Another supplemental appropriation of $3.4 million in FY 1997 still left PDS with a debt of $5,041,190 heading into FY 1998. Despite a 3.4% increase in its FY 1998 state funding (from $17.6 million to $18.2 million), PDS depleted its resources after only five months. A further supplemental appropriation still left PDS with a debt of approximately $4 million at the close of FY 1998. In FY 1999, the Legislature increased the appropriation to over $22 million and increased it another 22.61% (up to $27,110,905) for FY 2000.[2]

Statewide Studies of Public Defender Services

Prompted by the rise in indigent defense caseload, the subsequent funding problems, and the rapidly increasing indigent defense budget, the West Virginia Legislature's Standing Committee on Government and Finance, Performance Evaluation and Review Division was directed in 1998 to study PDS as the first step toward improving the state's provision of indigent defense services.

The Standing Committee's report estimates that the state could potentially save between $2.2 million and $5.4 million by:

- providing public defenders to circuit courts that do not have Public Defender Corporations;
- expanding existing public defender offices where caseload levels require heavier use of private attorneys; and
- creating multiple Public Defender Corporations in large circuits to reduce conflicts of interest and to reduce caseload problems.

Since 1991, PDS has reported that public defender average cost-per-case has remained stable (actually decreasing 2.29% from $202.59 in 1991 to $197.95 in 1997) while assigned counsel average cost-per-case has increased more than 77% (from $307.80 to $545.82).[3] The performance review team concluded that Public Defender Corporations are most cost effective and efficient due to the fact that public defenders have more familiarity with indigent defense cases, are more specialized, and do not have to "re-invent the wheel" with each new case. In FY 1997, Public

[2] The FY 1999 general fund appropriation of $22,110,905 was sufficient to cover PDS expenses without requiring a supplemental appropriation.

[3] These are PDS calculated cost per case numbers. The Legislative Oversight report concluded that PDC cost per case ranged between $200-$300. A fuller discussion of cost per case data follows in Chapter 2.

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Defender Corporations were reported to handle over 58% of the cases statewide (38,299 of 66,034) yet accounted for only 33.5% of the total dollars earmarked to cases represented in the same year ($7,581,417 of $22,652,095).

The second major finding in the report is that PDS does not adequately monitor the quality of indigent defense services as required by statute. The report highlights the need for PDS to institute performance and workload standards. The Executive Director of PDS recognizes the need to assess the quality of indigent defense, but high caseloads and budget problems have forced him to dedicate all supplemental increases to the PDS budget toward public defender and assigned counsel representation costs instead of dedicating funds to monitoring compliance and performance.

At approximately the same time, a Subcommittee of the Joint Standing Committee on the Judiciary issued a report with similar recommendations to ensure adequate and cost-effective indigent defense representation. Among other findings, Joint Standing Committee on the Judiciary recommended that the Legislature consider:

- alternate methods of compensation, including part-time public defender offices;
- establishing additional public defender offices in the counties most likely to achieve the greatest cost savings;
- establish a "separate-office method" (i.e., a second public defender) to keep conflict cases in public defender offices;
- studying the accuracy of self-reported financial information on indigency screening forms.

Attempts to Redress the Issues Highlighted in the Reports

Bills have been submitted to the Legislature in each of the past two years to address the on-going problems with indigent defense in West Virginia. Though ultimately unsuccessful, the draft bills proposed expanding the powers of PDS, switching the authority to activate local Public Defender Corporations from the chief judges and/or local bars to the PDS, limiting the number of billable hours assigned counsel can be compensated for annually, restricting the period during which assigned counsel may submit payment vouchers, and establishing a Public Defender Services Administrative Fee Account. All revenues from this funding source would have been earmarked for the sole benefit of PDS.

Despite the recommendations of the legislative oversight report and the joint standing

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committee on the judiciary, no new policy changes regarding PDS have been enacted by the Legislature.

West Virginia Indigent Defense Task Force

In an effort to try a new approach to resolve the problem, the Executive Director of PDS invited members of the Spangenberg Group (TSG) to meet with representatives from the Executive Branch, the Legislature, the state bar, local indigent defense boards, and local public defenders to learn firsthand about indigent defense problems in the state, to observe public defender practices and to discuss the merits of expanding the public defender system in West Virginia as a means to contain costs.

The Spangenberg Group is a nationally recognized research and consulting firm located in West Newton, Massachusetts, which specializes in the improvement of indigent defense systems. The Spangenberg Group had conducted research in all fifty states and provides consultative services to developing and developed countries which are reforming their legal aid delivery programs. For over fourteen years, The Spangenberg Group has been under contact with the American Bar Association's Bar Information Program (BIP), which provides support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems. As the ABA's primary provider of technical assistance relating to indigent defense systems, The Spangenberg Group has worked with judges, bar associations, state and local governments, legislative bodies and public defender organizations in over forty states around the country. The May 1999 fact finding mission to West Virginia was conducted under the auspices of BIP.[4]

Our experience has led us to conclude that indigent defense improvements can be substantially enhanced by bringing together representatives from key criminal justice agencies, the

[4] The Spangenberg Group is uniquely qualified to assist PDS explore indigent defense cost containment. In 1980, Robert Spangenberg, President of TSG, conducted an analysis of indigent defense services in West Virginia as a member of Abt Associates under a grant from the U.S. Department of Justice, Law Enforcement Assistance Administration. The subsequent report, *A Proposed Statewide Public Defender System for the State of West Virginia*, reviewed the history of public defender services in West Virginia, calculated staffing and budgetary needs for a statewide public defender system and supported the move toward statewide oversight of indigent defense services. Robert Spangenberg also testified before the West Virginia Legislature during the session that first created PDS. For the past several years, TSG has provided PDS officials with comparison data from other states regarding indigent defense services and practices under the BIP program.

Additionally, Robert Spangenberg is the recognized expert on indigent defense cost containment. In September 1986, Spangenberg wrote "Containing the Cost of Indigent Defense Programs" on behalf of the U.S. Department of Justice, National Institute of Justice.

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Legislature, the judiciary, the executive branch, and others to collaboratively tackle a particular problem within the criminal justice system. The common ground found by task forces addressing problems in indigent defense within the context of the overall criminal justice system.

With this in mind, the Executive Director of PDS appointed a 25-member task force (See Appendix A) to address the concerns associated with rising costs and caseloads. The Task Force retained the services of The Spangenberg Group to help them understand the issues from a national perspective. What follows is a review of West Virginia's indigent defense data (Chapter 2), the results of a statewide indigent survey (Chapter 3), and a discussion of how West Virginia's indigent defense data compares to data from other states (Chapter 4).

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Chapter 2
West Virginia Indigent Defense Data Audit

At the first meeting of the Indigent Defense Task Force, two initial problems were raised regarding the task force's direction and goals. The first regarded the reliability of the indigent defense data traditionally reported by Public Defender Services. Some members of the task force indicated that PDS's data should not be taken at face value as a true depiction of indigent defense costs and caseloads in West Virginia. The second problem raised was in regard to the inclusiveness of the project and whether or not it was proper to proceed with a study and recommendation without allowing people with a stake in the criminal justice system to offer their insights and recommendations. This chapter discusses West Virginia indigent defense data in depth and Chapter 3 discusses the results of an indigent defense survey sent out to justice, judges, prosecutors, chief public defenders, and private court-appointed attorneys in an attempt to address the concerns of inclusiveness.

Issues with Public Defender Services Data Reporting

In the 1999 Legislative Oversight report, the auditors conclude: "The lack of comparable data makes it difficult to formulate an accurate comparison of cost-effectiveness between private attorneys and public defenders." In a letter to the task force dated October 15, 1999, Chief Justice Larry V. Starcher echoed the sentiments of the legislative auditor: "I believe that any effort to better control costs in our state's indigent defense system will be difficult or even impossible, unless there is first a recognition that the PDS's method of making calculations and comparisons of the purported cost of public defender representation vs. appointed counsel are - as the Legislative Auditor recently concluded - not valid."

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PDS Case-Tracking System and Case Counting Practices

The Spangenberg Group subsequently proceeded to conduct an independent audit of the PDS indigent defense data. To understand the results of that audit, it is necessary to briefly explain the complexity of undertaking such a task. First, we would like to state that we were impressed by the diligence with which PDS staff maintains and verifies the thousands of vouchers expected to be processed on an annual basis. We have been in several jurisdictions where caseload data problems are caused by people responsible for data processing who do not care about the reliability of the data. That is not the case in West Virginia. Unfortunately, the case-tracking system itself precludes easy data analysis, and without the benefit of an MIS staff person, we understand why PDS has chosen to report data in the manner it has.

In any evaluation TSG conducts, we generally like to look at a five-year time period, at the very least, to look for trends and abnormalities in the reported data. In 1994, PDS operated a Q&A Case Management System.[5] Diskettes were sent to PDS from each Public Defender Corporation on a monthly basis. Each disk contained data files in standard ASCII format that reflected total cases opened, total cases closed, and time spent on cases and office administration for that month. Prior to FY 98, each disk was loaded into a master file one at a time. The data was checked for missing field data (only fields reported on were verified) and correctly entered field data. Reports were run for each month's data and printed out for manual compilation into statewide data. That data was then exported out of the database onto a diskette because PDS did not own a computer large enough to handle the data storage needs of 12-15 offices' data over a year's time. Unless a series of cases or the summarized data stood out as odd or unusual, an in-depth look at the data was not possible given the time frame in which the reporting needed to be completed.

In FY 98, PDS began to insist on the upgrading of all equipment and software from DOS environments to Windows environments and from Q&A Database to Time Matters Case Tracking. During the roll out to Time Matters it was discovered that a few were incorrectly addressing

[5] The Spangenberg Group is indebted to the assistance of Kellie Carper of PDS for helping us get up to speed on all of the PDS computer databases in a very short time period. Much of this section relies on a preliminary memo Ms. Carper drafted to familiarize us with the case-tracking system.

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the opening of new cases. With the computer hardware and software in PDS being greatly improved, they are now able to import all of a Corporation's data from one year into a database without having any file corruption problems. We are told that when PDS identified the offices that were counting cases incorrectly, they were able to stack those cases and sort by the assigned Circuit Court case number, opened date or closed date and last name in order to identify "duplicates" and remove those from the open and close databases. However, no paper backup or verification exists in the office for the data and the absence of day-to-day database management, a concise data-entry manual, and ongoing hands-on training still raise some validation issues in our mind.

On the assigned counsel side, PDS has traditionally kept track of court-appointed counsel vouchers on a main-frame system until 1991. At that time, separate tables were developed on Q&A to produce assigned counsel data consistent with public defender case-tracking procedures. The ability of Q&A to track the heavy volumes of vouchers on a peer-to-peer network was problematic, and subsequently, separate databases for each year had to be downloaded and stored on a diskette apart from the system. After two-years of design and installation, PDS began tracking vouchers on an Oracle data-base in the summer of 1998.

In short, because of the level of computerization and the lack of staff with management information system knowledge and the need to remove and store prior years' data on diskettes, PDS was left in the situation of producing annual statistics that reported on the cases *paid* within the just closed fiscal year rather than the cases *disposed* in that same year. In West Virginia, private appointed counsel are allowed to submit one voucher every six months after appointment and a final voucher any time up to four years after the formal disposition of the case. Additionally, attorneys may submit vouchers after any intermediate disposition in juvenile cases. Because of this generous standard for submission of bills, payments to assigned counsel in any given year may include payments on cases from the prior years, and/or two billings for a single case.

The result of this has been a slight inflation of the assigned counsel numbers as traditionally reported for FY 94 through FY 97. The degree of the reported assigned counsel caseload inflation would have been much more significant had it not been for the fact that a certain percentage of the vouchers for cases disposed in that fiscal year are not sent in and processed during that same year.

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But because PDS recognized that the caseload figures were indeed inflated to some degree, they attempted to make valid comparisons between assigned counsel and public defenders by determining the number of cases for which public defenders did any work during a given year. Thus, a fiscal year's report of public defender cases would include any case open at the start of the fiscal year, plus any new assignments.

The Spangenberg Group's Independent Audit of PDS Data

It is our conclusion that PDS's data reporting was a best case effort to compare apples to apples given their limited resources, and does not reflect any attempt to make Public Defender Corporations look better than assigned counsel. Still, The Spangenberg Group believes that the PDS data reporting is not an effective way to analyze caseload and cost-effectiveness. When comparing caseload data, TSG recommends that a "case" be defined uniformly for both public defenders and assigned counsel, and, whenever possible, to have a "case" be defined as a single charge, or set of charges, arising out of a single incident and concerning one defendant in one court proceeding.[6]

The effort to look at West Virginia's indigent defense caseload in this manner was quite daunting. The Spangenberg Group has to import all of the various databases for each of the fiscal years, confirm that data fields matched, and combine all the data into a single database.[7] We then matched assigned counsel vouchers with the same case number, totaled the expenses and counted it as one case in the year the disposition occurred, regardless of when the voucher was processed. Similarly, public defender case counts were based on disposed cases only. The result, we believe, is that for the first time West Virginia policy makers will have significantly improved data from which to make informed decisions.

---

[6] This is the "case" definition recommended by the National Center for State Courts and the Conference of State Court Administrators. The Conference of State Court Administrators and the National Center for State Courts' publication, *State Court Model Statistical Dictionary*, 1989, instructs administrators to "[c]ount each defendant and all charges involved in a single incident as a single case (page 19)."

[7] The Spangenberg Group would like to acknowledge John Rogers and the PDS staff, most notably Kellie Carper and Sheila Coughlin, for their cooperation and valuable assistance in giving us access to all of their data. We would also like to acknowledge the assistance of our management information specialist, David Newhouse, who created the unified West Virginia FY94-98 indigent defense database used in this analysis.

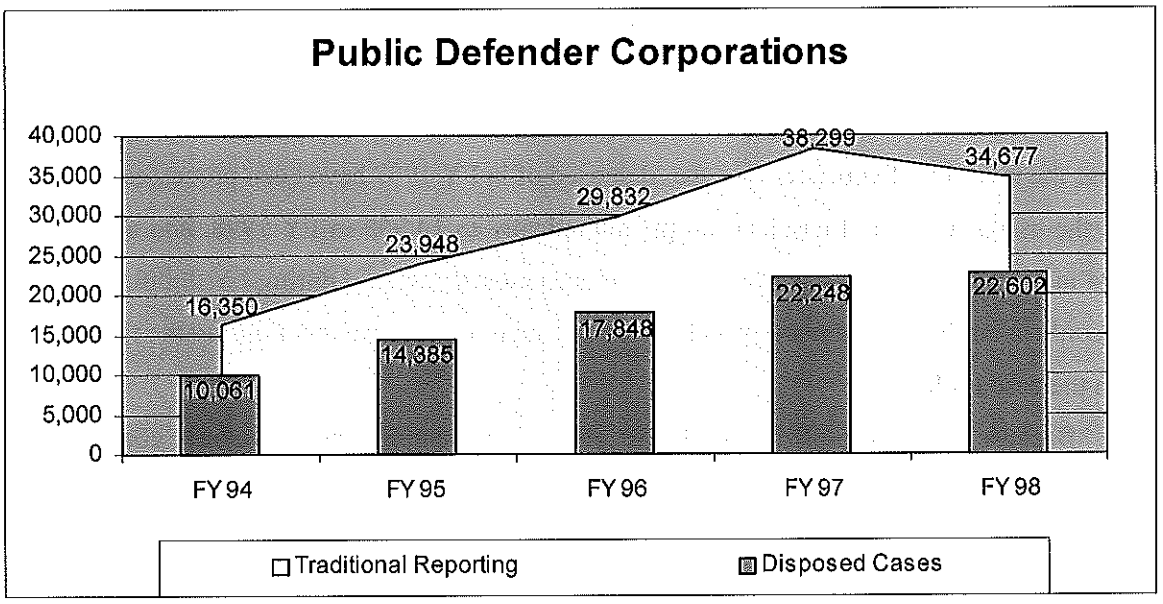
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Analysis of West Virginia Indigent Defense Data

We began our analysis by comparing the difference between the cases actually closed during a given fiscal year by public defenders and assigned counsel and caseload numbers as traditionally reported. We then compared the cost associated with only those closed cases for each fiscal year by tracking the dollars spent on those cases during that year. On the public defender side, the difference in traditional reporting of cases versus actual disposed cases is quite dramatic. In FY 1994, PDS reported that Public Defender Corporations had a caseload of 16,350. By our accounts, Public Defender Corporations closed 10,061 cases in that year. In each of the next three fiscal years, the difference between the traditional reporting of cases and disposed cases becomes greater, such that by FY 1997, the number of traditionally reported cases (38,299) is approximately 72% greater than disposed cases (22,248). This is due to the fact that, traditionally, a case is counted in one fiscal year as a new assignment and may then be counted again as an open case in a subsequent year if the case was not previously disposed. As such, the difference between the counting methods will grow disproportionately, as shown in Chart 2-1.

Chart 2-1

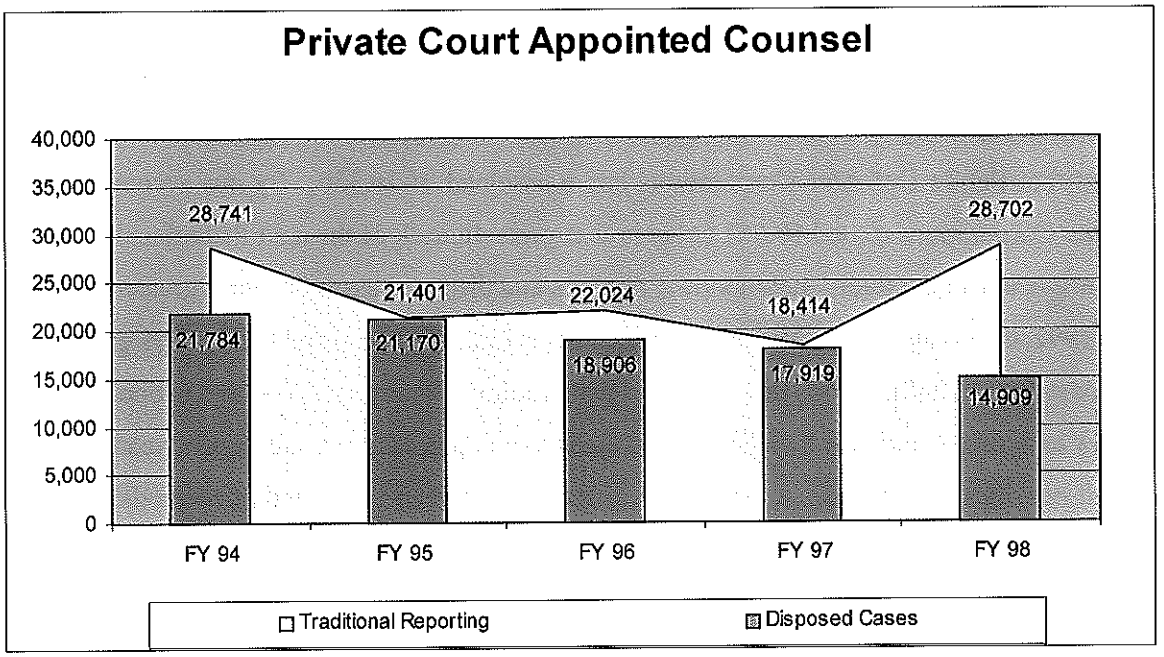
Comparison of Disposed Cases vs. Traditional Reporting of Cases, FY 94-FY 98



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Chart 2-1 (Continued)

Comparison of Disposed Cases vs. Traditional Reporting of Cases, FY 94- FY 98



On the assigned counsel side, the difference between the traditional reports and disposed cases is less dramatic, but still significant. The most important variable here is timely submission, receipt and processing of vouchers. If vouchers are not submitted in a timely fashion, the difference between the traditional reporting and disposed cases will be more noticeable. In FY 1997, the difference between the PDS numbers (18,414) and TSG numbers (17,919) is quite small. We believe this is because the majority of vouchers for cases disposed of in FY 1997 have been processed. After FY 1997, the assigned counsel caseload drops dramatically to 14,909 in FY 1998, and again to just 13,694 in FY 1999 (Thus far, 3,876 cases have been closed and paid during FY 2000). This leads us to confirm our belief that many vouchers are not submitted for payment during the fiscal year in which the case is closed.[8]

Because of the drop-off in reported recent-assigned counsel cases, we have concluded that

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[8] The reduction in assigned counsel disposed cases from FY 1994 (21,784) to FY 1997 (17,919) is due to the introduction of new Public Defender Corporations in some circuits. Additionally, the database detected 889 cases without a disposition date. Since these cases could potentially be from any of nine fiscal years (FY 92- FY 00), this adds up to approximately 100 additional cases per year.

Table 2-2: Circuit-by-Circuit Analysis of West Virginia Public Defender Services' Indigent Defense Expenditures and Caseloads, FY 1997

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
1st	113,096	$549,336	$543,574	$9.66	2,060	573	$266.67	$948.65	78.24%	50.26%	21.76%	49.74%	0.023
2nd	66,410	$332,670	$93,756	$6.42	1,024	161	$324.87	$582.34	86.41%	78.01%	13.59%	21.99%	0.018
3rd	24,773	$0	$160,884	$6.49	0	254		$633.40	0.00%	0.00%	100.00%	100.00%	0.010
4th	92,107	$0	$888,801	$9.65	0	1,484		$598.92	0.00%	0.00%	100.00%	100.00%	0.016
5th	48,943	$337,950	$270,033	$12.42	346	469	$976.73	$575.76	42.45%	55.59%	57.55%	44.41%	0.017
6th/24th	138,463	$853,055	$425,971	$9.24	4,666	1,636	$182.82	$260.37	74.04%	66.70%	25.96%	33.30%	0.046
7th	43,032	$309,808	$271,843	$13.52	636	420	$487.12	$647.25	60.23%	53.26%	39.77%	46.74%	0.025
8th	35,233	$279,627	$142,373	$11.98	1,195	191	$234.00	$745.41	86.22%	66.26%	13.78%	33.74%	0.039
9th	64,980	$517,880	$358,209	$13.48	1,995	319	$259.59	$1,122.91	86.21%	59.11%	13.79%	40.89%	0.036
10th	76,819	$509,224	$174,534	$8.90	1,504	388	$338.58	$449.83	79.49%	74.47%	20.51%	25.53%	0.025
11th	43,701	$0	$379,733	$8.69	0	626		$606.60	0.00%	0.00%	100.00%	100.00%	0.014
12th	47,952	$301,275	$110,565	$8.59	731	142	$412.14	$778.63	83.73%	73.15%	16.27%	26.85%	0.018
13th	207,619	$1,703,070	$1,365,441	$14.78	3,503	2,961	$486.17	$461.14	54.19%	55.50%	45.81%	44.50%	0.031
14th	41,379	$0	$283,885	$6.86	0	489		$580.54	0.00%	0.00%	100.00%	100.00%	0.012
15th	69,371	$488,363	$274,142	$10.99	1,316	255	$371.10	$1,075.07	83.77%	64.05%	16.23%	35.95%	0.023
16th	57,249	$0	$632,494	$11.05	0	1,246		$507.62	0.00%	0.00%	100.00%	100.00%	0.022
17th	75,509	$0	$456,114	$6.04	0	927		$492.03	0.00%	0.00%	100.00%	100.00%	0.012
18th	29,037	$0	$132,623	$4.57	0	182		$728.70	0.00%	0.00%	100.00%	100.00%	0.006
19th	30,843	$0	$118,180	$3.83	0	418		$282.73	0.00%	0.00%	100.00%	100.00%	0.014
20th	27,803	$0	$308,694	$11.10	0	396		$779.53	0.00%	0.00%	100.00%	100.00%	0.014
21st	44,853	$0	$211,580	$4.72	0	306		$691.44	0.00%	0.00%	100.00%	100.00%	0.007
22nd	35,529	$0	$361,966	$10.19	0	467		$775.09	0.00%	0.00%	100.00%	100.00%	0.013
23rd	107,307	$910,830	$396,706	$12.19	2,177	497	$418.39	$798.20	81.41%	69.66%	18.59%	30.34%	0.025
25th	47,252	$0	$327,961	$6.94	0	642		$510.84	0.00%	0.00%	100.00%	100.00%	0.014
26th	40,090	$0	$360,457	$8.99	0	691		$521.65	0.00%	0.00%	100.00%	100.00%	0.017
27th	28,990	$0	$306,898	$10.59	0	540		$568.33	0.00%	0.00%	100.00%	100.00%	0.019
28th	26,775	$175,520	$126,805	$11.29	329	120	$533.50	$1,056.71	73.27%	58.06%	26.73%	41.94%	0.017
29th	68,013	$0	$525,718	$7.73	0	757		$694.48	0.00%	0.00%	100.00%	100.00%	0.011
30th	33,739	$312,807	$144,764	$13.56	766	161	$408.36	$899.16	82.63%	68.36%	17.37%	31.64%	0.027
31st	26,610	$0	$121,326	$4.56	0	201		$603.61	0.00%	0.00%	100.00%	100.00%	0.008
Total	1,793,477	$7,581,415	$10,276,030	$9.96	22,248	17,919	$340.77	$573.47	55.39%	42.46%	44.61%	57.54%	0.022
PDC	1,079,739	$7,581,415	$4,698,716	$11.37	22,248	8,293	$340.77	$566.59	72.85%	61.74%	27.15%	38.26%	0.028
Non-PDC	713,738	$0	$5,577,314	$7.81	0	9,626	$0.00	$579.40	0.00%	0.00%	100.00%	100.00%	0.013

Districts with Public Defender Corporations =

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the best year to look at for analysis is FY 1997. Table 2-2 (see page 12) is a circuit-by-circuit analysis of West Virginia Public Defender Services' indigent defense expenditures and caseloads for FY 1997. Comparative tables for the other fiscal years (FY 94- FY 98) are included in Appendix B.

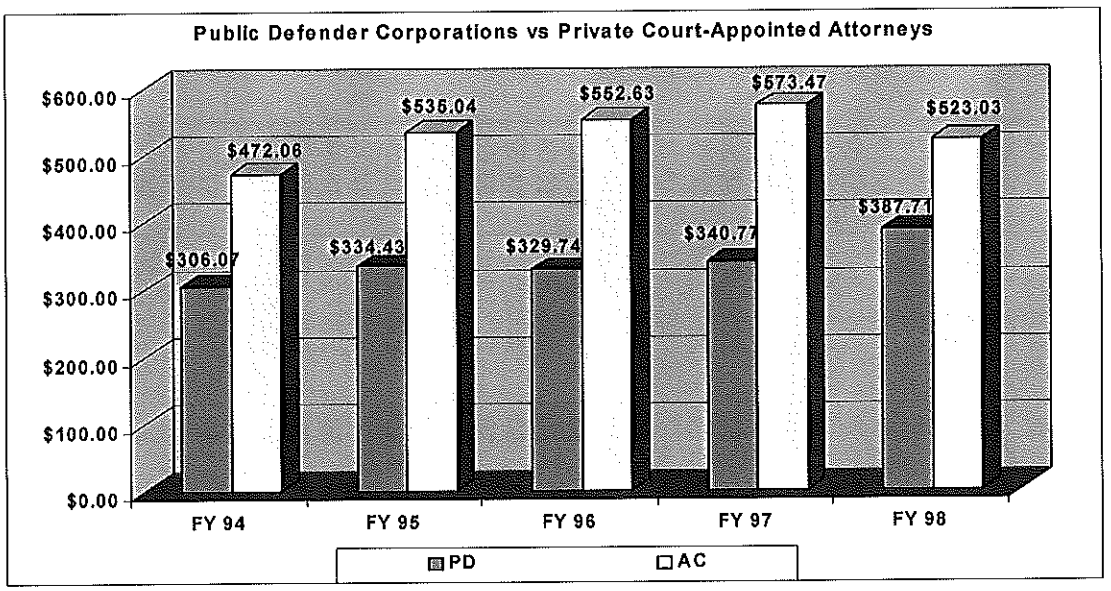
In FY 1997, there were 40,167 indigent defense closed cases in the state. The cases cost the state $17,857,445. During that year, Public Defender Corporations in 14 circuits handled 55.39% of the closed cases (22,248) for 42,46% of the total expenditure ($7,581,415). Conversely, private court-appointed counsel handled 44.61% of the caseload (17,919) for 57.54% of the indigent defense expenditure ($10,276,030).

This means that in FY 1997, the average cost-per-case for Public Defender Corporations was $340.77. The average cost-per-closed-case for assigned counsel for the same time period was $573.47. The cost-per-closed-case figure for assigned counsel does not fluctuate dramatically between assigned counsel practicing in Public Defender Corporation ($579.40).

Chart 2-3 shows that the average cost per case for both Public Defender Corporations and assigned counsel has remained relatively stable over the five year span of FY 1994 to FY 1998.

Chart 2-3

Analysis of West Virginia Indigent Defense Cost Per Case, FY 94-98



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Of course, some types of case cost more to defend than others. Before one assumes that public defenders are always more cost efficient than private court-appointed attorneys, one should study the percentages for each type of case the Public Defender Corporations and private attorneys are handling. For instance, if public defenders are merely handling all of the misdemeanor cases in a circuit and leaving all of the felony cases for private attorneys, one would naturally expect the private attorneys' cost per case to be significantly higher.

Table 2-4 (see page 15) has the breakdown of indigent defense cases by case type for the fourteen circuits that had Public Defender Corporations in FY 1997. Since public defenders are the primary provider in these circuits, it is not unexpected that they handle the majority of felonies (4.423 of 5,649 or 75.11%), misdemeanors (14,036 of 16,509 or 85.02%), and juvenile cases (2,334 of 3,266 or 71.46%). Additionally, public defenders handled the majority of paternity, parole revocation, habeas and other[9] cases. Private assigned counsel handled the majority of mental hygiene (2,242 of 2,905, or 77.18%) and abuse/neglect cases (844 of 944, or 84.91%).[10] A similar breakdown for the other fiscal years can be found at the end of the report (See Appendix C).

Thus, the question becomes what is the cost of representing clients in mental hygiene and abuse/neglect cases? Because Public Defender Corporations, by definition, do not bill by the case, the only cost per case information obtainable is for assigned counsel. Table 2-6 (See page 16) shows the breakdown of private court-appointed counsel cost per case by case type for FY 1997. (For other fiscal years, see Appendix D). On average, mental hygiene cases are the least expensive cases to represent ($104.79 per case). Conversely, abuse/neglect cases are the second most expensive type of case ($1,423.80) to handle next to habeas claims, due, in part, to the number of appearances required for such cases. Mental hygiene cases represent over 20% of the total caseload handled by private court-appointed counsel (3,621 of 17,919), while comprising approximately 3% (663 of 22,248) of the public defender caseload. On the other hand, abuse and neglect cases make-up 7.59%

[9] Other cases are defined as: contempt; extradition; fugitive; magistrate appeal; mandamus; prohibition; recidivist; supreme court and termination cases.

[10] There are several reasons why assigned counsel handle a greater percentage of mental hygiene and abuse/neglect cases. Many of the circuits with Public Defender Corporations had existing local attorneys who specialize in mental hygiene and abuse/neglect cases prior to the existence of the public defender. It is reported that some judges continue to appoint these private attorneys because of their expertise. Also, abuse/neglect cases often involve families with more than one child. Because of conflicts of interest, PDC can only be appointed to one individual in these cases.

Table 2-4: Comparison of West Virginia Indigent Defense Caseload by Case Type, FY 1997

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	Total	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	Total
1st	303	1,351	134	141	9	32	13	7	70	**2,060**	92	210	112	56	0	5	84	0	14	**573**
2nd	156	606	31	146	0	28	12	28	17	**1,024**	28	33	35	37	0	2	21	1	4	**161**
5th	69	183	8	11	0	0	10	1	64	**346**	102	197	32	38	0	10	61	1	28	**469**
6th/24th	875	2,946	0	801	0	2	36	3	3	**4,666**	119	78	1,063	143	5	17	165	5	41	**1,636**
7th	212	199	125	71	7	5	8	0	9	**636**	68	161	1	115	2	9	50	2	12	**420**
8th	248	847	0	78	0	2	13	3	4	**1,195**	60	37	25	38	0	1	23	1	6	**191**
9th	366	1,273	126	141	0	28	19	11	31	**1,995**	87	78	17	46	3	9	65	4	10	**319**
10th	324	1,025	0	119	1	21	13	0	1	**1,504**	61	67	180	28	0	4	38	3	7	**388**
12th	143	453	20	28	0	3	3	12	69	**731**	51	38	8	24	0	2	11	2	6	**142**
13th	640	2,364	0	416	0	20	0	27	36	**3,503**	509	1,377	606	219	4	37	131	6	72	**2,961**
15th	215	807	69	53	0	40	9	4	119	**1,316**	59	62	3	52	1	6	62	0	10	**255**
23rd	489	1,365	0	292	3	23	0	4	1	**2,177**	95	50	151	103	0	3	77	4	14	**497**
28th	53	196	31	36	0	2	2	2	7	**329**	35	22	9	19	0	2	24	2	7	**120**
30th	150	421	119	1	2	2	12	0	59	**766**	40	63	0	14	0	1	32	2	9	**161**
Total	**4,243**	**14,036**	**663**	**2,334**	**22**	**208**	**150**	**102**	**490**	**22,248**	**1,406**	**2,473**	**2,242**	**932**	**15**	**108**	**844**	**33**	**240**	**8,293**

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	Total	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	Total
1st	77%	87%	54%	72%	100%	86%	13%	100%	83%	**78.24%**	23%	13%	46%	28%	0%	14%	87%	0%	17%	**21.76%**
2nd	85%	95%	47%	80%		93%	36%	97%	81%	**86.41%**	15%	5%	53%	20%		7%	64%	3%	19%	**13.59%**
5th	40%	48%	20%	22%		0%	14%	50%	70%	**42.45%**	60%	52%	80%	78%		100%	86%	50%	30%	**57.55%**
6th/24th	88%	97%	0%	85%	0%	11%	18%	38%	7%	**74.04%**	12%	3%	100%	15%	100%	89%	82%	63%	93%	**25.96%**
7th	76%	55%	99%	38%	78%	36%	14%	0%	43%	**60.23%**	24%	45%	1%	62%	22%	64%	86%	100%	57%	**39.77%**
8th	81%	96%	0%	67%		67%	36%	75%	40%	**86.22%**	19%	4%	100%	33%		33%	64%	25%	60%	**13.78%**
9th	81%	94%	88%	75%	0%	76%	23%	73%	76%	**86.21%**	19%	6%	12%	25%	100%	24%	77%	27%	24%	**13.79%**
10th	84%	94%	0%	81%	100%	84%	25%	0%	13%	**79.49%**	16%	6%	100%	19%	0%	16%	75%	100%	88%	**20.51%**
12th	74%	92%	71%	54%		60%	21%	86%	92%	**83.73%**	26%	8%	29%	46%		40%	79%	14%	8%	**16.27%**
13th	56%	63%	0%	66%	0%	35%	0%	82%	33%	**54.19%**	44%	37%	100%	34%	100%	65%	100%	18%	67%	**45.81%**
15th	78%	93%	96%	50%	0%	87%	13%	100%	92%	**83.77%**	22%	7%	4%	50%	100%	13%	87%	0%	8%	**16.23%**
23rd	84%	96%	0%	74%	100%	88%	0%	50%	7%	**81.41%**	16%	4%	100%	26%	0%	12%	100%	50%	93%	**18.59%**
28th	60%	90%	78%	65%		50%	8%	50%	50%	**73.27%**	40%	10%	23%	35%		50%	92%	50%	50%	**26.73%**
30th	79%	87%	100%	7%	100%	67%	27%	0%	87%	**82.63%**	21%	13%	0%	93%	0%	33%	73%	100%	13%	**17.37%**
Total	**75.11%**	**85.02%**	**22.82%**	**71.46%**	**59.46%**	**65.82%**	**15.09%**	**75.56%**	**67.12%**	**72.85%**	**24.89%**	**14.98%**	**77.18%**	**28.54%**	**40.54%**	**34.18%**	**84.91%**	**24.44%**	**32.88%**	**27.15%**

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Table 2-6: Private Court-Appointed Counsel Cost Per Case by Case Type, FY 1997

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A& N	Habeas	Other	**TOTAL**
1st	$1,850.62	$352.69	$151.25	$804.29		$574.72	$2,593.00		$1,184.69	**$948.65**
2nd	$1,020.46	$307.63	$161.33	$498.77		$927.63	$1,160.29	$1,200.15	$877.12	**$582.33**
3rd	$1,179.10	$480.47	$116.28	$665.47		$694.73	$1,454.75	$3,349.30	$796.93	**$633.40**
4th	$1,496.20	$374.31	$125.33	$610.19	$599.90	$408.05	$1,095.38	$2,230.53	$754.81	**$598.92**
5th	$825.47	$269.07	$146.18	$394.52		$297.53	$1,452.70	$1,203.24	$727.38	**$575.76**
6th	$860.23	$357.52	$37.81	$271.45	$1,189.12	$266.20	$982.83	$1,994.57	$1,262.11	**$244.89**
7th	$973.98	$304.95	$101.50	$513.36	$343.34	$670.47	$1,613.08	$644.36	$726.23	**$647.24**
8th	$1,452.35	$335.30	$113.76	$375.44		$4,090.01	$639.62	$2,461.22	$742.17	**$745.41**
9th	$1,438.94	$566.14	$129.66	$942.52	$798.43	$792.02	$1,684.33	$1,689.56	$1,753.93	**$1,122.91**
10th	$989.89	$267.77	$97.56	$492.96		$245.33	$954.42	$1,922.45	$3,118.63	**$449.83**
11th	$1,514.01	$359.74	$116.41	$367.91	$442.00	$463.81	$1,687.73		$824.66	**$606.60**
12th	$1,077.88	$289.49	$165.63	$615.83		$369.75	$1,578.86	$936.05	$1,418.05	**$778.63**
13th	$930.22	$321.47	$115.34	$484.57	$604.34	$653.70	$1,197.50	$3,043.12	$993.56	**$461.14**
14th	$1,105.31	$285.67	$182.65	$236.14	$142.41	$1,161.10	$1,312.41	$629.93	$495.59	**$580.54**
15th	$1,413.93	$480.48	$83.40	$545.77	$337.66	$432.42	$1,585.67		$3,105.75	**$1,075.07**
16th	$1,081.07	$336.00	$170.52	$268.94		$649.94	$1,382.80	$2,542.91	$1,312.86	**$507.62**
17th	$1,011.61	$374.55	$92.87	$481.20	$330.50	$337.18	$1,534.13	$2,210.35	$697.07	**$492.03**
18th	$1,089.42	$402.16	$126.29	$654.27	$173.40	$299.63	$2,369.14		$907.95	**$728.70**
19th	$432.17	$251.67	$139.94	$224.24		$325.50	$1,219.71		$278.26	**$282.73**
20th	$1,566.20	$433.28	$155.85	$590.71		$910.43	$1,919.61	$2,506.51	$485.37	**$779.53**
21st	$1,122.25	$432.85	$271.06	$429.41		$425.11	$1,467.29		$1,107.01	**$691.44**
22nd	$1,319.69	$380.24	$155.64	$848.41		$555.70	$1,550.58	$486.00	$951.79	**$775.09**
23rd	$1,472.93	$409.34	$185.58	$529.26		$677.82	$1,569.28	$2,367.88	$1,531.13	**$798.20**
24th	$1,086.59	$283.34	$73.88	$201.29		$473.32	$664.60	$2,090.93		**$391.33**
25th	$1,296.80	$293.87	$167.39	$343.76		$417.18	$608.62		$363.95	**$510.84**
26th	$1,210.87	$385.10	$128.91	$707.32	$297.41	$683.80	$1,640.32	$5,362.13	$616.12	**$521.64**
27th	$785.54	$359.68	$188.75	$541.15	$474.69		$1,387.80		$634.80	**$568.33**
28th	$1,238.70	$234.77	$118.61	$428.25		$1,456.77	$2,308.64	$1,516.88	$1,103.77	**$1,056.71**
29th	$1,338.11	$362.51	$186.98	$635.57		$597.03	$1,829.24	$2,604.37	$660.82	**$694.48**
30th	$1,575.91	$376.85		$681.64		$1,236.25	$858.52	$2,499.71	$1,637.14	**$899.15**
31st	$994.54	$288.46	$46.53	$226.01		$159.28	$1,342.90	$5,690.86	$1,246.45	**$603.61**
AVG.	**$1,162.35**	**$347.13**	**$104.79**	**$465.71**	**$611.78**	**$568.46**	**$1,423.80**	**$2,254.92**	**$958.89**	**$573.47**

PDC	$1,127.01	$331.93	$85.93	$500.39	$785.51	$596.06	$1,412.18	$2,014.54	$1,948.93	$566.59
Non PDC	$1,189.93	$356.90	$135.46	$443.58	$322.24	$554.40	$1,442.81	$2,538.21	$774.25	$579.40

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of the assigned counsel caseload (1,360 of 17,919) compared to less than 1% of the public defender caseload (150 of 22,248).

Thus, for comparison purposes, it may be prudent to remove mental hygiene and abuse/neglect cases from the court-appointed counsel caseload in an effort to compare apples to apples with the Public Defender Corporations' data in regard to cost per case. In FY 1997, court-appointed attorneys represented defendants in 3,621 mental hygiene cases at a cost of $379,444, and 1,360 clients in abuse/neglect cases at a cost of $1,936,371. Excluding these cases, private court-appointed attorneys handled 12,938 cases at a total cost of $7,960,213.94. This raises the average court-appointed cost per case to $615.25, significantly higher than the public defender cost per case of $340.77.

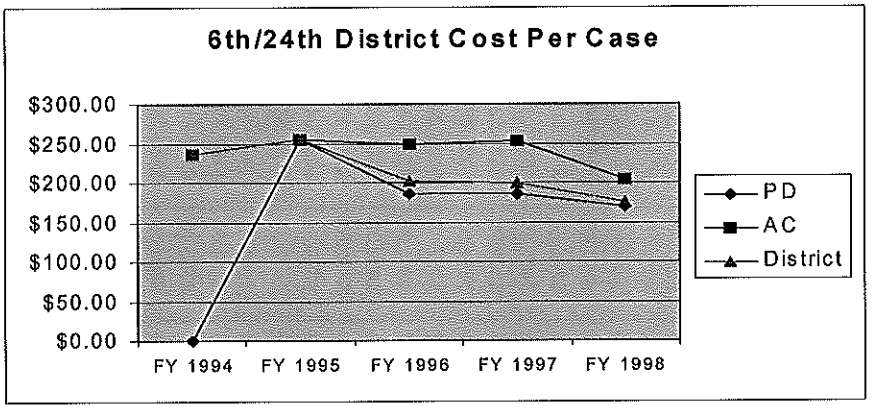
A Closer Analysis of the Circuits that have Instituted PDC's during FY 94-98

Over the course of the five year span, two circuits (5th and 6th/24th) have started Public Defender Corporations. Based on the conclusions above, one would expect to see the circuits' average cost per case to decrease after the introduction of the corporation.

The Public Defender Corporation in the 6th/24th circuit began at the start of FY 1995. Initial start-up costs drove the circuit's indigent defense cost per case up slightly during the initial year, but had consistently held the cost per case down below the FY 1994 measure of $237.50.

Chart 2-7

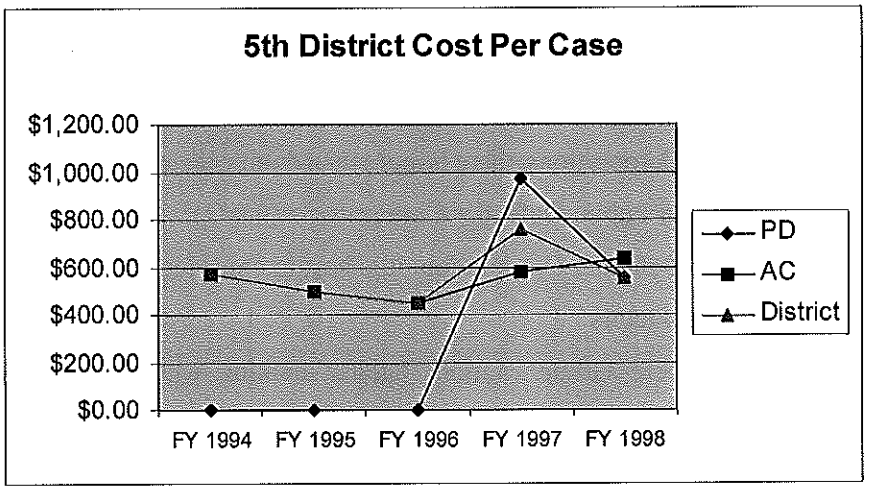
Historical Analysis of Cost Per Case Before and After Start-up of PDC



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Chart 2-7 (Continued)

Historical Analysis of Cost Per Case Before and After Start-up of PDC



In the 5th circuit, the Public Defender Corporation was instituted after the start of FY 1997. Subsequently, the public defender cost per case spikes during the initial year, due to start-up costs associated with opening a new defender office (purchasing technologies, etc.) Though the data for FY 99 and FY 00 are substantially incomplete, initial indications are that the public defender cost per case continued to decrease the circuit's average cost per case below FY 1998 levels.

Assessing the Cost-effectiveness of Public Defender Corporations

Of course, cost per case is not the only relevant statistic in assessing the cost effectiveness of an indigent defense system. The Spangenberg Group believes that cost per capita is another factor to consider in analyzing indigent defense costs. In FY 1997, circuits with Public Defender Corporations had a significantly higher cost per capita ($11.37) than circuits without Public Defender Corporations ($7.81). There are several factors that could explain this difference. During the course of our work there has been some evidence that some judges are routinely reducing vouchers and/or not appointing counsel in all cases in which a lawyer could be appointed. If true, this would drive down the cost per capita in circuits with no Public Defender Corporations. The scope of this study precludes us from studying the appointment process and voucher review process in every circuit, but it would be advisable in the future for PDS to compare the number of cases in

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assigned counsel circuits with some other measure (e.g. reported cases filed or case as reported by the courts) to gauge whether or not the judicial appointment process and voucher review system has a significant effect on the cost per capita figures in non-Public Defender Corporation circuits.

What we can say at this point in time is that in most circuits, the number of indigent defense cases in a circuit has a more direct impact on indigent defense costs than do capita figures. In circuits with Public Defender Corporations, there is more than double the number of cases per capita (0.028) than in circuits without Public Defender Corporations (0.013). Thus, when weighing the merits of instituting a Public Defender Corporation, it is best to consider both cost per capita and cases per capita, among other factors.

Again, The Spangenberg Group cautions against making wholesale indigent defense systemic changes based solely on cost per case, cost per capita and case per capita figures alone. Cost-effectiveness cannot be the sole motivating force for changing the current system of providing indigent defense services, especially if such a change would substantially decrease the quality of representation. We would advise that a qualitative review of each circuits' indigent defense system be undertaken prior to such changes to gauge if each circuit provides adequate defense services.[11]

For instance, the caseload levels of Public Defender Corporations must be looked at in light of the effect caseloads have on representation quality.[12] Though many states have workload standards are aspirational rather than binding, we found that 15 states have implemented some kind of workload guidelines. The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC), which published its standards in

1973. In that report, Standard 13.12 on Courts states:

> The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding

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[11] In this respect, we mirror the Legislative oversight report. On page 31, the report quotes: "A primary purpose of Public Defender Services is to *'provide high quality legal assistance to indigent person'* (§29-21-1). Achieving this purpose would provide *'rights and privileges guaranteed to all citizens'* by the U.S. and state constitutions, and it *'reaffirms the faith of our citizens in our government of laws.'* The agency's [PDS] principal charge is *'the development and improvement of programs by which the state provides legal representation to indigent persons'* (§29-21-4). To accomplish this purpose, the agency's statute requires it to monitor the delivery of legal services to ensure for quality, compliance and improvement (§29-21, sections 3,4,6 and 13a).....[t]he Legislative auditor found that the State office lacks management information that monitors the quality of services, compliance with the Code, and improvement needs.

[12] The Spangenberg Group's familiarity with indigent defense workload standards is quite extensive. In 1996, The Spangenberg Group, under the auspices of the American Bar Association, Bar Information Program, undertook the project of collecting and categorizing national, state and local standards and guidelines relating to the administration of indigent defense services.

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> traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.[13]

Additionally, commentary to Standard 5-5.3 of the American Bar Association Standards references the public defender caseload standards developed by the National Advisory Commission, noting they "have proven resilient over time, and provide a rough measure of caseloads."[14]

The average number of cases per attorney in those circuits with Public Defender Corporations has remained relatively stable over the five years period studied in this report (See Table 2-8, page 21). In FY 94, the average public defender disposed 223.58 cases. In FY 98, the number was 221.59. The Spangenberg Group strongly cautions the Task Force about jumping to any conclusions based upon these numbers. Simple numerical case counts are important to consider, but this manner of counting oversimplifies the actual work put into some types of cases and fails to accurately reflect the amount of time required to adequately process defendants in different types of cases. Such systems also fail to track the time attorneys spend on activities that are essential to their specific role, such as traveling, waiting in court, or participating in training. Without an accurate case counting system or method for measuring the time required to adequately handle the caseload, it is difficult to project staffing needs and justify budget requests based on the above numbers.

For instance, Table 2-8 shows that the Public Defender Corporation in the 13th judicial circuit has lower case-per-attorney numbers than many of the other circuits. Yet, that does not mean that the attorneys in the Kanawha County public defender office are underutilized. In West Virginia, the public defender statute §29-21-6 calls for PDS to "operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of eligible clients in the supreme court of appeals." Given the limited resources of PDS, the appellate division is not operating out of the PDS offices. The majority of appellate cases are handled by the Public Defender Corporation in the 13th circuit. Though the Spangenberg Group has not had the opportunity to assess the quality of appellate representation in the local Public Defender Corporation, we do believe that the practice of having

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[13] National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts (Washington, D.C., 1973), p. 186.

[14] American Bar Association Standards for Criminal Justice Providing Defense Services, Third Edition, p. 72.

TABLE 2-8: Analysis of Public Defender Corporation Staff and Caseloads, FY 94 - FY 98

District	Year	PDC Staff			PDC	Cases Per	Support Staff
		Attorney	Support	Total	Caseload	Attorney	Per Attorney
1st	FY 98	8	3	11	2,245	280.63	0.38
	FY 97	8	3	11	2,060	257.50	0.38
	FY 96	8	3	11	1,326	165.75	0.38
	FY 95	7	3	10	1,252	178.86	0.43
	FY 94	5	3	8	1,417	283.40	0.60
2nd	FY 98	4	2	6	994	248.50	0.50
	FY 97	4	2	6	1,024	256.00	0.50
	FY 96	3	2	5	738	246.00	0.67
	FY 95	3	2	5	364	121.33	0.67
	FY 94	3	2	5	887	295.67	0.67
5th	FY 98	4	3	7	662	165.50	0.75
	FY 97	3	2	5	346	115.33	0.67
	FY 96	0	0	0			
	FY 95	0	0	0			
	FY 94	0	0	0			
6th/24th	FY 98	13	4	17	5,227	402.08	0.31
	FY 97	12	4	16	4,666	388.83	0.33
	FY 96	11	4	15	4,074	370.36	0.36
	FY 95	9	5	14	2,592	288.00	0.56
	FY 94	0	0	0			
7th	FY 98	4	2	6	589	147.25	0.50
	FY 97	4	2	6	636	159.00	0.50
	FY 96	4	2	6	649	162.25	0.50
	FY 95	2	1	3	369	184.50	0.50
	FY 94	2	1	3	329	164.50	0.50
8th	FY 98	3	2	5	758	252.67	0.67
	FY 97	3	2	5	1,195	398.33	0.67
	FY 96	3	2	5	984	328.00	0.67
	FY 95	3	2	5	950	316.67	0.67
	FY 94	2	1	3	1,080	540.00	0.50
9th	FY 98	6	3	9	1,947	324.50	0.50
	FY 97	6	3	9	1,995	332.50	0.50
	FY 96	6	3	9	1,593	265.50	0.50
	FY 95	4	2	6	1,318	329.50	0.50
	FY 94	4	2	6	1,321	330.25	0.50
10th	FY 98	6	4	10	1,649	274.83	0.67
	FY 97	6	4	10	1,504	250.67	0.67
	FY 96	6	3	9	1,332	222.00	0.50
	FY 95	5	3	8	1,328	265.60	0.60
	FY 94	5	2	7	1,314	262.80	0.40
12th	FY 98	4	2	6	734	183.50	0.50
	FY 97	4	2	6	731	182.75	0.50
	FY 96	3	2	5	725	241.67	0.67
	FY 95	2	2	4	591	295.50	1.00
	FY 94	2	1	3	481	240.50	0.50
13th	FY 98	24	14	38	3,158	131.58	0.58
	FY 97	21	11	32	3,503	166.81	0.52
	FY 96	19	11	30	2,542	133.79	0.58
	FY 95	15	8	23	1,984	132.27	0.53
	FY 94	10	6	16	1,123	112.30	0.60
15th	FY 98	7	4	11	1,500	214.29	0.57
	FY 97	6	3	9	1,316	219.33	0.50
	FY 96	5	3	8	1,000	200.00	0.60
	FY 95	4	2	6	873	218.25	0.50
	FY 94	4	2	6	141	35.25	0.50
23rd	FY 98	12	8	20	1,959	163.25	0.67
	FY 97	10	7	17	2,177	217.70	0.70
	FY 96	8	5	13	1,839	229.88	0.63
	FY 95	6	3	9	1,662	277.00	0.50
	FY 94	5	2	7	792	158.40	0.40
28th	FY 98	2	2	4	734	183.50	1.00
	FY 97	2	1	3	731	182.75	0.50
	FY 96	1	1	2	725	241.67	1.00
	FY 95	1	1	2	591	295.50	1.00
	FY 94	1	1	2	481	240.50	1.00
30th	FY 98	5	2	7	828	165.60	0.40
	FY 97	4	2	6	766	191.50	0.50
	FY 96	3	2	5	698	232.67	0.67
	FY 95	3	2	5	768	256.00	0.67
	FY 94	2	1	3	808	404.00	0.50
Total	FY 98	102	55	157	22,602	221.59	0.54
	FY 97	93	48	141	22,248	239.23	0.52
	FY 96	80	43	123	17,848	223.10	0.54
	FY 95	64	36	100	14,385	224.77	0.56
	FY 94	45	24	69	10,061	223.58	0.53

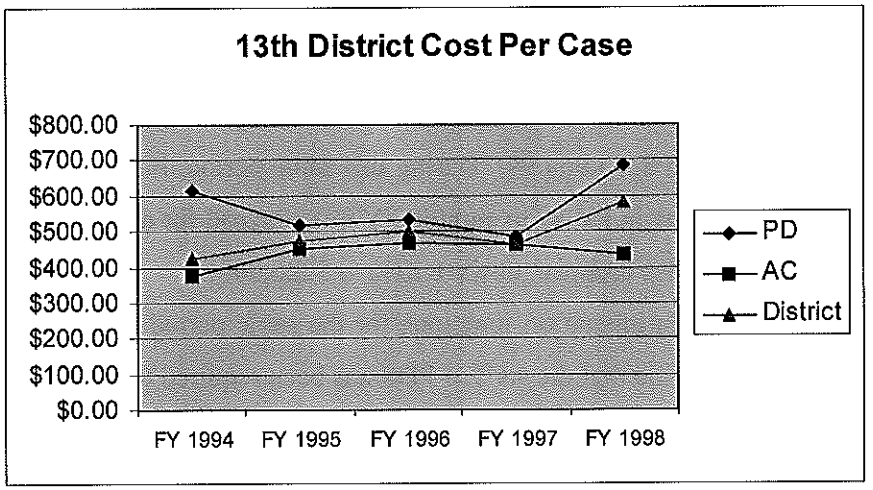
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the PDC handle the Appellate cases skews all of the caseload numbers for the Kanawha County Public Defender Corporation.

Appellate cases generally are more expensive and time consuming to represent than trial-level cases. Additionally, beginning in January 1996, the 13th Circuit has been operating a public defender criminal research center statutorily required of PDS. Subsequently, the 13th Circuit is the one Public Defender Corporation circuit that has had a higher public defender cost per case than assigned counsel cost per case from year to year:



The Spangenberg Group believes that the most accurate method of analyzing public defender caseloads is through a case-weighting study that allows policy-makers to establish state specific caseload standards and determine staffing needs and resource allocation for defense attorneys. Currently, there is no way to compare the workload of public defenders in West Virginia to determine the number of hours that are spent doing in-court versus out-of-court activities. Once workload standards are established, it is much easier to determine when and if a Public Defender Corporation has reached an excessive caseload level. Policy-makers can then determine whether it is more effective to allocate additional resources to the corporation or to spend the money on private assigned counsel.

PDS and Data Reporting

West Virginia Code §29-21-6(d) requires Public Defender Services to "operate an accounting

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and auditing division to require and monitor the compliance with this article by Public Defender Corporations and other persons or entities receiving funding or compensation from the agency." The statute calls for this division to prepare reports concerning the evaluation, inspection, or monitoring of Public Defender Corporations and assigned counsel attorneys and assist the Executive Director prepare budgets and statistical analysis.

We believe that no organization can be expected to perform proper auditing or statistical analyzes without the resources to do so. TSG committed a significant amount of the time and resources of our MIS specialists, in addition to a significant amount of time committed by PDS staff, in order to create the database used in this study. In FY 1989, PDS's actual expenditures for the central office was $383,643.14. Over ten years time, the central administration expenditure has actually decreased 2.52%, to $373,964.99. During this same period, PDS has lost one full-time equivalent position (from nine in FY 89 to eight in FY 99). Payroll for nine staff members in FY 89 was $228,843. This too has dropped, down 1.22% to $226,060.

Analyzing central administration functions for the same period as the caseload analysis above (FY 94 - FY 98), we find that the staff of PDS has been required to process and audit more vouchers, and oversee more Public Defender Corporations, for less money. In FY 1994, PDS audited and processed 28,741 vouchers for assigned counsel[15] and 10,061 disposed cases from Public Defender Corporations. The total appropriation for appointed counsel and Public Defender Corporations, including a supplemental appropriation of $4,138,488, was $15,874,393. The central administration expenditure in FY 1994 was $371,348.15, bringing the total expense for indigent defense up to $16,245,741. The central administration expenditure represented 2.29% of the total indigent defense budget.

By FY 1998, the number of assigned counsel vouchers to be processed had risen 19.84% (from 28,741 to 34,442) and public defender caseloads had risen 124.64% (from 10,061 22,602). The total appropriation for assigned counsel and public defenders in FY 98 was $24,210,905. In that year, the PDS central administration expenditure was $402,340,92, or less than 1.7% of the total indigent defense cost ($24,613,246). In our opinion, PDS has been expected to oversee a growing

[15] Voucher processing statistics differ from disposed case counts. Voucher processing in any given fiscal year necessarily includes processing and auditing vouchers representing cases closed during pas fiscal years in addition to ones from the current fiscal year.

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indigent defense workload for a diminishing amount of administrative money from FY 94 to FY 98, making it difficult to conduct the type of statistical analysis completed for the Task Force.

Finally, the increasing expectations for PDS staff to audit and process more and more vouchers while monitoring Public Defender Corporation case reporting practices should be understood in light of staff salaries. For an organization responsible for processing and auditing payment vouchers in excess of $20 million a year, it is difficult to believe that there is no person on staff at PDS dedicated to overseeing the management information system. It is also important to point out that although each PDS staff member does not devote 100% of his or her time to data auditing/processing, the majority of the people responsible for processing and auditing the vouchers make, on average, approximately $20,000 per year. Table 2-9 lists PDS staff and salaries:

Table 2-9

PDS Staff & Salaries

Position	FY 98	Current
Executive Director	$55,000	$55,000
Admin. Officer	$31,212	$36,048
Supervisor II	$31,140	$36,048
Paralegal	$22,992	$26,976
Office Assistant III	$22,128	$26,028
Office Assistant II	$17,580	$22,032
Accounting Assistant (2)	$13,896	$16,236
Total:	**$193,948**	**$218,368**

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Chapter 3

Statewide Indigent Defense Survey

At the initial meeting of the Task Force, the Executive Director of PDS made it clear that he believed the funding crisis could be lessened by accepting the Legislative Oversight recommendation to expand the public defender system. Because the Task Force is very broad-based, not all members share this view. During the October 7th meeting, some task force members expressed their opposition to expanding the public defender system and showed strong support for the assigned counsel program existing in many judicial circuits. The argument runs that even if Public Defender Corporations are proven to be more cost-effective, quality of representation may be hurt by moving to a public defender system due to burgeoning caseloads and the inexperience of many younger public defenders.

In the spirit of inclusion, Delegate Rick Stanton, Chair of the House Judiciary Committee, suggested that the Task Force conduct a survey of those individuals who have experience and a vested interest in West Virginia's indigent defense system (justices, judges, prosecutors, public defenders, and private court-appointed attorneys) to gauge their opinions of the cost-effectiveness and quality of the current system and to hear viewpoints for improvements. Toward that end, The Spangenberg Group prepared a questionnaire, in cooperation with the Task Force Chair, John McCuskey, and PDS distributed it in early November. The survey was distributed anonymously and thus the individuals results are confidential. Each of the survey responses was processed and analyzed by The Spangenberg Group.[16]

Besides general background information, the survey asked four basic questions:

- How satisfied are you with the current method of providing indigent defense services?
- Do you believe that indigent defense counsel generally receive adequate support services (i.e. paralegal staff, social workers, investigators, expert witnesses) to defend their clients?

[16] TSG acknowledges the work of Iris Brisendine of PDS for facilitating the collection of survey responses on behalf of our organization.

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- Is there a difference in the quality of defense representation between public defenders and court appointed counsel?
- What would you do to improve indigent defense services?

Survey Results

The Spangenberg Group would like to acknowledge the extreme thoughtfulness in which the vast majority of surveys were answered. Many respondents wrote detailed answers, and several respondents drafted letters to express their opinion on indigent defense in West Virginia at length.

Of the 1,028 surveys sent out, The Spangenberg Group analyzed 340 (a response rate of approximately 33%).[17] Table 3-1 breaks down the response rates by position within the criminal justice system. Since the surveys are greatly weighed toward private court-appointed attorneys, The Spangenberg Group has analyzed the response by position within the criminal justice system:

Table 3-1

Indigent Defense Survey Response Rates

Position	Survey Sent Out	Responses Received	Response Rate
Justice/Judge	71	31	43.66%
Prosecutor	55	26	47.27%
Public Defender	16	13	81.25%
Private Court-Appointed Lawyer	906	278	30.68%
Other[18]	0	5	0.00%
Total	**1,028**	**353**	**34.34%**

Justices/Judges

Of the 32 justices/judges that responded, 16 (50%) stated that a Public Defender Corporation is the primary method of providing indigent defense services in their current circuit. Over 81% of this group (13 of 16) reported their satisfaction level with the current method of providing indigent services as either "very satisfied" or "somewhat satisfied." Asked to explain their responses, these

[17] Analysis was based on all surveys received at our offices by November 23, 1999.

[18] Four respondents classified their positions as "other". The four responses were: 1.)Bar County President; 2.)Expert Witness; 3.)Legal Services; 4.)Magistrate; and 4.) State Government Attorney. For purposes of analysis, the responses from numbers 1-3 were included in the private court-appointed attorneys answer. The magistrates's answers were included in the judges responses. The State Government Attorney was grouped with the prosecutors.

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justices/judges generally responded positively to the performance of the Public Defender Corporations. Typical responses included:

- "Our public defender office does a real good job. I think it is a big improvement over the old appointed counsel system."
- "Still too much reliance on the private bar. Public defenders need greater resources at trial level and on appeal." and
- "We have a great public defender system. Well staffed with competent lawyers."

No judges in circuits with Public Defender Corporations claimed they were "very dissatisfied" with the current indigent defense system, and just two stated that they were "somewhat dissatisfied."[19] One of these two judge's dissatisfaction level is a result of the Public Defender Corporation being understaffed and therefore does not pay enough attention to the specific defendant. This judge stated that, "[t]oo much of the work is not done with specific defendant in mind, but [rather] with overall caseload." The other judge commented that her/his dissatisfaction was due to the process of appointing private counsel in conflict cases being too slow, resulting in too many continuances of felony cases.

The justices/judges that serve circuits with no Public Defender Corporation also expresses a high level of satisfaction with indigent defense services. Twelve of 16 (or 75%) responded that they were either "very satisfied" or "somewhat satisfied" with the current method of providing counsel to indigent defendants. A typical response from these judges was: "Defendants get exceptional representation by competent attorneys who are in private practice." However, one judge in this group expressed the opinion that "some attorneys submit excessive statements for simple cases."

As with judges in circuits with Public Defender Corporations, no judges in assigned counsel circuits were very dissatisfied with the current system of indigent defense. Two of the four remaining judges were somewhat dissatisfied. Only one of these two offered an explanation, claiming that "[t]he same services could be supplied at less cost through a Public Defender Corporation."

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[19] Only one judge in a Public Defender Corporation circuit claimed that she/he was neither satisfied nor dissatisfied. This judge stated that the Public Defender Corporation was just instituted in October 1999 and it was too early to comment on its merits.

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Table 3-2 displays the breakdown of justice/judges satisfaction level with the current system. Overall, the majority of justice/judges who responded to the survey state that they are very satisfied with the way indigent defense is provided in West Virginia:

Table 3-2

Justices/Judges Satisfaction Level with Current Indigent Defense System

Primary Indigent Defense Provider	Satisfaction level	Number	Percent
PDC	Very Satisfied	8	50.00%
	Somewhat Satisfied	5	31.25%
	Neith Satisfied nor Dissatisfied	1	6.25%
	Somewhat Dissatisfied	2	12.50%
	Very Dissatisfied	0	0.00%
AC	Very Satisfied	10	62.50%
	Somewhat Satisfied	2	13.33%
	Neith Satisfied nor Dissatisfied	2	13.33%
	Somewhat Dissatisfied	2	13.33%
	Very Dissatisfied	0	0.00%
Overall	Very Satisfied	18	56.25%
	Somewhat Satisfied	7	21.88%
	Neith Satisfied nor Dissatisfied	3	9.38%
	Somewhat Dissatisfied	4	12.50%
	Very Dissatisfied	0	0.00%

Over 78% (25 of 32) of justices and judges who participated in the survey believe that defense counsel receive adequate support services to defend their clients. Three respondents claimed that they did not know (9.68%), while another four justice/judges believe that defense attorneys do not receive adequate paralegal, social service, and/or investigatory services.

The Task Force was interested to see if judges who work in circuits with a Public Defender Corporation believe that either public defenders or assigned counsel provide indigent defendants with better representation. Of the 16 judges in Public Defender Corporation circuits, 12 offered their opinion on this question. Exactly half (6 of 12) justice/judges responded that there was no difference in representation. These six justice/judges were overwhelmingly favorable in their praise of both public defenders and assigned counsel, as shown in these examples:

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- "Our local public defender is staffed with seasoned, experienced trial lawyers who give spirited defense - just like the lawyers I choose for appointment."

- We are fortunate to have both well-trained public defenders and experienced private assigned counsel which both provide very competent representation to indigent criminals that appear in my court. We also have well trained assigned counsel who represent indigent parties very aggressively in abuse and neglect cases."

Of the six justice and judges who do believe that there is a difference in the quality of defense representation between public defenders and assigned counsel, the majority (5 of 6) believe public defenders provide better quality defense services. All five commented to some degree that their belief is grounded in the fact that public defenders have far more experience in criminal defense work than do assigned counsel. The one judge who felt that assigned counsel provide better representation believes that assigned counsel attorneys have more time to devote to a case.

Perhaps the most important question of the survey is the one that asks, "What would you do to improve indigent defense services?" Because this was an open-ended question, devised to solicit wide-ranged responses, TSG has categorized the responses into sub-groupings to help the analysis. Twenty of the 32 justices/judges surveyed offered suggestions. Table 3-3 displays the responses:

Table 3-3

Justices/Judges' Suggestions for Improving Indigent Defense Services

Suggested Improvement	Number	Percent
Expand PD system	6	30%
More Oversight of Current System	5	25%
More Training	3	15%
Better Funding	2	10%
Faster Payments	2	10%
Raise AC rates	1	5%
No improvement Needed	1	5%

One judge in a circuit with no Public Defender Corporation stated:

- "It appears to me that indigent defense services may be overpriced in many instances. Many of the vouchers submitted for payment reflect continuing research on criminal offenses of which the attorney should obviously be aware. How many years should an

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attorney require to learn and understand the elements of larceny, shop-lifting, burglary, breaking and entering and the like?"

Another judge responded:

- "Provide free training seminars to attorneys who provide representation to indigent clients. Monitor closely the payments to attorneys on indigent cases. Appoint attorneys according to their skills and experience as opposed to random assignments."

Prosecutors

The 27 prosecutors who responded to the survey estimated that approximately 73.8% of their workload, on average, is related to processing indigent defendants.[20] As with the justices and judges, the prosecutors generally are satisfied with the current method of providing indigent defense services, regardless of whether or not they serve in circuits with Public Defender Corporations.

Table 3-4

Prosecutors' Satisfaction Level with Current Indigent Defense System

Primary Indigent Defense Provider	Satisfaction level	Number	Percent
PDC	Very Satisfied	6	54.55%
	Somewhat Satisfied	3	27.73%
	Neither Satisfied nor Dissatisfied	1	9.09%
	Somewhat Dissatisfied	1	9.09%
	Very Dissatisfied	0	0.00%
AC[21]	Very Satisfied	6	40.00%
	Somewhat Satisfied	3	20.00%
	Neither Satisfied nor Dissatisfied	5	33.33%
	Somewhat Dissatisfied	1	6.67%
	Very Dissatisfied	0	0.00%

[20] The TSG prosecutor survey was substantially enhanced by a preliminary survey created and distributed by William Charnock, of the West Virginia Prosecuting Attorneys Institute. Mr. Charnock's survey closely mirrored many of the questions asked in the formal survey. Mr.Charnock received 31 responses to our 26 responses. Where appropriate, TSG has used quotations from the Charnock survey to further demonstrate the viewpoints of West Virginia prosecutors.

[21] One prosecutor in a circuit served by an assigned counsel system left his/her satisfaction level response blank.

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Table 3-4 (Continued)

Prosecutors' Satisfaction Level with Current Indigent Defense System

Primary Indigent Defense Provider	Satisfaction level	Number	Percent
Overall	Very Satisfied	12	46.15%
	Somewhat Satisfied	6	23.08%
	Neither Satisfied nor Dissatisfied	6	23.08%
	Somewhat Dissatisfied	2	7.69%
	Very Dissatisfied	0	0.00%

It is important to note that no prosecutors were "very dissatisfied" by the current system of providing indigent defense services. But, it is interesting that prosecutors in circuits served by assigned counsel system have a higher percentage of "neither satisfied nor dissatisfied" or "somewhat dissatisfied" respondents (40%) than their counterparts in circuits with Public Defender Corporations (18.18%).

Reasons given for the lower satisfaction level in assigned counsel circuits ranged in degree of dissatisfaction with the present system. For instance, one prosecutor stated, "[s]ome court appointed counsel not competent; scheduling is difficult," while another commented, "[t]he system exists - it needs to be changed but there is too much power behind current systems to change it."

As with the justice/judges' responses, roughly half (6 of 11) the prosecutors who worked in circuits with Public Defender Corporations believe there is a difference between the representation provided by public defenders versus assigned counsel. Again, roughly half of these six prosecutors think public defenders provide better representation. This viewpoint is represented by such comments as, "[p]ublic defenders are often more familiar with updates/changes in statute or court rules and are more efficient in handling criminal cases." The opposing viewpoint is best represented in the following comment: "The Public Defender Corporation has a high turnover rate with newer attorneys receiving next to no supervision or guidance from deputies. Court-appointed counsel is primarily experienced attorneys who better represent the client both legally and emotionally."

A higher majority of prosecutors (25.93%) than justices/judges (9.68%) believe that public defenders do not have adequate support staff.

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As with the judges, the prosecutors' responses for improvements to the system were also grouped under similar headings. Sixteen of the 27 prosecutors offered suggestions for improvements.

Table 3-5

Prosecutors' Suggestions for Improving Indigent Defense Services

Suggested Improvement	Number	Percent
Expand PD system	5	31.25%
More Oversight of Current System	1	6.25%
Moe Training	1	6.25%
Better Funding	3	18.75%
Faster Payments	2	12.50%
No improvement Needed	4	25.00%

Public Defenders

Perhaps most central to the survey is the question of how defense attorneys view the system themselves. Thirteen of the 16 heads of the local Public Defender Corporations responded to the survey (81.25% response rate). The vast majority of public defenders are either "very satisfied" or "Somewhat satisfied" with the current method of providing indigent defense services. Two public defenders responded that they were "somewhat dissatisfied" with the system, though their dissatisfaction was associated with scheduling conflicts and/or slow payments for private attorneys handling conflicts.

Only six public defenders feel that they are afforded adequate support staff (37.5%). This belief is reflected in the fact that the most common response from public defenders regarding how to improve the system is to provide better funding (41.67%).

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Table 3-6

Public Defenders' Suggestions for Improving Indigent Defense Services

Suggested Improvement	Number	Percent
Expand PD System	3	25.00%
More Oversight of Current System	2	16.67%
Better Funding	5	41.67%
Faster Payments	2	16.67%

Private Court-Appointed Attorneys

The majority of our survey respondents were private court-appointed lawyers. Satisfaction levels with such a large pool varied greatly, as reflected in Table 3-7.

Table 3-7

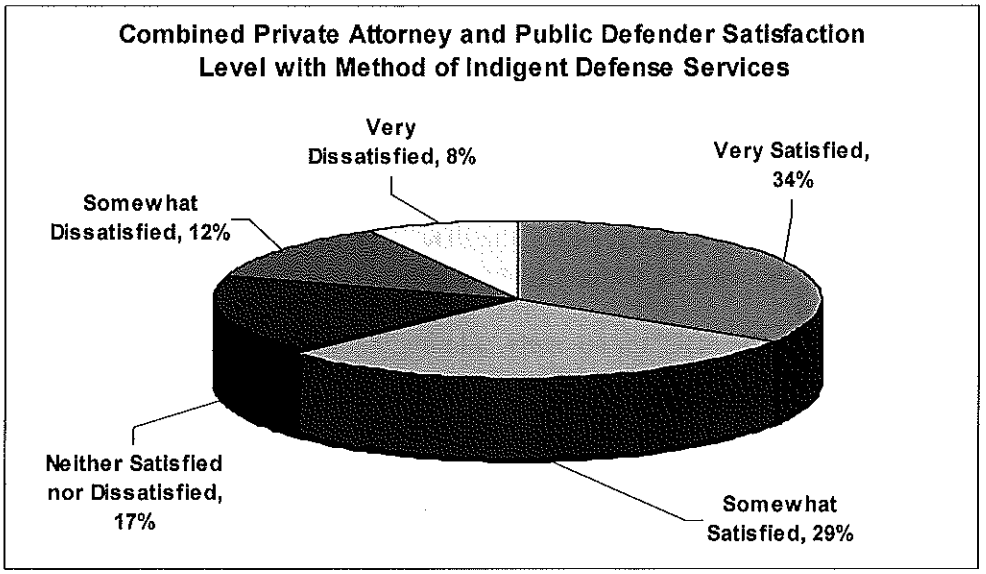
Satisfaction Level with Current Indigent Defense System

Primary Indigent Defense Provider	Satisfaction level	Number	Percent
PDC[22]	Very Satisfied	32	25.19%
	Somewhat Satisfied	36	28.35%
	Neither Satisfied nor Dissatisfied	29	22.83%
	Somewhat Dissatisfied	17	13.39%
	Very Dissatisfied	13	10.24%
AC[23]	Very Satisfied	62	41.61%
	Somewhat Satisfied	43	28.86%
	Neither Satisfied nor Dissatisfied	17	11.41%
	Somewhat Dissatisfied	17	11.41%
	Very Dissatisfied	10	6.71%

[22] Two court-appointed attorneys in a circuit served by a Public Defender Corporation left his/her satisfaction level response blank.

[23] Three court-appointed attorneys in a circuit served by an assigned counsel system left their satisfaction level response blank.

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Private court-appointed attorneys represent the sector of the criminal justice system with the highest percentage believing that indigent defense providers do not receive adequate support services (40%).

Of the 129 private court-appointed attorneys working in circuits with Public Defender Corporations, 49 (or 37.98%) stated that there was a different in the quality of work between public defenders and private attorneys. Three of these did not advance a reason for their opinion. The reasons provided by the other 46 are quite interesting. Approximately 33% (15 of 46) believe that private attorneys give better representation. The reasons stated are included:

- "Appointed counsel attorneys are young members of reputable, quality firms. They are more effective advocates and more politically powerful."
- "A private attorney is more experienced and able to see the issues and not be concerned with 'numbers' or statistics." and
- "Assigned counsel provides superior defense. Public defenders plead over 90% of cases and discourage clients from going to trial."

The same number of private attorneys (15 of 46, or 32.61%) believe public defenders provide better services. These answers included:

- "Public defenders in [_____] do outstanding work consistently. Private attorneys as court-appointed counsel result in inconsistent quality."

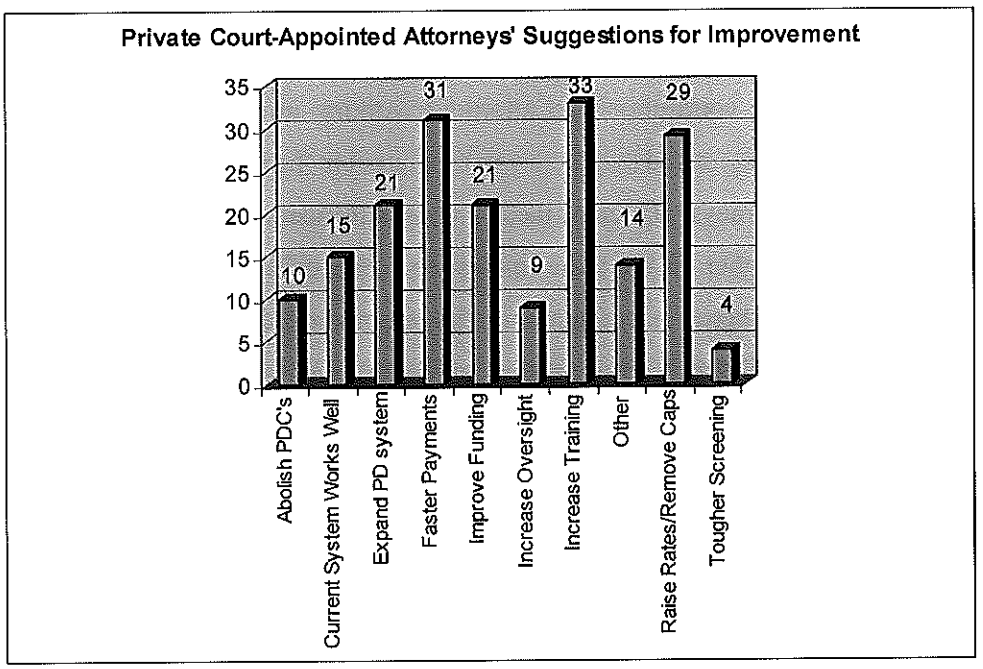
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- "Public defenders usually are better prepared and have more knowledge than other assigned counsel." and
- "Public Defenders have greater expertise and they specialize in certain areas."

Finally, the other 16 private attorneys working in Public Defender Corporation circuits believe the difference is caused by the public defender being overworked and underpaid:

- "My feelings is that on major felonies, the PDC is up to the task; however on lesser felonies and misdemeanors, its representation is somewhat lacking due to the sheer volume of cases."
- "The caseload for the PDC's is so overwhelming that they cannot provide adequate representation for each and every client."

Most interesting is the responses from private court-appointed attorneys as to what they would do to improve the system. The most common answer was to provide more training or a resource center through Public Defender Services to enhance better cooperation between public defender offices and private attorneys.



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Table 3-8 Private Court Appointed Attorneys' Suggestions for Improving Indigent Defense Services	
Suggested Improvement	Percent
Abolish PDC's	5.36%
Current System Works Well (No Changes)	8.02%
Expand PD system	11.23%
Faster Payments	16.58%
Improve Funding	11.23%
Increase Oversight	4.81%
Increase Training	17.65%
Other[24]	7.49%
Raise Rates/Remove Caps	15.51%
Tougher Screening	2.14%

In regard to the number of respondents requesting training and resource services, it should be noted that West Virginia Code §29-21-6(c) provides for PDS to provide such assistance:

> The agency shall establish and the executive director or his designate shall operate a criminal law research center as provided for in section seven [§29-21-7] of this article. This center shall undertake directly, or by grant, or contract, to serve as a clearinghouse for information; to provide training and technical assistance relating to the delivery of legal representation; and to engage in research, except that broad general legal or policy research unrelated to direct representation of eligible clients may not be undertaken.

The inability of PDS to provide the services that they are statutorily required to perform should be seen in the same light of limited administrative resources highlighted in Chapter 2. Currently, PDS cannot provide these services. It should be noted that having a resource center may, in fact, reduce the amount of research hours billed by court-appointed counsel to cases.

[24] "Other" represents answers that were unique and not easily grouped under any of the headings. Answers included: decriminalize more crimes; end recoupment for all indigent clients; public defenders overworked; etc. One attorney offered the following suggestion: "Why not pay the current rate and allow the private attorneys to write $X ($35-$50) per hour from his/her income tax as a charitable deduction or directly from gross income?"

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Chapter 4

Indigent Defense in West Virginia: A National Perspective

During the initial meeting, Task Force members requested The Spangenberg Group to provide them with an analysis of the various indigent defense models employed throughout the country to help them understand our comparisons. There are three primary models for providing representation to those accused of crimes and unable to afford counsel: assigned counsel, contract and public defender programs.

- The ***assigned counsel model*** involves the assignment of indigent criminal cases to private attorneys on either a systematic or an ad hoc basis.
- The ***contract model*** involves a private bar contract with an attorney, a group of attorneys, a bar association, or a private non-profit organization which will provide representation in some or all of the indigent cases in the circuit.
- The ***public defender model*** involves a public or private non-profit organization with full or part-time staff attorneys and support personnel.

From these three models for the appointment of counsel, states have developed indigent defense delivery systems, many of which employ some combination of these types. For example, even in states with a statewide public defender system, private attorneys will be appointed in conflict cases and in some instances to alleviate burdensome caseloads. In other states where there is less uniformity, there may be contract counsel in one county, assigned counsel in a second county, and a public defender office in yet a third county. (A more in depth discussion of each model is included in Appendix E.)

How States Organize and Fund Their Systems at the Third Level

More than one half of the states, including West Virginia, have organized some form of a statewide indigent defense program. These statewide systems have varying degrees of responsibility and oversight, but they share the common element of providing some degree of uniformity to the

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delivery of indigent defense services statewide.[25]

In contrast to statewide systems, the other state delegate the responsibility to organize and operate an indigent defense system to the individual county or a group of counties comprising a judicial circuit. The decision of what type of system to use may be made by the County Board, the local bar association, the local judges or a combination of these groups. Under this system there is little or no programmatic oversight at the state level. There is no state board, commission, or administrator.

How States Organize and Fund Their Appellate Indigent Defense System

The predominant methods used throughout the states to provide appellate defense services are: combined and trial and appellate state public defenders, state appellate defender programs, regional public defender programs and local level delivery programs. The latter applies to states with no statewide or regional system for providing appellate defender services. In these state, statutes or court rules specify whether local defender programs or private, court-appointed systems will provide representation in individual appellate cases. Private attorneys in this delivery model are appointed on an ad hoc, or, case-by-case basis. Statutes or court rules specify the rates for compensation of private counsel in some states, while others leave the amount of compensation to the discretion of the appointing authority. In states where the local public defender provides appellate representation, expenses relating to these services (e.g., experts or transcripts) are often built directly into the public defender's budget by the funding source.

State-by-State Indigent Defense Comparisons

When assessing the state of an indigent defense program, The Spangenberg Group looks to similar indigent defense systems across the country with which to compare the program. Making

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[25] A statewide agency may operate under the executive or judicial branch of government or as an independent public or private agency. Often, a governing body or commission is created to enact policy and select the state public defender or chief counsel of the agency. In some states, a state public defender is appointed by the Governor.

Some statewide systems incorporate a variety of local indigent defense delivery systems throughout the state, including public defender offices, assigned counsel and/or contract programs. Typically, public defenders serve metropolitan areas and private bar programs or contract programs serve the less populous regions. Private bar programs are also necessary in all public defender regions for the purpose of providing representation in conflict and caseload overload situations.

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comparisons between various indigent defense systems is an imperfect science, due to a wide number of variables. Among the most important variables to consider in state-by-state indigent defense comparisons are the following:

- Whether the system is funded entirely with state funds, entirely with county funds, or a mixture of both.
- Whether the system is organized at the county, regional, or state level.
- Whether or not the state has the death penalty.
- Whether the system has a centralized organization responsible for statewide data collection, oversight, and/or policy making.
- The types and percentages of cases handled by various providers in the state. For example, does a specific program handle appeals or death penalty cases? What percentage of the total indigent defense caseload is made up of less time consuming cases such as misdemeanor or traffic cases?
- The rate of pay for court-appointed counsel in the state.
- The population of the state.
- The way in which programs define, and therefore count, cases. Different programs define cases by charge, by indictment, by defendant, by assignment and by disposition.
- The availability of complete, up-to-date and reliable data.
- Geographic proximity.
- State poverty rates. and
- Crime rates.

Taking into account all of these criteria, The Spangenberg Group has selected the following states for comparison with West Virginia: Connecticut; Delaware; Florida; Maryland; Missouri; New Jersey; New Mexico; North Carolina; Ohio; Oklahoma; Oregon; Tennessee; Wisconsin; and, Vermont. It should be noted that Pennsylvania and Virginia are not good comparison states because of the lack of statewide indigent defense data. A brief narrative on each of these states' indigent defense systems is in Appendix F.

Caveats on the Data

Before we perform the independent data audit on PDS's data, we began collecting data from these comparative states. Because we assumed that we would have good data from FY 1998 for West Virginia, we asked these other states for FY 1998 data as well. Unfortunately, because of the delaying receiving all assigned counsel vouchers from FY 1998 in West Virginia, The Spangenberg Group now feels that FY 1997 is a better comparative year. We could only get FY

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1998 data in six of the comparative states (CT, MO, NC, OK, TN, and VT).

Additionally, the population figure used for the state-by-state comparisons are the U.S. Bureau of the Census figure for 1996. West Virginia's population in 1996 was 1,825,754. This varies with the state population figure in chapter 2 (1,793,477). Chapter 2 used 1990 population data because it was the most recent year for which county-by-county data was available.

Finally, Chapter 2 examines the actual cost of representing indigent defense cases. Therefore, expenditure information did not include central administration costs ($406,611 in FY 97). Because other states included central administration expenditures in their data, we have added this amount evenly between public defenders and assigned counsel in this analysis. This explains why cost per case figures are higher than those reported in Chapter 2.

State-by-State Comparison of Cost Per Capita & Cost Per Case

Based on the methodology described above, West Virginia had an indigent defense cost per capita of $10.00 in FY 1997. This ranks West Virginia sixth of the fifteen comparative states.

Table 4-2

Indigent Defense Cost Per Capita, FY 97

State	Population	Expenditure	Cost Per Capita
Missouri	5,358,692	$24,727,622.00	$4.61
Ohio	11,172,782	$62,378,131.00	$5.58
Oklahoma	3,300,902	$19,226,832.00	$5.82
Tennessee	5,319,654	$35,817,993.00	$6.73
New Jersey	7,987,933	$57,295,000.00	$7.17
Maryland	5,071,604	$36,588,453.00	$7.21
North Carolina	7,322,870	$58,622,732.00	$8.01
Vermont	588,654	$5,348,677.00	$9.09
Delaware	724,842	$6,902,126.00	$9.52
West Virginia	1,825,754	$18,264,056.00	$10.00
Connecticut	3,274,238	$34,095,150.00	$10.41
New Mexico	1,713,407	$17,956,300.00	$10.48
Wisconsin	5,159,795	$56,045,000.00	$10.86
Florida	14,399,985	$163,950,000.00	$11.39
Oregon	3,203,735	$53,158,841.00	$16.59
Average:			**$8.29**
FY 1998 data =			

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West Virginia also has an average indigent defense cost per case of $454.70. This ranks the state third of fifteen.

Table 4-3

Indigent Defense Cost Per Case

State	Caseload	Expenditure	Cost Per Case
Delaware	33,492	$6,902,126.00	$206.08
Ohio	287,126	$62,378,131.00	$217.25
Tennessee	151,827	$35,817,993.00	$235.91
Maryland	153,340	$36,588,453.00	$238.61
Florida	562,362	$163,950,000.00	$291.54
Vermont	17,735	$5,348,677.00	$301.59
New Mexico	59,154	$17,956,300.00	$303.55
Oklahoma	59,241	$19,226,832.00	$324.55
Missouri	76,034	$24,727,622.00	$325.22
North Carolina	154,443	$58,622,732.00	$379.58
Oregon	135,175	$53,158,841.00	$393.26
Connecticut	76,560	$34,095,150.00	$445.34
West Virginia	40,167	$18,264,056.00	$454.70
Wisconsin	118,555	$56,045,000.00	$472.73
New Jersey	88,343	$57,295,000.00	$648.55
Average:			**$323.00**
FY 1998 data =			

Comparison of Central Administration Expenditures & Salaries

Because Public Defender Services oversees both Public Defender Corporations and the assigned counsel systems, comparison of central administration expenditures is difficult. In most states, a separate agency like the administrative office of courts oversees the processing of assigned counsel vouchers. Whenever possible, The Spangenberg Group collected data from all agencies in a state that does comparative work to PDS. In seven of the comparative states, we were able to compile data on central administrative costs. West Virginia has the lowest percentage of central administration cost to the overall indigent defense expenditure.

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Table 4-4

Central Administration Costs

State	Central Admin. Expenditure	Total Expenditure	Central Admin as a % of Total Expenditure
Delaware	$450,732	$6,902,126	6.53%
New Mexico	$922,600	$17,956,300	5.08%
Connecticut	$1,820,032	$34,095,150	5.34%
Vermont	$211,874	$5,348,677	3.96%
Missouri	$719,936	$24,727,622	3.11%
Tennessee	$836,922	$35,817,993	2.34%
West Virginia	$406,611	$18,264,056	2.23%

The main reason for West Virginia's low percentage of central administrative costs to overall indigent defense expenditure is due to salaries and the lack of a management information specialist.

Table 4-5

Central Administration Average Salaries (# of Positions)

State	Ex. Dir/Chief PD	Deputy	AR/AP/HR	MIS	Data Process	Other
Delaware	$105,200	$102,600	$37,458 (4)		$55,594	$37,146
New Mexico	$99,100	$88,200	$80,500 (2)		$27,000	$76,600
Connecticut	$117,000	$110,000	$58,813 (9)	$67,184 (2)	$46,375 (2)	$57,487 (15)
Vermont	$65,586		$36,475 (2)		$30,966	
Missouri	$86,652	$81,096	$48,930 (2)	$48,060		$25,068 (15)
Tennessee	$95,152		$35,805 (4)	$46,836 (2)	$25,000 (4)	
West Virginia	$55,000		$34,332 (2)		$19,176 (4)	$25,692

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Chapter 5

Findings

The balance of this report consists of the findings of The Spangenberg Group. Our findings are based on our data review, discussion with public defenders and Task Force members, the statewide survey, and our site visits to the PDS office. The Spangenberg Group would like to begin this section highlighting some of the positive things we encountered during our time in West Virginia:

Finding #1: Public Defender Services has a small but dedicated staff of professionals that are committed to overseeing indigent defense services in a manner that is cost-efficient to the people of West Virginia. We were impressed with the diligence with which PDS staff maintains and verifies thousands of vouchers on an annual basis under difficult circumstances.

Finding #2: PDS currently collects a substantial amount of data related to indigent defense representation. Many state do not collect as much data on a uniform basis, especially as it relates to court appointed counsel information.

Finding #3: In many other state that we have studied, there was a higher level of dissatisfaction with the jurisdiction's indigent defense system than was shown in the overall response rate of the West Virginia survey. However, a number of recommendations were made by justices, judges, prosecutors, public defenders and private court-appointed counsel for needed improvements.

Finding #4: By whatever measure is used to draw expenditure comparisons between West Virginia and other states, West Virginia is not at the bottom of the list.

The balance of this chapter is a list of our other findings:

Finding #5: The window for submitting vouchers to PDS is extremely broad and well above the national norm.

The Spangenberg Group believes that many of the PDS data problems highlighted in this report could be resolved by shortening the time in which vouchers may be sent in for payment. Currently, PDS is forced to base budget requests on data that is incomplete. Good budget forecasting requires sound data. In turn, the ability to accurately forecast expenditure

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needs could lead to better planning and subsequently end the need for supplemental expenditures. This in turn could lead to faster payments to court-appointed attorneys.

The Spangenberg Group does not know of any other state that allows court-appointed counsel to submit vouchers up to four years after the completion of a case. Though a state-by-state review of voucher rules and guidelines has not been conducted, we believe the national norm to be closer to three months after the close of the year in which the final disposition took place.[26]

Finding #6: The current PDS budget does not allow it to operate the training/resource center, the audit division and the appellate division as required by statute.

Because of its limited funding, PDS has been forced to contract out much of its resource center and appellate division functions to the 13th Circuit Public Defender Corporation. It has been our experience nationally that when statewide indigent defense divisions are housed in local offices, many defense providers either do not know that the resources exist and/or feel like they do not have access to them. This is especially true in regards to court appointed counsel.

In West Virginia, this situation has resulted in the use of the resource center being primarily for public defender use only. As highlighted in the survey conducted for this report, court-appointed attorneys' most common request is for training. As such, we believe that better quality and more frequent training for court appointed attorneys may lead to more familiarity with the defense function.

Similarly, a fully funded auditing department would be able to produce reports on a periodic and regular basis that could flag such things as: the number of times attorneys bill above the average cost-per-case; the number of hours billed in excess of a certain monthly/quarterly

[26] For instance, a group of court-appointed attorneys in Washington, DC are currently suing the court system for failure to pay in a timely manner. The lawyers re relying on the Prompt Payment Act, which requires their vouchers to be processed within a month of the date they are submitted. Vouchers must be submitted within *seven days* after the legal work is performed.

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threshold; etc. This is not to imply that The Spangenberg Group thinks that there is rampant fraud within the West Virginia indigent defense system. Rather, an auditing division may be able to find additional cost-savings over time that could not have been uncovered given the parameters of this study and report.

Finding #7: PDS needs a management information specialist to oversee its case-tracking system.

Finding #8: The staff and management of PDS are paid at a considerably lower rate than Indigent defense organizations in comparable states. The PDS staff is also substantially smaller in size than other comparable state programs and needs to be expanded.

Not only must the size of the PDS staff be increased, but the salary levels must also be increased to improve the quality and cost-effectiveness of its indigent defense system. Generally, the auditing functions associated with processing vouchers improves when data processors have the familiarity with the auditing system that comes from years of experience. Competitive wages should ensure that staff turn-over does not disrupt the agency's ability to audit and process vouchers.

Currently, the pay of PDS employees is below that of comparable positions in other states. The Executive Director of PDS is the lowest paid statewide indigent defense executive among comparable states, a situation that is compounded by the fact that the Executive Director of PDS cannot be explained away by geographical variances, as the Executive in charge of overseeing indigent defense in the regional states of Virginia, Maryland, Delaware and Tennessee all have salaries at or near $100,000.

The Spangenberg Group does not feel it is appropriate for us to make a specific recommendation in this regard. However, we do feel that the salary of the Executive Director should reflect the responsibility of managing a $27 million state agency.

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Finding #9: The data in this report is consistent with the findings of the West Virginia Legislative Oversight report and the Joint Standing Committee on the Judiciary report, namely that public defenders provide more cost-effective representation than do court-appointed attorneys. It is our professional opinion, based on over fifteen years experience and hundreds of the indigent defense studies nationwide, that an expanded study on this issue would result in similar conclusions.

Based on our FY 1997 calculations, Public Defender Corporations represent indigent defendants at an average cost per case of #340.77 compared with the court-appointed attorney cost-per-case figure of $573.47. As such, PDC's handled 55.39% of the closed cases (22,248) for 42.46% of the total indigent defense expenditure ($7,581,415). Conversely, private court-appointed counsel handled 44.61% of the caseload (17,919) for 57.54% of the indigent defense expenditure ($10,276,030). In that same year, PDC's handled the majority of felonies, misdemeanors, juvenile delinquency, paternity, parole revocation, habeas and "other" cases in the state.

This finding is consistent with recent data obtained from nine other states that were able to break down their average cost per case between private court appointed counsel and public defenders. In each of these states, public defenders have a lower cost per case than do court-appointed attorneys.[27] It is our experience nationally that public defenders have a lower cost per case because of such factors as: more familiarity with criminal law; specialization for certain types of cases; centralization of administrative costs; and, the flexibility for accepting some amount of additional cases within approved budget levels. On the other hand, a private court-appointed counsel system operates on a fixed unit cost. That is, if the caseload increases above a projected level so will the overall costs.

Not withstanding the West Virginia data and The Spangenberg Group's experiences nationwide, there remains some uncertainty that the data in this report is sufficiently reliable to call for a recommendation by the Task Force that consideration should be given to

[27] Connecticut, Delaware, Georgia, North Carolina, Ohio, South Carolina, Tennessee, Vermont and Virginia.

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expanding the public defender corporations to other circuits in the state.[28] The concerns that have been raised are twofold:

1.) The indigent defense data is incomplete and therefore no conclusions should be drawn from it; and
2.) The establishment of a Public Defender Corporation in a circuit actually increases that circuit's indigent defense caseload. As such, it can be argued that the indigent defense expenditure for a circuit may actually increase whenever a Public Defender Corporation is introduced into a circuit.

First, we believe that there is an important distinction between data that is incomplete and data that is of questionable integrity. Clearly, TSG cannot vouch for the data entry practices of each and every public defender corporation. However, we did complete an intensive study of the PDS case-tracking system and data processing procedures. As we have already stated, we are impressed by both the level of professionalism of the PDS staff and the level of sophistication of the new database system. Additionally, we observe data entry practices and interviewed the PDS staff regarding systemic checks and balances. In our professional opinion, we believe PDS has a competent staff overseeing the public defender and appointed counsel data reporting. Thus, we are confident that the indigent defense data produced for this report is the most reliable indigent defense data to date. The data problems discussed in the body of the report reflect issues of incomplete data due to the extended window for submitting vouchers and not data of a poor integrity level that would preclude making any findings whatsoever.

Second, it is our experience nationally that the total number of court appointments frequently does increase whenever a public defender system is established in a given jurisdiction. This is true for several reasons, including: public defenders are often assigned to courtrooms and

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[28] The Spangenberg Group was asked by some Task Force members to re-run some numbers to examine whether or not the establishment of a PDC increases a circuits indigent defense caseload and expenditure in an attempt to prove that court-appointed systems are more cost efficient than public defender systems. In the spirit of providing all information requested, TSG has included an additional data analysis of the 6th/24th and 5th circuits in Appendix G. Suffice it to say, we feel confident in the following findings:

1.) It is unwise to base any conclusions, either pro or con, on the data from the 6th/24th and 5th circuits alone Because the sample is too small and the evidence is contradictory;
2.) We believe it would be useful to visit several of the circuits, both those with and without Public Defender Corporations to compare criminal case data among the prosecution, the courts and PDS before any further Definitive conclusions be drawn as tot he cost-effectiveness of public defenders and court-appointed attorneys Specifically for West Virginia.

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therefore are more accessible to take appointments; judges generally are more likely to make an appointment because of their familiarity with the public defender system; and, clients are made aware of the public defender and often seek counsel prior to official appointment. Yet, it is also our experience that the cost efficiencies of public defender systems may offset this increase.

It is also important to state that in our travels we have observed very good and very bad indigent defense systems. We have seen very bad public defender systems resulting from severe under funding or from mismanagement of the office. Similarly, we have seen poor appointed counsel systems that attempt to save the jurisdiction money by cutting vouchers or not extending the right to counsel where it is constitutionally required. Simply stated, there is no single delivery model for any and all jurisdictions. For instance, largely rural counties often do not have the population nor the caseload to warrant a public defender office whereas an urban jurisdiction would. The Spangenberg Group also emphasizes that no circuit can operate an indigent defense system solely with public defenders due to the inevitable cases in which public defenders have a conflict of interest.

As West Virginia continues to explore indigent defense cost-containment, we believe that it would be unwise to continue the debate as an either/or decision that pits public defenders against court-appointed attorneys. Instead, we believe it would be sound policy for West Virginia to adopt the American Bar Association's Standard 5.-1.2, which states: "The legal representation plan for each jurisdiction should provide for services of a full-time defender organization when population and caseload are sufficient to support such an organization...[and] every system should include the active and substantial participation of the private bar."

In our opinion, we do not think that West Virginia's population and caseload justifies a statewide public defender system. Having said that, we believe that data from this study indicates that there are *some* West Virginia circuits that would benefit from instituting a Public Defender Corporation due to population and caseload. Our final finding addresses

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the decision-making process of determining whether or not to explore expanding the public defender system.

Finding #10: Our experience with the West Virginia Task Force has been a most rewarding one. In our judgement, the Task Force has reviewed the current system in a fair and thorough manner. Its preliminary findings reflect a desire to improve an already established system that has grown significantly over the years. We agree with the Task Force that a permanent commission would substantially assist in a better understanding and support of this critical program. It would also assure a more objective approach and balance to what appears to us to be the one divisive issue - the need for further expansion of the public defender System in West Virginia, where appropriate.

Though it is not The Spangenberg Group's place to tell West Virginia policy makers what is in the best interest of the citizenry of West Virginia, it is our opinion that some change is needed in the indigent defense decision-making process, especially in regards to whether or not to open a Public Defender Corporation.

We believe such issues as public defender expansions are best left up to an objective standing indigent defense commission. We say this because it is our belief that some of the opposition to giving the Executive Director of PDS the final authority to open PDC's is the fear that too much power will be concentrated in one person and that no opportunity for dissenting views will be allowed to be heard. Conversely, if the decision is left at the local level, there is a perception among many people that currently local bar organizations wield too much power and block the establishments of PDC's in certain circuits for their own benefit. A statewide commission, especially one in which appointments are shared among the three branches of government and the state bar, eliminate much of this factionalism and allow for more thorough and deliberate approach to the question. Such an approach can be more beneficial once the indigent defense data becomes more current.

There has been a clear trend over the last decade to create state systems for indigent defense representation in criminal cases in state court. Though some states place the responsibility

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of the statewide system solely in the hands of a State Public Defender without creating a commission, more and more states are establishing statewide indigent defense commissions to oversee the system. Though the responsibilities of these commissions vary from state to state, many share common directions such as: securing adequate financing for indigent defense; authorizing budget preparations; developing procedures to monitor the caseloads of public defenders; developing and instituting performance measures to permit qualitative reviews of each circuits indigent defense system; establishing indigent defense standards and guidelines; evaluating the need to establish new public defender corporations; and, conducting public education on the need for quality indigent defense services. The majority of these commissions are not merely advisory boards.

The Spangenberg Group, on behalf of the American Bar Association Bar Information Program has prepared tables detailing basic information about these commissions. The most recent version of the table shows that 30 states now have a commission with varying responsibilities for all or a portion of the indigent defense work statewide. Another eight states (Alaska, Delaware, Iowa, New Jersey, New Mexico, Rhode Island, Vermont and West Virginia) have statewide oversight responsibilities placed in the hands of one person or agency with no commission.[29] Of the remaining 12 states, four are currently reviewing the possibility of creating both a statewide commission and/or statewide public defender.

Thus, the discussion by the Task Force directed toward a recommendation to create a statewide commission or advisory board in West Virginia is consistent with the clear trend across the country. Yet, we believe the Task Force will miss an important opportunity if it does not consider giving the commission more than just advisory power.

[29] The American Bar Association, Bar Information Program's State Commissions Table gives detail as to indigent defense commissions' make-up and authorities and is included as Appendix H.

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Appendix A

Indigent Defense Task Force

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Appendix B

Indigent Defense Expenditures & Caseloads

Circuit-by-Circuit Analysis of West Virginia Public Defender Services'

Indigent Defense Expenditures and Caseloads, FY 1994

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
1st	113,096	$363,581	$322,312	$6.06	1,417	411	$256.59	$784.21	77.52%	53.01%	22.48%	46.99%	0.016
2nd	66,410	$226,646	$171,062	$5.99	887	202	$255.52	$846.84	81.45%	56.99%	18.55%	43.01%	0.016
3rd	24,773	$0	$245,636	$9.92	0	344		$714.06	0.00%	0.00%	100.00%	100.00%	0.014
4th	92,107	$0	$686,654	$7.45	0	1,424		$482.20	0.00%	0.00%	100.00%	100.00%	0.015
5th	48,943	$0	$370,089	$7.56	0	640		$578.26	0.00%	0.00%	100.00%	100.00%	0.013
6th/24th	138,463	$0	$1,052,834	$7.60	0	4,433		$237.50	0.00%	0.00%	100.00%	100.00%	0.032
7th	43,032	$153,002	$341,107	$11.48	329	672	$465.05	$507.60	32.87%	30.97%	67.13%	69.03%	0.023
8th	35,233	$142,149	$49,884	$5.45	1,080	138	$131.62	$361.48	88.67%	74.02%	11.33%	25.98%	0.035
9th	64,980	$260,022	$341,647	$9.26	1,321	379	$196.84	$901.44	77.71%	43.22%	22.29%	56.78%	0.026
10th	76,819	$349,339	$174,704	$6.82	1,314	457	$265.86	$382.28	74.20%	66.66%	25.80%	33.34%	0.023
11th	43,701	$0	$455,649	$10.43	0	979		$465.42	0.00%	0.00%	100.00%	100.00%	0.022
12th	47,952	$168,755	$114,362	$5.90	481	167	$350.84	$684.80	74.23%	59.61%	25.77%	40.39%	0.014
13th	207,619	$682,894	$1,258,768	$9.35	1,123	3,355	$608.10	$375.19	25.08%	35.17%	74.92%	64.83%	0.022
14th	41,379	$0	$309,182	$7.47	0	692		$446.79	0.00%	0.00%	100.00%	100.00%	0.017
15th	69,371	$158,133	$569,732	$10.49	141	772	$1,121.51	$737.99	15.44%	21.73%	84.56%	78.27%	0.013
16th	57,249	$0	$511,508	$8.93	0	1,147		$445.95	0.00%	0.00%	100.00%	100.00%	0.020
17th	75,509	$0	$193,386	$2.56	0	427		$452.89	0.00%	0.00%	100.00%	100.00%	0.006
18th	29,037	$0	$155,122	$5.34	0	226		$686.38	0.00%	0.00%	100.00%	100.00%	0.008
19th	30,843	$0	$167,517	$5.43	0	540		$310.22	0.00%	0.00%	100.00%	100.00%	0.018
20th	27,803	$0	$237,111	$8.53	0	342		$693.31	0.00%	0.00%	100.00%	100.00%	0.012
21st	44,853	$0	$182,683	$4.07	0	270		$676.60	0.00%	0.00%	100.00%	100.00%	0.006
22nd	35,529	$0	$283,255	$7.97	0	342		$828.23	0.00%	0.00%	100.00%	100.00%	0.010
23rd/31st	133,917	$314,218	$529,701	$6.30	792	677	$396.74	$782.42	53.91%	37.23%	46.09%	62.77%	0.011
25th	47,252	$0	$475,603	$10.07	0	972		$489.30	0.00%	0.00%	100.00%	100.00%	0.021
26th	40,090	$0	$384,248	$9.58	0	648		$592.98	0.00%	0.00%	100.00%	100.00%	0.016
27th	28,990	$0	$244,699	$8.44	0	473		$517.33	0.00%	0.00%	100.00%	100.00%	0.016
28th	26,775	$88,953	$67,570	$5.85	368	101	$241.72	$669.01	78.46%	56.83%	21.54%	43.17%	0.018
29th	68,013	$0	$383,518	$5.64	0	597		$642.41	0.00%	0.00%	100.00%	100.00%	0.009
30th	33,739	$171,648	$64,599	$7.00	808	86	$212.44	$751.15	90.38%	72.66%	9.62%	27.34%	0.026
Total	1,793,477	$3,079,340	$10,344,142	$7.48	10,061	21,913	$306.07		31.47%	22.94%	68.53%	77.06%	0.018
PDC	918,943	3,079,340	4,005,448	$7.71	10,061	7,417	$306.07	$540.04	57.56%	43.46%	42.44%	56.54%	0.019
Non-PDC	874,534	$0	6,338,694	$7.25	0	14,496	$0.00	$437.27	0.00%	0.00%	100.00%	100.00%	0.017

Districts with Public Defender Corporations =

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Circuit-by-Circuit Analysis of West Virginia Public Defender Services' Indigent Defense Expenditures and Caseloads, FY 1995

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
1st	113,096	$460,843	$411,450	$7.71	1,252	499	$368.09	$824.55	71.50%	52.83%	28.50%	47.17%	0.015
2nd	66,410	$249,824	$170,863	$6.33	364	193	$686.33	$885.30	65.35%	59.38%	34.65%	40.62%	0.008
3rd	24,773	$0	$236,711	$9.56	0	356		$664.92	0.00%	0.00%	100.00%	100.00%	0.014
4th	92,107	$0	$829,633	$9.01	0	1,704		$486.87	0.00%	0.00%	100.00%	100.00%	0.019
5th	48,943	$0	$369,747	$7.55	0	739		$500.33	0.00%	0.00%	100.00%	100.00%	0.015
6th/24th	138,463	$679,860	$726,034	$10.15	2,592	2,751	$262.29	$263.92	48.51%	48.36%	51.49%	51.64%	0.039
7th	43,032	$175,107	$390,613	$13.15	369	915	$474.54	$426.90	28.74%	30.95%	71.26%	69.05%	0.030
8th	35,233	$243,789	$130,483	$10.62	950	254	$256.62	$513.71	78.90%	65.14%	21.10%	34.86%	0.034
9th	64,980	$316,511	$425,376	$11.42	1,318	500	$240.14	$850.75	72.50%	42.66%	27.50%	57.34%	0.028
10th	76,819	$350,734	$199,525	$7.16	1,328	373	$264.11	$534.92	78.07%	63.74%	21.93%	36.26%	0.022
11th	43,701	$0	$334,665	$7.66	0	636		$526.20	0.00%	0.00%	100.00%	100.00%	0.015
12th	47,952	$194,329	$148,442	$7.15	591	156	$328.81	$951.55	79.12%	56.69%	20.88%	43.31%	0.016
13th	207,619	$1,008,320	$1,540,419	$12.28	1,984	3,415	$508.23	$451.07	36.75%	39.56%	63.25%	60.44%	0.026
14th	41,379	$0	$305,459	$7.38	0	640		$477.28	0.00%	0.00%	100.00%	100.00%	0.015
15th	69,371	$334,800	$360,707	$10.03	873	325	$383.51	$1,109.87	72.87%	48.14%	27.13%	51.86%	0.017
16th	57,249	$0	$622,913	$10.88	0	1,248		$499.13	0.00%	0.00%	100.00%	100.00%	0.022
17th	75,509	$0	$235,471	$3.12	0	547		$430.48	0.00%	0.00%	100.00%	100.00%	0.007
18th	29,037	$0	$196,472	$6.77	0	261		$752.77	0.00%	0.00%	100.00%	100.00%	0.009
19th	30,843	$0	$150,615	$4.88	0	443		$339.99	0.00%	0.00%	100.00%	100.00%	0.014
20th	27,803	$0	$323,927	$11.65	0	390		$830.58	0.00%	0.00%	100.00%	100.00%	0.014
21st	44,853	$0	$363,933	$8.11	0	334		$1,089.62	0.00%	0.00%	100.00%	100.00%	0.007
22nd	35,529	$0	$423,039	$11.91	0	416		$1,016.92	0.00%	0.00%	100.00%	100.00%	0.012
23rd	107,307	$453,458	$446,426	$8.39	1,662	630	$272.84	$708.61	72.51%	50.39%	27.49%	49.61%	0.021
25th	47,252	$0	$581,866	$12.31	0	994		$585.38	0.00%	0.00%	100.00%	100.00%	0.021
26th	40,090	$0	$373,983	$9.33	0	739		$506.07	0.00%	0.00%	100.00%	100.00%	0.018
27th	28,990	$0	$307,266	$10.60	0	509		$603.67	0.00%	0.00%	100.00%	100.00%	0.018
28th	26,775	$97,093	$83,866	$6.76	334	163	$290.70	$514.52	67.20%	53.65%	32.80%	46.35%	0.019
29th	68,013	$0	$427,165	$6.28	0	621		$687.87	0.00%	0.00%	100.00%	100.00%	0.009
30th	33,739	$246,055	$82,978	$9.75	768	129	$320.38	$643.24	85.62%	74.78%	14.38%	25.22%	0.027
31st	26,610	$0	$126,821	$4.77	0	290		$437.31	0.00%	0.00%	100.00%	100.00%	0.011
Total	1,793,477	$4,810,723	$11,326,868	$9.00	14,385	21,170	$334.43	$535.04	40.46%	29.81%	59.54%	70.19%	0.020
PDC	1,030,796	4,810,723	5,117,182	$9.63	14,385	10,303	$334.43	$496.67	58.27%	48.46%	41.73%	51.54%	0.024
Non-PDC	762,681	$0	6,209,686	$8.14	0	10,867	$0.00	$571.43	0.00%	0.00%	100.00%	100.00%	0.014

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Circuit-by-Circuit Analysis of West Virginia Public Defender Services' Indigent Defense Expenditures and Caseloads, FY 1996

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
1st	113,096	$529,806	$309,054	$7.42	1,326	382	$399.55	$809.04	77.63%	63.16%	22.37%	36.84%	0.015
2nd	66,410	$226,263	$178,420	$6.09	738	221	$306.59	$807.33	76.96%	55.91%	23.04%	44.09%	0.014
3rd	24,773	$0	$188,422	$7.61	0	330		$570.98	0.00%	0.00%	100.00%	100.00%	0.013
4th	92,107	$0	$880,432	$9.56	0	1,616		$544.82	0.00%	0.00%	100.00%	100.00%	0.018
5th	48,943	$0	$399,010	$8.15	0	851		$468.87	0.00%	0.00%	100.00%	100.00%	0.017
6th/24th	138,463	$745,502	$454,068	$8.66	4,074	1,825	$182.99	$248.80	69.06%	62.15%	30.94%	37.85%	0.043
7th	43,032	$289,580	$311,585	$13.97	649	612	$446.19	$509.13	51.47%	48.17%	48.53%	51.83%	0.029
8th	35,233	$222,523	$98,065	$9.10	984	228	$226.14	$430.11	81.19%	69.41%	18.81%	30.59%	0.034
9th	64,980	$469,920	$400,761	$13.40	1,593	414	$294.99	$968.02	79.37%	53.97%	20.63%	46.03%	0.031
10th	76,819	$445,575	$210,132	$8.54	1,332	316	$334.52	$664.97	80.83%	67.95%	19.17%	32.05%	0.021
11th	43,701	$0	$365,439	$8.36	0	612		$597.12	0.00%	0.00%	100.00%	100.00%	0.014
12th	47,952	$229,385	$106,441	$7.00	725	164	$316.39	$649.03	81.55%	68.30%	18.45%	31.70%	0.019
13th	207,619	$1,382,180	$1,298,680	$12.91	2,542	2,770	$543.74	$468.84	47.85%	51.56%	52.15%	48.44%	0.026
14th	41,379	$0	$247,897	$5.99	0	529		$468.61	0.00%	0.00%	100.00%	100.00%	0.013
15th	69,371	$329,506	$290,042	$8.93	1,000	246	$329.51	$1,179.03	80.26%	53.18%	19.74%	46.82%	0.018
16th	57,249	$0	$684,180	$11.95	0	1,360		$503.07	0.00%	0.00%	100.00%	100.00%	0.024
17th	75,509	$0	$317,468	$4.20	0	579		$548.30	0.00%	0.00%	100.00%	100.00%	0.008
18th	29,037	$0	$185,949	$6.40	0	282		$659.39	0.00%	0.00%	100.00%	100.00%	0.010
19th	30,843	$0	$180,150	$5.84	0	559		$322.27	0.00%	0.00%	100.00%	100.00%	0.018
20th	27,803	$0	$316,943	$11.40	0	327		$969.24	0.00%	0.00%	100.00%	100.00%	0.012
21st	44,853	$0	$266,742	$5.95	0	331		$805.87	0.00%	0.00%	100.00%	100.00%	0.007
22nd	35,529	$0	$387,198	$10.90	0	427		$906.79	0.00%	0.00%	100.00%	100.00%	0.012
23rd	107,307	$655,495	$469,487	$10.48	1,839	541	$356.44	$867.81	77.27%	58.27%	22.73%	41.73%	0.022
25th	47,252	$0	$534,714	$11.32	0	911		$586.95	0.00%	0.00%	100.00%	100.00%	0.019
26th	40,090	$0	$357,230	$8.91	0	804		$444.32	0.00%	0.00%	100.00%	100.00%	0.020
27th	28,990	$0	$234,560	$8.09	0	462		$507.71	0.00%	0.00%	100.00%	100.00%	0.016
28th	26,775	$102,145	$96,079	$7.40	348	140	$293.52	$686.28	71.31%	51.53%	28.69%	48.47%	0.018
29th	68,013	$0	$453,074	$6.66	0	722		$627.53	0.00%	0.00%	100.00%	100.00%	0.011
30th	33,739	$257,400	$97,184	$10.51	698	130	$368.77	$747.57	84.30%	72.59%	15.70%	27.41%	0.025
31st	26,610	$0	$128,660	$4.84	0	215		$598.42	0.00%	0.00%	100.00%	100.00%	0.008
Total	1,793,477	$5,885,280	$10,448,066	$9.11	17,848	18,906	$329.74	$552.63	48.56%	36.03%	51.44%	63.97%	0.020

PDC	1,030,796	5,885,280	4,319,998	$9.90	17,848	7,989	$329.74	$540.74	69.08%	57.67%	30.92%	42.33%	0.025
Non-PDC	762,681	$0	6,128,068	$8.03	0	10,917	$0.00	$561.33	0.00%	0.00%	100.00%	100.00%	0.014

Districts with Public Defender Corporations =

Prepared by the Spangenberg Group 1001 Watertown Street West Newton, MA 02465 (617) 969-3820

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Circuit-by-Circuit Analysis of West Virginia Public Defender Services' Indigent Defense Expenditures and Caseloads, FY 1998

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
1st	113,096	$652,570	$394,760	$9.26	2,245	382	$290.68	$1,033.40	85.46%	62.31%	14.54%	37.69%	0.023
2nd	66,410	$359,158	$53,105	$6.21	994	105	$361.33	$505.76	90.45%	87.12%	9.55%	12.88%	0.017
3rd	24,773	$0	$61,409	$2.48	0	115		$533.99	0.00%	0.00%	100.00%	100.00%	0.005
4th	92,107	$0	$641,338	$6.96	0	1,062		$603.90	0.00%	0.00%	100.00%	100.00%	0.012
5th	48,943	$371,200	$130,607	$10.25	662	199	$560.73	$656.32	76.89%	73.97%	23.11%	26.03%	0.018
6th/24th	138,463	$883,180	$281,555	$8.41	5,227	1,370	$168.96	$205.51	79.23%	75.83%	20.77%	24.17%	0.048
7th	43,032	$353,935	$256,558	$14.19	589	397	$600.91	$646.24	59.74%	57.98%	40.26%	42.02%	0.023
8th	35,233	$328,370	$168,522	$14.10	758	280	$433.21	$601.86	73.03%	66.08%	26.97%	33.92%	0.029
9th	64,980	$536,330	$412,511	$14.60	1,947	409	$275.46	$1,008.58	82.64%	56.52%	17.36%	43.48%	0.036
10th	76,819	$530,675	$175,483	$9.19	1,649	414	$321.82	$423.87	79.93%	75.15%	20.07%	24.85%	0.027
11th	43,701	$0	$316,910	$7.25	0	577		$549.24	0.00%	0.00%	100.00%	100.00%	0.013
12th	47,952	$315,200	$107,473	$8.81	734	127	$429.43	$846.24	85.25%	74.57%	14.75%	25.43%	0.018
13th	207,619	$2,136,183	$1,151,280	$15.83	3,158	2,600	$676.44	$442.80	54.85%	64.98%	45.15%	35.02%	0.028
14th	41,379	$0	$146,666	$3.54	0	308		$476.19	0.00%	0.00%	100.00%	100.00%	0.007
15th	69,371	$633,625	$232,200	$12.48	1,500	156	$422.42	$1,488.46	90.58%	73.18%	9.42%	26.82%	0.024
16th	57,249	$0	$593,189	$10.36	0	1,281		$463.07	0.00%	0.00%	100.00%	100.00%	0.022
17th	75,509	$0	$479,622	$6.35	0	956		$501.70	0.00%	0.00%	100.00%	100.00%	0.013
18th	29,037	$0	$29,695	$1.02	0	52		$571.06	0.00%	0.00%	100.00%	100.00%	0.002
19th	30,843	$0	$87,136	$2.83	0	302		$288.53	0.00%	0.00%	100.00%	100.00%	0.010
20th	27,803	$0	$203,216	$7.31	0	394		$515.78	0.00%	0.00%	100.00%	100.00%	0.014
21st	44,853	$0	$177,774	$3.96	0	298		$596.56	0.00%	0.00%	100.00%	100.00%	0.007
22nd	35,529	$0	$302,243	$8.51	0	433		$698.02	0.00%	0.00%	100.00%	100.00%	0.012
23rd	107,307	$1,065,280	$173,509	$11.54	1,959	299	$543.79	$580.30	86.76%	85.99%	13.24%	14.01%	0.021
25th	47,252	$0	$169,722	$3.59	0	532		$319.03	0.00%	0.00%	100.00%	100.00%	0.011
26th	40,090	$0	$215,539	$5.38	0	337		$639.58	0.00%	0.00%	100.00%	100.00%	0.008
27th	28,990	$0	$183,626	$6.33	0	338		$543.27	0.00%	0.00%	100.00%	100.00%	0.012
28th	26,775	$197,215	$101,751	$11.17	352	107	$560.27	$950.94	76.69%	65.97%	23.31%	34.03%	0.017
29th	68,013	$0	$385,735	$5.67	0	733		$526.24	0.00%	0.00%	100.00%	100.00%	0.011
30th	33,739	$400,155	$103,049	$14.91	828	196	$483.28	$525.76	80.86%	79.52%	19.14%	20.48%	0.030
31st	26,610	$0	$61,958	$2.33	0	150		$413.05	0.00%	0.00%	100.00%	100.00%	0.006
Total	1,793,477	$8,763,076	$7,798,141	$9.23	22,602	14,909	$387.71	$523.05	60.25%	52.91%	39.75%	47.09%	0.021

PDC	1,079,739	8,763,076	3,742,363	$11.58	22,602	7,041	$387.71	$531.51	76.25%	70.07%	23.75%	29.93%	0.027
Non-PDC	713,738	$0	4,055,778	$5.68	0	7,868	$0.00	$515.48	0.00%	0.00%	100.00%	100.00%	0.011

Districts with Public Defender Corporations =

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Appendix C

Indigent Defense Caseload

By Case Type

Comparison of West Virginia Indigent Defense Caseload by Case Type, FY 1994

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**
1st	261	826	131	140	2	13	12	4	28	**1,417**	84	97	119	73	0	8	24	1	5	**411**
2nd	117	475	83	156	10	8	9	22	7	**887**	28	43	43	68	0	1	11	3	5	**202**
7th	200	11	77	2	6	5	13	1	14	**329**	50	422	1	159	11	11	11	2	5	**672**
8th	281	756	0	35	0	0	1	0	7	**1,080**	21	23	34	46	2	2	6	0	4	**138**
9th	234	786	117	76	0	17	22	4	65	**1,321**	89	97	49	96	6	7	22	3	10	**379**
10th	328	937	0	0	14	8	16	1	10	**1,314**	79	65	234	54	2	3	13	2	5	**457**
12th	133	271	22	34	0	6	5	4	6	**481**	44	33	30	41	2	6	3	2	6	**167**
13th	288	390	1	429	0	4	1	3	7	**1,123**	588	1,545	794	220	46	38	64	7	53	**3,355**
15th	42	77	5	1	0	1	3	0	12	**141**	159	360	27	149	7	16	45	1	8	**772**
23rd	212	509	4	50	1	1	0	3	12	**792**	86	101	116	181	1	4	37	5	17	**548**
28th	71	214	34	38	0	6	1	0	4	**368**	13	27	28	16	2	2	8	0	5	**101**
30th	159	413	150	6	2	0	4	0	74	**808**	23	17	0	28	1	0	14	0	3	**86**
Total	**2,326**	**5,665**	**624**	**967**	**35**	**69**	**87**	**42**	**246**	**10,061**	**1,264**	**2,830**	**1,475**	**1,131**	**80**	**98**	**258**	**26**	**126**	**7,288**

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**
1st	76%	89%	52%	66%	100%	62%	33%	80%	85%	**78%**	24%	11%	48%	34%	0%	38%	67%	20%	15%	**22%**
2nd	81%	92%	66%	70%		89%	45%	88%	58%	**81%**	19%	8%	34%	30%		11%	55%	12%	42%	**19%**
7th	80%	3%	99%	1%	35%	31%	54%	33%	74%	**33%**	20%	97%	1%	99%	65%	69%	46%	67%	26%	**67%**
8th	93%	97%	0%	43%		0%	14%		64%	**89%**	7%	3%	100%	57%		100%	86%		36%	**11%**
9th	72%	89%	70%	44%	0%	71%	50%	57%	87%	**78%**	28%	11%	30%	56%	100%	29%	50%	43%	13%	**22%**
10th	81%	94%	0%	0%	88%	73%	55%	33%	67%	**74%**	19%	6%	100%	100%	13%	27%	45%	67%	33%	**26%**
12th	75%	89%	42%	45%		50%	63%	67%	50%	**74%**	25%	11%	58%	55%		50%	38%	33%	50%	**26%**
13th	33%	20%	0%	66%	0%	10%	2%	30%	12%	**25%**	67%	80%	100%	34%	100%	90%	98%	70%	88%	**75%**
15th	21%	18%	16%	1%	0%	6%	6%	0%	60%	**15%**	79%	82%	84%	99%	100%	94%	94%	100%	40%	**85%**
23rd	71%	83%	3%	22%	50%	20%	0%	38%	41%	**59%**	29%	17%	97%	78%	50%	80%	100%	63%	59%	**41%**
28th	85%	89%	55%	70%		75%	11%		44%	**78%**	15%	11%	45%	30%		25%	89%		56%	**22%**
30th	87%	96%	100%	18%	67%		22%		96%	**90%**	13%	4%	0%	82%	33%		78%		4%	**10%**
Total	**64.79%**	**66.69%**	**29.73%**	**46.09%**	**30.43%**	**41.32%**	**25.22%**	**61.76%**	**66.13%**	**57.99%**	**35.21%**	**33.31%**	**70.27%**	**53.91%**	**69.57%**	**58.68%**	**74.78%**	**38.24%**	**33.87%**	**42.01%**

Percentage of cases

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Comparison of West Virginia Indigent Defense Caseload by Case Type, FY 1995

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**
1st	268	734	72	111	0	25	14	6	22	**1,252**	92	118	120	95	1	3	63	2	5	**499**
2nd	56	171	29	88	2	1	5	6	6	**364**	30	46	21	73	0	1	13	1	8	**193**
6th/24th	440	1,430	0	383	0	0	0	0	339	**2,592**	311	668	1,290	310	11	27	70	8	56	**2,751**
7th	213	7	114	1	3	8	12	1	10	**369**	81	601	6	177	7	6	20	1	16	**915**
8th	234	680	0	27	0	0	0	1	8	**950**	73	44	27	92	3	0	10	0	5	**254**
9th	231	871	93	64	0	18	17	3	21	**1,318**	123	93	57	163	3	9	38	2	12	**500**
10th	333	944	0	1	5	6	26	1	12	**1,328**	46	39	213	41	0	3	22	4	5	**373**
12th	137	367	11	43	0	7	6	6	14	**591**	59	32	25	19	4	1	5	1	10	**156**
13th	404	997	0	512	1	12	1	23	34	**1,984**	701	1,521	761	190	37	26	100	6	73	**3,415**
15th	180	539	22	46	5	23	16	1	41	**873**	65	57	2	133	8	15	39	0	6	**325**
23rd	484	979	3	171	0	2	8	1	14	**1,662**	87	49	194	203	3	4	60	10	20	**630**
28th	60	189	35	33	0	1	3	0	13	**334**	39	42	34	19	5	1	17	1	5	**163**
30th	154	423	121	2	13	2	9	0	44	**768**	22	18	1	66	0	0	15	0	7	**129**
Total	**3,194**	**8,331**	**500**	**1,482**	**29**	**105**	**117**	**49**	**578**	**14,385**	**1,729**	**3,328**	**2,751**	**1,581**	**82**	**96**	**472**	**36**	**228**	**10,303**

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**
1st	74%	86%	38%	54%	0%	89%	18%	75%	81%	**71.50%**	26%	14%	63%	46%	100%	11%	82%	25%	19%	**28.50%**
2nd	65%	79%	58%	55%	100%	50%	28%	86%	43%	**65.35%**	35%	21%	42%	45%	0%	50%	72%	14%	57%	**34.65%**
6th/24th	59%	68%	0%	55%	0%	0%	0%	0%	86%	**48.51%**	41%	32%	100%	45%	100%	100%	100%	100%	14%	**51.49%**
7th	72%	1%	95%	1%	30%	57%	38%	50%	38%	**28.74%**	28%	99%	5%	99%	70%	43%	63%	50%	62%	**71.26%**
8th	76%	94%	0%	23%	0%		0%	100%	62%	**78.90%**	24%	6%	100%	77%	100%		100%	0%	38%	**21.10%**
9th	65%	90%	62%	28%	0%	67%	31%	60%	64%	**72.50%**	35%	10%	38%	72%	100%	33%	69%	40%	36%	**27.50%**
10th	88%	96%	0%	2%	100%	67%	54%	20%	71%	**78.07%**	12%	4%	100%	98%	0%	33%	46%	80%	29%	**21.93%**
12th	70%	92%	31%	69%	0%	88%	55%	86%	58%	**79.12%**	30%	8%	69%	31%	100%	13%	45%	14%	42%	**20.88%**
13th	37%	40%	0%	73%	3%	32%	1%	79%	32%	**36.75%**	63%	60%	100%	27%	97%	68%	99%	21%	68%	**63.25%**
15th	73%	90%	92%	26%	38%	61%	29%	100%	87%	**72.87%**	27%	10%	8%	74%	62%	39%	71%	0%	13%	**27.13%**
23rd	85%	95%	2%	46%	0%	33%	12%	9%	41%	**72.51%**	15%	5%	98%	54%	100%	67%	88%	91%	59%	**27.49%**
28th	61%	82%	51%	63%	0%	50%	15%	0%	72%	**67.20%**	39%	18%	49%	37%	100%	50%	85%	100%	28%	**32.80%**
30th	88%	96%	99%	3%	100%	100%	38%		86%	**85.62%**	13%	4%	1%	97%	0%	0%	63%		14%	**14.38%**
Total	**64.88**	**71.46%**	**15.38%**	**48.38%**	**26.13%**	**52.24%**	**19.86%**	**57.65%**	**71.71%**	**58.27%**	**35.12%**	**28.54%**	**84.62%**	**51.62%**	**73.87%**	**47.76%**	**80.14%**	**42.35%**	**28.29%**	**41.73%**

Percentage of cases

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Comparison of West Virginia Indigent Defense Caseload by Case Type, FY 1996

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**
1st	173	760	116	195	1	39	11	1	30	**1,326**	75	102	88	33	0	9	58	6	11	**382**
2nd	81	461	20	121	12	12	5	15	11	**738**	54	60	43	30	0	2	25	2	5	**221**
6th/24th	757	2,699	0	577	3	4	5	1	28	**4,074**	172	121	1,175	152	20	20	129	5	31	**1,825**
7th	275	175	126	18	16	7	11	0	21	**649**	67	302	2	174	6	10	39	2	10	**612**
8th	216	684	0	75	0	3	0	1	5	**984**	50	68	26	62	2	0	13	1	6	**228**
9th	320	1,008	88	112	0	31	13	10	11	**1,593**	83	107	48	85	1	13	56	3	18	**414**
10th	283	922	0	84	14	8	16	0	5	**1,332**	63	40	148	29	0	1	28	4	3	**316**
12th	189	426	17	38	0	7	3	2	43	**725**	57	37	18	27	0	0	13	2	10	**164**
13th	511	1,374	0	608	0	19	1	11	18	**2,542**	511	1,222	619	198	6	29	133	3	49	**2,770**
15th	224	586	29	44	1	18	3	11	84	**1,000**	51	30	3	81	4	6	60	0	11	**246**
23rd	395	1,165	1	222	6	7	0	5	38	**1,839**	102	53	121	138	3	7	87	9	21	**541**
28th	58	206	25	40	0	6	8	0	5	**348**	35	33	22	22	0	3	17	1	7	**140**
30th	119	365	94	31	8	0	11	2	68	**698**	34	44	0	13	1	0	34	0	4	**130**
Total	**3,601**	**10,831**	**516**	**2,165**	**61**	**161**	**87**	**59**	**367**	**17,848**	**1,354**	**2,219**	**2,313**	**1,044**	**43**	**100**	**692**	**38**	**186**	**7,989**

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**
1st	70%	88%	57%	86%	100%	81%	16%	14%	73%	**78%**	30%	12%	43%	14%	0%	19%	84%	86%	27%	**22%**
2nd	60%	88%	32%	80%	100%	86%	17%	88%	69%	**77%**	40%	12%	68%	20%	0%	14%	83%	12%	31%	**23%**
6th/24th	81%	96%	0%	79%	13%	17%	4%	17%	47%	**69%**	19%	4%	100%	21%	87%	83%	96%	83%	53%	**31%**
7th	80%	37%	98%	9%	73%	41%	22%	0%	68%	**51%**	20%	63%	2%	91%	27%	59%	78%	100%	32%	**49%**
8th	81%	91%	0%	55%	0%	100%	0%	50%	45%	**81%**	19%	9%	100%	45%	100%	0%	100%	50%	55%	**19%**
9th	79%	90%	65%	57%	0%	70%	19%	77%	38%	**79%**	21%	10%	35%	43%	100%	30%	81%	23%	62%	**21%**
10th	82%	96%	0%	74%	100%	89%	36%	0%	63%	**81%**	18%	4%	100%	26%	0%	11%	64%	100%	38%	**19%**
12th	77%	92%	49%	58%		100%	19%	50%	81%	**82%**	23%	8%	51%	42%	0%	0%	81%	50%	19%	**18%**
13th	50%	53%	0%	75%	0%	40%	1%	79%	27%	**48%**	50%	47%	100%	25%	100%	60%	99%	21%	73%	**52%**
15th	81%	95%	91%	35%	20%	75%	5%	100%	88%	**80%**	19%	5%	9%	65%	80%	25%	95%	0%	12%	**20%**
23rd	79%	96%	1%	62%	67%	50%	0%	36%	64%	**77%**	21%	4%	99%	38%	33%	50%	100%	64%	36%	**23%**
28th	62%	86%	53%	65%		67%	32%	0%	42%	**71%**	38%	14%	47%	35%	0%	33%	68%	100%	58%	**29%**
30th	78%	89%	100%	70%	89%		24%	100%	94%	**84%**	22%	11%	0%	30%	11%		76%	0%	6%	**16%**
Total	**72.67%**	**83.00%**	**18.24%**	**67.47%**	**58.65%**	**61.69%**	**11.17%**	**60.82%**	**66.37%**	**69.08%**	**27.33%**	**17.00%**	**81.76%**	**32.53%**	**41.35%**	**38.31%**	**88.83%**	**39.18%**	**33.63%**	**30.92%**

Percentage of cases

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Comparison of West Virginia Indigent Defense Caseload by Case Type, FY 1998

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**
1st	328	1,318	203	244	1	35	22	21	73	**2,245**	73	121	68	22	0	2	76	3	17	**382**
2nd	128	518	98	182	1	26	16	13	12	**994**	8	24	9	25	0	3	34	1	1	**105**
5th	116	263	22	65	0	3	33	2	158	**662**	33	44	14	36	0	4	56	0	12	**199**
6th/24th	1,111	3,342	0	726	0	3	36	5	4	**5,227**	106	98	927	85	2	8	118	4	22	**1,370**
7th	233	166	92	66	0	2	11	1	18	**589**	56	158	2	91	0	13	63	0	14	**397**
8th	150	587	0	15	0	0	2	3	1	**758**	55	93	22	66	0	0	35	1	8	**280**
9th	305	1,323	131	97	0	36	22	3	30	**1,947**	116	102	12	63	0	11	88	0	17	**409**
10th	302	1,231	0	90	0	15	11	0	0	**1,649**	61	66	195	35	0	4	43	3	7	**414**
12th	156	446	39	28	0	4	5	11	45	**734**	35	41	4	26	0	0	15	1	5	**127**
13th	729	1,953	0	357	0	22	0	21	76	**3,158**	397	1,350	412	206	2	18	149	1	65	**2,600**
15th	359	770	47	105	1	77	3	11	127	**1,500**	39	23	3	25	0	11	46	1	8	**156**
23rd	424	1,226	1	289	0	16	0	2	1	**1,959**	37	24	121	48	0	4	46	1	18	**299**
28th	69	204	26	30	0	3	12	0	8	**352**	39	13	8	10	0	5	26	1	5	**107**
30th	151	387	121	51	0	3	13	0	102	**828**	55	71	7	21	0	1	34	1	6	**196**
Total	**4,561**	**13,734**	**780**	**2,345**	**3**	**245**	**186**	**93**	**655**	**22,602**	**1,110**	**2,228**	**1,804**	**759**	**4**	**84**	**829**	**18**	**205**	**7,041**

	Public Defender Corporations										Private Court-Appointed Attorneys									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	**Total**
1st	82%	92%	75%	92%	100%	95%	22%	88%	81%	**85.46%**	18%	8%	25%	8%	0%	5%	78%	13%	19%	**14.54%**
2nd	94%	96%	92%	88%	100%	90%	32%	93%	92%	**90.45%**	6%	4%	8%	12%	0%	10%	68%	7%	8%	**9.55%**
5th	78%	86%	61%	64%		43%	37%	100%	93%	**76.89%**	22%	14%	39%	36%		57%	63%	0%	7%	**23.11%**
6th/24th	91%	97%	0%	90%	0%	27%	23%	56%	15%	**79.23%**	9%	3%	100%	10%	100%	73%	77%	44%	85%	**20.77%**
7th	81%	51%	98%	42%		13%	15%	100%	56%	**59.74%**	19%	49%	2%	58%		87%	85%	0%	44%	**40.26%**
8th	73%	86%	0%	19%			5%	75%	11%	**73.03%**	27%	14%	100%	81%			95%	25%	89%	**26.97%**
9th	72%	93%	92%	61%		77%	20%	100%	64%	**82.64%**	28%	7%	8%	39%		23%	80%	0%	36%	**17.36%**
10th	83%	95%	0%	72%		79%	20%	0%	0%	**79.93%**	17%	5%	100%	28%		21%	80%	100%	100%	**20.07%**
12th	82%	92%	91%	52%		100%	25%	92%	90%	**85.25%**	18%	8%	9%	48%		0%	75%	8%	10%	**14.75%**
13th	65%	59%	0%	63%	0%	55%	0%	95%	54%	**54.85%**	35%	41%	100%	37%	100%	45%	100%	5%	46%	**45.15%**
15th	90%	97%	94%	81%	100%	88%	6%	92%	94%	**90.58%**	10%	3%	6%	19%	0%	13%	94%	8%	6%	**9.42%**
23rd	92%	98%	1%	86%		80%	0%	67%	5%	**86.76%**	8%	2%	99%	14%		20%	100%	33%	95%	**13.24%**
28th	64%	94%	76%	75%		38%	32%	0%	62%	**76.69%**	36%	6%	24%	25%		63%	68%	100%	38%	**23.31%**
30th	73%	84%	95%	71%		75%	28%	0%	94%	**80.86%**	27%	16%	5%	29%		25%	72%	100%	6%	**19.14%**
Total	**80.43%**	**86.04%**	**30.19%**	**75.55%**	**42.86%**	**74.47%**	**18.33%**	**83.78%**	**76.16%**	**76.25%**	**19.57%**	**13.96%**	**69.81%**	**24.45%**	**57.14%**	**25.53%**	**81.67%**	**16.22%**	**23.84%**	**23.75%**

Percentage of cases

Prepared by The Spangenberg Group 1001 Watertown Street West Newton, MA 02465 (617) 9693820

11/29/99

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Appendix D

Private Court-Appointed Cost Per Case

By Case Type

Private Court-Appointed Counsel Cost Per Case by Case Type, FY 1994

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A& N	Habeas	Other	TOTAL
1st	$1,281.38	$452.37	$194.67	$1,272.84		$1,112.06	$1,292.52	$475.49	$2,864.27	**$784.21**
2nd	$3,487.62	$364.93	$106.49	$441.42		$440.00	$1,052.85	$1,228.63	$1,482.76	**$846.84**
3rd	$2,025.88	$547.55	$87.43	$626.78		$629.31	$903.26	$2,311.12	$1,140.61	**$714.06**
4th	$988.16	$383.47	$127.61	$448.10	$271.30	$394.85	$816.64	$1,491.60	$669.22	**$482.20**
5th	$1,026.15	$287.80	$152.60	$611.09	$238.92	$517.99	$1,086.72		$1,238.77	**$578.26**
6th	$608.40	$207.61	$49.80	$229.34	$542.74	$289.47	$912.11	$2,041.94	$564.30	**$223.97**
7th	$1,366.25	$367.61	$997.50	$471.71	$815.20	$471.88	$1,553.59	$3,060.37	$859.12	**$507.60**
8th	$947.81	$207.96	$137.19	$263.97	$235.25	$490.25	$301.65		$1,282.31	**$361.48**
9th	$1,665.96	$450.35	$123.53	$875.86	$513.18	$647.79	$1,110.68	$2,225.10	$2,083.26	**$901.44**
10th	$862.36	$470.90	$107.79	$486.29	$177.75	$717.00	$905.75	$1,559.00	$1,417.34	**$382.28**
11th	$961.31	$303.40	$91.84	$339.04	$342.13	$477.99	$439.95	$630.50	$653.03	**$442.61**
12th	$1,392.01	$297.67	$127.14	$618.73	$300.05	$249.23	$767.63	$950.74	$1,301.48	**$684.80**
13th	$788.89	$286.72	$97.52	$588.25	$307.11	$570.49	$1,086.24	$1,340.21	$572.76	**$375.19**
14th	$871.08	$325.28	$186.86	$362.68	$240.56	$487.88	$940.17	$1,400.75	$280.19	**$446.79**
15th	$1,553.84	$378.06	$98.54	$588.16	$311.46	$572.85	$1,624.49	$1,224.00	$1,325.01	**$737.99**
16th	$885.37	$284.58	$121.65	$379.18	$268.62	$420.53	$885.60	$3,108.14	$1,136.16	**$445.95**
17th	$765.15	$370.29	$113.98	$439.24	$257.64	$163.50	$1,407.01	$1,375.46	$768.44	**$452.89**
18th	$1,235.41	$331.31	$118.25	$593.60	$335.28	$522.18	$1,681.78		$1,168.29	**$686.38**
19th	$647.81	$249.20	$167.89	$212.80	$1,005.00	$1,686.16	$807.14		$678.90	**$310.22**
20th	$1,215.53	$484.90	$202.79	$443.44	$770.71	$532.15	$760.75	$1,506.86	$1,466.05	**$693.31**
21st	$986.70	$468.24	$121.39	$741.58	$468.25	$412.41	$1,813.67	$3,024.41	$1,115.77	**$676.60**
22nd	$1,666.82	$381.54	$176.57	$954.57	$411.50	$847.98	$2,019.17	$633.64	$799.25	**$828.23**
23rd	$2,330.47	$501.81	$128.17	$633.98	$1,255.00	$288.04	$1,277.40	$1,172.19	$824.38	**$821.66**
24th	$816.48	$246.13	$95.75	$164.73	$688.65	$230.00	$854.79	$12,000.00	$1,564.53	**$381.39**
25th	$1,095.09	$307.98	$146.18	$301.33	$474.59	$496.68	$775.13	$81.00	$939.90	**$489.30**
26th	$1,515.20	$456.28	$144.27	$530.30	$481.79	$555.27	$1,486.91	$601.68	$888.72	**$592.98**
27th	$880.58	$398.79	$287.78	$469.85	$903.88	$429.00	$730.65		$559.52	**$517.33**
28th	$2,054.88	$363.45	$112.38	$715.29	$619.00	$287.50	$1,126.03		$1,126.27	**$669.01**
29th	$1,372.16	$376.02	$159.71	$593.32	$332.39	$520.43	$601.35	$2,513.70	$1,664.46	**$642.41**
30th	$636.04	$330.62		$955.76	$516.50		$831.50		$1,810.33	**$751.15**
31st	$1,081.75	$393.17	$53.88	$505.40	$271.00	$473.15	$752.44		$402.32	**$615.76**
AVG.	**$1,056.49**	**$316.51**	**$103.06**	**$462.12**	**$416.46**	**$516.28**	**$1,110.80**	**$1,677.07**	**$917.04**	**$471.20**

PDC	$1,205.57	$335.27	$112.95	$632.89	$409.86	$574.08	$1,203.68	$1,478.59	$1,054.93	$538.70
Non-PDC	$985.91	$307.20	$97.90	$378.36	$419.69	$484.09	$1,035.45	$1,812.87	$858.34	$437.27

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Private Court-Appointed Counsel Cost Per Case by Case Type, FY 1995

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A& N	Habeas	Other	TOTAL
1st	$1,301.53	$462.44	$158.35	$1,027.22	$260.30	$469.25	$1,628.05	$2,889.59	$2,107.76	**$824.55**
2nd	$2,420.15	$400.38	$113.99	$570.26		$347.80	$743.84	$450.00	$3,168.81	**$885.30**
3rd	$1,629.14	$427.34	$98.80	$648.84	$432.06	$806.61	$1,095.72	$1,470.65	$696.45	**$664.92**
4th	$1,175.37	$355.76	$106.87	$465.48	$333.51	$361.38	$716.29	$1,173.04	$531.20	**$486.87**
5th	$918.19	$276.92	$186.53	$417.42	$258.64	$289.13	$1,013.09	$2,260.28	$756.31	**$500.33**
6th	$820.99	$199.45	$42.85	$360.35	$423.78	$304.48	$1,255.62	$1,902.32	$1,025.49	**$251.07**
7th	$899.89	$309.91	$134.42	$451.76	$549.30	$291.12	$1,738.80	$2,819.19	$469.31	**$426.90**
8th	$1,162.50	$235.30	$105.91	$263.47	$269.67		$552.36		$367.26	**$513.71**
9th	$1,530.99	$457.32	$131.75	$668.15	$319.49	$896.87	$1,432.66	$4,067.03	$542.48	**$850.75**
10th	$1,915.59	$317.26	$130.69	$299.48		$1,966.50	$1,688.72	$3,117.34	$679.80	**$534.92**
11th	$936.08	$389.50	$119.06	$380.71	$238.60	$670.62	$1,031.83		$1,311.94	**$526.20**
12th	$1,778.56	$239.62	$132.38	$630.72	$152.30	$762.61	$686.81	$1,895.40	$1,384.49	**$951.55**
13th	$924.39	$323.53	$94.67	$552.33	$378.85	$526.52	$1,358.27	$1,071.35	$731.15	**$451.07**
14th	$1,046.76	$304.07	$157.52	$259.42	$384.74	$297.86	$829.11		$383.33	**$477.28**
15th	$1,982.42	$586.25	$79.00	$678.97	$1,032.82	$373.39	$2,079.76		$2,166.44	**$1,109.87**
16th	$1,072.30	$326.46	$131.38	$421.14	$279.61	$420.56	$882.03	$2,085.85	$658.42	**$499.13**
17th	$667.94	$328.63	$106.28	$572.42	$663.05	$172.11	$1,484.16	$1,455.83	$758.26	**$430.48**
18th	$1,318.89	$378.67	$103.81	$562.99	$587.92	$173.75	$2,298.77		$1,013.07	**$752.77**
19th	$707.56	$241.45	$168.85	$237.80	$502.38	$176.30	$1,068.27	$1,296.00	$294.94	**$339.99**
20th	$1,540.78	$420.97	$117.64	$632.64	$974.06	$1,140.46	$1,117.81	$6,579.68	$753.38	**$830.58**
21st	$2,163.66	$547.53	$146.95	$678.10	$862.50	$398.16	$1,732.16	$3,734.40	$931.71	**$1,089.62**
22nd	$1,977.02	$423.47	$229.36	$1,341.16		$412.39	$1,858.44		$990.67	**$1,016.92**
23rd	$1,630.63	$542.50	$157.63	$556.79	$415.05	$171.44	$1,644.33	$1,425.59	$976.10	**$708.61**
24th	$1,370.79	$228.32	$94.06	$225.17	$373.50	$1,069.17	$444.43	$1,839.20	$1,056.85	**$441.06**
25th	$1,314.10	$308.36	$144.02	$392.75	$303.74	$354.92	$793.54	$399.96	$383.69	**$585.38**
26th	$1,394.40	$527.59	$114.72	$550.11	$419.57	$502.66	$1,291.73	$793.34	$644.70	**$506.07**
27th	$1,086.68	$409.23	$212.55	$456.16	$442.54		$1,462.57	$3,466.76	$541.59	**$603.67**
28th	$865.13	$274.24	$125.76	$499.83	$356.20	$326.50	$1,034.51	$476.00	$933.01	**$514.52**
29th	$1,559.73	$347.74	$214.29	$724.65	$895.74	$698.90	$984.96		$837.90	**$687.87**
30th	$940.04	$402.86	$130.00	$562.84			$802.64		$818.64	**$643.24**
31st	$821.38	$240.99	$95.18	$363.87	$269.94	$576.30	$826.71		$415.80	**$437.31**
AVG.	**$1,191.67**	**$334.67**	**$100.16**	**$502.47**	**$411.75**	**$463.03**	**$1,263.90**	**$1,966.64**	**$804.32**	**$535.04**

PDC	$1,143.42	$311.56	$82.82	$526.59	$443.29	$503.01	$1,414.62	$1,885.07	$977.06	$496.67
Non-PDC	$1,228.90	$352.55	$132.14	$480.43	$383.95	$443.45	$1,092.47	$2,031.90	$691.80	$571.43

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Private Court-Appointed Counsel Cost Per Case by Case Type, FY 1996

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A& N	Habeas	Other	TOTAL
1st	$1,194.72	$389.09	$200.25	$406.06		$384.94	$2,102.68	$1,285.81	$1,418.73	**$809.04**
2nd	$1,744.26	$279.53	$136.77	$360.00		$853.99	$1,380.42	$3,086.34	$1,677.23	**$807.33**
3rd	$1,315.62	$409.97	$84.44	$410.74		$615.48	$1,283.85		$1,023.38	**$570.98**
4th	$1,332.55	$392.81	$111.89	$595.98	$384.63	$331.71	$918.58	$643.48	$394.43	**$544.82**
5th	$881.42	$221.90	$171.85	$425.00	$176.50	$317.48	$1,403.63	$1,297.70	$553.30	**$468.87**
6th	$807.73	$240.62	$39.71	$560.51	$620.67	$371.20	$866.25	$653.13	$788.37	**$221.39**
7th	$1,070.02	$303.99	$76.25	$385.31	$945.59	$722.71	$1,358.85	$3,901.82	$719.42	**$509.13**
8th	$1,080.72	$266.07	$107.47	$250.02	$459.56		$320.71	$234.50	$386.32	**$430.11**
9th	$1,711.33	$499.34	$142.64	$666.75	$1,032.27	$1,537.59	$1,617.03	$3,151.24	$1,152.38	**$968.02**
10th	$1,378.77	$350.76	$89.07	$558.59		$757.50	$1,365.79	$5,073.86	$6,854.46	**$664.97**
11th	$1,075.83	$394.72	$124.82	$335.76	$512.48	$713.19	$1,792.77		$1,630.93	**$597.12**
12th	$899.16	$231.52	$99.51	$580.65			$1,035.91	$1,148.57	$1,339.05	**$649.03**
13th	$934.92	$321.15	$109.10	$481.14	$418.94	$795.74	$1,588.18	$796.09	$540.42	**$468.84**
14th	$904.88	$297.49	$162.76	$402.52	$700.53	$798.38	$882.36	$477.83	$338.84	**$468.61**
15th	$1,843.14	$520.80	$129.67	$435.52	$904.24	$580.10	$2,092.39		$1,100.99	**$1,179.03**
16th	$1,048.65	$361.93	$181.70	$317.08	$404.70	$371.30	$2,025.41	$1,508.41	$625.40	**$503.07**
17th	$1,314.09	$423.96	$99.71	$684.39	$188.32	$449.52	$1,426.03		$510.05	**$548.30**
18th	$1,675.76	$398.55	$115.90	$613.81	$343.29	$225.00	$1,383.82	$1,795.53	$1,370.04	**$659.40**
19th	$787.10	$237.51	$160.44	$225.70		$310.69	$845.57		$519.84	**$322.27**
20th	$2,305.87	$501.29	$173.43	$555.17	$3,845.20	$654.73	$1,440.25	$232.84	$976.54	**$969.24**
21st	$1,353.14	$531.89	$115.47	$564.60		$383.89	$2,337.80		$1,004.56	**$805.87**
22nd	$2,258.70	$368.47	$160.33	$869.59		$578.48	$1,509.10	$1,250.95	$645.62	**$906.79**
23rd	$1,676.37	$382.47	$185.70	$586.50	$552.85	$764.25	$1,326.06	$2,306.12	$11,509.04	**$867.81**
24th	$1,474.38	$258.03	$63.14	$270.48	$548.56	$1,128.74	$642.15	$4,689.25	$1,557.55	**$559.45**
25th	$1,486.49	$316.34	$125.60	$311.52	$374.86	$456.90	$1,469.48	$1,735.47	$556.60	**$586.95**
26th	$1,421.01	$435.74	$114.35	$398.43	$731.84	$425.18	$1,239.17	$557.72	$758.25	**$444.32**
27th	$852.03	$374.68	$189.29	$454.11	$836.16	$460.00	$969.89		$340.97	**$507.71**
28th	$1,113.11	$282.56	$91.28	$317.63		$294.00	$1,529.61	$1,439.06	$1,496.43	**$686.28**
29th	$1,438.79	$346.51	$219.71	$556.30	$352.25	$304.30	$1,063.01	$106.50	$670.77	**$627.53**
30th	$794.73	$396.27		$563.41	$781.00		$1,247.06		$555.40	**$747.57**
31st	$1,288.89	$280.48	$72.25	$395.30		$247.99	$1,035.53		$783.30	**$598.42**
AVG.	**$1,232.90**	**$345.30**	**$101.66**	**$445.09**	**$608.58**	**$518.18**	**$1,390.39**	**$1,753.22**	**$804.05**	**$552.63**

PDC	$1,142.77	$327.48	$81.24	$472.72	$651.90	$741.16	$1,413.11	$2,259.37	$1,068.25	$540.74
Non-PDC	$1,295.51	$353.88	$132.26	$427.26	$571.32	$421.65	$1,356.80	$983.87	$687.87	$561.33

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Private Court-Appointed Counsel Cost Per Case by Case Type, FY 1998

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A& N	Habeas	Other	TOTAL
1st	$2,020.42	$264.75	$181.28	$869.34		$711.75	$2,007.84	$1,084.79	$1,559.33	**$1,033.40**
2nd	$382.63	$259.50	$89.11	$331.52		$447.17	$946.79	$1,151.00	$42.50	**$505.76**
3rd	$1,173.17	$377.74	$87.40	$747.76		$343.67	$796.12	$555.95	$502.70	**$533.99**
4th	$1,910.43	$346.24	$125.26	$553.81	$699.98	$386.38	$771.17	$405.19	$521.05	**$603.90**
5th	$1,098.78	$271.20	$156.49	$525.76		$257.18	$935.81		$655.14	**$656.32**
6th	$664.04	$240.23	$37.30	$349.75	$680.00	$304.76	$892.66	$1,210.02	$559.83	**$204.67**
7th	$1,143.76	$278.75	$82.00	$434.04		$598.39	$1,220.37		$1,724.31	**$646.24**
8th	$1,474.24	$355.97	$140.05	$281.40			$794.45	$2,110.00	$345.60	**$601.87**
9th	$1,319.97	$431.23	$137.10	$640.98		$727.51	$1,673.03		$1,067.84	**$1,008.59**
10th	$815.94	$268.62	$85.41	$389.16		$553.04	$1,385.53	$889.14	$1,892.66	**$423.87**
11th	$1,117.96	$331.35	$124.72	$339.94		$440.65	$2,284.73	$6,506.75	$515.79	**$549.24**
12th	$1,556.51	$244.86	$69.88	$507.96			$1,490.76	$2,137.50	$994.09	**$846.24**
13th	$993.39	$303.58	$120.95	$418.40	$1,529.99	$534.60	$1,119.59	$238.50	$481.59	**$442.80**
14th	$783.97	$257.70	$185.62	$400.95		$247.04	$1,756.78	$405.04	$487.57	**$476.19**
15th	$1,424.80	$631.22	$119.73	$758.23		$716.22	$2,607.50	$3,108.50	$1,483.52	**$1,488.46**
16th	$1,177.73	$301.55	$144.57	$306.46		$410.14	$1,170.85	$2,516.71	$649.23	**$463.07**
17th	$904.39	$371.97	$103.65	$619.37	$362.00	$516.26	$1,959.01	$2,797.42	$1,027.43	**$501.70**
18th	$1,017.17	$506.00	$120.37	$356.21			$1,847.85		$1,341.65	**$571.05**
19th	$391.71	$220.56	$125.00	$216.79		$444.70	$798.47	$264.50	$301.79	**$288.53**
20th	$907.92	$370.59	$279.15	$621.44		$256.43	$1,142.98	$437.00	$315.06	**$515.78**
21st	$958.07	$379.68	$132.42	$470.05		$274.28	$1,047.62		$734.39	**$596.56**
22nd	$1,364.70	$305.73	$193.86	$695.27		$598.59	$1,521.72		$361.71	**$698.02**
23rd	$1,460.46	$297.94	$139.22	$326.78		$497.53	$1,063.28	$235.00	$1,591.93	**$580.30**
24th							$397.36			**$397.36**
25th	$610.96	$236.88	$141.36	$288.60		$421.22	$1,034.59	$295.50	$574.45	**$319.03**
26th	$1,105.96	$343.31	$105.50	$549.64		$351.88	$986.05	$1,528.03	$1,059.10	**$639.58**
27th	$991.16	$343.08	$114.25	$534.16		$567.00	$1,846.21		$469.76	**$543.27**
28th	$1,157.99	$310.23	$95.75	$388.66		$389.52	$1,381.06	$858.01	$1,838.08	**$950.94**
29th	$1,151.01	$314.22	$165.57	$614.82		$269.20	$1,353.73	$3,000.00	$817.96	**$526.24**
30th	$834.35	$226.07	$97.29	$268.43		$90.00	$947.64	$86.50	$398.94	**$525.76**
31st	$759.17	$218.05	$71.96	$164.60		$108.67	$1,432.00		$457.19	**$413.06**
AVG.	**$1,126.67**	**$312.53**	**$98.39**	**$422.26**	**$913.66**	**$453.85**	**$1,291.27**	**$1,516.22**	**$775.05**	**$523.05**

PDC	$1,130.39	$302.62	$77.72	$437.03	$1,105.00	$544.70	$12,994.41	$1,149.27	$943.50	$531.51
Non-PDC	$1,123.62	$319.02	$132.27	$412.08	$530.99	$407.88	$1,275.46	$1,770.27	$659.16	$515.48

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Appendix E

Indigent Defense Models

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Assigned Counsel Programs

Assigned counsel programs utilize private attorneys to represent indigent defendants. Many private practitioners, including less experienced lawyers, welcome the opportunity to participate in an assigned counsel program because of the courtroom and trial experience they can gain. The most recent comprehensive national review of indigent defense programs, "Criminal Defense for the Poor, 1986," reported that in 1986, assigned counsel programs operated in 52% of the counties, public defender programs in 37%, and contract systems in 11% of the counties.

The Ad Hoc Assigned Counsel Program

The oldest and most common type of assigned counsel program is the ad hoc program, under which the appointment of counsel is generally made by the court, without benefit of a formal list or rotation method and without specific qualification criteria for attorneys. Cases are sometimes assigned to attorneys on the basis of who is in the courtroom at a defendant's first appearance or arraignment, the time when appointments are typically made. Attorneys are usually paid on an hourly basis (e.g., $30/hour for work out-of-court and $40/hour for work in-court). In some states, attorneys are provided a flat fee per case.

In most jurisdictions, private, court-appointed counsel must petition the court for funds for investigative services, expert witnesses and other necessary costs of litigation. It is common for such an expenditure to require prior approval of the court, and to be subject to a somewhat flexible, but court-controlled maximum amount.

While the ad hoc assigned counsel method remains the predominant indigent defense system used in the country, particularly in smaller, less populated counties, it is frequently criticized for fostering patronage and lacking control over the experience level and qualifications of the appointed attorneys. It is not common for many of the appointments to be taken by recent law school graduates looking for experience, and by more "experienced," but marginally competent attorneys who need the income.

The Coordinated Assigned Counsel Program

The better type of assigned counsel program is one that has some type of administrative or oversight body. These coordinated programs generally require attorneys to meet minimal

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qualification standards in order to join the program, and provide a greater degree of supervision, training and support for the attorneys who are accepted. In the coordinated model, attorneys are usually assigned on a rotational basis according to their respective areas of expertise and the complexity of the cases. The American Bar Association recommends the use of coordinated assigned counsel programs over ad hoc programs to maintain independence from the judiciary and elected officials. Standard 5-1.3 of ABA's Standards for Criminal Justice, Providing Defense Services specifies that "[t]he selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by administrators of the defender, assigned counsel programs and contract-for-service." Like counsel appointed in an ad hoc fashion, counsel appointed in a coordinated program are paid by the hour or by the case.

The coordinated assigned counsel model is recognized by the American Bar Association as superior to the ad hoc assigned counsel model, as it more frequently ensures consistent and adequate representation, helps to eliminate patronage by judges in the assignment process, and avoids appointing cases to lawyers merely because they happen to be present in court at the time the assignment is made.

Contract Attorney Programs

In a "contract" program, the jurisdiction enters into contracts with private attorneys, law firms, bar associations or non-profit organizations to provide representation to indigent defendants. Often the contract is designated for a specific purpose within the indigent defense system, such as all cases where the public defender has a conflict of interest, or for a certain category of cases (e.g., Felonies, misdemeanors, juvenile dependencies).

The structure of these programs varies, but there are essentially two main types of contract programs.

Fixed Price Contracts

The defining characteristics of a fixed price contract program is that the contracting lawyer, law firm or bar association agrees to accept an undetermined number of cases within an agreed upon contract period, frequently one year, for a single flat fee. The contracting attorneys are usually responsible for the cost of support services, investigation and expert witnesses for all of the cases. Even if the caseload in the jurisdiction is higher than was projected, the contractor is responsible for

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providing representation in each of the cases for no additional compensation, This type of contract has been severely criticized by the courts and national organizations. The American Bar Association's House of Delegates approved a resolution in 1985 condemning the awarding of contracts for indigent defense services based on cost alone. In State v. Smith (1984), the Arizona Supreme Court found this type of system, which was in use in several Arizona counties, unconstitutional because:

1.) The system does not take into account the time that the attorney is expected to spend in representing his share of indigent defendants;

2.) The system does not provide for support costs for the attorney, such as investigators, paralegals and law clerks;

3.) The system fails to take into account the competency of the attorney. An attorney, especially one newly-admitted tot he bar, for example, could bid low in order to obtain a contract, but would not be able to adequately represent all of the clients assigned...; and

4.) The system does not take into account the complexity of each case.

The Fixed Fee-Per-Case Contract

The distinguishing feature of a fixed fee-per-case contract is that when a private lawyer, law firm or organization enters into a contract to provide indigent defense representation, the contract specifies a predetermined number of cases for a fixed fee *per case*. Frequently, funds for support services, investigations, secretarial services, and expert witnesses will be included in the contract. The contracting attorney typically submits a monthly bill indicating the number of cases handled during the period. Once the predetermined number of cases has been reached, the option exists to re-negotiate or extend the contract. The fixed fee per case system is far less common than the fixed price contract system.

Unfortunately, too many jurisdictions have adopted the fixed price contract model solely as a means to cut costs, often at the expense of the quality representation. An indigent defense system has a legal and ethical responsibility to guarantee the quality of representation it is providing. If that responsibility is not taken seriously, the jurisdiction makes itself vulnerable to expensive and damaging litigation from claims of ineffective assistance of counsel.

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The ABA Standards have addressed the potential for "quality control" problems in a contract system. Part III of the revisions approved in August 1990 includes a new section addressing, for the first time, Contract Defense Services. Section 5-3.3(b), "Elements for the contract for services," delineates 15 essential provisions that should be included in any contract with private attorneys or other lawyer groups.

Among the elements proscribed, the standards assert that the contract "should ensure quality legal representation," and that the contract should not be awarded "primarily on the basis of cost." The standards also stress that the contract include detailed information about how the cases will be handled by the contractor. Specifically, the standards require that contracts include, but not be limited to, the type and number of cases to be included, the fee per case, minimum attorney qualification standards, the attorneys who will be working on the cases, a policy for obtaining representation in the case of a conflict of interest, and other provisions. The key to a successful contract program is to ensure that the attorneys have appropriate experience, training and monitoring, and that the lawyers have access to the support and resources necessary for litigation.

In the past few years, there has been a substantial increase in the number of jurisdictions utilizing contract programs. In most instances, contract programs have been introduced as an alternative to court-appointed attorneys handling conflict cases in jurisdictions which have a public defender office.

The primary appeal of contract systems to funding bodies is the ability to accurately project the cost of conflict counsel for the upcoming year by limiting the total amount of money that is contracted out. With an appointed counsel system, it is impossible to predict the total cost for the upcoming year. Variables affecting the cost of an appointed counsel system include the total number of cases assigned, whether any death penalty or complicated cases are filed, and whether there are drug sweeps resulting in multiple defendants. Counties and states utilizing fixed price contracts are not subject to these variables, so they can project with certainty what their indigent defense expenditures will be at the beginning of the year.

Public Defender Programs

A public defender program is a public or private non-profit organization staffed by full or part-time attorneys and is designated by a given jurisdiction to provide representation to indigent

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defendants in criminal cases. While there are many variations among public defender programs, the defining characteristic is the employment of staff attorneys to provide representation.

The public defender concept predates Gideon by 50 years. The first defender program was established in Los Angeles in 1913. This early model was intended to provide a core group of experienced criminal lawyers who would improve upon the pro bono representation offered by members of the private bar. Besides the occasional local program, such as in Los Angeles or New York, the public defender model did not proliferate around the country until after the landmark Supreme Court decision and the publications of several important national studies in the 1970's.

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Appendix F

Comparative State Narratives

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1. Connecticut

Population:	3,274,238	Primary Funding:	State
Density:	678.4 people per square mile	Primary System:	Public Defender
Poverty Rate:	9.9%		
Counties:	8	Death Penalty:	Yes

The state-funded Connecticut Division of Public Defender Services and Special Public Defenders (SPDs)- private attorneys who contract with the public defender to handle conflict and overload cases - provide virtually all indigent defense representation in Connecticut. The Public Defender has regional offices throughout the state, and has a budget of $28,079,848 for FY 2000. Representation in mental health commitment and juvenile dependency cases is provided by a court-appointed counsel program administered by the state Superior Court Operations office.

Indigent Defense Commission:

The seven members of the Public Defender Services Commission are appointed by various state government officials. The Commission has the following duties: adopt rules for Division of Public Defender Services; establish a compensation plan comparable to state's attorneys; establish employment standards; appoint Chief Public Defender and Deputy Chief Public Defender, and remove for cause following notice and hearing; and submit annual report to Chief Justice, Governor and Legislature.

Alternative Revenue:

Clients of the Division of Public Defender Services are asked to pay a fee of $25 as a contribution to their representation. Division attorneys or administrative staff screen applicants for eligibility to pay the fee, and collect the fee. Revenue from the fee goes to the Division of Public Defender Services, and the fee generated $84,576 in FY 1999.

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2. Delaware

Population:	724,842	Primary Funding:	State
Density:	340.8 people per square mile	Primary System:	Public Defender
Poverty Rate:	9.5%		
Counties:	3	Death Penalty:	Yes

Indigent Defense System:

The Delaware State Public Defender represents all indigent defendants in trial and appellate cases. The Public Defender has regional office throughout the state, and the state pays all expenditures for indigent defense. The FY 2000 budget for the Delaware State Public Defender is $7,192,300. Conflict cases are primarily handled by a pool of six private attorneys who contract with the state to handle conflict cases. The average annual, flat-fee contracts are for $42,460 (per attorney), not including work on Class A felony cases (an additional $12,000), or capitol and non-capitol murder cases, which usually Adds another $20,000 per year. The contract program is administered by a circuit judge, who selects the contract attorneys.

The Delaware Criminal Justice Council used funds received from the Byrne Grant to create a statewide video conferencing system. This system links up the local Attorney General and public defender with local police departments and courtrooms. The project expedites warrant processing, bail hearings, arraignments, evidentiary hearings and pro se motions filed by inmates and reduces police transportation and time. It is also used for statewide training for the state public defender system.

3. Florida

Population:	14,399,985	Primary Funding:	Primarily State
Density:	239.6 people per square mile	Primary System:	Public Defender
Poverty Rate:	8.6%		
Counties:	67	Death Penalty:	Yes

Indigent Defense System:

In Florida, the 20 judicial circuit public defenders are publicly elected and provide representation at trial. Appellate cases are handled on a regional basis by five of these offices. Conflict cases are handled by private court-appointed counsel, and the rates vary from judge to judge, and from

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circuit to circuit. By statute, the state is responsible for public defender salaries and "the necessary expenses of the office," and the counties pay for office overhead expenses and court-appointed counsel costs. While state funds are distributed to the circuit public defender offices based on a recently restructured funding formula designed to fairly distribute the monies, some counties make more funding available for indigent defense than others. This new funding formula has contributed to increase appropriations for the Florida Public Defender Association (FPDA), a network of Florida's 20 elected circuit public defenders. Its FY 1999 state appropriation of $126 million is a 6% increase from last year's appropriation.

On October 1, 1997, the Florida Capital Collateral Representative, a state-funded entity which represented indigent capital prisoners in the state and federal post-conviction proceedings, was split into three separate Capital Collateral Regional Counsel offices covering the northern, middle and southern regions of Florida. By legislation, the three offices function independently and operate as separate budget entities.

Indigent Defense Commission:

The FPDA is governed by a Board of Directors comprised of the 20 elected public defenders in Florida, two representatives of the assistant public defender staff and one representative apiece from public defender investigative and administrative staff. The Florida Public Defender Coordination Office (FPDCO) works with the FPDA.

The FPDA engages in activities that promote and develop the public defender system in Florida. The FPCDO coordinates FPDA meetings; collects caseload and budget information from public defenders; analyzes public defender workload; prepares annual formulae which are based on caseload and attorney unit cost and used by the three branches of government and the circuit public defenders in the budget request process; monitors pertinent legislative developments; conducts training for public defender staff; and circulates pertinent case law to the elected public defenders.

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Alternative Revenue:

As of January 1, 1997, any accused person or, if applicable, a parent or legal guardian of an accused minor or accused adult tax-dependant person, who files an affidavit declaring indigency and requesting representation by the public defender must pay a $40 fee at the time the affidavit is filed. Fees collected are deposited into the Indigent Criminal Defense Trust Fund, which is administered by the state Judicial Administration Commission (JAC), and are "to be used to *supplement* the general revenue funds appropriated by the Legislature to the public defenders"(emphasis added). The JAC is required to return these funds to the 20 circuit public defender's offices "proportional[ly] to each circuit's collections." Fla. Stat. Ann. §27.52 (as amended during the 1997 legislative session by HB 1906).

As originally enacted, §27.52 contained language stating that the affidavit would be accepted without the fee if the court, after reviewing the financial information in the affidavit, reduced or waived the fee of assessed it at the disposition of the case. However, in the amended version passed in the 1997 legislative session, this language was stricken, making Florida the only jurisdiction we are aware of that does not provide a waiver mechanism for its application fee. Commentary to ABA Standard 5-7.2 states that "a defendant may be required at the time representation is provided, to make a limited financial contribution if it can be done without causing substantial hardship." Florida's statute does not allow for those facing substantial hardship to avoid payment.

In passing this legislation, the Florida state legislature took steps to help ensure that the fee would be collected from those defendants who are capable of paying it. First, the law creating the administrative fee also aims to tighten up indigency screening by expanding the affidavit which applicants for public defender services must submit in order to be appointed counsel. The 1997 amendment to §27.52 requires that the affidavit of indigency contain a statement affirming the applicant's obligation to report to the court or to the indigency examiner a change in financial circumstances. Second, the State Court Administrator's office was allocated 20 positions statewide to conduct indigency screening so that the courts are not overburdened with new responsibilities and will be able to devote adequate time to administering the screening program. Under legislation passed during the 1997 legislative session, as incentive to the clerks of the court who oversee collection of the fee, the clerks may retain two percent of the application fees collected monthly for

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administrative costs prior to remitting the remainder to the Judicial Administrative Commission In FY 1998, $1.1 million was generated from the $40 application fee, a figure which was almost matched in FY 1999, when the fee brought in $1 million.

4. Maryland

Population:	5,071,604	Primary Funding:	State
Density:	489.2 people per square mile	Primary System:	Public Defender
Poverty Rate:	8.6%		
Counties:	23	Death Penalty:	Yes

Indigent Defense System:

Indigent defense services in Maryland are fully state-funded. The Maryland State Public Defender is an independent agency under the executive branch and the Public Defender appoints the district defenders for each of Maryland's 12 judicial districts. The public defender program maintains 23 regional trial offices, as well as four trial offices in metropolitan Baltimore. Additionally, the Maryland State Public Defender has a capital defense division, a collateral review division, an appeals unit and a mental health unit.

In the most recent legislative session, the public defender office received a 2% increase in its FY 1999 budget - up to approximately $40 million. Though some of the increase will be used to offset the costs of representing children in termination of parental rights cases- a new responsibility for the Maryland Public Defender Office - most of the new money is slated to help pay for computers and staffing for both a pilot community court project and a social work unit.

Indigent Defense Commission:

The Governor of Maryland appoints the three member s of the Board of Trustees of the Maryland Office of the Public Defender. Two of the three members must be active attorneys and the State Public Defender is a non-voting ex officio member. The Board is required to: study and observe the operation of the Public Defender office; coordinate the activities of district Advisory Boards; appoint the Public Defender; and advise the Public Defender on all relevant matters.

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5. Missouri

Population:	5,358,692	Primary Funding:	State
Density:	74.3 people per square mile	Primary System:	Public Defender
Poverty Rate:	10.4%		
Counties:	114	Death Penalty:	Yes

Indigent Defense System:

The state-funded Missouri State Public Defender system provides representation to indigent defendants in all criminal cases. The State Public Defender has three divisions that provide representation to indigent defendants at trial, appeals and in capital proceedings. The Public Defender maintains 35 regional office to handle trial cases throughout the state and three appellate offices.

The Missouri State Public Defender has received substantial increases in state appropriations in recent years. In FY 1997, the organization received approximately $22.4 million from the state, an increase of 20% over their FY 1996 appropriation. Last year, the public defender office received a 10% increase, bringing its FY 1998 budget to approximately $24.8 million.

Indigent Defense Commission:

The seven members of the Public Defender Commission in Missouri are appointed by the Governor. The commission's responsibilities include: selecting the Director of the Office of the State Public Defender as well as his/her deputies; establishing employment procedures; reviewing office performance and monitoring the Director; ensuring the independence of the system through public education efforts; advising on budgetary matters; contracting with private attorneys; and approving a fee schedule for assigned counsel.

6. New Jersey

Population:	7,987,933	Primary Funding:	State
Density:	1,042 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	9.0%		
Counties:	21	Death Penalty:	Yes

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Indigent Defense System:

The state-funded New Jersey State Public Defender is a statewide program which is responsible for all indictable felony offenses and juvenile delinquency cases in New Jersey's thirteen count-based superior courts, along with direct appeals from these cases. The Public Defender maintains regional offices covering each of New Jersey's 21 counties.

Until recently, the state's counties were responsible for providing counsel to indigent defendants at the municipal level in misdemeanor cases. Despite a state supreme court decision in which the court held that attorneys representing indigent defendants in municipal court are not entitled to compensation, *Madden v. Delran Twp.*, 126 N.J. 591 (1992), in 1997, legislation established a funding mechanism for those municipal courts which did not employ a municipal public defender. (As of July 1997, only 383 of New Jersey's 537 municipal courts employed a municipal public defender. The remaining 154 municipal courts required involuntary pro bono services of private bar members.) The legislation authorizes the collection of a waivable application fee of up to $200, payable over a four-month period, for individuals seeking the services of a municipal public defender. Funds collected through the application fee are deposited in a dedicated fund to be used exclusively to meet all cost incurred in providing indigent defense services at the municipal court level, including the cost of expert investigation and testimony.

Alternative Revenue:

In 1991, the New Jersey legislature, facing a budget crisis, directed the state public defender to consider alternative sources of revenue. In September of that year the public defender instituted a $50 administrative fee to be collected from its clients. N.J. Admin. Code Tit. 15 §16-3(f). All of the fee revenue collected by the public defender is used to offset the cost of providing indigent defense services. The state public defender already had an automated billing system for reimbursements and liens, so an introduction of an up-front fee required little additional overhead cost to the system. Prospective clients are told about the fee during either their initial contact with the public defender's office or when they apply for public defender representation. The fee is collected by the attorney or investigator who has the first contact with the client.

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The New Jersey Office of the Public Defender collects the $50 up-front fee from approximately 6-7% of those assessed. Revenue generated by the fee has remained relatively flat since its inception in 1991. In FY 1992, $187,000 was collected. Since the revenue has increased at a slow pace. The fee brought in $210,020 in FY 1997 and increased by less than 1%, to $211,555, in FY 1998.

In the 1997 legislative session a second public defender application fee was authorized in New Jersey, this one intended to cover the cost of a newly passed law requiring that each of New Jersey's 537 municipal courts employ at least one salaried municipal public defender. New Jersey's state-funded public defender system is responsible for all indictable offenses in the state's thirteen county-based superior courts, but no state monies are used to find indigent defense representation at the municipal level. New Jersey's municipal courts have jurisdiction over non-indictable felonies, misdemeanors, DWI/DUI cases, and traffic violations. Before the municipal public defender bill passed, only 383 of New Jersey's municipal courts employed a municipal public defender. The remaining 154 municipal courts required involuntary pro bono services of members of the private bar to represent indigent defendants in municipal court. Since January 1, 1998, a $200 application fee has been required of all applicants for representation by a municipal public defender. The revenue is used exclusively to meet the costs incurred by counties in providing the services of a municipal public defender, including the cost of investigation. SB 1886, the legislation authorizing the $200 fee, supplemented Title 2B of the New Jersey Statutes and repealed N.J.S 2B §12-28. The Spangenberg Group has not been able to gather any data regarding how much revenue these municipal court fees generate, due to the lack of any centralized information pertaining to these fees.

7. New Mexico

Population:	1,713,407	Primary Funding:	State
Density:	12.5 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	22.4%		
Counties:	33	Death Penalty:	Yes

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Indigent Defense System:

New Mexico's state-funded Public Defender Department provides primary representation in trial and appellate cases throughout the state. Approximately half of the state's counties (the more populous ones) are served by one of the State Public Defender Department's regional trial offices; private attorneys who contract with the Department represent indigent defendants in the remaining counties.

The New Mexico Public Defender Department's expenditure for FY 1999 was $21,564,800.

Alternative Revenue:

Since 1993, indigents in New Mexico have been asked to pay a $10 application fee. Revenue from the fee is deposited into the "Public Defender Automation Fund," which is used to buy and maintain computer hardware and software for the New Mexico Public Defender Department. In FY 1998, the fee brought in $114,683.

8. North Carolina

Population:	7,322,870	Primary Funding:	State
Density:	136.1 people per square mile	Primary System:	Assigned counsel with some Contract Defenders & Public Defenders
Poverty Rate:	12.5%		
Counties:	100	Death Penalty:	Yes

Indigent Defense System:

In North Carolina, the state pays for all indigent defense expenditures. Trial level representation is provided at the local level; each county has the responsibility of organizing its system. A handful of the state's 100 counties employ the public defender model while the rest use assigned counsel or contract defenders. Appellate representation is provide by the State Appellate Defender. The AOC spent $59,622,732 on indigent representation in FY 1998.

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9. Ohio

Population:	11,172,782	Primary Funding:	Mixed State & County
Density:	264.9 people per square mile	Primary System:	Public Defender
Poverty Rate:	11.6%		
Counties:	88	Death Penalty:	Yes

Indigent Defense System:

The Ohio Public Defender Commission provides direct representation in all capital trials, direct appeal and state posy-conviction cases. The Commission also oversees the delivery of non-capital trial level services throughout the state. Ohio's counties may select their own delivery model, and those counties which comply with the Commission's standards are eligible for partial reimbursement for expenditures in connection with these services.

Ohio's indigent defense system is funded through a combination of county and state monies. As mentioned above, the state-funded Public Defender Commission reimburses counties up to 50% of their expenditure, but the rate of reimbursement fluctuates each year, depending on the Commission's budget. Generally, it is between 40% and 50% of the amount paid by the county. This program is supported in large measure by an $11 assessment on all criminal convictions other than minor traffic offenses; the assessment is added to the bail premium of all defendants who post bond or at the disposition of the case if no bail is posted. For FY 2000, the Ohio Public Defender Commission has an operating budget of $62,393,829. Capital cases are handled by county public defenders or appointed counsel.

Indigent Defense Commission:

The nine members of the Ohio Public Defender Commission, five of whom are appointed by the Governor and four by the Ohio Supreme Court, provide, supervise and coordinate indigent legal representation in the state. The Commission's members establish rules for the Public defender regarding issues such as compensation, indigency standards and caseloads, as well as approve Public Defender budgets. The Commission chair and at least four Commission participants must be bar members.

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Alternative Revenue:

In each of the 11 counties in Ohio where indigent defense programs are administered by the State Public Defender, it has been determined that an application fee will be implemented by January 1, 2000. The fee will be $75, and the revenue will revert back to the county general fund. County public defenders will be responsible for screening defendants for eligibility and actually collecting the fee.

Many of Ohio's other counties have also established up-front fees. The amount and administration of the fee, however, varies from county to county.

10. Oklahoma

Population:	3,300,902	Primary Funding:	Mixed State & County
Density:	45.8 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	14.8%		
Counties:	77	Death Penalty:	Yes

Indigent Defense System:

In Oklahoma's two largest counties, Tulsa and Oklahoma (Oklahoma City), the counties fund indigent defense services at the trial and direct appeal levels. Both counties have full-time public defender offices.

In 1991, the Oklahoma legislature created and funded a new state agency for providing indigent defense services, the Oklahoma Indigent Defense System (OIDS). OIDS, with its five-member Board of Directors, is responsible for providing indigent defense services in 75 of Oklahoma's 77 counties. OIDS has separate, staffed capital trial, capital direct appeal, non-capital direct appeal and capital state post-conviction divisions. The majority of non-capital trial cases are handled by attorneys working under contract with OIDS. Impetus for the statewide system was a 1990 Oklahoma Supreme Court decision which held that the compensation system in effect for court-appointed counsel at the trial level was unlawful as an unconstitutional taking of property of court-appointed attorneys. *State v. Lynch*, 796 P2d 1150 (Okla. 1990).

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Following the 1997 legislative session, OIDS opened three non-capital trial satellite offices, and, in the 1998 legislative session, received funds to expand one of the three offices. For FY 2000, OIDS received a budget of $14,883,111.

Indigent Defense Commission:

The Governor of Oklahoma selects each of the five members who serve on the Oklahoma Indigent Defense System Board. At least three of the members must be lawyers. This Board makes policies for indigent defense programs, approves a budget for OIDS, appoints an advisory council of indigent defense attorneys, establishes policies on maximum caseloads and appoints the OIDS Executive Director.

Alternative Revenue:

Oklahoma requires any indigent defendant requesting representation by the Oklahoma Indigent Defense System to pay a $40 application fee to the court clerk. Today, all the revenue generated by the fee is allocated to the Court Clerk's Revolving Fund. However, at the fee's inception in 1992, 90% of the then-$15 fee went to the Indigent Defense Revolving Fund and just over 10% reverted back to the Court. This distribution scheme changed in 1996, when the fee was raised to $40 and statutory language specified that the first $20 collected should go to OIDS, and the balance would be deposited in the Court Clerk's Revolving Fund. In November of 1997 the state changed again, this time declaring that all revenue brought in would be transmitted to the Court Clerk's Revolving Fund.

11. Oregon

Population:	3,203,735	Primary Funding:	State
Density:	29.6 people per square mile	Primary System:	Public Defender, Assigned Counsel & Contract Defender
Poverty Rate:	12.8%		
Counties:	36	Death Penalty:	Yes

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Indigent Defense System:

In Oregon, the state provides all funding for indigent defense services. At the trial level, the Indigent Defense Services Division of the Administrative Office of the Courts administers contracts with each county program, which may choose a public defender, private bar contract or court-appointed counsel system. The State Public Defender handles direct appeals.

Alternative Revenue:

In 1997, ORS 151.487 was revised and became the primary vehicle for a new statewide program allowing courts to order persons who apply for court-appointed counsel in any case to pay in full or in part "the administrative costs of determining the eligibility of the person and the cost of legal and other services to be provided" prior to the conclusion of the case. As a result, the state implemented a recoupment program and a $20 application fee. The court must first determine whether the person applying for appointed counsel has thee financial ability to pay such costs without creating substantial hardship in providing basic economic necessities to the person or the person's dependent family. As in other states, failure to obey a court order to pay an application fee or contribution amount cannot be used as grounds for contempt or the withdrawal of court-appointed counsel. However, application fee and contribution amounts ordered by the courts are enforceable against the person "as if the order is a civil judgement," and a court's decision to order or to not order payment of either cost is subject to review at any time. Lastly, the State Court Administrator's guidelines and standards for operation of this new program prohibit delay in the appointment of counsel to individuals eligible for indigent defense services which may arise if the individuals disagree with the decisions regarding their eligibility or contribution amount.

The Oregon application fee and contribution program came into effect in November 1998, and has been operating in five counties on a pilot basis. The program is expected to expand to the entire state as of January 1, 2000. The application fee was set at $20 and all revenues generated go to the State Court Indigent Defense Account. The Office of the State Court Administrator is not able to discern between revenues generated by the application fee and money brought in by client contribution. These two sources generated approximately $360,000 in the five counties in FY 1999.

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12. Tennessee

Population:	5,319,654	Primary Funding:	Primarily State Some County
Density:	118.3 people per square mile	Primary System:	Public Defender
Poverty Rate:	14.5%		
Counties:	95	Death Penalty:	Yes

Indigent Defense System:

In Tennessee, with the exception of Shelby County (Nashville) and Davidson County (Memphis), which have their own respective county public defender offices funded through a combination of state and local monies, the state funds indigent defense and each judicial district has an independent public defender office. The Tennessee District Public Defenders Conference oversees the delivery of indigent defense services throughout the state. Its FY 1999 appropriation was $21 million, 4.7% increase from FY 1998. Another program, the Office of the Post-Conviction Defender, represents indigent defendants convicted of capital offenses who are seeking state post-conviction relief.

In the 1998 legislative session, the state legislature appropriated funds to conduct a weighted caseload study for judges, prosecutors and public defenders; this study was completed in spring of 1999.

Indigent Defense Commission:

The Tennessee Indigent Defense Commission of the Supreme Court of Tennessee is composed of 11 members who are appointed by the state Supreme Court. Duties of the Commission include: appointing officers; adopting rules for operation of the Commission; developing a comprehensive plan for indigent defense services in the state court system; collecting case information; determining reasonable caseloads for district defenders; set standards for criminal defense attorneys representing indigent defendants; setting compensation for assigned counsel; setting annual budget for court-appointed counsel expenditures; and developing a voucher review process.

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The Post-Conviction Defender Commission has nine members, appointed by the Governor, lieutenant governor, the Speaker of the House of Representatives, and the Supreme Court of Tennessee. Their tasks are to appoint the Post-Conviction Defender and prepare an annual budget for the Office of the Post-Conviction Defender.

Alternative Revenue:

Since July 1, 1997, Tennessee has required indigent defendants and parents or guardians of indigent minors facing juvenile proceedings to pay a $50 administrative fee. If a court finds that the defendant or guardian can pay more than $50, the fee can be increased to an amount not to exceed $200. Court clerks collect the fee, and 5% of the revenue reverts back to the court, while the other 95% is deposited into the state's general fund. In calendar year 1998, the fee generated $543,300.

13. Wisconsin

Population:	5,159,795	Primary Funding:	State
Density:	90.1 people per square mile	Primary System:	Public Defender
Poverty Rate:	8.6%		
Counties:	72	Death Penalty:	No

Indigent Defense System:

Wisconsin has an integrated state public defender system with regional trial offices providing trial and appellate representation throughout the state.

Indigent Defense Commission:

Wisconsin has a nine member commission appointed by the Governor and approved by Senate. At least five must be attorneys with the Chair elected by the Board. The commission's duties include: Appoint state Public Defender and establish salary; Approve budget and submit to Governor; Promulgate standards of indigency; Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs; Perform all other duties necessary and incidental; Contract with federal agencies and local public defender organizations for provision of services.

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Alternative Revenue:

Technically there is no up-front application fee for indigent defendants seeking court-appointed representation in Wisconsin, but there is a bifurcated reimbursement system that in some ways resembles an application fee.

Under Wisc. Stat. Ann §977.075 (West Supp. 1996), the Board of the Office of the State Public Defender (SPD) is required to establish, by rule, fixed amounts for the cost of legal representation. Under the program adopted in August 1995, SPD staff screen defendants for indigency and inform them that they are expected to pay a per-charge fee for representation rendered. Each misdemeanor charge is assessed at $200, and felony representation runs $400 per charge. An appeal of a case that went to trial will cost the defendant $1,000, while reimbursement for representation in an appeal where there was no trial runs $400. However, under the bifurcated nature of the program, defendants can elect to pre-pay the reimbursement charges at substantially reduced rates, if they do so within 30 days from application for counsel. Felony and misdemeanor fees can be pre-paid at a rate of $50 per offense, while reimbursement for representation in an appellate trial case can be pre-paid at $100. Thus, a defendant facing two misdemeanor charges can elect to pay $100 within 30 days from appointment or pay $400 at the disposition of the case. If the defendant elects to pay a fee in installments, he or she loses out on the pre-payment discount. Following the screening interview, defendants are given a payment envelope.

As in other state, defendants will not be denied counsel if they are unable to pay the fee, but their accounts will be turned over to a collection agency retained by the SPD. All monies collected revert back to the public defender.

Start-up costs for the program were minimal, consisting of transferring two positions from public defender field offices to the central office to handle the payments. Initial projections for revenue generated by the program were forecast at $7 million, based on the number of charges defended by public defenders in past years. Actual collections totaled $626,000 in FY 1996, and increased to $825,900 in FY 1998.

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14. Vermont

Population:	588,654	Primary Funding:	State
Density:	60.8 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	10.6%		
Counties:	14	Death Penalty:	No

Indigent Defense System:

Vermont has a state funded public defender system with full-time staff offices in approximately half of the counties and contract counsel in the remaining counties providing trial and appellate representation. The Vermont Office of the Defender General reported a slight decrease in its FY 1998 budget appropriation for general operations ($5,304,722 down from $5,355,000). However, two separate, one-time appropriations - one for $132,000 to address a growing backlog in termination of parental rights cases, the other $175,000 for computer upgrades- gave the Office of the Defender General a net gain in its FY 1998 appropriation. Funding rates continued to increase through 2000, as the Defender General's budget for the current fiscal year is $6,321,581.

Alternative Revenue:

As of March 1996, Vermont has imposed a $25 fee on individuals applying for representation. The money collected by the fee is deposited into the public defender special fund, which is used almost exclusively to support public defense in Vermont. In FY 1998, the fee brought in $255,172. Juvenile clients requiring counsel are not required to pay the fee.

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Appendix G

Additional Comparative Data

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The 6th/24th Circuit Public Defender Corporation began at the start of FY 1995. Between FY 1994 and FY 1998, the circuits indigent defense caseload increased by 48.82%. This occurred at a time that the state's total indigent defense caseload increased by only 17.32% (from 31,974 to 37,511).

Caseload	1994	1995	1996	1997	1998
PD		2,592	4,074	4,666	5,227
AC	4,433	2,751	1,825	1,636	1,370
Total	4,433	5,343	5,899	6,302	6,597

Yet, during this same time period, the state's indigent defense expenditure grew by 23.37% (from $13,423,484 to $16,561,218) while the 6th/24th circuit increased by only 10.63%. In this circuit, we believe it is fair to say that the public defender corporation saved money for the state while ensuring that eligible clients received representation.

Expenditure	1994	1995	1996	1997	1998
PD		$679,860.00	$745,502.00	$853,055.00	$883,180.00
AC	$1,052,834.00	$726,034.00	$454,068.00	$425,971.00	$281,555.00
Total	$1,052,834.00	$1,405,894.00	$1,199,570.00	$1,279,026.00	$1,164,735.00

The other circuit that instituted a Public Defender Corporation during this time period was the 5th circuit. Because that PDC was established after the start of FY 1997, we believe that the real cost savings will not be felt until FY 1999 and beyond. As indicated in this report, we do not believe that enough of the indigent defense data is reliable after FY 1997 to draw definite conclusions. Still, the data that we do have indicated that the 5th circuit's indigent defense caseload has not been affected by the introduction of the PDC, though the indigent expenditure has increased.

Caseload	1994	1995	1996	1997	1998
PD				346	662
AC	640	739	851	469	199
Total	640	739	851	815	861

Expenditure	1994	1995	1996	1997	1998
PD				$337,950.00	$371,200.00
AC	$370,089.00	$369,747.00	$399,010.00	$270,033.00	$130,607.00
Total	$370,089.00	$369.747.00	$399,010.00	$607,983.00	$501,807.00

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Appendix H

State Indigent Defense Commission Table

STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
ALABAMA	None	Not applicable	None	Not applicable
ALASKA State Public Defender Agency (Executive Agency, Department of Administration)	None	Not applicable	Appointed by Governor from nominations of Judicial Council. Confirmed by majority of Legislature in joint sitting. Four-year term; renewal requires Legislative confirmation. Member of bar. Governor can remove for good cause.	Appoint, supervise and control assistant public defenders and other employees. Submit annual report to Legislature & Supreme Court on number and types of cases, dispositions and expenditures. Full-time; private practice prohibited.
ALASKA Office of Public Advocacy (Executive Agency, Department of Administration)	None	Not applicable	Public Advocate appointed by Governor. Serves at will of Governor.	Provides Guardians Ad Litem for abused and neglected children and status offenders. Provides representation in conflict cases from the Alaska Public Defender Agency. Acts as Public Guardian and Conservator for citizens with disabilities.
ARIZONA	None	Not applicable	None	Not applicable
ARKANSAS Arkansas Public Defender Commission (Executive Agency)	Seven members appointed by Governor: at least four licensed Arkansas attorneys experienced in criminal defense; at lease one County Judge. Governor designates one member as Chair. No more than two residents of same congressional district. No two members from same county. Serve five-year terms.	Establish policies and standards for Public Defender System. Approve budgets for trial public defender offices. Require annual reports from trial public defender offices. Appoint Executive Director. Evaluate performance of Executive Director, Capital, Conflicts & Appellate Office, trial public defenders and private assigned counsel. Maintain list of private attorneys willing and qualified to accept capital case appointments. Authorize contracts with trial public defenders.	Executive Director appointed by Commission. Must have experience in defense of capital cases. Serves at will of Commission.	Supervise capital conflict and appellate office. Maintain records of operation of public defender system. Prepare budget for Commission. Implement attorney performance procedures pursuant to Commission's standards. Maintain court opinions, statutes, etc. for use by trial pubic defenders and court- appointed counsel. Maintain appellate brief bank. Convene training program related to public defender system. Prepare annual report.
CALIFORNIA California Habeas Resource Center (Judicial Branch)	Five-member Board of Directors confirmed by the Senate. Each of the state's five Appellate Projects shall appoint one board member; all must be attorneys. No lawyer working as judge, prosecutor or in a law enforcement capacity is eligible. Four-year terms.	Appoint Executive Director.	Executive Director appointed by Board of Directors. Must be member of California State Bar during the five years preceding appointment and possess substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time. Serves at the will of the Board.	Hire up to 30 attorneys to represent any indigent person convicted and sentenced to death in California in post-conviction actions in state and federal courts. Work with the Supreme Court to recruit attorneys to accept death penalty habeas case appointments and to maintain a roster of attorneys so qualified. Employ investigators and experts to provide services to appointed attorneys in capital post-conviction cases. Develop and maintain brief bank for use by appointed counsel. Review case billings and recommend compensation of members of the private bar to the court. Prepare annual report on the status of appointment of counsel for indigent prisoners in capital post-conviction cases.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
COLORADO Office of State Public Defender Commission (Judicial Agency)	Five members appointed by Supreme Court. No more than three from same political party. Three attorneys, two non-attorneys. No judges, prosecutors, public defenders or law enforcement personnel.	Appoint State Public Defender and discharge for cause.	State Public Defender appointed by Commission. Five-year, renewable term. Member of bar five years prior to appointment. Full-time position.	Employ and set compensation for all employees (rates approved by Supreme Court); establish regional offices as necessary; provide commensurate legal services to indigents accused of crimes as are available to non-indigents, independently of any political consideration or private interests.
COLORADO Office of Alternate Defense Counsel (Judicial Agency)	Nine members appointed by Supreme Court. No More than five from same political party. Six lawyer members, each representing one of the six congressional districts, all of whom are Colorado licensed lawyers practicing criminal law. Three members citizens not licensed to practice law in Colorado. No member at any time a judge, prosecutor, pubic defender or employee of a law enforcement agency. Serve four-year terms.	Select an Alternate Defense Counsel; serve as an advisory board to the alternate defense counsel; advise alternate defense counsel on development and maintenance of competent and cost-effective representation. Shall meet at least annually.	Alternate defense counsel appointed by Commission to renewable five-year term. Must be licensed to practice law in Colorado for at least five years prior to appointment. May not hold private practice. Serves at will of the Commission.	Employ and set compensation for all employees. Provide legal representation to indigent persons and partially indigent persons in circumstances when the state public defender has a conflict of interest by contracting with licensed attorneys and investigators. Legal services provided to indigents shall be commensurate with those available to non-indigents and independent of any political considerations or private interests.
CONNECTICUT Public Defender Services Commission (Autonomous body within judicial department for fiscal and budgetary purposes only.)	Seven member: two judges appointed by Chief Justice; one member appointed by each; Speaker of House, President Pro Tem of Senate, minority leader of House, minority leader of Senate. Chairman appointed by Governor. Three-year term. No more than three, other than chairman, from same party. Two of four non-judicial members non-attorneys. No public defenders.	Adopt rules for Division of Public Defender. Establish a compensation plan comparable to state's attorneys. Establish employment standards. Appoint Chief Public Defender and Deputy Chief Public Defender. Remove Public Defender and Deputy Public Defender for cause following notice and hearing. Submit annual report to Chief Justice, Governor and Legislature by October 15. (See duties of public defender.)	Chief Public Defender appointed by Commission to a four-year term. Member of state bar for five years. Full-time position.	Direct and supervise work of all personnel. Submit annual report, including data and recommendations for changes in law, to Commission by September 15. (Note extensive list in Sec. 51-291.)
DELAWARE Office of the Public Defender (Executive Agency)	None	Not applicable	Public Defender appointed by Governor. Six-year term. Qualified attorney licensed in Delaware.	Appoint assistant attorneys, clerks, investigators and other employees as necessary and set salaries. Determine indigency prior to arraignment. Prepare annual report.
DISTRICT of COLUMBIA D.C. Public Defender Service (independent agency)	Eleven member Board of Trustees. Appointed by panel of two U.S. Judges, two D.C. Judges and Mayor of D.C. Three-year term; not more than two consecutive. No judges. Four of Eleven members non-attorney residents of D.C.	Establish general policy but shall not direct conduct of particular cases. Submit fiscal year report to Congress, Chief Judges of U.S. Courts and D.C. Courts and D.C. Mayor. Arrange annual independent audit. Quarterly reports to court on matters relating to appointment systems. Appoint Director and Deputy Director and set their salaries.	Director appointed by Trustees. Serve at pleasure of Trustees. Member of D.C. Bar. No private practice.	Employ and supervise personnel. Set compensation not to exceed salary paid to U.S. Attorneys and staff.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
FLORIDA Florida Public Defender Association (FPDA); Florida Public Defender Coordination Office (FPDCO)	None per se, but the FPDA is governed by a Board of Directors comprised of the 20 elected public defenders in Florida, two representatives of the assistant public defender staff and one representative apiece from public defender investigative and administrative staff. The FPDCO works with the FPDA.	The FPDA engages in activities that promote and develop the public defender system in Florida. The FPDCO coordinates FPDA meetings; collects caseload and budget information from public defenders; analyzes public defender workload; prepares annual funding formulae which are based on caseload and attorney unit cost and used by the three branches of government and the circuit public defenders in the budget request process; monitors pertinent legislative developments; conducts training for public defender staff; and circulates pertinent case law to the elected public defenders.	Not applicable	Not applicable
GEORGIA Georgia Indigent Defense Council (separate agency within Judicial Branch)	Fifteen member council. Supreme Court selects members: ten lawyers; three lay persons; and two county commissioners. Selected for four-year terms.	Recommend standards and guidelines for local programs. Administer state funds to local public defender programs that comply with standards. Support local defenders. Provide local attorneys with technical, clinical help and training. Prepare budget.	Director selected by Council.	Duties and responsibilities not contained in Statute.
HAWAII Office of State Public Defender (Executive Agency, Department of Budget and Finance)	Five member Defender Council. Appointed by Governor. Serve at Governor's pleasure. One member from each county. Chairman selected by members.	Council shall be governing body of Office and State Public Defender. Shall appoint Public Defender. Approve employment decision of Public Defender.	State Public Defender appointed by Council. Four-year term. Qualified to practice law in Hawaii. Full-time position.	Subject to approval of Council: employ assistant public defenders, investigators and other support personnel. Assistant public defenders may be part-time and engage in private practice other than criminal law.
IDAHO State Appellate Public Defender (The Department of Self-Governing Agencies)	None	Not applicable	State Appellate Defender appointed by the Governor with advice and consent from the Senate from a list of 2-4 persons recommended by a Committee comprised of the President of the Idaho State Bar Association, Chairmen of the Senate Judiciary and Rules Committee, and a citizen at large appointed by the Governor. The Chief Justice of the Idaho Supreme Court, or her designee, is ex officio member of the Committee. Public defender must be attorney licensed to practice in Idaho with at least five-year experience practicing law. Four-year term; removed only for good cause.	Provide appellate and post-conviction representation to indigent defendants convicted of felony offenses in those counties which participate in the capital crimes defense fund; prepare annual report. Employ deputy state appellate defenders and other employees. Adopt necessary policies or rules.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
ILLINOIS Office of State Appellate Defender (agency of the Judicial Department)	Board of Commissioners. Nine members. Appointed by various courts and bars. Governor appoints Chair. Serves one six-year term.	Approve budge. Advise Appellate Public Defender on policy. Can recommend dismissal of the Appellate Public Defender.	State Appellate Defender appointed by Illinois Supreme Court. Four-year term. Qualified to practice law in Illinois.	Provide representation in criminal appeals. Establish offices around the state. Train and assist trial level defenders.
INDIANA Public Defender Commission (Policy Board for Capital and Non-Capital Representation) (Judicial Agency)	Public Defender Commission: Eleven members: three appointed by Governor; three appointed by Chief Justice; one appointed by Board of Indiana Criminal Justice Institute; two House members appointed by the Speaker of the House; two Senate members, appointed by Speaker Pro Tempore of the Senate. Four-year term. No law enforcement officers or court employees. Members designate one member Chair.	Set standards for indigent defense services in capital and non-capital cases. Adopt guidelines and fee schedule under which counties may be reimbursed. Make recommendations concerning the delivery of indigent defense services in Indiana. Prepare annual report on operation of public defense fund.	Not Applicable	Not applicable
INDIANA Public Defender of Indiana (State post-conviction public defender) (Judicial Agency)	None	Not applicable	Public Defender appointed by Supreme Court. Four-year term. Resident. Practicing lawyer in Indiana for three years.	Represent all indigent defendants in post-conviction proceedings.
IOWA Office of the State Public Defender (independent agency within Executive Branch)	None	Not applicable	State Public Defender appointed by Governor. Four-year term. Licensed to practice law in Iowa.	Oversee all 18 public defender offices. Coordinate non-public defender indigent defense program. Contract with attorneys when public defender unable to take case.
KANSAS State Board of Indigent Defense Services (Executive Branch Agency)	Nine members: five lawyers, four non-lawyers. Appointed by Governor and confirmed by Senate. Two members from First Congressional District, one of whom is a registered Kansas lawyer, and at least one member from each other Congressional District. At least one (and up to five) registered Kansas lawyer from each county with over 100,000 population. No members may be judicial or law enforcement personnel. Three-year terms.	Appoint Director and public defenders. Maintain statistics on indigent defense representation. Conduct training programs. Establish public defender offices. Enter into contracts with attorneys to provide indigent defense representation and with cities or counties for misdemeanor representation. Provide technical assistance to public defenders and private attorneys.	Board appoints Director who must be licensed in Kansas and demonstrate commitment and ability in criminal law.	Serve as Chief Executive Officer of Board. Supervise operation, policies, procedures of Board. Prepare annual report.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
KENTUCKY Department of Public Advocacy (independent state agency within Executive Branch) Public Defender Commission (Policy board for capital and non-capital representation) (Judicial Agency)	Nine appointed members plus deans of Kentucky law schools. Two members appointed by Governor. One by speaker, one by president of the senate, two by Supreme Court; two criminal lawyers appointed by Governor from list of five submitted by Bar Association, one appointed by Governor from list submitted by Kentucky Protection and Advocacy Advisory Board. Four-year term. No prosecutors or law enforcement officials. Chair elected by Commission to one-year term. Also a 17-member citizen advisory board appointed by the Public Advocate.	Recommend to Governor three attorneys as nominees for Public Advocate. Assist Public Advocate in selecting staff. Provide general supervision of Public Advocate and review performance. Engage in public education and generate political support. Review and adopt annual budget. Not interfere with handling of cases.	Public Advocate appointed by Governor from nominees submitted by Commission. Member of Kentucky Bar with five years experience. Four-year term.	Appoint Deputy Public Defender. Appoint assistant public defenders and other personnel. Serve as ex officio, non-voting member of Commission. Appoint 17-member Advisory Board for Protection and Advocacy Division.
LOUISIANA Louisiana Indigent Defender Program (separate agency within Executive Branch created by Supreme Court Rule)	Seven to fifteen members. Appointed by Chief Justice of Supreme Court with concurrence of majority of justice. Renewable three-year terms. One member from each of the six Supreme Court districts. One additional member from First Supreme Court District. Not more than three non-lawyer members. At least three experienced criminal lawyers.	Members elect Chair. Establish uniform standards and guidelines for statewide program. Subdivide state into regions. Select most appropriate system for delivery in each region. Select regional full-time public defenders. Set policy for the Expert Witness/Testing Fund and the District Assistance Fund. Set eligibility standards and guidelines for district defender boards to receive Expert Witness/Testing and District Assistance Funds.	Chief Executive Officer selected by Board. Attorney with five years prior experience in criminal practice. Board sets term.	Supervise attorneys in Appellate Division and Capital Litigation programs. Manage monies in Expert Witness/Testing Fund and District Assistance Fund. Assist Board in enforcing its standards and guidelines.
MAINE	None	Not applicable	None	Not applicable
MARYLAND Office of the Public Defender (Executive Agency)	Three-member Board of Trustees; two must be active attorneys. Appointed by Governor. Three-year term. Chair designated annually by Trustees.	Study and observe operation of Public Defender office. Coordinate activities of district Advisory Boards. Appoint Public Defender. Advise Public Defender on all relevant matters.	Public Defender appointed by Board of Trustees. Term is at the pleasure of Trustees. Attorney admitted in Maryland plus five years in practice.	Appoint Deputy Public Defender with Board approval. Appoint First District Defender in each judicial district. Appoint assistant public defenders with advice of District Defenders. Appoint other employees. Maintain at least one office in each district. General responsibility for operation of all offices. Maintain records. Supervise district defenders' maintenance of local attorney panels.
MASSACHUSETTS Committee for Public Counsel Services (independent agency; Judicial Branch for budget purposes only)	Fifteen members. Appointed by Justices of Supreme Judicial Court. Three-year term. Chair elected by the Committee.	Establish standards for public counsel and private counsel divisions. Establish uniform standards of indigency. Establish guidelines for training and for qualification and removal of counsel in public and private divisions. Prepare annual report. Appoint chief counsel and two deputies. Extensive list of other duties and responsibilities enumerated by Statute.	Chief Counsel appointed by Committee. Attorney. Serves at pleasure of Committee.	Overall supervision of various divisions of committee. Perform duties as defined by the Committee. Authorize all payments certified by judges for private counsel.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
MICHIGAN State Appellate Defender Office, Appellate Defender Commission (agency of Judicial Branch)	Seven members appointed by Governor. Two recommended by Supreme Court; one recommended by Court of Appeals; one recommended by Michigan Judges Association; two recommended by State Bar; one non-attorney. Four-year term. No member a sitting judge, prosecutor or law enforcement officer.	Choose State Appellate Defender. Develop appellate defense program. Develop standards for program. Maintain list of attorneys willing and qualified for appointment in indigent appellate cases. Provide CLE training for attorneys on list.	State Appellate Defender chosen by Commission. Can only be removed for cause.	Provide appellate representation. Maintain a manageable caseload. Prepare and maintain brief bank available to court-appointed attorneys who provide appellate services to indigents.
MINNESOTA State Board of Public Defense (separate agency within Judicial Branch)	Seven members. One district court judge appointed by Supreme Court. Four attorneys familiar with criminal law but not employed as prosecutors, appointed by Supreme Court. Two public members appointed by Governor.	Elect Chair and appoint State Public Defender. Chair may appoint Chief Administrator. Prepare annual report. Recommend budget for Board, Office of State Public Defender and Pubic Defense Corps. Establish procedures for distribution of funds for public defense. Set standards for state and district public defenders and court-appointed system.	State Public Defender appointed to four-year term. Full-time position.	Provide appellate and post-conviction proceeding representation in all indigent cases. Assist in trial representation in conflict of interest cases when requested by a district public defender or appointed counsel. Conduct training programs.
MISSISSIPPI Public Defender Commission of the State of Mississippi	Nine members, no active prosecutors may serve. The Governor, Lieutenant Governor, Speaker of the House of Representatives, Chief Justice of the Supreme Court of Mississippi, Conference of Circuit Judges of the State of Mississippi , Conference of County Court Judges of the State of Mississippi, President of the Mississippi Bar, President of the Magnolia Bar and the President of the Public Defenders Association each appoint one member. The Chairman of the Senate Judiciary Committee and House of Representatives Judiciary B Committee, or their designees, serve as legislative liaisons and non-voting members. Members serve three-year terms.	Appoint an Executive Director of the Statewide Public Defender Systems; establish, implement and enforce policies and standards for a comprehensive and effective public defender system throughout the state of Mississippi. The Commission may delegate to the Executive Director, in whole or in part, these duties.	Executive Director shall be an experienced criminal lawyer, licensed to practice law in Mississippi for four years prior to appointment.	Commission's duties, which it may delegate to the Executive Director, include: appoint a District Defender in each circuit court district; supervise the Conflicts and Appellate Divisions; develop indigency eligibility and caseload standards; establish qualifications and performance standards for all attorneys working for the statewide systems; re-assign conflict or overload cases from one district office to another; maintain lists of attorneys willing and able to accept appointments to individual cases, including capital cases; provide CLE and training seminars; compile and maintain a law library and brief bank for district defenders and private attorneys participating in the Statewide Public Defender System; assume all budgeting and reporting responsibilities for the system.
MISSOURI Office of State Public Defender (independent department in Judicial Branch)	Public Defender Commission: Seven members: four lawyers; no more than four from same party. Appointed by Governor with advice and consent of Senate. Six-year term. State Public Defender is ex officio member without vote. Chair elected by members.	Select director and deputies. Establish employment procedures. Review office performance and monitor director. Public education to ensure independence of system. Advise on budgetary matters. Contract with private attorneys. Approve fee schedule for assigned counsel.	Director appointed by Commission. Four-year term. Attorney with substantial criminal law experience, also experienced in personnel administration.	Administer and coordinate operation. Direct and supervise work of employees. Submit annual report of budget to Commission. Supervise training. Contract out for legal services with approval of Commission.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
MONTANA State Appellate Public Defender (Executive Branch Agency)	Five members. One trial level judge, nominated by Judges Association. Three attorneys, nominated by State Bar, who must have criminal defense experience. One lay person nominated by Governor. Staggered terms, one or two years.	Appoint Appellate Public Defender. Help gather attorney list for appointments of counsel at trial and state post-conviction. Draft criminal defense standards for counsel.	State Appellate Defender hired by Commission. No term limit.	Provides representation in state post-conviction or appeals if defendant claims ineffective assistance. Help in or assume responsibility in appeals. Assume case if trial or Supreme Court judge appoints.
NEBRASKA (Executive Branch Agency)	Commission for Public Advocacy. Nine members: six members for each judicial district; chair and two positions at large. Governor appoints from list prepared by State Bar. Non-salaried. Qualified attorneys with criminal defense experience or demonstrated commitment. Budget is from general funds and recovery of one-third of expenses from Nebraska's counties.	Provide legal services and resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony resource center divisions. Select a Chief Counsel.	Chief Counsel selected by Commission. Serves at will of Commission. Five years Nebraska practice. Criminal defense experience including capital case defense.	Overall supervision of appellate, capital and major case divisions and litigation support fund. Prepare budget and annual report. Establish and administer projects and programs for the operation of the Commission. Oversee training programs.
NEVADA State Public Defender (Judicial Branch Agency)	None	Not applicable	Four-year term. Selected by Governor. Nevada Bar member.	Establish statewide system for all counties who choose to be part of state system. Oversee activities of these programs. Prepare annual budget. Annual report to legislature.
NEW HAMPSHIRE Judicial Council (Judicial Branch Agency)	State-level Judicial Council. Fourteen members. One selected from each court level: Supreme, Superior, Probate; President of the New Hampshire Municipal and District Court Justices Association (ex officio); Attorney General (ex officio); President of New Hampshire Bar Association (ex officio); representative from Superior Court Clerks; seven others appointed by Governor, four of whom must be attorneys.	The Judicial Council's responsibilities related to indigent defense include contracting with local defender corporations and individual attorneys for provision of defense services and general supervision of indigent programs in regard to: allocation of cases between public defender program and assigned counsel; performance of counsel; competence of counsel; fiscal and budgetary matters.	See below.	Executive Director's responsibilities are contained in a contract with the Judicial Council.
NEW HAMPSHIRE New Hampshire Public Defender (Judicial Branch)	The new Hampshire Public Defender is a private non-profit corporation under contract with the Judicial Council and has an oversight Board of Directors.	Select Executive Director.	The Executive Director of the New Hampshire Public Defender is selected by the corporation's board of directors.	Represent indigent defendants in criminal cases or juveniles charged as delinquents in the District, Municipal, Superior and Supreme Courts.
NEW JERSEY Office of the Public Defender (Executive Agency, Part of Division of the Public Advocate)	None	Not applicable	Appointed by Governor with advice and consent of Senate. Five-year term. Attorney, experienced in practice in New Jersey.	Appoint deputy and assistant public defenders as well as support personnel. Establish State Public Defender system for all counties. Engage and compensate assigned counsel.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
NEW MEXICO State Public Defender (Executive Department)	None	Not applicable	Chief Public Defender appointed by and serves at pleasure of Governor. Attorney active for five years prior to appointment and is experienced in defense or prosecution.	Manage all operations of department. Set fee schedule for assigned counsel. Establish local public defender districts. Appoint district pubic defenders who serve at his/her pleasure.
NEW YORK Capital Defender Office (independent agency in Judicial Branch)	Three-member Board of Directors: one appointed by the Chief Judge of the Court of Appeals; one by the temporary President of the Senate; and one by the Speaker of the Assembly. Three-year terms.	Appoint a Capital Defender. Determine, with the Capital Defender, the number of attorneys, investigators and other staff necessary to the office.	Capital Defender selected by Capital Defender Office Board of Directors.	In consultation with Board of Directors, hire attorneys as deputy capital defenders, investigators and other staff. The Capital Defender Office provides both direct representation and consultation services; it also has responsibility for determining, in consultation with the Administrative Board of the Judicial Conference, attorney qualification standards.
NORTH CAROLINA Appellate Defender Office (Judicial Branch Agency)	None	Not applicable	Appellate Defender appointed by Chief Justice.	Provide appellate representation to indigents. Maintain appellate brief bank. Provide CLE training. Consult with attorneys representing defendants in capital cases. Recruit qualified, willing attorneys for state and federal death penalty post-conviction proceedings.
NORTH DAKOTA North Dakota Legal Counsel for Indigents Commission (Judicial Agency)	Eight members. Chief Justice appoints: one county government representative recommended by North Dakota Association of Counties; one judge recommended by Chief Presiding Judge; three recommended by State Bar; and two recommended by Attorney General. Three-year terms. Chief Justice appoints Chair. State Court Administrator provides staff.	Review cost and caseload data. Prepare annual report and budget. Provide planning, guidelines and technical assistance to counties and judicial districts re: indigent defense services. Adopt guidelines for indigent defense services. Review disputed fee decisions of trial judges.	None	Not applicable
OHIO Ohio Public Defender Commission (independent commission within the Executive Branch)	Nine members. Chair appointed by Governor. Four appointed by Governor; two of whom are from each political party. Four members appointed by Supreme Court. Chair and at least four members are bar members. Four-year terms.	Provide, supervise and coordinate legal representation. Establish rules for Public Defender such as compensation, indigency standards and caseloads. Approve budgets.	State Public Defender appointed by Commission. Attorney with minimum of four years experience. State Bar member.	Appoint Assistant State Public Defender. Supervise maintenance of Commission standards. Keep records and financial information. Establish compensation procedures.
OKLAHOMA Oklahoma Indigent Defense System Board (Executive Branch Agency)	Five members for five-year terms. Appointed by Governor, subject to advice and consent of Senate. At least three lawyers. Governor designates Chair.	Make policies for indigent defense programs. Approve budget. Appoint advisory council of indigent defense attorneys. Establish policies on maximum caseloads. Appoint Executive Director.	Executive Director appointed by and serves at pleasure of Board. Licensed as Oklahoma attorney for four years. Experienced in criminal defense.	Develop state system, with exception of Oklahoma and Tulsa counties. Prepare system budget. Keep list of private attorneys for capital and non-capital case appointments. Advisor to indigent defenders. Act on system's behalf in Legislative efforts. Conduct training.

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STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
OREGON State Public Defender Office (agency of Judicial Branch)	Six-member Board appointed by Chief Justice of Supreme Court for four-year terms.	Make policy for statewide appeals. Selects state Public Defender. Chairman chosen by committee. Responsible for establishing policy of program.	Selected by independent committee under Judicial Branch. Four-year term. Full-time; private practice prohibited.	Two levels - appellate (on-staff) and trial (contract provider). Report to Legislature biannually.
PENNSYLVANIA	None	Not applicable	None	Not applicable
RHODE ISLAND Office of the Public Defender (agency of Executive Branch)	None	Not applicable	Appointed by Governor with advice and consent of Senate. Three-year term. Attorney with five years experience.	Appoint , supervise and direct assistants as necessary. Develop and oversee statewide system by regions.
SOUTH CAROLINA Office of Indigent Defense (independent agency within Executive Branch)	Commission on Indigent Defense. Seven members appointed by Governor on recommendation of South Carolina Public Defender Association. One from each congressional district. One from state at-large who serves as Chair. Four-year terms.	Appoint Executive Director of Office of Indigent Defense. Supervise operations of Office of Indigent Defense.	Executive Director appointed by Commission.	Administer Office of Indigent Defense. Distribute state funds to counties. Compile statistics on indigent defense statewide. Report to General Assembly on indigent defense. Maintain list of attorneys qualified to accept appointments in death penalty cases. Administer collection and distribution of public defender application fees and surcharge fines imposed on specified criminal offenses. Supervise staff and carry out requirements of Commission.
SOUTH CAROLINA Office of Appellate Defense (independent state agency within Executive Branch)	Commission on Appellate Defense: Dean of the University of South Carolina Law School; President of the South Carolina Public Defenders Association; President of the South Carolina Bar Association; President of the South Carolina Trial Lawyers Association; Chairman of the South Carolina Judicial Council; Chairman of the Senate Judiciary Committee or his designee; and Chairman of the Judiciary Committee of the House of Representative or his designee. Commission elects Chairman for one-year term.	Appoint Chief Attorney. May, subject to rules of Supreme Court, recommend or establish policies for the operation of the Office of the Appellate Defense. Approve annual budget. Establish indigency criteria.	Chief Attorney appointed by Commission to four-year term. Licensed to practice law in South Carolina.	Submit budget to Commission. Establish training for employees. Represent indigent defendants in appeal of a conviction in trial court or decision of any proceeding in civil commitment or other involuntary placement.
SOUTH DAKOTA	None	Not applicable	None	Not applicable
TENNESSEE District Public Defenders Conference (agency of the Judicial Branch)	Not applicable, but see below.	Not applicable, but see below.	The District Public Defender Conference has an Executive Secretary who is elected by the Conference for eight-year term.	Assist district public defenders to coordinate their responsibilities. Serve as liaison among various branches of state government. Prepare budgets for each district for submission to state. Provide pubic defenders with minimum law libraries.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
TENNESSEE Tennessee Indigent Defense Commission of the Supreme Court of Tennessee (Judicial Branch)	Tennessee Indigent Defense Commission of the Supreme Court of Tennessee. Eleven members appointed by Supreme Court from recommendations made by petitioner organizations who pushed for creation of Commission through Supreme Court rule. Three-year terms. Chair appointed by Supreme Court.	Appoint officers. Adopt rules for operation of Commission. Develop a comprehensive plan for indigent defense services in state court system. Collect case information; determine reasonable caseload for district defenders; set standards for criminal defense attorneys representing indigent defendants; set compensation schedule for assigned counsel; set annual budget for court-appointed counsel expenditures; and develop voucher review process.	Not applicable, but see above.	Not applicable, but see above.
TENNESSEE Office of the Post-Conviction Defender and Post-Conviction Defender Commission	Nine members: two appointed by the Governor; two appointed by the Lieutenant Governor; two appointed by the Speaker of the House of Representatives; three appointed by the Supreme Court of Tennessee. Serve four-year terms.	Appoint Post-Conviction Defender; prepare annual budget for the Office of Post-Conviction Defender.	Post-Conviction Defender appointed by Post-Conviction Defender Commission. Four-year term. Must be lawyer in good standing with Supreme Court of Tennessee and possess demonstrated experience in capital case litigation.	Provide legal representation to indigent persons convicted and sentenced to death; hire assistant post-conviction defenders, investigators and support staff; maintain clearinghouse of materials and brief bank for public defenders and private counsel who represent indigents charged or convicted of capital crimes; provide CLE training and consulting services to lawyers representing defendants in capital cases; recruit qualified members of the bar to provide representation in state death penalty proceedings.
TEXAS	None	Not applicable	None	Not applicable
UTAH	None	Not applicable	None	Not applicable
VERMONT Office of the Defender General (agency of Executive Branch)	None	Not applicable	Defender General appointed by Governor with advice and consent of Senate. Four-year term.	Operates program thru public defenders and deputy public defenders or by contracting out to private attorneys. May establish local offices headed by a public defender. Contract with member of bar to serve as assigned counsel coordinator.
VIRGINIA Public Defender Commission (agency of Judicial Branch)	Nine members. Appointed by Speaker of the House in consultation with Senate and House Courts of Justice Committees. Three judges, three practicing attorneys, three lay people. Three-year terms.	Oversee administration of Public Defender Commission. Select Executive Director and individual head public defenders	Commission selects Executive Director who serves at pleasure of Commission. Member of Virginia State Bar and experienced.	Statute sets up office. Hire staff. Establish and oversee local public defender offices mandated by State Legislature.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
WASHINGTON Office of Public Defense (independent agency of the Judicial Branch)	Advisory Committee has nine members: three persons appointed by the Chief Justice; two non-attorneys appointed by the Governor; two Senators and two members of the House of Representatives; one person appointed by the Court of Appeals Executive Committee; and one member appointed by the Washington State Bar Association.	Submit three names to the Supreme Court for Director of the Office of Public Defense.	Director serves at the pleasure of the Supreme Court, which selects from list of three names submitted by Advisory Committee. Director must: have practiced law in Washington for at least five years, represented criminal defendants, and possess proven managerial or supervisory experience.	Administers all criminal appellate defense services; submits to State Legislature a biennial budget for costs related to appellate indigent defense; recommends indigency standards; collects information and reports to the legislature on indigency cases; coordinates with the Supreme Court and judges of each division of the court of appeals to determine how attorney services should be provided. The Office of Public Defender does not provide direct representation.
WEST VIRGINIA Public Defender Services (Executive Agency)	None	Not applicable	The Executive Director of Public Defender Services is appointed by the Governor with the consent of the Senate.	Public Defender Services administers, coordinates and evaluates local indigent defense programs in the state's 31 judicial districts. PDS is statutorily required to provide training and technical assistance to indigent defense providers and operates an appellate division to represent indigent defendants in appeals in the state's Supreme Court. The Executive Director of PDS is authorized to make grants to and contract with Public Defender Corporations in those judicial districts in which the Chief Judge and/or the majority of active local bar members have determined a need for a public defender office. By statute, all Public Defender Corporations must have a Board of Directors consisting of appointees by the local County Commissioner, the County Bar Association and the Governor. Currently, 23 of West Virginia's 55 counties are served by 15 Public Defender Corporations. The remaining 32 counties rely solely on assigned counsel to provide representation to indigent defendants.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
WISCONSIN Wisconsin State Public Defender (independent agency within Executive Branch)	Nine members. Appointed by Governor, approved by Senate. At lease five must be attorneys. Three-year terms. Chair is elected by Board.	Appointed state Public Defender and establish salary. Approve budget and submit to Governor. Promulgate standards of indigency. Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs. Perform all other duties necessary and incidental. Contract with federal agencies and local public defender organizations for provision of services.	State Public Defender appointed by Board. Member of Wisconsin Bar. Five-year term.	Supervise operation of all state and regional public defender offices. Maintain data and submit biennial budget to Board. Delegate cases to any member of Wisconsin Bar. Negotiate contracts out for representation as directed by Board. Appoint staff.
WYOMING State Public Defender (Executive Agency)	None	Not applicable	State Public Defender appointed by Governor. No term specified. Member of Wyoming Bar with experience in defense or prosecution.	Administer public defender program in districts and oversee operation of public defender system statewide. Assistant public defenders appointed by Governor and serve at pleasure of Public Defender. Public Defender may require them to be full-time. Public defender in each district appointed by Governor upon recommendations from District Judge and County Commissioners.

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APPENDIX B

Reimbursement Rate Calculations of Current Value (from 1990 to 2008)
Ralph McKinney, WV Public Defender Services

Rates of Compensation for Court-Appointed Counsel in Capital Cases at Trial:
A State-by-State Overview, June, 2007
The Spangenberg Group

Rates of Compensation for Court-Appointed Counsel in Non-Capital Felony Cases at Trial:
A State-by-State Overview, June, 2007
The Spangenberg Group

Federal Public Defender Web Site: Current Payment Rates
United States District Court

WV State Bar Membership Survey Results, 2004
WV State Bar

Letters from:
The Honorable Justice Joseph P. Albright
The Honorable Judge Ronald E. Wilson
Cathryn Nogay, Esquire

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REIMBURSEMENT RATE CALCULATIONS OF CURRENT VALUE (FROM 1990 TO 2008)

Ralph E. McKinney, Jr., RBA (WVSC), MBA (MU)

WV Public Defender Services

19 December 2008

ABSTRACT: This paper uses several methods to calculate the present value of the 1990 $45/$65 rate paid to AC Attorneys. Multiple calculations and sources are used to establish that (a) the 2008 CPI estimate is $73.45/$106.09; (b) the 2008 CPI overhead estimate per hour was $57.13; (c) the minimum comparable $45 per hour rate within Division of Personnel comparable classifications was $32.04 per hour without overhead and $87.05 with overhead; and (d) the most likely minimum comparable rate was $87.05/$126.22.

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INTRODUCTION

Since 1 July 1990, the reimbursement rates for appointed indigent criminal defense attorneys ("AC Attorneys") have been $45 per hour for in-court time and $65 per hour for out-of-court time (WVPDS, 2002). The rate changes were a result of litigation, brought by Milliard Jewell (see Jewell v. Maynard, 383 S.E. 2d 536 (1989)), and subsequent changes to WV Code §29-21-13a. The 1990 change was an effort to provide reimbursement to private appointed Counsel ("AC") AC Attorneys to cover overhead expenses and limited compensation for time rendered for legal services provided to indigents. These 1990 rates are the current 2008 rates being reimbursed today.

PURPOSE & SCOPE

The purpose of this paper is to facilitate discussions concerning the AC Attorney reimbursement rates of $45/$65 (in-court/out-of-court) effective 1 July 1990 in the present 2008 economy. This paper relates to indigent criminal defense activities only within the State of West Virginia. This paper will not address legal interpretations, the quality of legal representation, operations of public defender offices, or operations of AC attorneys. While some of these elements may be discussed, this paper will be limited in scope to the discussions surrounding the 1990 legislatively changed rates of $45/$65 and what these rates are estimated to be in today's economy.

RESEARCH QUESTION

Eighteen years have passed since the legislative rate changes have been made effective. As of the writing of this paper, those rates continue to be reimbursement rates. Since 1990, significant

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changes have occurred in the economy as a whole. Due to these changes, the WV Indigent Defense Commission presented the general question: "What would the rate be in today's market?"

METHODOLOGY

While the general assumption is that economic markets will increase over time, a possibility exists that decreases can occur. Therefore, a quantitative analysis concerning economic factors that could impact $45/$65 will be explored. For this analysis, several variables will be fixed:

- The effective passage date of 1 July 1990 for $45/$65 will be the starting point of this analysis. Dates prior to 1 July 1990 will not be considered. However, the information used for the litigation causing these changes precedes the 1989 ruling in Jewell (supra).
- The $45/$65 are for the reimbursement of overhead and time as defined by the WVPDS.
- Distinctions for geographical differences in West Virginia (e.g., Big Ugly, Charleston, Comfort, Huntington, Lewisburg, Martinsburg, Mullins, Yawkey, etc.) will not be made. The assumption will be that economic conditions are similar.
- The quality of legal representation will not be considered. Differences by case type or legal expertise will not be considered.

To answer the research question, information from several sources will be used to perform a quantitative analysis that will estimate what the $45/$65 rates might be in 2008. While there are several ways to calculate estimates, this paper will take a conservative approach for projections.

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DISCUSSIONS

Consumer Price Index as an Economic Measurement

Since 1990, the U.S. economy has experienced inflation. One of the most common measurements of inflation is the Consumer Price Index ("CPI") (BLS, 2008). The CPI measures changes, either increases or decreases, as a percentage of the prior year. Therefore, calculations must be made using an established base year (i.e., 1990) if those calculations will be for multiple consecutive years. Table 1 details the CPI as applied to $45/$65.

In **Jewell (supra)**, several findings concerning overhead costs and reimbursement rates were made. The following information is related to the research question: (a) *"...average hourly overhead costs of private lawyers is $35 per hour..."*; and (b) *"Rates for court-appointed work in the federal system are now $40 an hour for out-of-court work and $60 an hour for in-court work"*

Taking the smaller figure of $45/$65 ($45) and reducing that figure by the overhead expenses as reported in **Jewell (supra)** ($35), the AC Attorney compensation was set at $10 per hour. This $10 represents a little less than 30% of costs. One possible approach is to detail or project the overhead costs and add 30%. This would provide a guideline to determine the minimum amount of total compensation for AC Attorneys. Table 1 projects the CPI value of $35 from 1990 to 2008, as well as the value at $45/$65 an hour. A formula to project the $65 rate is **[(65-45)/45]*estimated 2008 rate**, or about 1.45 times the 2008 rate.

Another approach is to consider the percentage increase over the federal system. The same difference ($5) can be observed between the $45/$65 and the federal system $40/$60. Thus, the calculation should be based on the smaller federal figure of $40. Five dollars of $40 represents 12.5% increase over the federal system. This 12.5% may be applied to the current rates of the federal system

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to calculate a potential minimum rate for AC Attorneys. The current FPD rates are $100 and $170 per hour (FPD, 2008). Therefore, the estimated AC Attorney rate would be $112.50 and $182.50.

TABLE 1: CPI ADJUSTMENT for $45/$65 (1990 to 2008)
Source: Data is from BLS, 2008
Note: 2008 Data was not available; therefore, 2007 data was substituted for 2008.

Year	CPI Index	Out-Court	In-Court	Office
1990	Base Year	45	65	35
1991	4.2	46.89	67.73	36.47
1992	3.0	48.30	69.76	37.56
1993	3.0	49.75	71.85	38.69
1994	2.6	51.04	73.72	39.70
1995	2.8	52.47	75.79	40.81
1996	3.0	54.04	78.06	42.03
1997	2.3	55.29	79.86	43.00
1998	1.6	56.17	81.13	43.69
1999	2.2	57.41	82.92	44.65
2000	3.4	59.36	85.74	46.17
2001	2.8	61.02	88.14	47.46
2002	1.6	62.00	89.55	48.22
2003	2.3	63.42	91.61	49.33
2004	2.7	65.13	94.08	50.66
2005	3.4	67.35	97.28	52.38
2006	3.2	69.50	100.39	54.06
2007	2.8	71.45	103.20	55.57
2008*	2.8	73.45	106.09	57.13

Based on Table 1, the 1990 $45/$65 rates are estimated to be $73.45/$106.09 in 2008. This change was an increase of $28.45/$41.09 and represents a 63.2% total change in both rates. Over eighteen (18) years, the 63.2% averages an annual inflation rate of 3.51%, based on the consumer price index. The 1990 $35 overhead costs is estimated at $57.13 for 2008. Adding 30% to $57.13, the same percentage allowed in **Jewell (supra)**, current rate is projected at $74.26.

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Comparable Positions as detailed from the WV Division of Personnel

To further explore the $45/$65 rates, full-time salaried positions comparable to AC Attorneys can provide additional information to form a stronger basis to determine the minimum comparable estimated rates for 2008. The second economic measurement of rates will be a comparative analysis of $45/$65 against the Classification and Compensation information as posted by the West Virginia Division of Personnel (DoP, 2008). Reviewing these postings, five positions comparable to AC Attorneys were identified. These positions are discussed below.

The first position was **#9505 Attorney 1.** While this position requires graduation from an ABA law school, there is no requirement for admission to the WV State Bar. The only exception is in the case of the WV Department of Tax and Revenue where there is an admission requirement of less than one year. Additionally, the examples of work detail note *"Assists in hearings before courts of law..."* As written, this position does not provide for the practice of law outside of a supervisory environment. This position does not mimic the responsibilities of an AC Attorney.

The second position was **#9506 Attorney 2.** This position is an expansion of the Attorney 1 position. WV State Bar admission is a requirement and the work examples does allow for the practice of law on a limited basis. For example, *"Conducts hearings before courts of law..."* but only *"...[assists] in appeals before the Supreme Court of Appeals."* While this position is closer to an AC Attorney, there are limitations on what work can be performed without supervision. As such, the Attorney 2 position might be comparable to an AC Attorney handling misdemeanor cases and other non-felonies.

The third position was **#9507 Attorney 3.** This position expands the Attorney 2 position and has specific distinguishing characteristics that directly relate to AC Attorneys. *"Attorneys at this level conduct legal research related to the criminal rights of indigents and inmates, and represents same in criminal proceedings."*

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The fourth position was **#9504 Attorney Supervisor**. This position expands Attorney 3 with additional complex work and skill examples. Specifically, *"Drafts legal pleadings or briefs on complex criminal cases..."*

Finally, **# 9508 Child Advocate Attorney** requires admission to the WV BAR and two years experience as an attorney. The description of Child Advocate Attorney is similar to Attorney 2 except the focus is on juveniles.

Attorney 3 is the first position that makes a reference to indigent criminal defense. Therefore, the position of Attorney 3 may be the minimum standards for indigent criminal defense. However, five years experience is required. This is not the case for AC Attorneys. Therefore, each position will be detailed for comparison (See Table 2) by minimum salary. For each position, the minimum and maximum annual and hourly salaries will be illustrated. The annual hours per year were calculated to be 2,080 (40 hours per week at 52 weeks per year).

TABLE 2: COMPARABLE WV DoP SALARIES

	Annual Salary:		Hourly Rate:		
Classification	Minimum	Maximum	Minimum	Maximum	Average
Attorney 1	$35,736	$66,120	$17.18	$31.79	$24.49
Attorney 2	$38,244	$70,752	$18.39	$34.02	$27.71
Child Advocate Attorney	$40,932	$75,720	$19.68	$36.40	$28.04
Attorney 3	$43,400	$81,036	$20.87	$38.96	$29.92
Attorney Supervisor	$50,172	$92,808	$24.12	$44.62	$34.37

While Table 2 illustrates that hourly salaries are below the 1990 $45/$65 rate, the 1990 $45/$65 included office overhead and excluded benefits. Therefore, additional information is needed to properly

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compare the WV DoP salaries and the 1990 $45/$65: Paid hours not at work (Holiday hours; Annual Leave; sick leave) and benefits (health insurance (PEIA), pensions (PERS); and FICA taxes).

For the 2009 calendar year, WV State employees will observe ten (10) eight hour holidays and two (2) four hour holidays equating to eighty-eight (88) hours of holiday pay. Annual leave accumulation is contingent on an employee's length of service: less than five (5) years, fifteen (15) days or 120 hours are earned. While the two positions comparable to AC Attorneys (Attorney 3 and Attorney Supervisor) require more than five years of experience, this analysis will take a conservative approach and assume 120 hours. Contrary to annual leave, sick leave is constant at eighteen (18) days or 144 hours annually. Therefore, total leave is at 352 hours annually. Thus, 2,080 hours per year is actually 1,728 hours at "billable" attorney time. Table 3 provides information based on a 1,728 hour year.

TABLE 3: COMPARABLE DoP SALARIES (1,728 HOURS)

	Annual Salary:		Hourly Rate:		
Classification	Minimum	Maximum	Minimum	Maximum	Average
Attorney 1	$35,736	$66,120	$20.68	$31.79	$26.24
Attorney 2	$38,244	$70,752	$22.13	$34.02	$28.08
Child Advocate Attorney	$40,932	$75,720	$23.69	$36.40	$30.05
Attorney 3	$43,400	$81,036	$25.12	$38.96	$32.04
Attorney Supervisor	$50,172	$92,808	$29.03	$44.62	$36.83

As seen by Table 3, the range per hour was $20.68 to $44.62. However, based on the position classifications and descriptions, Attorney 1, Attorney 2, and Child Advocate Attorney should be excluded from consideration. Therefore, the hourly range becomes $25.12 to $44.62. Again, this range does not include any overhead expenses or legal costs associated with the practice of law. This only considers a partial compensation that each DoP classification details.

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Employer taxes are the responsibility of an AC Attorney and thus were considered part of the $45/$65 rates. Taking this analysis one step further, general classification benefits will be attributed to the salaries. For FICA taxes, the amount is 7.65% of the total salary. PERS (retirement) employer contributions are 10.5% of the WV DoP salary. Therefore, all salaries were allotted an additional 18.15% (7.65% to cover FICA and 10.5% for PERS). The 18.15% was done as a lump sum to avoid an overestimate resulting from miscalculating the benefits value.

A life insurance premium of $5.37 is paid monthly ($64.44 annually). Health insurance premiums are contingent upon plan type and number of participants. A typical family plan for 2009 was $10,740 annually. This includes employee contributions. For this paper, a reasonable and conservative assumption is that only 80% of the $10,740 (or $8,592) will be paid by the employer. The total insurance cost is calculated at $8,656.44. This amount was added after adding the percentage benefits.

The result of these estimates is detailed in Table 4. The benefits calculated represent the common benefits associated with these positions. Benefits such as unemployment compensation insurance and workers' compensation have not been included.

TABLE 4: COMPARABLE WV DoP SALARIES (1,728 hours & Calculated Benefits)

	Annual Salary:		Hourly Rate:		
Classification	Minimum	Maximum	Minimum	Maximum	Average
Attorney 1	$50,879	$86,777	$29.44	$50.22	$39.83
Attorney 2	$53,842	$92,250	$31.16	$53.39	$42.28
Child Advocate Attorney	$57,161	$98,385	$33.08	$56.94	$45.01
Attorney 3	$59,934	$104,400	$34.68	$60.42	$47.55
Attorney Supervisor	$67,935	$118,309	$39.31	$68.47	$53.89

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Table 4 illustrates that the DoP Salary with benefit range is between $29.44 and $68.47 without any consideration of overhead. Given this range, the mean would be calculated at $48.96 per hour [*Calculation*: 68.47 - 29.44 = 39.03 / 2 = 19.52 + 29.44 = mean].

Prosecutor & Legislative Salaries as an Economic Measurement

As prosecutors perform similar duties as AC Attorneys, a salary comparison is detailed in Appendix A. From this comparison, the 2008 hourly rates were $31.54 (based on 2,080 hours) and $37.96 (based on 1,728). Legislative salaries for attorneys were calculated for comparative purposes (see Appendix B). The average hourly rates were $36.44 (based on 2,080 hours) and $43.86 (based on 1,728). All rates are based on salary only and exclude benefits and office overhead.

STATISTICAL SUMMARY AND CONCLUSION

To better illustrate these estimates, a summary is presented in Table 5. Within Table 5, there are several areas without calculations. While estimates can be placed within these areas, these estimates would be less accurate in the reflection of the 2008 values as these estimates would be contingent upon other estimates.

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TABLE 5: SUMMARY OF RELEVANT CALCULATIONS FOR 2008 VALUE
Note: Figures in italic are projected estimates based on other calculations.

	Atty Time Overhead	Out-Court	In-Court		
Jewell (supra) rates	10	35	45	65	
CPI	16.32	57.13	73.45	106.09	(Table 1, p. 5)
FPD			112.50	182.50	(pp. 4-5)
Attorney 1	24.49	*57.13*	*81.62*	*118.35*	(Table 2, p. 7)
	26.24	*57.13*	*83.37*	*120.89*	(Table 3, p. 8)
	39.83	*57.13*	*96.96*	*140.59*	(Table 4, p. 9)
Attorney 2	27.71	*57.13*	*84.84*	*123.02*	(Table 2, p. 7)
	28.08	*57.13*	*85.21*	*123.55*	(Table 3, p. 8)
	42.28	*57.13*	*99.41*	*144.14*	(Table 4, p. 9)
Child Advocate Attorney	28.04	*57.13*	*85.17*	*123.50*	(Table 2, p. 7)
	36.40	*57.13*	*93.53*	*135.62*	(Table 3, p. 8)
	45.01	*57.13*	*102.14*	*148.10*	(Table 4, p. 9)
Attorney 3	29.92	*57.13*	*87.05*	*126.22*	(Table 2, p. 7)
	32.04	*57.13*	*89.17*	*129.30*	(Table 3, p. 8)
	47.55	*57.13*	*104.68*	*151.79*	(Table 4, p. 9)
Attorney Supervisor	34.37	*57.13*	*91.50*	*132.68*	(Table 2, p. 7)
	36.83	*57.13*	*93.96*	*136.24*	(Table 3, p. 8)
	53.89	*57.13*	*111.02*	*160.98*	(Table 4, p. 9)
Prosecutor Salary	37.96	*57.13*	*95.09*	*137.88*	(p. 10)
Legislative Rates	43.86	*57.13*	*100.99*	*146.44*	(p. 10)

Based on the calculations as detailed within this paper, the value of the 1990 $45/$65 can be viewed a number of ways: The value can be viewed as

- $73.45/$106.09 based on the CPI adjustments;
- $87.05/$126.22 based on Attorney 3 minimum average;
- $91.50/$132.68 based on Attorney Supervisor minimum average;
- $95.09/$137.88 based on the average salary for Prosecutors;
- $100.99/$146.44 based on the average salary for legislative attorneys; and
- Any combination as detailed in Table 5.

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These estimates represent a basic valuation of what the 1990 $45/$65 rates might be based on after selective adjustments. However, advances in technology and advances in scientific methods as applied to criminal and legal proceedings have dramatically increased and have improved. These advances potentially increase overhead expenditures. Thus, these estimates should be considered the minimal reimbursement level for AC Attorneys.

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APPENDIX A

WV Prosecuting Attorney Salaries

For 2008

SOURCE: WV Prosecuting Attoneys Institute

Note: This information is the responsibility of the WVPAI and therefore, no assurances for validity or reliability are granted. The only assurance is that the raw information was not altered. However, the calculations concerning the raw information were performed by WVPDS. Also, part-time salaries were not extracted from WVPAI.

	Elected	0-5 yrs	6-11 yrs	12+ yrs
Berkeley	96,000	70,000	83,375	
		56,878	70,000	
		53,831	62,972	
		53,831		
		53,831		
		53,831		
Cabell	96,000	46,775	55,431	68,775
		43,150	58,850	
			50,411	
			49,850	
Harrison	96,600	52,000	66,500	
		77,500		
		59,400		
		60,000		
		65,760		
		50,000		
		40,000		
		52,650		
Jefferson	96,600	59,565	77,330	89,263
		57,475	64,790	89,263
			77,330	
Kanawha	96,600	44,000	61,000	98,500
		47,000	67,500	93,500
		42,000	47,000	68,500
		63,000	73,500	71,140
		45,000		78,500
		43,000		91,000
		42,000		
		45,000		
		50,000		
		50,000		
		47,000		
Monongalia	96,600	60,000	75,000	66,000

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		52,000	63,000	
			56,000	
Putnam	96,600	69,884		74,859
		52,584		
		41,078		
		41,078		
Raleigh	96,600	37,000	47,800	70,200
		36,000		59,500
				59,500
				46,500
Wood	96,600	60,500	80,000	87,899
		42,000	68,749	
		44,000		
		55,000		
Marion	94,500	50,000		
		50,000		
		46,174		
		50,000		
Mercer	94,500	46,000	52,900	57,000
			48,000	
Ohio	94,500	44,000		
Boone	92,200	58,200	72,700	
Fayette	92,200			
Greenbrier	92,200	45,000		66,000
				66,000
Hampshire	92,200			
Hancock	92,200	52,000		
Jackson	92,200	50,000		
		40,000		
Logan	92,200	52,500		
		52,500		
Marshall	92,200			
Mason	92,200	42,000		
Preston	92,200	57,000		
		48,500		
Wayne	92,200	47,315		
Brooke	59,400		38,092	
Grant	90,000			
Hardy	90,000			
Lewis	90,000			
McDowell	90,000			60,000
				60,000
Mineral	90,000			
Mingo	90,000			

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Morgan	90,000	45,000			
Nicholas	90,000	50,000	62,500		
		50,000			
Pocahontas	90,000				
Randolph	90,000	44,000			
		43,000			
Upshur	90,000		51,630		
			47,239		
Wyoming	90,000			43,000	
Pleasants	59,400				
Wetzel	59,400				
Taylor	unknown				
Braxton	87,800			60,000	
Lincoln	87,800				
Pendleton	87,800				
Tucker	87,800				
Barbour	87,800				
Doddridge	87,800	35,000			
Ritchie	87,800				
Roane	87,800				
Summers	54,120				
Tyler	54,120				
Calhoun	50,000				
Clay	50,160				
Gilmer	42,500				
Monroe	48,000				
Webster	50,000	43,000			
Wirt	unknown				
	4,475,400	3,256,790	1,729,449	1,624,899	
					11,086,538
N= 169					169
		Average	65,601		
Hours=2080		Hourly Rate	$31.54		
Hours=1728		Hourly Rate	$37.96		

APPENDIX B

WV State Auditor's Office

State Employees Total Compensation for 2007 Calendar Year

Source: http://www.wvsao.gov/employeecomp.aspx

SENATE	RATLIFF JR, RAY E		$82,137.66		
SENATE	PAULEY, RITA A		$80,300.08		
SENATE	BOWLING, CONNIE A	AST AG	$75,550.16		
SENATE	HAGER II, HENRY D		$70,850.08		
SENATE	LILLY, MELISSA D		$67,337.58		
SENATE	JOHNSON, RUSSELL J	CHILD ADV ATTRNY	$67,037.58		
HOUSE OF DELEGATES	MCOWEN, MARK W		$90,428.32		
HOUSE OF DELEGATES	ALTIZER, JOSEPH A		$88,369.92		
HOUSE OF DELEGATES	TYLER, NANCY L		$83,924.24		
HOUSE OF DELEGATES	KRAUS, CANDACE C		$82,450.00		
HOUSE OF DELEGATES	THOMPSON, BRENDA K		$82,810.48		
HOUSE OF DELEGATES	KIMBLE, DANIEL E		$81,958.41		*
HOUSE OF DELEGATES	REED III, JOHN H		$75,687.50		*
HOUSE OF DELEGATES	ROSKOVENSKY, CHARLES M		$61,987.50		
HOUSE OF DELEGATES	SKINNER, BRIAN J		$67,337.58		
HOUSE OF DELEGATES	AVAMPATO, DENISE L		$54,544.63		
		Total		$1,212,711.72	
		Average n=16		$75,794.48	
		Hours (2,080)		$36.44	
		Hours (1,728)		$43.86	

These were removed from total salary.

SECRETARY OF STATE	KIMBLE, DANIEL E		$3,125.00
REAL ESTATE COMMISSION	REED III, JOHN H		$7,050.00

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Rates of Compensation for Court-Appointed Counsel in Capital Cases at Trial: A State-By-State Overview

June 2007

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Rates of Compensation Paid to Court-Appointed Counsel in Capital Cases at Trial: A State-By-State Overview, 2007

Introduction

Since 1996, The Spangenberg Group has periodically produced tables and narratives on behalf of the American Bar Association's Bar Information Program detailing compensation rates paid to court-appointed counsel who handle death penalty trial cases in the 38 states that permit the death penalty. The first table was published in July 1996, and the second, along with an accompanying narrative, was produced in April 1998. The most recent full update to the report was completed in April 2003. We receive repeated requests for the tables from attorneys, policy-makers and others.

The table that follows this narrative reflects the information collected during the course of our survey conducted between February and April of 2007. As in previous reports, we have included citations to the authority for the compensation rates and/or maximum fees.

It is not the purpose of this report to produce any type of assessment or evaluative ranking of states in terms of compensation rates paid to court-appointed counsel in capital cases. In many states, the compensation rates vary according to locality. Most of these states, referred to in this report as "reasonable compensation" states,[1] do not maintain centralized records on the precise amounts court-appointed counsel are paid.[2] To collect these data, in each "reasonable compensation" state, we interviewed public defenders, court administrators, private counsel, or others familiar with the jurisdiction's indigent defense system. The numbers reflected in the accompanying table and/or narrative are representative of the limited information provided to us through these interviews.

Additionally, while the compensation rate information in the table pertains only to court-appointed counsel, there are two other methods by which legal counsel is provided to indigent defendants. The three methods that jurisdictions use to provide indigent defense are:

- The assigned counsel model: Private attorneys are assigned to indigent criminal cases on either a systematic or ad hoc basis. Typically they are paid on an hourly basis or paid a flat fee per case.
- The contract model: A jurisdiction contracts with private attorneys, groups of attorneys, a bar association or a private, non-profit organization to provide representation in some or all of the indigent cases in the jurisdiction. In some jurisdictions, the public defender agency contracts with private attorneys to handle conflict of interest cases.

[1] A "reasonable compensation" state is one in which the state legislature places the responsibility for establishing the rate of compensation for court-appointed counsel on each individual criminal court judge (or other locality in some cases) throughout the state.

[2] Texas and Nebraska are notable exceptions in that each local jurisdiction reports the compensation rates paid to court-appointed attorneys, where applicable.

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- The public defender model: A public or private non-profit organization with full or part-time staff attorneys provides all or a percentage of the representation to indigent defendants in a jurisdiction. Many states have separate capital defender units which handle death penalty cases at trial.

From these three models for the appointment of counsel, states and counties have developed indigent defense delivery systems, most of which employ some combination of the three. For example, even in states with a statewide public defender system, private attorneys are usually appointed in conflict of interest cases and in some instances to alleviate burdensome caseloads. In other states where there is less uniformity, there may be contract counsel in one county, assigned counsel in a second county, and a public defender office in yet a third county.

Most jurisdictions use a combination of the above three models, thus it is inappropriate to conclude that one jurisdiction better funds its indigent defense system because it pays assigned counsel a higher rate of compensation than other jurisdictions. To determine the relative adequacy of funding of any state's indigent defense system, one must look at many factors; the comparable rates of compensation for court-appointed counsel is only one of these factors. Other factors include whether or not there is a statutory limit on the amount that may be paid per case and whether or not overhead and other expenses are paid on top of the hourly rate. Litigation in Mississippi, for example, resulted in court-appointed counsel being paid an hourly amount to cover overhead costs.[3] The accompanying table includes statutory maximums, where applicable, and whether they may be waived or not.

Thirty-eight states, as well as the U.S. government, permit the use of the death penalty. The table on the following page is the number of death row inmates by state as reported by the NAACP Legal Defense and Educational Fund.[4]

[3] *Wilson v. State*, 574 So.2d 1338 (Miss. 1990).

[4] "Death Row USA, Winter 2007," *Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc.*, http://www.naacpldf.org/content/pdf/pubs/drusa/DRUSA_Winter_2007.pdf.

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Death Row Inmates by State

California	660	Mississippi	66	Utah	9
Florida	397	Missouri	51	Washington	9
Texas	393	*U.S. Government*	44	*U.S. Military*	9
Pennsylvania	226	Kentucky	41	Connecticut	8
Alabama	195	Arkansas	37	Maryland	8
Ohio	191	Oregon	33	South Dakota	4
North Carolina	185	Indiana	23	Colorado	2
Arizona	124	Idaho	20	Montana	2
Georgia	107	Virginia	20	New Mexico	2
Tennessee	107	Delaware	18	Wyoming	2
Louisiana	88	Illinois	11	New York	1
Oklahoma	88	New Jersey	11	New Hampshire	0
Nevada	80	Kansas	9		
South Carolina	67	Nebraska	9	**Total**	**3357**

Since the last full update of this report in 2003, many changes have taken place in regard to the death penalty. In our last report, the total number of death row inmates across the United States was 3,533. As of January 2007, the number of death row inmates (3,357) has decreased by nearly 5 percent. Several states (Indiana, Missouri, North Carolina, Oklahoma and Texas) have experienced a significant decrease in the number of death row inmates since 2003. On the other hand, the number of inmates on death row in California has increased considerably since our last full update. Formal moratoria have been placed on executions in Illinois (2000) and New Jersey (2006) because of general concerns about the death penalty. According to the Death Penalty Information Center, in 2006 and 2007 a number of states declared moratoria on the death penalty because of concerns over the method of execution.[5] In 2004, the highest court in New York, the Court of Appeals, declared the New York's death penalty statute unconstitutional.[6] As of June 2007, legislative attempts to correct the flaws in the statute have failed.

Previous updates of this report have revealed two clear trends: one toward the creation of specialized statewide capital trial units, the other toward increased compensation rates for court-appointed counsel in capital trial cases. At least fourteen states (Connecticut, Georgia, Kansas, Kentucky, Maryland, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, and Virginia) along with a number of circuit public defender offices in

[5] "Death Penalty in Flux," *Death Penalty Information Center*, http://www.deathpenaltyinfo.org/article.php?did=2289.

[6] *People v. LaValle*, 817 N.E. 2d 341 (2004).

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Florida, have separate units that handle and/or provide support for private counsel handling death penalty cases at trial. Additionally, the Louisiana Indigent Defender Assistance Board (LIDAB) contracts with non-profit organizations that specialize in providing capital trial representation. Of the five states with the largest number of death row inmates, none has a specialized statewide capital trial unit. In some states, there are programs that serve as a resource center for court-appointed attorneys representing indigent defendants in capital cases. For example, Texas Defender Service provides consulting services to those private bar attorneys representing indigent capital defendants. Undoubtedly, the availability of a specialized support organization encourages private attorneys to accept appointments in capital cases.

The trend toward increased rates of compensation also serves to increase the number of qualified attorneys willing to handle capital trial cases. Since our last survey, thirteen states (Colorado, Connecticut, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Montana, Nevada, New Jersey, North Carolina, and South Dakota) and the United States government have increased their hourly compensation rates for court-appointed attorneys. In Wyoming, where a range of possible rates is set by the high court, the range has increased since 2003. Three states (Kentucky, Nevada, and Ohio) have increased the maximum amount counsel can earn in a given case; Maryland removed its cap altogether. These rate increases across the country demonstrate that policy makers are recognizing that, in order to attract qualified counsel who are able to provide effective representation in capital cases, it is necessary to increase hourly rates of compensation.

Different Approaches to Compensating Assigned Counsel

The following section discusses six approaches taken by the states in determining compensation for court-appointed counsel. The approaches are broken down by the authority that sets the rates. These approaches are characterized as:

- Statutory hourly rate;
- Administrative or court rule;
- State public defender;
- State commission on indigent defense;
- Reasonable compensation; and
- Combination approach.

Since the last full report was published in April 2003, the authority for setting compensation rates has changed in three states: Georgia, Montana and Oregon. In 2003, the Georgia legislature passed the Georgia Indigent Defense Act, which established the Georgia Public Defender Standards Council (GPDSC). One of the responsibilities of the council is to establish compensation rates for court-appointed attorneys. As of January 2006, the Montana Public Defender Commission, created in the 2005 legislative session, assumed responsibility for setting rates for court-appointed attorneys, among other responsibilities. Prior to the establishment of the statewide system in Montana, the compensation rates paid to court-

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appointed attorneys in capital trials varied from county to county. In Oregon, court rule dictated the rates of compensation for court-appointed counsel prior to July 2003. Since then the Oregon Public Defense Services Commission, established in 2001, has assumed the responsibility of setting the hourly rate of compensation for court-appointed attorneys.

A comprehensive classification and explanation of the different methods for determining rates of compensation follows. When necessary, a detailed description of states' method for compensating counsel in capital cases at trial is given. Otherwise, please refer to the accompanying table for state-specified compensation rates.

Statutory Hourly Rate

In five states (Alabama, Florida, Illinois, Nevada, and South Carolina) rates of compensation for court-appointed attorneys are set by statute. Thus, the determination of compensation rates for court-appointed attorneys in capital cases is a legislative matter. The accompanying table includes the statutes which set compensation rates paid to court-appointed counsel in capital cases at trial.

Alabama

In Alabama, compensation rates for court-appointed attorneys are set by statute. In October of 2000, the rates were increased from $30 for out-of-court work and $50 for in-court work to $40 for out-of-court work and $60 for in-court work. The language in the statute also calls for the reimbursement of "reasonably incurred" expenses. In *James W. May v. State*, the Alabama Court of Criminal Appeals ordered that the court pay an additional amount for overhead; the presumptive hourly overhead in Alabama is $30.[7] In February of 2005, the Alabama Attorney General issued an opinion conflicting with the *May* decision, and from February 2005 to December 2006 the State Comptroller refused to pay overhead fees. The Alabama Supreme Court ordered the Comptroller to resume payment overhead costs in *Wright v. Childree* (2006).[8] While the average hourly overhead is $30, the overhead rate varies from case to case, and counsel must seek prior approval for the overhead expenses.

Florida

Each of Florida's twenty local circuit public defender offices handles capital trials; many offices have capital divisions. During the 2007 legislative session, the Florida General Assembly passed legislation that created five regional offices of conflict counsel to handle primary conflicts of the public defender offices. The legislation provides that private attorneys can still handle secondary and tertiary conflict cases, although they will no longer be administered by circuit indigent defense services committees. The legislation states that flat fees will be yearly

[7] *May v. State*, 672 So. 2d 1307 (Ala. Crim. App. 1993), cert. denied, *May v. State*, 672 So. 2d 1310 (Ala. 1995).

[8] *Wright v. Childree*, CV-05-1544 (2006).

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by the General Appropriations Act. According to the General Appropriations Act of 2007, the maximum flat fee paid in capital murder cases is $15,000 per attorney; in capital sexual battery cases, the maximum flat fee is $2,000. According to the legislation, a $15,000 maximum can be waived up to 200 percent or more if the flat fee in a particular case "would be confiscatory."

Illinois

The majority of Illinois' 102 counties have county-funded public defender offices. In conflict cases, the circuit court judge appoints counsel. During the 1999 legislative session, Illinois legislators approved a bill that set the rate of compensation for private attorneys representing an indigent client charged with a capital offense at $125 per hour. This statutory rate is adjusted every year according to the state's consumer price index. As of January 2007, the rate was $145.39. Additionally, in 2002, the legislature created the Capital Litigation Trust Fund to assist counties in the prosecution and defense of capital cases, but this is the only state money available for trial level indigent defense services in Illinois.

Administrative or Court Rule

The rates of compensation are set by either administrative or court rule in nine states: Colorado; Delaware; Indiana; New Hampshire; New York; South Dakota; Tennessee; Virginia; and Wyoming. Generally, the state's Supreme Court sets a rate, which is either written into the state's rules of criminal procedure or a Supreme Court directive or rule.

New York

In New York, the Capital Defender Office (CDO) was created by statute to provide representation and to support and assist at all stages of capital litigation. The CDO, along with an administrative board of the New York Judicial Conference, recommends compensation rates for court-appointed attorneys which New York's highest court, the Court of Appeals, must approve. Compensation rates for appointed counsel in capital trials were first set at $175 per hour for lead counsel and $150 per hour for co-counsel. However, the Court reduced these rates in December 1998, simultaneously altering the rate structure so that payment varies depending on whether the work was done before or after the prosecution announced its intent to seek the death penalty. Lead attorneys in capital cases are now reimbursed at a rate of $125 per hour for their work after the prosecution has given notice of intent to seek the death penalty, and $100 per hour before notice is given. Co-counsel receives $100 per hour after notice, and $75 per hour before notice.

The Court of Appeals declared New York's death penalty statute unconstitutional in 2004.[9] The ruling in *People v. LaValle* invalidated the death penalty in New York citing that the state's jury instructions were unconstitutional. The next year, the General Assembly Codes Committee voted against legislation reinstating the death penalty.

[9] *People v. LaValle, supra* note 6, at 3.

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Virginia

In 2002, the Virginia legislature authorized the creation of four regional capital defender offices. The Virginia Indigent Defense Commission oversees the four offices and establishes standards for court-appointed counsel in capital cases. Each capital case in the capital defender offices is assigned to two attorneys, one of whom (lead chair) is a salaried employee of the capital defender office. The Virginia Supreme Court has set a rate for court-appointed attorneys at $125 per hour with no limit.

Public Defender

The state public defender office determines the compensation rates for court-appointed attorneys in five states: Connecticut; Maryland; Kentucky; New Jersey; and New Mexico.

Kentucky

Kentucky's Department of Public Advocacy (DPA) has a Capital Trial Branch with seven experienced, well-trained attorneys. The Louisville Metro Public Defender also has a specialized death penalty unit consisting of four attorneys. The DPA limits the number of cases its capital branch attorneys can take at one time, and attorneys in the DPA field offices also handle capital cases. The DPA sets the compensation rate for court-appointed attorneys in conflict and overflow cases. The rate is currently $75 per hour with a maximum of $30,000 per attorney in any given case; the maximum can be waived in extraordinary circumstances.

New Mexico

New Mexico uses a request for proposals contract system in which attorneys are awarded cases on a rotating basis. The contractors are paid flat fees on an event-based schedule and according to whether they are lead or co-counsel. Lead counsel earns $5,000 for a first degree murder trial. Once the state files to seek the death penalty, lead counsel earns an additional $11,500. When the case goes to trial, lead counsel earns an additional $4,500, bringing the maximum that an attorney can earn from a capital case in New Mexico to $24,500. If co-counsel is assigned to a first degree murder case, that contractor will be paid a flat rate of $6,000. If the state seeks the death penalty as punishment, the co-counsel earns an additional $2,000; if the case goes to trial, the co-counsel receives $4,500. The maximum amount earned by co-counsel in capital cases in New Mexico is $12,500. In extraordinary circumstances, the maximum rates can be waived. Also, the flat rates listed above do not include overhead expenses, which are tracked by the contractor and paid by the state public defender.

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State Commission on Indigent Defense

In seven states (Arkansas, Georgia, Kansas, Missouri, Montana, North Carolina, and Oregon) compensation for court-appointed attorneys is determined by a statewide indigent defense commission or board.

Kansas

The Kansas Board of Indigent Defense Services (KSBIDS) has the authority to enter into contracts with court-appointed attorneys. The rate for court-appointed counsel in capital cases is $150 per hour with no per case maximum. However, KSBIDS has an in-house capital defense unit so contracting with counsel in capital cases is very rare.

North Carolina

The North Carolina Office of Indigent Defense Services (IDS) sets court-appointed counsel fees in North Carolina. The IDS Office has a specialized capital unit with regional offices. The rate set by the office for capital trials is $95 per hour. Each county also has standby attorneys who protect a defendant's rights between arrest and determination of indigency. These attorneys, referred to as "provisional attorneys," receive $85 per hour in capital cases. There are no maximum amounts paid per case.

Oregon

In Oregon, most capital trial cases are handled by attorneys working under contract with the Public Defense Services Commission. These contracts range from approximately $144,000 to $169,000 per year (based on a certain number of cases as allowed in the contract) per full-time equivalent attorney, which includes overhead and support staff. For those cases not handled by contract counsel, compensation for appointed counsel is set by the Public Defense Services Commission at $55 for lead counsel and $40 for co-counsel. These rates do not include routine expenses, such as photocopying, telephone, mileage, etc.

Reasonable Compensation

In nine states (Arizona, California, Idaho, Louisiana, Mississippi, Nebraska, Pennsylvania, Texas, and Washington) the establishment of compensation rates for court-appointed attorneys is left up to a locality. In most cases, the local court or judge determines the rate of compensation for counsel. Because the rate of compensation is decided at the local level, compensation rates in this category generally vary from county to county or district to district. In Ohio, while the Ohio Public Defender recommends an hourly rate, it has no binding effect and like other "reasonable compensation" states, the actual rate of compensation varies according to locality.

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Idaho

Idaho's indigent defense system is determined on a county-by-county basis; therefore, compensation rates and methods vary widely. In Idaho's most populated county, rates are negotiated for private counsel in conflict cases. The rates for capital conflict counsel in Ada County (Boise) generally range from $90 to $150 per hour both in- and out-of-court. There are no maximum fee caps in Idaho.

Louisiana

In Louisiana, most capital trial cases are handled by parish public defenders or contract counsel. Many public defender offices pay contract counsel an hourly rate for conflict cases. These rates vary widely throughout Louisiana; New Orleans, for example, pays an hourly rate of $110 for contract counsel while Caddo Parish (Shreveport) pays an hourly rate of $75.

To deal with conflict and overload cases, the Louisiana Indigent Defense Assistance Board (LIDAB) created four regional programs in which LIDAB contracts with non-profit groups in four regions to handle conflict capital cases. Because LIDAB contracts with non-profit groups, the attorneys handling conflict cases are generally salaried employees. However, LIDAB limits the number of the cases assigned through its regional contract programs.

Mississippi

Compensation rates for court-appointed counsel are set by local judges in Mississippi. Compensation rates vary from county to county, but by statute (as interpreted in *Wilson v. State*)[10] total compensation for trial work cannot exceed $2,000 per case in capital cases plus overhead expenses, which are set at a presumptive rate of $25 per hour. In practice, courts do not strictly follow the statutory limits, and hourly rates vary from court to court throughout Mississippi.

The Mississippi Office of Capital Defense Counsel began taking cases in 2001. Currently, the office has twenty open cases, sixteen of which employ county-funded co-counsel. The Office of Capital Defense Counsel has never received a sufficient appropriation to make appointments in all capital indigent defense cases. According to the Office's website, for example, there are 50-60 new cases per year needing court-appointed counsel. However, the Office of Capital Defense Counsel only has the resources for 20 cases per year. The remaining cases are handled by county-funded court-appointed counsel.

Nebraska

Judges set the rates of compensation in each district of Nebraska. Hourly rates of compensation for court-appointed counsel in capital cases range from $60 to $100; however the

[10] *Wilson v. State*, *supra* note 3, at 2.

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most frequently occurring rates in Nebraska are in the range of $70 per hour to $75 per hour. Lancaster County (Lincoln) pays assigned counsel $85 per hour for work both in- and out-of-court in capital cases. Most counties follow the model of paying the same rate for in- and out-of-court work. Douglas County (Omaha) is one notable exception; court-appointed attorneys from Douglas County earn $65 per hour for out-of-court work and $80 per hour for in-court work. Additionally, while most districts assign an hourly rate of compensation for court-appointed attorneys, many districts negotiate their compensation rate with court-appointed attorneys.

In 1995, the Nebraska legislature created and funded the Nebraska Commission on Public Advocacy, which provides legal services and state resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony case divisions. The Commission is structured to help those small rural counties that would have difficulty financing the defense in a capital case. Therefore, rather than assigning an hourly rate of compensation, some counties use the Commission on Public Advocacy for their capital cases.

Ohio

The Ohio Public Defender has a specialized death penalty division which deals with each stage of capital proceedings, including trial. Trial attorneys within the death penalty division also provide representation to indigent clients for conflict cases. In addition, the death penalty division public defenders assist and advise court-appointed capital attorneys.

The Ohio Public Defender Commission requires each county in Ohio to have a fee schedule for court-appointed counsel. In addition, the Ohio Public Defender sets a non-binding, recommended maximum fee schedule for appointed counsel. The Public Defender's recommended rate for court-appointed attorneys in capital cases is $95 per hour for both in- and out-of-court work. The maximum rate at which the Public Defender will provide reimbursement is $75,000. Most counties that handle death penalty cases pay a lower rate than the suggested $95 per hour.

The Ohio Public Defender Commission's 2005 Annual Report lists the hourly rates paid in each county for felonies, misdemeanors, juvenile, appeals, death penalty and other cases. The average hourly rate for capital felonies paid among the counties in FY 2005 was $46, although this does not include expenses (such as travel, printing, copying, etc.).

Pennsylvania

Because local judges determine the rates of compensation for court-appointed attorneys, rates vary widely throughout Pennsylvania. In Philadelphia, the local criminal court adopted a "Modified Guaranteed Fee System" in March of 1997 under which attorneys are paid flat preparation fees and per diem in-court fees. The fees are payable as follows:

Preparation Fees:

- Disposition after arraignment but prior to trial: $1,133
- Disposition at trial: $1,700

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- Mitigation appointment: $1,700

Per Diem Fees (at trial):

- Half day, 3 hours or less: $200
- Full day, more than 3 hours: $400
- Mitigation, half day: $100
- Mitigation, full day: $200

In Allegheny County (Pittsburgh), court-appointed attorneys are paid $50 per hour plus office expenses. They can also opt to get paid a flat rate of $250 for a half day and $500 for a full day of in-court work.

Texas

Each of Texas' 254 counties organizes and funds its own indigent defense delivery system. Before the Texas Fair Defense Act was signed into law in 2001, there was no systemic way of tracking the different assigned counsel compensation plans across the state. Now counties must develop and publish their plans for indigent defense systems to meet criteria set by the Texas Fair Defense Act.

Compensation rates for court-appointed counsel are established by district court judges and vary from county to county. The hourly compensation rates in capital cases range from $50-$200 both in- and out-of-court.[11] However, many counties do not rely solely on hourly rates. Many counties use fixed rates, and some, including Harris County (Houston), use a combination of fixed and hourly rates. Harris County pays an hourly rate for out-of-court work and a fixed daily rate for in-court work. Lead counsel earns $100 per hour for out-of-court work with a cap of $12,000, and co-counsel earns $80 per hour with a $9,600 cap. In-court daily fixed rates are event-based. Both lead counsel and co-counsel earn $400 per day for non-trial court appearances. For the in-court voir dire process, lead counsel earns $600 per day and co-counsel earns $500 per day. Finally, for in-court trials, lead counsel earns $800 per day while co-counsel earns $700 per day.

Combination System

In two states, Oklahoma and Utah, a combination of the aforementioned systems for determining the compensation rates is used. Both of these states employ an indigent defense system (capital or otherwise) that not all counties are required to follow. Local courts set the rate of compensation in those counties that are not part of the indigent defense system in these states.

[11] Based on the figures reported to the Texas Task Force on Indigent Defense. For county-by-county rates, please refer to http://tfid.tamu.edu/IDPlans/Feedocuments.asp.

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Oklahoma

The Oklahoma Indigent Defense System (OIDS) is the statewide program responsible for indigent defense representation in 75 of Oklahoma's 77 counties. The majority of cases within the system are handled by attorneys who contract with OIDS. Fifteen counties within the system are part of satellite offices that use salaried staff attorneys. Additionally, OIDS has a specialized division to handle capital cases at trial. For conflict and overload cases, the Executive Director of OIDS sets a statutory rate of compensation and per-case maximums. In capital cases, lead counsel earns an hourly rate of $60 for out-of-court work and $80 for in-court work with a maximum per case of $20,000. Co-counsel earns the hourly rate of $50 for out-of-court work and $70 for in-court work with a maximum per case of $5,000. The per-case maximums can be waived in extraordinary circumstances.

The two counties that do not participate in the Oklahoma Indigent Defense System are Oklahoma County and Tulsa County. Each of those two counties has its own public defender program, and the local courts set the compensation rate for attorneys appointed when the public defender cannot take the case. Tulsa County aligns itself closely with the rates established by OIDS, paying capital counsel $60 for out-of-court work and $80 for in-court work, with maximums of $20,000 for lead counsel and $5,000 for co-counsel. Oklahoma County also pays its court-appointed lead counsel a maximum of $20,000. However, counsel in Oklahoma County earn $50 for out-of-court work and $65 for in-court work. In cases with extraordinary circumstances, the Oklahoma County Public Defender recommends to the judge that additional funds beyond the maximum be allocated to court-appointed counsel.

Utah

Utah's indigent defense system is determined on a county-by-county basis. Counties elect to set up a public defender system run by the county, contract with individual attorneys, or contract with a legal organization. Currently, all counties in Utah have opted to use some sort of contract model for indigent defense services. Additionally, Utah's Indigent Defense Act allows counties to opt in to the Indigent Capital Defense Trust Fund.[12] As of 2007, 23 of Utah's 29 counties have chosen to participate in the fund. According to Rule 8 of Utah's Rules of Criminal Procedure, at least two attorneys must serve in capital cases. In cases in which the death penalty is a possible punishment but is not sought, the fund pays $60,000 to be split between counsel; in cases in which the death penalty is sought, the fund pays $100,000 to be split between counsel. The compensation of attorneys that are part of this system is determined by the Board of the Indigent Capital Defense Trust Fund.

The Federal Model: the Criminal Justice Act

At the federal level, the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) authorizes payment for representation of indigent defendants accused of committing crimes. Under the act,

[12] Two other states – South Dakota and Idaho – have a similar trust fund that counties have the option of paying into for capital (or complex) cases.

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each United States District Court is required to develop a plan for furnishing counsel and investigative, expert and other services necessary for adequate representation in trial and appellate proceedings. The Criminal Justice Act (CJA) authorizes three methods for a court to provide counsel to indigent defendants: a Federal Public Defender Organization, a Community Defender Organization (CDO), and a panel of private attorneys.

CJA panel attorneys serve every district in the federal court system. In those districts where there is a Federal Public Defender Organization or a Community Defender Organization, panel attorneys are appointed to handle those cases in which the institutional defender has a conflict of interest -- approximately 25% of all cases. They handle all of the indigent defendant cases in those districts without a CDO or Federal Public Defender Organization.

Pursuant to 18 U.S.C. § 3005, two attorneys must be appointed to federal death penalty trial cases. The compensation of CJA panel attorneys is addressed by 21 U.S.C. § 848(q)(10)(A), which establishes the maximum compensation rate for work in and out of court at $125. The statute allows for a yearly increase in the rate to be determined by the Judicial Conference. The current rate set by the federal Judicial Conference is $163 per hour. According to the CJA Guidelines, there is no maximum amount that CJA panel attorneys can earn in capital proceedings.

Conclusion

In 1989, the American Bar Association adopted the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. The Guidelines were revised in February 2003 to reflect changes in the law and ABA policy. The more current version embodies the current consensus about what is required to provide effective representation in capital cases. The ABA adopted the Guidelines in order to "set forth a national standard of practice for the defense in capital cases in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence by any jurisdiction." The revised edition of the Guidelines is available online at: http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/deathpenaltyguidelines2003.pdf.

Guideline 9.1, which concerns compensation of court-appointed counsel in capital trial cases, is printed below.

GUIDELINE 9.1- FUNDING AND COMPENSATION

A. The Legal Representation Plan must ensure funding for the full cost of high quality legal representation, as defined by these Guidelines, by the defense team and outside experts selected by counsel.

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B. Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.

1. Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.

2. Attorneys employed by defender organizations should be compensated according to the salary scale of the prosecutor's office in the jurisdiction.

3. Appointed counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with the prevailing rates for similar services performed by retained counsel in the jurisdiction, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.

C. Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the provision of legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

1. Investigators employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

2. Mitigation specialists and experts employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale for comparable expert services in the private sector.

3. Members of the defense team assisting private counsel should be fully compensated for actual time and services performed at an hourly rate commensurate with prevailing rates paid by retained counsel in the jurisdiction for similar services, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.

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D. Additional compensation should be provided in unusually protracted or extraordinary cases.

E. Counsel and members of the defense team should be fully reimbursed for reasonable incidental expenses.

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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.

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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."

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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; *Wilson v. State*, 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.

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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).

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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.

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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.

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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)

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Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview

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Selected Case Law Concerning Indigent Defendant Counsel Compensation

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Rates of Compensation for Court-Appointed Counsel in Non-Capital Felonies at Trial, 2007

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Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, 2007

Introduction

Since 1997, The Spangenberg Group has periodically produced tables and narratives detailing compensation rates for court-appointed attorneys in non-capital felony cases at trial. The tables, which are prepared on behalf of the American Bar Association's Bar Information Program, provide state-by-state information concerning the hourly rates paid to assigned counsel and the authority for the rates. We receive repeated requests for the tables from attorneys, policy-makers and others. Frequent interest in this report is generated by a state legislature's consideration of changes to its attorney compensation rates.

The last comprehensive report was published in 2002. Since then, The Spangenberg Group has produced three reports which included selected updates in 2003, 2005 and 2006. In comparing statistics between the information that we gathered during our survey for this report and our last report, we will refer to the comprehensive report published in 2002.

It is not the purpose of this report to produce any type of assessment or evaluative ranking of the compensation rates reported in this article. First, many states have so-called "reasonable compensation" systems, in which the rates are set by the county or local judge and vary widely from county to county. Therefore no single rate can be defined for these states, making it impossible to place them in an ordinal ranking of rates paid to court-appointed counsel. Moreover, most of the "reasonable compensation" states do not maintain centralized records on the precise amounts court-appointed counsel are paid. To collect these data, we interviewed public defenders, court administrators, private counsel, or others familiar with the jurisdiction's indigent defense system. The numbers reflected in the accompanying table and/or narrative are representative of the limited information provided to us through these interviews.

Second, even if it were possible to rank all fifty states' compensation rates, such a ranking would be of limited significance. This is so because, in addition to paying attorneys in private practice an hourly rate, there are two other methods by which legal counsel is provided to defendants who cannot afford it. The three methods jurisdictions use to provide indigent defense are:

- The assigned counsel model: private attorneys are assigned to indigent criminal cases on either a systematic or ad hoc basis. Typically they are paid on an hourly basis or paid a flat fee per case.
- The contract model: a jurisdiction contracts with private attorneys, a group of attorneys, a bar association or a private, non-profit organization to provide representation in some

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or all of the indigent cases in the jurisdiction.[1] In some jurisdictions, such as Delaware and Connecticut, the public defender agency contracts with private attorneys to handle most of the conflict of interest cases.

- The public defender model: a public or private non-profit organization with full or part-time staff attorneys and support personnel provides all or a percentage of the representation to indigent defendants in a jurisdiction. Employees of defender offices are paid a salary.

From these three models for the appointment of counsel, states and counties have developed indigent defense delivery systems, most of which employ some combination of the three. For example, even in states with a statewide public defender system, private attorneys are often appointed in conflict of interest cases and in some instances to alleviate burdensome caseloads. In other states where there is less uniformity, there may be contract counsel in one county, assigned counsel in a second county, and a public defender office in yet a third county. Maine is the only state in the country that relies exclusively on assigned counsel to represent indigent defendants at the trial level.

Because most jurisdictions use a combination of the above three models, it is inappropriate to conclude that one jurisdiction better funds its indigent defense system simply because it pays assigned counsel a higher rate of compensation than other jurisdictions. To determine the relative adequacy of funding of any state's indigent defense systems, one must look at many factors; the comparable rates of compensation for court-appointed counsel is only one of these factors.

Besides the hourly rate, there are other important factors that significantly affect assigned counsel compensation. For example, many states have set statutory limits on the amount that may be paid per case. However, in all states except for Mississippi, judges are statutorily permitted to authorize payment that exceeds the caps in extraordinary cases requiring additional time. Non-waivable fee caps have a potentially chilling effect on the adequacy of representation provided by appointed counsel in complicated cases.

Hourly assigned counsel compensation rates are often inadequate to pay attorney overhead costs. Litigation in Mississippi has resulted in court-appointed counsel being paid an hourly amount to cover overhead expenses on top of the hourly rate for compensation.[2] This hourly rate for overhead expenses in Mississippi has no cap. Similarly, in Alabama, the Alabama Supreme Court has interpreted state law to provide for overhead reimbursement on top

[1] For more on this method of compensating indigent defense providers see, R. SPANGENBERG & A. SPENCE. FINDINGS CONCERNING THE CONTRACTING FOR THE DELIVERY OF INDIGENT DEFENSE SERVICES. American Bar Association, Bar Information Program (July 1995).

[2] *Wilson v. State*, 574 So. 2d 1338 (Miss. 1990).

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of hourly rates for court-appointed attorneys.[3] In 2005, the Alabama Attorney General issued Opinion 2005-063, stating that overhead costs were not subject to reimbursement by Alabama law. Following the opinion, the state comptroller withheld overhead payments to court-appointed attorneys until the end of 2006, when the Alabama Supreme Court issued an opinion reinstating the payment of overhead expenses in *Wright v. Childree*.[4]

Finally, it is important to mention one concern with the court-appointed counsel compensation system, and that is the potential for a conflict of interest when judges approve the compensation and reimbursement claims of panel attorneys who appear before them. The *1992 Interim Report of the Committee to Review the Criminal Justice Act*[5] pointed out that when a judge approves a fee that is less than the amount sought, counsel may - rightly or wrongly - perceive the reduction as an "admonition, rebuke or retaliation for defense tactics." Judges, however, sometimes feel justified in cutting vouchers they feel are excessive for the type of case handled, relying on their own view of "what a case is worth." Through our experience in examining indigent defense systems around the country, we have also observed judges who are unwilling to waive fee caps in extraordinary circumstances; do not authorize experts and investigators; and/or do not provide substantial funding for experts and investigators. These practices, if done routinely, effectively reduce the authorized hourly rate or per-case maximum and serve as a disincentive for attorneys to provide competent representation.

Different Approaches to Compensating Assigned Counsel

The following section discusses seven approaches taken by the state legislatures in determining compensation for court-appointed counsel.[6] The approaches are broken down by the authority that sets the rates. These approaches are characterized as:

- Statutory hourly rate
- Administrative or court rule
- State public defender
- State commission on indigent defense
- Reasonable compensation
- Reasonable compensation, recommended rate
- Combination approach.

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[3] *May v. State*, 672 So.2d 1307 (Ala. Crim. App. 1993), cert. denied *May v. State*, 672 So.2d 1310 (Ala. 1995).

[4] *Wright v. Childree*, (CV-05-1544).

[5] For more discussion of the Criminal Justice Act, see the Federal Model Section on page 16 of this report.

[6] *Gideon v. Wainwright*, 372 U.S. 335 (1963) did not place indigent defense funding responsibility exclusively on state government. By statute, the state can transfer the responsibility for funding in whole or in part to county government. This is done in a number of states.

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Statutory Hourly Rate

Ten states (Alabama, Florida, Hawaii, Iowa, Massachusetts, Nevada, New York, South Carolina, West Virginia and Wisconsin) reimburse court-appointed counsel according to state statute. The rates paid in the District of Columbia are also set by statute. Therefore, rate establishment for court-appointed attorneys is a legislative matter. All of the pertinent statutory sections and the rates appear in the accompanying table.

Alabama

Alabama statutory law sets compensation rates at $40/hour for in-court work and $60/hour for out-of-court work. The statute authorizing these rates states, "Counsel shall also be entitled to be reimbursed for any expenses reasonably incurred in such defense to be approved in advance by the trial court." In *May v. State*, the Alabama Court of Criminal Appeals ordered the state to pay an additional amount for overhead as "expenses reasonably incurred."[7] The Alabama Attorney General issued an opinion against reimbursement of the fees, and the Alabama Comptroller Office withheld overhead fee payment starting in February 2005. However, in December of 2006 the Supreme Court of Alabama ruled that the Comptroller must pay overhead fees in *Wright v. Childree* retroactive to February 2005.[8] The presumptive and average hourly rate for overhead fees in Alabama is $30.

Florida

During Florida's 2007 legislative session, the Florida General Assembly created five regional conflict counsel offices, which will begin operating in October 2007. The offices will handle cases that are conflicts for the public defender offices. The legislation provides that private, court-appointed attorneys will take secondary or tertiary conflict cases and earn a flat fee per case. The flat fees depend on the type of case and will be set annually by the legislature. The statutory ceilings on individual case payments in felony cases are $2,500 for a non-capital, non-life felony and $3,000 for a life felony. The maximums may be waived in cases that require "extraordinary and unusual effort." Beginning in July 2007, the maximum flat fee schedule as specified in the General Appropriations Act is:

- Life Felony: $2,500
- Punishable by Life Felony: $2,000
- First Degree Felony: $1,500
- Second Degree Felony: $1,000
- Third Degree Felony: $750

[7] See *May v. State*, *supra* note 3, at 3.

[8] See *Wright v. Childree*, *supra* note 4, at 3.

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Before the passage of the 2007 legislation, Florida law granted local circuit indigent services committees the authority to set compensation rates, and the rates varied from circuit to circuit. Some circuits set an hourly rate while others used a flat rate and/or fee schedule.

Iowa

Senate Filing 415, adopted in 1999 and codified in Iowa Code § 13B.2A in 2001, created a five-member Indigent Defense Advisory Commission to advise the General Assembly and the state public defender regarding hourly rates and per-case fee limitations. The bill also implemented a statutory hourly fee for cases handled by court-appointed counsel, which was codified in Iowa Code. The current statutory hourly rates for court-appointed attorneys are $65 for Class A felonies and $60 for all other felonies. While the state legislature sets the hourly rate for court-appointed attorneys in Iowa, the state public defender sets per case maximums pursuant to Iowa Code § 13B.4.

Massachusetts

From 1996 until 2004, the hourly compensation rates paid to court-appointed attorneys were $54 for homicide cases, $39 for Superior Court cases, and $30 for all other cases. In 2004, two cases were filed in the Massachusetts Supreme Judicial Court that helped pave the way for an increase in court-appointed attorney rates, which increased both in 2004 and 2005. One petition, filed by the indigent defense oversight body in Massachusetts, the Committee for Public Counsel Services (CPCS), along with the ACLU, addressed the concerns of indigent defendants in Hampden County.[9] In Hampden County (Springfield), a shortage of attorneys willing to work for the low rates provided by legislative appropriation led to indigent defendants being arraigned without counsel, some of whom remained in custody without being appointed counsel. In *Lavallee v. Justices in the Hampden Superior Court*, indigent defendants petitioned the Supreme Judicial Court (SJC), arguing that their constitutional right to counsel was being violated. Preceding the decision of the SJC in *Lavallee*, a second petition, *Arianna S. v. Commonwealth of Massachusetts*, was filed on behalf of indigent defendants statewide.[10] The SJC granted the *Lavallee* plaintiffs relief by ordering the dismissal of charges without prejudice for those facing felony, misdemeanor, or municipal ordinance charges for more than 45 days without the appointment of counsel, and by ordering the release of inmates that had been detained for over seven days without assistance of counsel.[11] Faced with the *Lavallee* decision and the pending *Arianna* petition, in August 2004 the Massachusetts legislature raised the hourly rates across the board by $7.50 per hour; they also established a statewide legislative commission to study the court-appointed defender system. Following the commission's recommendations, in July 2005, the legislature raised the rates again to the current hourly rates: $100 for homicide cases, $60 for

[9] *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228 (2004).

[10] *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, SJ 2004-0282 (2004).

[11] However, after several felony defendants were released, the SJC amended the order and allowed the trial judges to appoint private attorneys who the trial judges felt were competent to handle the case.

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non-homicide Superior Court cases, and $50 for all other cases. There is no maximum cap for court-appointed attorney fees in Massachusetts.

New York

Until 2004, the hourly rates in New York were the same as they were since 1986: $25 out of court and $40 in court with a $1,200 maximum. In 2000, the New York County Lawyers' Association sued the City and State of New York, alleging that the statutory rate of compensation had resulted in the imminent danger of ineffective assistance of counsel for indigent defendants in criminal court in New York City. On February 5, 2003, Manhattan Supreme Court Justice Lucindo Suarez issued an order finding that the State of New York's failure to increase the rates of compensation for court-appointed lawyers in New York City violated constitutional and statutory rights to meaningful and effective representation and obstructs the judiciary's ability to function. [12] The order included a permanent injunction directing the State and City to compensate assigned counsel at $90 per hour for both in-court and out-of-court work until the Legislature modified the statutes or upon further order of the Court. Following issuance of this order, the New York State General Assembly approved a rate of $75 an hour in felony cases for all work, in or out of court, with a maximum of $4,400. The $4,400 cap may be waived upon showing of extraordinary circumstances.

Hourly Rate Per Administrative or Court Rule

In ten states (Colorado, Delaware, Maine, New Hampshire, Rhode Island, South Dakota, Tennessee, Vermont, Virginia and Wyoming) uniform, statewide hourly rates are established either by executive administrative rule (such as a state Supreme Court order) or court rule, often as set forth by the state's rules of criminal procedure. The practices in several of these states warrant brief discussion.

- Delaware

In Delaware, Rule 44 of the Rules of Criminal Procedure establishes a rate of $60 per hour. In practice, however, contract attorneys handle cases that public defenders cannot take, and the courts contract with attorneys at a flat yearly rate of $54,036. The rate established by the Rules of Criminal Procedure is used in Class A (serious) felonies when court-appointed attorneys are paid an additional $60 per hour after they work beyond the contractual 25 hours per case. The maximum that an attorney can earn per case beyond their contracted amount is $15,000. That amount can be waived in extraordinary circumstances.

[12] *New York County Lawyers' Ass'n. v. State of New York*, 196 Misc. 2d 761 (N.Y. Sup.Ct. 2003).

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Vermont

In Vermont, 13 V.S.A. §5205(a) grants the Vermont Supreme Court the authority to set a reasonable rate for court-appointed attorneys that do not contract with the state public defender. In 1992, by Administrative Order of the Vermont Supreme Court, the hourly rate of $25 was raised to $50, effective FY 1993, with the following maximums: $25,000 for felonies involving life imprisonment or the death penalty,[13] $5,000 for a major felony, and $2,000 for a minor felony. However, a legislative override between 1992 and 1999 kept court-appointed attorney hourly rates at $40. In July of 1999, Vermont began to adhere to the $50 per hour rate.

Appointment of attorneys in felony cases has become exceedingly rare since 2001 when the Office of the Defender General set up a system of contract attorneys to handle homicide, life in prison, and death penalty cases. Contract attorneys in this system are paid $103,000 per year. Vermont uses contract attorneys for other conflict cases as well. Therefore, in the past six years very few cases have been handled by attorneys who are paid the $50 hourly rate.

Virginia

In Virginia, the state Supreme Court has established rates of $90 per hour for all work in or out of court, but state statute restricts per-case payments to no more than $1,235 to defend charges punishable for more than 20 years and $445 to defend other felony charges. During the 2007 legislative session, the Virginia General Assembly passed legislation that would provide for waivers beyond the fee caps. Effective July 1, 2007, the maximum of $1,235 to defend charges punishable by more than 20 years in prison can be waived up to an additional $850; the maximum of $445 to defend all other felony charges can be waived up to an additional $155. The same legislation allows for counsel to request an additional waiver exceeding those amounts.

In the past, the Virginia Courts have scaled down the per-case maximum they will pay attorneys proportional to the funding the legislature has appropriated. The waiver amounts approved by the General Assembly are also subject to legislative funding. SB 1168 states, "If at any time the funds appropriated to pay for waivers under this section become insufficient ... no further waivers shall be approved." Since the waivers are dependent on legislative funding, without a significant appropriation, Virginia's relatively competitive hourly rates have little bearing.[14]

Wyoming

Rather than set a standard rate, the Rules of Criminal Procedure set a range and maximum hourly rate in Wyoming. For work performed out of court, the local court must

[13] Vermont currently does not have the death penalty.

[14] For FY 2007-2008, the Virginia General Assembly has appropriated an additional $8.2 million for these waivers.

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recommend a reasonable hourly rate between $35 and $60. Court-appointed attorneys cannot earn more than $100 per hour for work performed in court.

Public Defender

In seven states (Alaska, Connecticut, Kentucky, Maryland, Minnesota, New Jersey, and New Mexico) hourly compensation rates for court-appointed attorneys are set by the state public defender office or its statewide equivalent and are subject to legislative appropriation.

Alaska

In Alaska, non-capital felony cases not handled by the statewide public defender are handled by one of three types of counsel: staff, contract and court-appointed attorneys. The Office of Public Advocacy (OPA) has staff lawyers who handle a limited number of conflict cases. The OPA contracts with other lawyers at rates ranging between $65-$100 per hour, depending on the experience of the lawyer and his or her location. Attorneys who take appointed cases and are not under contract are paid $60 per hour for work in court and $50 per hour for work out of court. With findings of extraordinary circumstances, however, these rates can be raised; therefore, the average rates of court-appointed attorneys range from $60-$85 per hour. These lawyers are appointed by the Public Advocate. There are different maximums for various types of cases for court-appointed lawyers. The outside maximum is $4,000, but this can be waived in cases with extraordinary circumstances.

Connecticut

In Connecticut, "special public defenders" serve on either a contractual or a non-contractual basis to handle conflict of interest cases in which no public defender is available. Those appointed on a non-contractual basis are paid $65 per hour for both in- and out-of-court work. Special public defenders that enter into contracts with the Connecticut Public Defender earn a flat rate depending on the court in which the case is heard. For work in Judicial District Courts, attorneys are paid a flat rate of $1,000 per case. In the lower courts, the Geographical Area Courts, attorneys are paid a flat rate of $325 per case. In cases with extraordinary circumstances, the attorneys may be paid beyond the flat rates.

Kentucky

In Kentucky, the Department of Public Advocacy runs its statewide indigent defense system. Very few court-appointed cases go to private lawyers in Kentucky. Each of the 30 Department of Public Advocacy offices across the state has "conflict contracts" which reflect how private attorneys are compensated. In some cases, attorneys are paid a flat fee per case or a trial bonus. When the private attorneys are paid on an hourly basis, they earn $40 per hour for non-violent felonies and $50 per hour for violent felonies. The rates are capped according to the type of felony and whether the case goes to trial. (See table.)

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Minnesota

In Minnesota, it is exceedingly rare to appoint counsel on an hourly basis. The State Board of Public Defense employs a mix of full-time and part-time public defenders. The part-time public defenders have private offices and handle most of the conflict of interest cases of the full-time public defenders.

New Mexico

New Mexico uses a request for proposals contract system in which attorneys are awarded cases on a rotating basis. All attorneys within the contract system earn flat rates that vary according to the degree of the felony and the judicial district. For example, in the Second Judicial District (Albuquerque), counsel earn $650 for a first degree felony, $600 for a second degree felony, $550 for a third degree felony, and $500 for a fourth degree felony. The rates earned in the Second Judicial District are typical across the state. For non-capital first degree murder cases, attorneys earn a flat rate of $5,000. All of the flat rates can be waived if the contractor incurs "extraordinary expenses."

State Commission on Indigent Defense

In eight states (Arkansas, Georgia, Kansas, Missouri, Montana, North Carolina, North Dakota, and Oregon) the rates paid to court appointed counsel are set by statewide public defender commissions or boards.

Missouri

According to statute, the Missouri Public Defender Commission has the authority to set compensation rates for court-appointed attorneys, but it is extremely rare to appoint an attorney from outside of the public defender program to a conflict case. Approximately 75 percent of conflict of interest cases are handled by transferring the case from the branch office where the conflict was identified to another branch office. For cases not handled by public defender branch offices, the public defender appoints an attorney under a flat fee range agreement (e.g., $500-$750, depending on time and work needed). The attorney can request additional funds, and if those funds are granted, the hourly rate beyond the flat fee is $50.

North Carolina

In August 2000, the North Carolina General Assembly passed the Indigent Defense Services Act of 2000, which created the Office of Indigent Defense Services and charged it with the responsibility of overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law. Included in its responsibilities is the power to set the rates of compensation paid to assigned counsel. In 2007 the rates for assigned counsel

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in felony cases at trial were $65 an hour with no per-case maximum. This same rate applies to court-appointed attorneys in all non-capital cases.

North Dakota

As of January 1, 2006, the Commission on Legal Counsel for Indigents, which was created in the 2005 legislative session, assumed responsibility for establishing a statewide reasonable rate of compensation for appointed counsel. Before the establishment of the North Dakota Commission on Legal Counsel for Indigents, attorneys were paid under two-year contracts with judges in the state's seven judicial districts. Now, in areas without public defender offices, private attorneys contract with the commission. In conflict cases, court-appointed attorneys are paid a $65 per hour rate set by the commission with a maximum per case of $2,000 for felonies. However, that maximum may be waived in extraordinary circumstances.

Reasonable Compensation

In eleven states (Arizona, California, Idaho, Louisiana, Michigan, Mississippi, Nebraska, Pennsylvania, Texas, Utah and Washington) the state legislatures have determined that compensation for court-appointed attorneys is left up to the locality, the county, a local judge or a combination of the two. In these states, the rates paid and the use of a maximum vary considerably from county to county, from district to district, and sometimes from judge to judge within a county. Because the range of practices concerning compensation of court-appointed counsel in so-called "reasonable compensation" states is so significant, we highlight below several examples from the various states.

Arizona

In Arizona, state statute and the Rules of Criminal Procedure govern compensation of appointed counsel, leaving it to the court to award the attorney a sum representing reasonable compensation for services performed. In the two largest counties –Maricopa (Phoenix) and Pima (Tucson)– the responsibility to establish rates of reasonable compensation for court-appointed counsel has been transferred from the courts to county agencies. The agencies administer contract programs for conflict of interest cases which the primary and secondary public defender agencies are unable to handle. These counties determine the necessary compensation through a contracting system rather than a fixed hourly rate.

Maricopa County pays its court-appointed counsel on a flat fee basis according to the type of offense. Effective July 2007, the rates are as follows:

- Felony DUI; Class 4-6 Felonies: $900
- Classes 2 and 3 Felonies: $1,250
- Negligent Homicide: $5,000
- Manslaughter: $7,500

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- Second Degree Murder: $10,000
- Non-capital First Degree Murder: $15,000

In Pima County, the Office of Court-Appointed Counsel (OCAC) divides non-capital felonies into three categories – Group A, Group B, and first degree murder. OCAC pays a flat rate of $800 for up to 20 hours of work in Group A (less serious) felonies. If counsel gets prior approval from OCAC and a court order, he or she can work beyond the 20 hours at a rate of $50 per hour. For Group B felonies, which include more serious charges such as armed robbery, attempted murder, and dangerous crimes against children, attorneys earn a flat rate of $3,000 for up to 60 hours of work. Once again, with a court order and prior approval from OCAC, the attorney can earn an hourly rate of $60 for work beyond 60 hours. For first degree murder cases, OCAC pays an hourly rate of $75 with a $15,000 cap, which is routinely waived.

California

In California, trial-level indigent defense representation is organized at the county level. The majority of counties have a public defender, and several counties have a second, and even third, public defender office to handle conflict of interest cases. Some counties contract with lawyers who accept case assignments and receive flat fee-per-case payments, while others pay conflict counsel hourly rates.

The majority of indigent cases in Los Angeles County are handled by the county public defender and alternative public defender. Conflict cases are handled by court-appointed counsel who contract with the Los Angeles County Bar Association Indigent Criminal Defense Appointments (ICDA). The hourly rates paid to those attorneys contracting with the ICDA range from $68 to $91 depending on the severity and sentence applied to the felony.

San Mateo County has no public defender program and relies exclusively on court-appointed counsel to provide indigent defense services. In 1968, San Mateo County contracted with the San Mateo County Bar's Private Defender Program (PDP) to provide legal representation of indigent defendants entitled to public counsel. Attorneys are compensated through an event-based fee schedule that is designed to provide no economic incentive to plea out a case. When a case is assigned, the attorney is paid a case fee of $375. Attorneys also receive additional flat fees for pretrial conferences ($80), preliminary hearings ($310-$350), and motions. During trial, court-appointed attorneys receive an hourly rate depending on whether it is a jury trial ($90 per hour) or not ($70 per hour). In certain circumstances attorneys may receive additional compensation of up to $1,250 for cases that require exceptional time and effort. For those cases with special circumstances, attorneys also receive an increased hourly rate ($85-$115 per hour) depending on the circumstances.

Idaho

In Idaho, court-appointed counsel rates vary widely across the state as indigent defense systems are determined on a county-by-county basis. In Ada County (Boise), conflict cases are

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handled by private contract attorneys. The hourly rates paid to conflict attorneys in Ada County are $40 for work performed out of court and $50 for work performed in court. There are no caps on how much an attorney can earn per case.

- Louisiana

In Louisiana, determination of compensation for court-appointed attorneys is left up to local indigent defender boards. Most of the district-based indigent defender boards utilize contract counsel to handle conflict of interest cases. Baton Rouge, for example, contracts with two attorneys per criminal court section to handle its conflict cases; the contracts are negotiable. In Caddo Parish (Shreveport), the Indigent Defender Office (IDO) contracts with attorneys for conflict and overload cases. Felony contracts pay $40,000 per year to panel attorneys.

Michigan

There is wide variation in court-appointed counsel fee schedules among Michigan's judicial circuits. Further, while some circuits pay hourly rates on a case-by-case basis, other circuits pay flat fees for plea and trial cases. In the 3rd Judicial Circuit (Wayne County), for example, attorneys handling criminal cases in the trial court are reimbursed according to a graduated, event-based schedule. Based on the event (e.g., motion, preliminary examination, etc.) and possible sentence, attorneys receive a particular fee. For instance, for a half day of trial, an attorney receives between $90 and $210, depending on the severity of the potential sentence. Other districts, such as the 21st (Isabella County), use contracts as the basis for compensation for counsel representing indigent defendants. Isabella County contracts with nine attorneys for a total indigent defense cost of $318,887 per year (increasing by 2% each year). Contract attorneys in Isabella County also earn a flat rate of $250 per day at trial.

- Mississippi

Compensation rates for court-appointed counsel in non-capital cases in Mississippi vary throughout the state. The general range of hourly rates paid to court-appointed attorneys in Mississippi is $45 to $65. The state has capped court-appointed compensation at $1,000 per case. Litigation in Mississippi challenging the constitutionality of the fee cap failed to increase or eliminate the per-case maximum, but succeeded in entitling court-appointed counsel to receive reimbursement for overhead costs.[15] In addition to submitting vouchers for payment of attorneys' fees, counsel in Mississippi submit vouchers for reimbursement of overhead costs for every hour worked. The presumptive rate for such expenses is $25 per hour.

- Pennsylvania

The rates paid to court-appointed counsel vary widely in Pennsylvania, with all decisions left to local judges. In Philadelphia, effective March 10, 1997, compensation for court-appointed

[15] See *Wilson v. State*, *supra* note 2, at 2.

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counsel shifted from an hourly basis to a "Modified Guaranteed Fee System," where attorneys are paid on a per-diem basis. The fee is payable as follows:

Preparation Fees:

- Non-homicide felony, disposition after arraignment but prior to trial: $400
- Non-homicide felony, disposition at trial: $650
- Homicide, disposition after arraignment but prior to trial: $1,133
- Homicide, disposition at trial: $1,700

Per Diem Fees:

- Non-homicide felony, 3 hours or less: $175
- Non-homicide felony, more than 3 hours: $350
- Homicide felony, 3 hours or less: $200
- Homicide felony, more than 3 hours: $400

In Allegheny County (Pittsburgh), court-appointed attorneys are paid $50 per hour plus office expenses. They can also opt to get paid a flat rate of $250 for a half day and $500 for a full day of in-court work. Fees are capped at $3,000 for homicides and $1,500 for serious, multiple incident felonies (such as rape).

•• Texas

In 2001 the Texas Fair Defense Act was signed into law. The Fair Defense Act created the Texas Task Force on Indigent Defense, which was created in part to ensure uniform indigent defense guidelines throughout Texas. Previous to this legislation there was no systemic way to track the assigned counsel compensation plan for Texas' 254 counties, as judges set compensation rates for their own courtrooms (and there are more than 800 criminal courts in Texas). Each county is still given the responsibility of designing and funding its own indigent defense system. However, counties must now develop and publish plans for their indigent defense systems that meet certain standards laid out in the statute. One such requirement is that all criminal courts in a county adhere to a single county-wide compensation plan.

The compensation plans and therefore compensation rates in Texas vary widely. The hourly rate for court-appointed attorneys for both in- and out-of-court work ranges from $30 to $175.[16] The hourly rate often depends on the type of felony, the particular event, and the experience of the attorney. Many counties use a combination system of hourly and fixed rates. Harris County (Houston), for example, uses this type of combination system. For out-of-court work, the county pays on an hourly basis depending on the degree of the felony. Court-appointed attorneys earn $100 per hour working on a first degree felony case, with a cap of $2,000. A second degree felony case pays an hourly rate of $75 with a maximum of $750, and a third degree felony pays an out-of-court rate of $50 with a $500 maximum. In-court fixed daily rates also depend on the degree of the felony, as well as whether the case is at trial or not. The

[16] Range determined from information provide to the Texas Task Force on Indigent Defense. For county-specific information, visit http://tfid.tamu.edu/IDPlans/Feedocuments.asp.

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daily rate for a first degree felony at trial is $500, while the daily rate for a third degree felony in court but not at trial is $150 with a $750 maximum.

Utah

In Utah, indigent defense systems are determined on a county-by-county basis. All of the counties in Utah have opted to contract either with private attorneys or independent organizations. Counties also have the option of setting up a public defender office. Salt Lake County, which handles about half of the felony cases in Utah, uses a contract system for court-appointed attorneys. The annual salary of the attorneys is determined by wage parity with prosecutors. Utah's Indigent Defense Act also allows for the use of a risk pool whereby counties can opt to pay into a fund that they can later draw from for felony cases; however, the minimum number of counties needed to participate in the fund has not been reached.

- Washington

Court-appointed counsel compensation rates vary widely in Washington. In King County (Seattle), the Office of Public Defense contracts with four non-profit defender agencies. For conflict cases, court-appointed counsel earn $50 per hour. The Office of Public Defense regularly pays beyond the $50 per hour rate for complex cases. Spokane County pays a flat fee of $1,100 for most felonies, and for more serious felony cases, court-appointed counsel is paid between $50 and $60 per hour.

Reasonable Compensation, Rate Recommended

In two states, Indiana and Ohio, although there is no set rate of compensation, a statewide body within the indigent defense system recommends a rate. Because indigent defense is organized and delivered at the local level in these states, the recommended rates have no binding effect.

Indiana

In Indiana, the Indiana Public Defender Commission receives a state appropriation for disbursement to counties which meet its standards and guidelines pertaining to the delivery of indigent defense services. The Commission requires counties to pay attorneys at least $60 per hour for work in non-capital felony cases with no case maximum, and the Commission reimburses compliant counties for a portion of their annual expenditures on appointed counsel.

- Ohio

Each county in Ohio is required to have a fee schedule for court-appointed counsel. In addition, the Ohio Public Defender sets a non-binding, recommended maximum fee schedule for appointed counsel. The Ohio Public Defender recommended rates are currently $50 per hour out

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of court and $60 per hour in court. Recommended per case maximums in non-capital felony cases are: aggravated murder without death penalty specifications - $10,000 for two attorneys, $8,000 for one attorney; felonies with the possible punishment of life imprisonment, repeat violent offenders, and major drug offenders - $5,000; aggravated felony (first, second and third degree felonies) - $3,000; other felonies - $2,500. Most counties pay lower rates than those suggested by the Public Defender's Office. The Ohio Public Defender reimburses counties for up to 50% of the state or county rate (whichever is lower) paid to court-appointed counsel. Attorneys may petition the court for a waiver of the maximum if their county has an extraordinary fee clause in its fee schedule.

The Ohio Public Defender Commission's 2005 Annual Report lists the hourly rates paid in each county for felonies, misdemeanors, juvenile, appeals, death penalty and other cases. The average hourly rate for non-capital felonies paid among the counties in FY 2005 was $39. The $39 hourly rate does not include routine expenses (such as travel, printing, copying, etc.).

Combination System

In Illinois and Oklahoma, a combination of more than one system is used to determine the rates of compensation for court-appointed attorneys.

Illinois

Illinois statute sets compensation rates and maximums that apply to only Cook County (Chicago). In Cook County, statutory rates of compensation for court-appointed attorneys are $30 for out-of-court work and $40 for in-court work. These rates have not changed since 1975. The statute also sets the maximum amount per case at $1,250; this amount may be waived "if the trial court certifies that such payment is necessary to provide fair compensation."

The other 101 counties follow the "reasonable compensation" method, and local courts set the compensation rates. For example, Lake County contracts with five attorneys at a rate of $2,500 per month to handle conflict cases that cannot be handled by the Public Defender. Compensation in additional cases (beyond those handled by the five contract attorneys) is determined on a case-by-case basis.

- Oklahoma

In Oklahoma, the statewide Oklahoma Indigent Defense System (OIDS) is responsible for all indigent defense representation in 75 of the state's 77 counties. Counsel in these counties who are appointed by the court to felony cases are entitled to be paid statutory rates of compensation – $40 per hour out of court and $60 per hour in court with a $3,500 maximum. However, the majority of cases in these counties are handled by attorneys who work under annual contracts with OIDS or work as staff employees at satellite offices.

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Oklahoma and Tulsa counties both have separate county public defender systems. In Oklahoma County, court-appointed attorneys earn a flat fee of $500; in addition to the flat fee, the public defender may recommend that the judge grant additional payment for extraordinary expenses. For non-capital murder cases in Oklahoma County, court-appointed attorneys earn a flat rate of $1,800 plus $400 per day in trial. On average, court-appointed attorneys in Oklahoma County earn $40 per hour for non-murder felonies and $50 per hour for non-capital murder felonies. Tulsa County, on the other hand, pays an hourly rate with maximums set by local court rule. The hourly rate in Tulsa County is $60 for out-of-court work and $80 for in-court work. Tulsa County has a maximum cap of $3,000 for non-capital murder felonies and $1,000 for all other felonies.

The Federal Model: the Criminal Justice Act

The approach to appointing private counsel to represent indigent defendants charged with federal crimes is very similar to the "statutory hourly rate" approach used in a number of states. At the federal level, the Criminal Justice Act of 1964 (18 U.S.C. §3006A) authorizes payment for representation of indigent defendants accused of committing crimes. Under the Act, each United States District Court is required to develop a plan for furnishing counsel and investigative, expert and other services necessary for adequate representation in trial and appellate proceedings. The Criminal Justice Act (CJA) authorizes three methods for a court to provide counsel to indigent defendants: a Federal Public Defender Organization, a Community Defender Organization, and a panel of private attorneys.

The majority of the federal judicial districts operate a Federal Public Defender Organization. A Federal Public Defender Organization consists of one or more full-time, federal salaried attorneys who are prohibited from having private law practices. The head of a Federal Public Defender Organization, the federal public defender, is appointed by the respective court of appeals to a renewable four-year term and is paid a salary fixed by the court of appeals at a rate not greater than that of the United States Attorney (prosecutor) for that district. A Federal Public Defender Organization operates under a budget approved by the Administrative Office of the United States Courts.

A Community Defender Organization (CDO) is a non-profit legal services organization incorporated under state laws and supervised by a board of directors. CDOs may operate under grants approved by the Judicial Conference or they may opt to be reimbursed for their services on a case-by-case basis under the statutorily prescribed hourly rates which also apply to CJA panel attorneys.

CJA panel attorneys serve every district in the federal court system. In those districts where there is a Federal Public Defender Organization or a Community Defender Organization, panel attorneys are appointed to handle those cases in which the institutional defender has a

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conflict of interest -- approximately 25% of all cases. They handle all of the indigent defendant cases in those districts without a CDO or Federal Public Defender Organization.

Private attorneys are appointed on a case-by-case basis by a district court or court of appeals from a panel of lawyers approved by the court as qualified to handle federal criminal cases. The CJA establishes hourly panel attorney payments of $45 for out-of-court work and $65 for in-court work, but authorizes the Judicial Conference to approve higher rates. In April of 2001, the Judicial Conference raised the payment rates to $55 out of court and $75 in court. As of January 1, 2006, the CJA panel attorney rate is $92 in and out of court in all districts. This increase reflects the partial implementation by Congress of the annual pay adjustments authorized by the CJA. Attorneys may receive up to $7,000 for felony cases. This ceiling may be exceeded in complex or extended cases upon application to the court.

Panel attorneys are also entitled to reimbursement for out-of-pocket expenses, such as travel. In order to receive payment for their services, panel attorneys submit vouchers to the clerk of the appointing court, specifying the number of hours devoted to the case and any accompanying expenses.

Findings

Based on the information contained in the accompanying table and the preceding narrative regarding court-appointed counsel rates, we find that:

- Since our last comprehensive report in 2002, hourly rates have increased in twelve states, Washington, D.C., and on the federal level;
- Of the states with rate increases, the majority had dramatic increases (i.e., over $20 per hour);
- Litigation has contributed to rate increases in two states;
- Per-case maximums have been raised in several states;
- Three states have implemented change that led to greater uniformity in rates statewide; and
- There is great disparity among rates across the country.

Since 2002, a number of changes have occurred in the hourly rates paid to court-appointed counsel. For instance, the federal government has raised the rates of compensation for court-appointed counsel in federal court from $90 to $92 an hour for work done both in and out of court. Hourly rates have been increased on a statewide basis in 12 states (Colorado, Delaware, Hawaii, Iowa, Kansas, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island, and South Dakota) and in the District of Columbia. In Wyoming, where the Rules of Criminal Procedure include a range of hourly rates, the range has increased over the past five years. Connecticut, Hawaii, and New York removed the distinction between in- and out-of-court rates; Connecticut kept its in-court rate for all cases, which was the greater of the two. Of the

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twelve states with rate increases, many increased their compensation rates dramatically over the five-year period. For example, in Hawaii the statutory hourly compensation rates for court-appointed attorneys in felony cases went from $40 out of court and $60 in court to $90 for both in and out of court. New Jersey doubled the hourly rates it paid to court-appointed attorneys from $25 out of court and $30 in court to $50 out of court and $60 in court.

Litigation in New York and Massachusetts challenged the constitutionality of the rates paid to court-appointed attorneys and served as a catalyst for an increase in hourly rates for court-appointed attorneys.[17] In New York, the New York County Lawyers' Association (NYCLA) filed a class action lawsuit in 2000 on behalf of the indigent clients of New York City court-appointed attorneys.[18] As a result of the lawsuit, the hourly rates for court-appointed counsel in New York have increased from $25 in court and $40 out of court to $75 for both in- and out-of-court work. In Massachusetts, two lawsuits that were filed in 2004 led to two rate increases in 2005 and 2006.[19] In that time period, hourly rates increased from $54 to $100 in homicide cases; $39 to $60 in Superior Court cases; and $30 to $50 in all other cases.

Many per-case maximums have changed since the last comprehensive report as well. Maximum rates have been raised in federal cases, the District of Columbia, and statewide in six states (Hawaii, Iowa, Maryland, Nevada, New York, and Rhode Island). In Virginia, the current maximums of $1,235 for felonies punishable by over 20 years imprisonment and $445 for all other felonies can now be waived up to an additional $850 and $155, respectively; previously, the maximums in Virginia were not waivable. Other states developed maximums that distinguish among different types of cases. The maximums paid in Kansas now reflect a differentiation between types of felonies; whereas the maximum for all felonies was $5,000 in 2002, the range depending on severity of the felony is now between $1,200 and $8,000. New Hampshire now has a higher maximum for homicide felonies, and West Virginia removed its maximum for those felonies punishable by life without the possibility of parole. Tennessee developed per-case maximum categories for preliminary hearings and trials in which the trial maximums are higher than the 2002 maximums. The maximums set in Kentucky are now distinguished by whether or not the case goes to trial; however, the per-case maximums have decreased in Kentucky since 2002.

Three states (Georgia, Montana, and North Dakota) have implemented reforms that have resulted in a greater uniformity of the rates paid to court-appointed counsel since 2002. In 2003, the Georgia legislature passed the Georgia Indigent Defense Act, which established the Georgia

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[17] See *New York County Lawyers' Ass'n. v. State of New York*, *supra* note 12, at. 6; *Lavallee v. Justices in the Hampden Superior Court*, *supra* note 9, at. 5; *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, *supra* note 10, at 5.

[18] For a more in depth discussion of *New York County Lawyers' Ass'n v. State of New York*, see narrative on page 5 of this report.

[19] For more discussion of *Lavallee v. Justices in the Hampden Superior Court* and *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, see page 5 of this report.

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Public Defender Standards Council (GPDSC). One of the responsibilities of the council is to establish compensation rates for court-appointed attorneys. As of January 2006, the Montana Public Defender Commission, created in the 2005 legislative session, assumed responsibility for setting rates for court-appointed attorneys, among other responsibilities. In both Georgia and Montana, the rates of compensation for court-appointed attorneys prior to the establishment of their statewide commissions varied across the state. Like Montana, North Dakota's statewide commission was created by the 2005 legislative session. The North Dakota Commission on Legal Counsel for Indigents (CLCI) was also assigned the responsibility for setting court-appointed counsel rates. Prior to the establishment of CLCI, court-appointed attorneys were paid through a contract system in which attorneys contracted with district judges for two years of service. All of these reforms result in a standardization of rates on a statewide basis.

As evident from the table that accompanies this report, there is great disparity among the states regarding the hourly rate paid to court-appointed attorneys in non-capital felony cases. For example, the hourly rate in Oregon and Wisconsin is $40 while the hourly rate in Nevada is $100. The same is true concerning per-case maximums. Many states do not use a maximum. Of those states that do use a per-case maximum, the maximums vary greatly. For example, the per-case maximum for felonies punishable by life imprisonment is a waivable $25,000 in Vermont while the cap for the same type of case in Virginia is $1,235, waivable up to an additional $850.

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Appendix
Selected Case Law Concerning Indigent Defendant Counsel Compensation

State v. Smith, 681 P.2d 1374 (Arizona, 1984)
In re: Rhem v. County of Richardson, 410 N.W.2d 92 (Neb. 1987)
State Ex Rel Stephen v. Smith, 747 P.2d 816 (Kansas S.Ct., 1987)
State v. Ryan, 444 N.W. 2d 656 (Nebraska, 1989)
White v. Board of County Commissioners, 537 So.2d 1376 (Fla. 1989)
State v. Lynch, 796 P.2d 1150 (Oklahoma S.Ct., 1990)
Wilson v. State, 574 So.2d 1338 (Miss. S.Ct., 1990)
May v. State, 672 S. 2d 1307 (Ala. App., 1993), cert. denied, May v. State, 672 S. 2d. 1310 (Ala. 1995)
Zarambia v. Superior Court, 912 P.2d 5 (Ariz. 1996)
New York County Lawyers' Association v. State of New York, 196 Misc. 2d 761 (N.Y. Sup.Ct. 2003)
Layallee v. Justices in the Hampden Superior Court, 442 Mass. 228 (2004)
Arianna S., et al. v. Commonwealth of Massachusetts, et. al., SJ 2004-0282 (2004)
Wright v. Childree, CV-05-1544 (Ala. 2006)

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Alabama[1]	$40	$60	Felony with possible sentence of life without parole: No maximum Class A Felony: $3,500 Class B Felony: $2,500 Class C Felony: $1,500	Yes		Code of Alabama § 15-12-21
Alaska	$50	$60	Felony disposed following a trial - $4,000; Felony disposed of following a plea of guilty or nolo contendere, or by dismissal - $2,000	Yes		2 AAC 60.010 Alaska Administrative Code
Arizona	Varies		Varies	Yes	Varies	AZ Rev. Stat. Ann. § 13-4013(a) grants authority to local court
Arkansas	Non-capital homicide, Classes A and Y felonies: $70-$90; All other felonies: $60-$80.		None			Arkansas Code Ann. § 16-87-211 authorizes the Public Defender Commission to set the rates
California	Varies Los Angeles: ranges from $68-$91, depending on type of felony. Sacramento: ranges from $70-$90, depending on type of felony.				Varies	California Penal Code § 987.2 grants authority to local court
Colorado	Type A (violent): $60 Type B (non-violent): $56		Felony 1 (trial/no trial): $15,000/$7,500 Felony 2 (trial/no trial): $7,500/$3,500 Felonies 3-6 (trial/no trial): $5,000/$2,500	Yes		Rates set by Chief Justice Directive 04-04, per Colo. Rev. Stat. § 21-2-105.

[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.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Connecticut	$65		None		Varies	Appointed counsel rates are set by the State PD in accordance with C.G.S. § 51-291(12).
Delaware	$60[2]		$15,000[3]	Yes	Yes	Del. Code Ann. 29 § 4605 grants authority to Supreme Court.
D.C.	$65		$3,600[4]	Yes		D.C. Code Ann. § 11-2604(a)
Florida	N/A		Non-capital, non-life felonies: $2,500; Life felonies: $3,000	Yes	Yes	Fla. Stat. § 27.5304 sets maximums and states that flat fee amounts "shall be established annually in the General Appropriations Act."
Georgia	$45	$60	None			OCGA § 17-12-8(b)(9) grants authority to the Georgia Public Defender Standards Council.

[2] Rate applies only to court-appointed attorneys in Class A felonies after 25 hours of work. Court-appointed counsel contract for $4,503 per month in Delaware.

[3] This maximum only applies to the hourly rate beyond contract in Class A felonies.

[4] In addition to a per-case cap, no attorney may earn more than $135,200 annually from court appointments in the District of Columbia.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Hawaii	$90		$6,000	Yes		H.R.S. § 802-5(b)
Idaho	Varies Ada County (Boise): $40	$50				Idaho Code § 19-860(b) grants authority to local judge.
Illinois[5]	Varies					725 IL.C.S. 5/113-3.
Indiana	Varies[6]					Ind. Code § 33-40-8-2 grants authority to local judge; Ind. Code § 33-40-5-4 authorizes Commission to set standard rates.
Iowa	Class A felonies: $65 All other felonies: $60		Felony punishable by life w/out parole (Class A): $18,000 Felony punishable by 25 years to life (Class B): $3,600 All other felonies (Classes C and D): $1,200	Yes		Iowa Code § 815.7; State Public Defender sets per case maximum in 493 I.A.C. 12.6 (1)

[5] Illinois' Compiled Statutes sets a statutory rate of $30 out of court and $40 in court with a $1,250 waivable maximum that applies only to Cook County; all other counties follow the "reasonable compensation" model in which the local court sets the compensation rate.

[6] In order to be reimbursed by the Indiana Public Defender Commission, courts must pay assigned counsel a minimum of $60 per hour. *See description on page 14 of narrative.*

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Kansas	$80		Non-trial: Non-drug offenses levels 6-10/ Drug offense under 6 hours in court: $1,200 Non-drug offenses levels 1-5/ Drug offense over 6 hours in court: $1,600 Trial: Non-drug offenses levels 5-10: $2,400 Non-drug offenses level 4/ Drug offenses levels 2-4: $3,200 Non-drug offenses levels 1-3/ Drug offenses level 1: $8,000	Yes		K.S.A. 22-4501 et. seq. grants authority to Kansas Board of Indigents' Defense Services.
Kentucky	Non-violent felonies: $40 Violent felonies: $50		Non-violent felonies (no trial): $600 Non-violent felonies (trial): $900 Violent felonies (no trial): $1,200 Violent felonies (trial): $1,500	Yes	Varies	K.R.S. Ann. § 31.235 grants authority to the Department of Public Advocacy.
Louisiana	Varies					Louisiana Revised Statutes § 15-144 et. seq.
Maine	$50		Murder: As determined by trial judge. Class A: $2,500 Class B/C against a person: $1,875 Class B/C against property: $1,250	Yes		Supreme Judicial Court Admin. Order JB 05-5.
Maryland	$50		$3,000	Yes		Ann. Code of Maryland Art. 27 § 6(d) grants Public Defender authority to promulgate administrative law.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Massachusetts	Homicide cases: $100; Superior Court non-homicide felonies and youthful offender cases: $60; All other felony cases in district court: $50.		None			Mass. General Laws Ann. Ch. 211D § 11.
Michigan	Varies Range is from $40-$89		Varies			Michigan Complied Laws Ann. § 775.16 grants authority to presiding judge.
Minnesota[7]	$50		None			No official authority; PD establishes rates.
Mississippi	Varies Range is from $45-$65		$1,000 plus overhead expenses, which are presumptively set at $25 an hour.	No		Miss. Code Ann. § 99-15-170 *Wilson v. State*, 574 So. 2d 1338 (1990).
Missouri	Rarely Used $50		None		Yes	Missouri Rev. Stat. § 600.017 allows PD Commission to approve fee schedule.
Montana	$60		None			Administrative Rules of Montana Title 2.69.601 authorizes PD Commission to establish rates.
Nebraska	Varies. Range is from $60-$80. Douglas County (Omaha): $65 $80 Lancaster County (Lincoln): $75		Varies	Yes		Nebraska Revised Statutes § 29-3905 grants authority to local judge.

[7] The majority of the public defender conflict of interest cases are handled by contract counsel. Hourly rate applies only to attorneys not on contract.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Nevada	$100		$20,000 facing life without the possibility of parole; $2,500 if facing less than life without parole.	Yes		N.R.S. 7.125
New Hampshire	$60		Homicide felonies: $15,000 All other felonies: $3,000	Yes		N.H. Constitution Part II, Art. 73A grants authority to the State Supreme Court; New Hampshire Supreme Court Rule 47.
New Jersey	$50	$60	None			N.J.S.A. § 2A: 158A-7 grants authority to the New Jersey Public Defender.
New Mexico	N/A		Varies		Yes	New Mexico Statutes Ann. § 31-15-7(11) authorizes Chief Public Defender to formulate a fee schedule.
New York	$75		$4,400	Yes		Article 18-B of the County Law § 722-b.
North Carolina	$65		None			General Statutes of North Carolina § 7A-498.5 grants authority to the Office of Indigent Defense Services.
North Dakota	$65		$2,000	Yes		North Dakota Century Code § 54-61-02(a)(1) grants authority to the Commission on Legal Counsel for Indigents.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Ohio	Varies. Public Defender Standards recommend: $50	$60	Public Defender Commission recommends: Aggravated Murder: $8,000 (1 attorney), $10,000 (2 attorneys); Murder and Felony w/ possibility of life sentence/repeat Violent Offender/Major Drug Offender: $5,000; Felonies (degrees 1-3): $3,000; Felonies (degrees 4&5): $2,500.	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 maximum.
Oklahoma[8]	$40	$60	$3,500	Yes		22 Oklahoma Statutes § 1355.4 grants authority to the Executive Director of the Oklahoma Indigent Defense System.
Oregon[9]	$40		None			O.R.S. § 151.216(f)(C) grants authority to the Public Defense Services Commission.
Pennsylvania	Varies Philadelphia County pays on a per diem basis.		Varies		Varies	Pennsylvania Statutes Ann. Article 16 § 9960.7 grants authority to local judge.
Rhode Island	Murder cases: $100; if potential sentence is greater than 10 years: $90; if potential sentence is less than 10 years: $60.		Murder cases: $15,000; if potential sentence is more than 10 years: $10,000; if potential sentence is less than 10 years: $5,000.	Yes		General Laws of the State of RI § 8-15-2 vests authority w/ Chief Justice. Supreme Court Executive Order No. 95-01.

[8] Rates apply only to conflict and overload cases within the Oklahoma Indigent Defense System. Tulsa County and Oklahoma County have separate public defender systems.

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

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
South Carolina	$40	$60	$3,500	Yes		Code of Law of S.C. Ann. § 17-3-50.
South Dakota	$78		None			S.D.C.L. § 23A-40-8.[10]
Tennessee	$40	$50	Preliminary hearings in general sessions or municipal court: $1,000; Trial court: $1,500	Up to $3,000[11]		Supreme Court Rule 13 § 2
Texas	Varies Bexar County (San Antonio): Ranges from $50-$75 out of court and $75-$125 in court. Dallas County: Ranges from $75-$100 El Paso County: $50 $65		Varies		Varies	Texas Code of Criminal Procedure Art. 26.05 grants authority to local judge.
Utah	Varies				Varies	Utah Code Ann. § 77-32-304.5 grants authority to county legislative body or district court.
Vermont[12]	$50		Felony involving life in prison; $25,000 Major felony: $5,000 Minor felony: $2,000	Yes		13 V.S.A. § 5205(a) grants authority to the Vermont Supreme Court.

[10] The source of authority for this rate is a Supreme Court rule. The South Dakota Supreme Court rules are incorporated into the state code.

[11] The $3,000 maximum may be waived in a homicide case if the Chief Justice finds that extraordinary circumstances exist and the failure to waive the maximum would result in undue hardship.

[12] Hourly rate only applies to attorneys that are not under contract with the state public defender; since 2001, most cases have been appointed by means of contract.

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THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Virginia	$90		$1,235 to defend charges punishable for more than 20 years; $445 to defend other felony charges.	Up to an additional $850 to defend charges punishable for more than 20 years; up to an additional $155 for all other felony charges.[13]		Code of Virginia § 19.2-163 grants authority to the Virginia Supreme Court and sets the per case maximums.
Washington	Varies King County: $50 Pierce County: $50-$62 Spokane County: (serious felonies) $50-$60 Skagit County: $65-$75		Varies Pierce County: Class A Felonies: $1,100 (no trial) $5,500 (trial) Classes B/C Felonies: $700 (no trial) $2,000 (trial)		Varies	RCW § 36.26.090 grants authority to court; RCW § 10.101.030 requires counties to adopt standards including rates of compensation.
West Virginia	$45	$65	No maximum for felonies punishable by life imprisonment without parole. All others: $3,000[14]	Yes		West Virginia Code Ann. § 29-21-13a(d).
Wisconsin	$40 plus $25 per hour for travel	$40	None			Wisconsin Statutes Ann. § 977.08(4m).
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.

[13] Effective July 1, 2007.

[14] West Virginia also sets its maximum amount for expenses at $1,500 per case; this amount is waivable as well.

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THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
U.S. Government	$92		$7,000	Yes		18 U.S.C. § 3006A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Teresa L. Deppner, Clerk
Ted Philyaw, Chief Probation Officer



The Court will be closed on Monday, January 19th in observance of the Martin Luther King Jr. holiday.

On Friday evening, September 19, 2008, the President signed S. 2450, enacting new Federal Rule of Evidence 502 (Pub. L. No. 110-322, 122 Stat. 3537). The new rule limits waivers of attorney-client privilege and work-product protection to facilitate discovery and reduce its cost. The law takes effect immediately. For more information, click here.

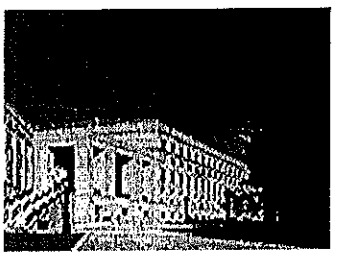
The Judicial Conference Advisory Committees on the Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules have proposed amendments to their respective rules and requested that the proposals be circulated to the bench, bar, and public for comment. The public comment period ends on February 17, 2009. The proposed amendments, rules committee reports explaining the proposed changes, and other information are posted on the Judiciary's Federal Rulemaking web site at http://www.uscourts.gov/rules.

Site Map

Points of Holding Court and Locations

Case Management CM/ECF Electronic Case Files

Beckley



General Information	**CM/ECF Information**	**Published Opinions**	**Rules, Procedures, Plans and Standing Orders**
Clerk's Offices	**Court Calendar**	**Jury & Naturalization Information**	**District Court Forms**
Judges	**District Court Fees**	**Post-Judgment Interest Rates**	**Employment Opportunities**
Attorney Information	**Prisoner and Other Pro Se Litigation**	**Student Education and Community Outreach**	**Other Links**
Court History	**Judicial Misconduct & Disability**	**Seminars Disclosure**	**MDL No. 1968 In Re Digitek**

Welcome to the web site of the United States District Court for the Southern District of West Virginia. This site is designed to provide convenient access to information about the court and its operations. To ensure the integrity and security of this system, United States Government personnel may monitor and/or audit traffic on this web site. Any attempt to tamper with or otherwise misuse this system or information maintained herein may result in criminal prosecution.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Teresa L. Deppner, Clerk
Ted Philyaw, Chief Probation Officer



HOME

NEW - Winning Strategies Training Program for CJA Panel Attorneys

Attorney Registration Form for Electronic Filing

Attorney Registration Form for E-Mail Notification Only

Certificate of Good Standing

Criminal Justice Act Plan

Fee for Admission to Practice

Local Rules for Attorney Admissions and Visiting Attorney Admissions

Notice of Change of Attorney Information

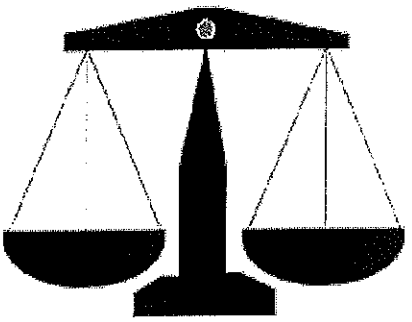
Order Appointing Senior Panel Attorneys to the CJA Plan Panel Advisory Committee and District Representative entered February 4, 2008

Rates for CJA Panel Attorneys

Statement of Visiting Attorney

Training Programs for CJA Panel Attorneys

ATTORNEY INFORMATION



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CJA Rates History - This document lists the mileage, hourly, and maximum rates allowed by the Administrative Office of the U.S. Courts for all years between 1996 and the present.

MILEAGE RATES

June 7, 1996 to September 7, 1998	31 cents per mile
September 8, 1998 to March 31, 1999	32.5 cents per mile
April 1, 1999 to January 13, 2000	31 cents per mile
January 14, 2000 to January 21, 2001	32.5 cents per mile
January 22, 2001 to January 20, 2002	34.5 cents per mile
As of January 21, 2002	36.5 cents per mile
As of January 1, 2003	36 cents per mile
As of January 1, 2004	37.5 cents per mile
As of February 4, 2005	40.5 cents per mile
As of September 1, 2005	48.5 cents per mile
As of January 1, 2006	44.5 cents per mile
As of February 1, 2007	48.5 cents per mile
As of March 19, 2008	50.5 cents per mile

HOURLY RATES

Before January 1, 1996	$60 in Court, $40 out
As of January 1, 1996	$65 in Court, $45 out
As of January 1, 2000	$70 in Court, $50 out
As of April 1, 2001	$75 in Court, $55 out
As of May 1, 2002	$90 in Court, $90 out
As of January 1, 2006	$92 in Court, $92 out
As of May 20, 2007	$94 in Court, $94 out
As of May 20, 2007 - Death/Capital Cases	$166 in Court, $166 out
As of January 1, 2008	$100 in Court, $100 out
As of Jan 1, 2008 - Death/Capital Cases	$170 in Court, $170 out

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MAXIMUM AMOUNTS

Before November 13, 2000	$3,500 Felony Case $750.00 All Others
As of November 13, 2000	$5,200 Felony Case $1,200 All Others $1,500 Misdemeanors $3,700 Appeals
As of December 8, 2004	$7,000 Felony Case $1,500 All Others $2,000 Misdemeanors $5,000 Appeals

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2004 WV STATE BAR MEMBERSHIP SURVEY RESULTS

1. Please check the following category which most appropriately describes your employment status:

	Response Percent	Response Total
Full time/does not require legal training	11.1%	115
Unemployed	0.4%	4
Retired	0.3%	3
Semi-retired or part-time	5.3%	55
Full-time attorney	**82%**	**853**
Dk/Na	1%	10
Total Respondents		**1040**
(skipped this question)		**5**

2. How long have you been a licensed attorney?

	Response Percent	Response Total
Under 5 years	21.5%	223
6 to 10 years	19.3%	201
11 to 15 years	15.6%	162
16 to 20 years	10.1%	105
21 to 30 years	**23.2%**	**241**
31 to 40 years	7.7%	80
40+ years	2.6%	27
Dk/Na	0%	0
Total Respondents		**1039**
(skipped this question)		**5**

3. What is your age?

	Response Percent	Response Total
Under 30 years	13.3%	138
31 to 35	**16.9%**	**176**
36 to 40	15.2%	158
41 to 45	11.2%	117
46 to 50	13.8%	143

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51 to 55	13.6%	141
56 to 60	9.8%	102
61 to 65	3%	31
Over 65	3.3%	34
Dk/Na	0%	0
Total Respondents		**1040**
(skipped this question)		**5**

4. What is your gender?

	Response Percent	Response Total
Female	35.9%	373
Male	**63.7%**	**662**
No answer	0.4%	4
Total Respondents		**1039**
(skipped this question)		**6**

5. What is your race?

	Response Percent	Response Total
Caucasian	**97.2%**	**1006**
African-American	1.3%	13
Asian-American	0.2%	2
Hispanic-American	0.5%	5
Other	0.5%	5
Dk/Na	0.4%	4
Total Respondents		**1035**
(skipped this question)		**10**

6. What was your 2003 taxable gross income from your law practice:

	Response Percent	Response Total
Under $20,000	3.2%	33
$20,001 to $40,000	7.6%	78
$40,001 to $60,000	18.3%	187
$60,001 to $80,000	**20.5%**	**209**

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$80,001 to $100,000	8.7%	89
$100,001 to $150,000	12.7%	130
$150,001 to $250,000	11.6%	118
Over $250,000	8.5%	87
Dk/Na	8.8%	90
	Total Respondents	**1021**
	(skipped this question)	**23**

7. Of the following, which is your PRIMARY legal occupation?

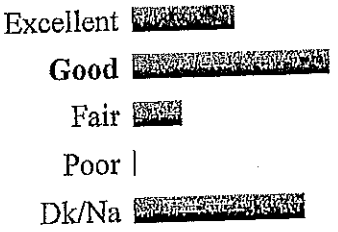
	Response Percent	Response Total
Attorney in Private Practice	**70.5%**	**733**
Judge	0.7%	7
Government (except Judge)	0.9%	9
Government - Federal	2.9%	30
Government - State	10.7%	111
Government - County/Municipal	1.9%	20
Financial, Insurance, Utility or Other Business	2.2%	23
Professor of Law	0.5%	5
Legal Services Attorney	1.9%	20
Public Defender	2.1%	22
Dk/Na	1%	10
Other (please specify)	4.7%	49
	Total Respondents	**1039**
	(skipped this question)	**5**

8. Where did you receive your legal training?

	Response Percent	Response Total
WVU College of Law	**65.9%**	**685**
Other	34.1%	354
Dk/Na	0%	0
	Total Respondents	**1039**
	(skipped this question)	**6**

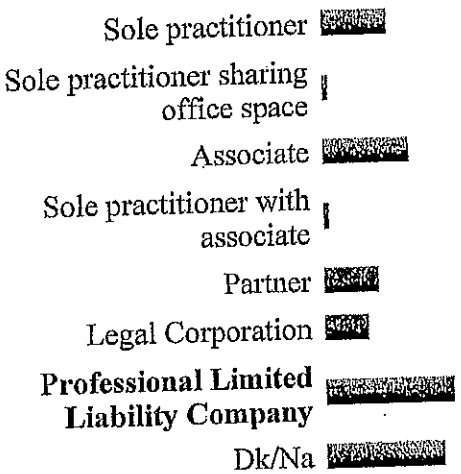
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9. Please characterize the quality of your education experience at the WVU College of Law.



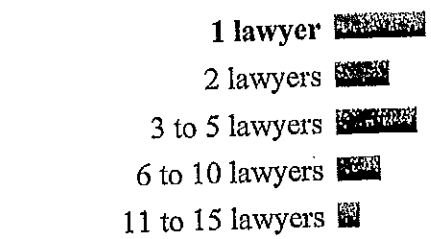
	Response Percent	Response Total
Excellent	19.4%	199
Good	**38%**	**389**
Fair	9.1%	93
Poor	0.9%	9
Dk/Na	32.6%	334
Total Respondents		**1024**
(skipped this question)		**21**

10. What is the form of business under which you practice law?



	Response Percent	Response Total
Sole practitioner	12.7%	122
Sole practitioner sharing office space	1.8%	17
Associate	16.8%	161
Sole practitioner with associate	2%	19
Partner	10.9%	104
Legal Corporation	8.8%	84
Professional Limited Liability Company	**24.1%**	**231**
Dk/Na	22.9%	219
Total Respondents		**957**
(skipped this question)		**88**

11. What is the size of your law office, including yourself?



	Response Percent	Response Total
1 lawyer	**17.1%**	**163**
2 lawyers	10.4%	99
3 to 5 lawyers	15.5%	148
6 to 10 lawyers	8.8%	84
11 to 15 lawyers	4.5%	43

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16 to 25 lawyers	9.7%	93
26 to 50 lawyers	9.2%	88
Over 50 lawyers	15.2%	145
Dk/Na	9.7%	93
Total Respondents		**956**
(skipped this question)		89

12. Do you limit your practice to a specialty?

	Response Percent	Response Total
Yes	45.1%	429
No	**46%**	**437**
Dk/Na	8.9%	85
Total Respondents		**951**
(skipped this question)		**94**

13. Check the single field of law listed below from your individual time and effort produced the greatest dollar amount of fees last year.

	Response Percent	Response Total
Administrative Agencies	3.2%	31
Bankruptcy	1.8%	17
Commercial Law	3.6%	34
Criminal Law	7.2%	69
Estate and Probate	1.8%	17
General Practice	4.2%	40
Personal Injury, Defense	**16.5%**	**158**
Public Utilities	1.4%	13
Taxation	0.7%	7
Environmental	1.3%	12
Health	1.9%	18
Antitrust	0.1%	1
Appellate Work	0.3%	3
Coal, Oil and Gas	1.6%	15
Corporations	1.1%	11
Domestic Relations	2.8%	27

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Financial Institutions	0.7%	7
Employment Law	4.2%	40
Personal Injury, Plaintiff	12.4%	119
Real Estate	4.8%	46
Trial Work Not Personal Injury	3.4%	33
Education	0.6%	6
Dk/Na	14.8%	142
Other (please specify)	9.5%	91
	Total Respondents	**957**
	(skipped this question)	**88**

14. What percentage of fee-producing time did you devote to the field indicated in the previous question?

	Response Percent	Response Total
Less than 20%	1.6%	15
20% to 39%	6%	57
40% to 59%	13.4%	128
60% to 79%	20.4%	194
80% to 100%	**38.5%**	**367**
Dk/Na	20.1%	192
	Total Respondents	**953**
	(skipped this question)	**92**

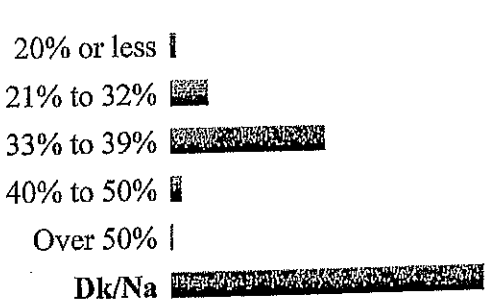
15. If you charge on a hourly basis, what is your usual hourly rate?

	Response Percent	Response Total
Less than $45	0%	0
$46 to $65	1.4%	13
$66 to $90	1%	9
$91 to $110	7.6%	72
$111 to $135	18%	170
$136 to $150	14.6%	138
$151 to $200	17%	160
Over $200	9.8%	92

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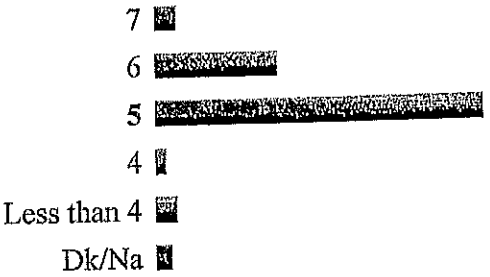
Dk/Na	**30.6%**	**288**
	Total Respondents	**942**
	(skipped this question)	**102**

16. If you charge on a contingency fee basis, what percentage do you charge most often?



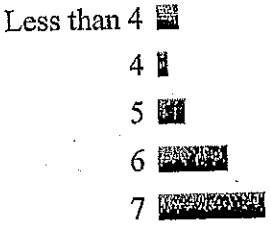
	Response Percent	Response Total
20% or less	1.1%	10
21% to 32%	7.5%	68
33% to 39%	29.7%	270
40% to 50%	2.6%	24
Over 50%	0.1%	1
Dk/Na	**59%**	**537**
	Total Respondents	**910**
	(skipped this question)	**133**

17. How many days per week do you devote to the practice of law?



	Response Percent	Response Total
7	4.4%	42
6	23.4%	223
5	**62.2%**	**593**
4	2.5%	24
Less than 4	4.5%	43
Dk/Na	3%	29
	Total Respondents	**954**
	(skipped this question)	**91**

18. On average, how many chargable hours whether directly billed or not do you produce a day?



	Response Percent	Response Total
Less than 4	4.3%	41
4	2.8%	27
5	5.8%	55
6	13.1%	125
7	20.5%	195

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SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA
25305

JOSEPH P. ALBRIGHT
JUSTICE

February 11, 2008

By Hand

Honorable Richard Thompson, Speaker
West Virginia House of Delegates
Room 234M, Building 1
State Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Speaker:

Attached to this letter is a copy of a letter received from Judge Wilson of the First Judicial Circuit. It outlines a problem with regard to child abuse and neglect cases that is likewise applicable to panel attorneys representing parties in Public Defender Corporation conflict cases and panel attorneys representing parties in non-Public Defender Corporation counties.

The problem described by Judge Wilson is further exacerbated by the fact that the staff of the West Virginia Public Defender Services is more interested in forcing non-public defender counties to adopt the public defender system than in fairly administering the mixed panel-attorney/Public Defender Corporation system. Specifically, their adverse involvement is demonstrated in two very concrete ways. First, there is rarely any effort made to obtain an increase in the hourly rate for panel attorneys. Second, the Public Defender Corporation offices are funded fully, leaving the funds for panel attorneys woefully inadequate and exhausted, as Judge Wilson points out, early each spring, several months before a new fiscal year commences.

The problems Judge Wilson describes can only be resolved by two actions by the Legislature: (a) a reasonable increase in the hourly rate for panel attorneys; and (b) a substantial increase in the appropriation for public defender services with directions that the bills of panel attorneys be regularly and timely paid.

In my view, the two steps I just outlined should be divorced from and addressed entirely separately from the bureaucracy-building effort to force each and every county to have a public defender office. That is a separate issue. The failure to adequately and timely pay panel attorneys has, among other things, led to the disgraceful situation Judge Wilson outlines, where some lawyers

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have felt it necessary to sell their accounts receivable to a fronting corporation which then charges a steep interest rate to provide timely compensation at even a more reduced rate to these lawyers.

One problem on the other side of the ledger that does deserve attention is the degree to which panel attorneys' bills are in fact reviewed and critiqued for accuracy, overcharges, and overreaching. Under current law, the circuit judges have authority to address these problems, but the State Public Defender Service does not. Without any question, it would be proper to also permit the central office to review these bills and return them to the circuit judge for further review where questions appear regarding the accuracy or suitability of the bills. However, in my honest opinion, this is a relatively small part of the problem, probably exacerbated by the low rate of pay and the complete untimeliness of that pay.

Mr. Speaker, the problems Judge Wilson outlines, about which I have just commented, deserve correction now. I would be most happy to meet with your or any of your colleagues or staff to further discuss these problems if that will promote their resolution.

Sincerely,

Joseph P. Albright

JPA/psm

cc: Chief Justice Elliott E. Maynard
Justice Robin Jean Davis
Justice Larry V. Starcher
Justice Brent D. Benjamin
Judge Ronald E. Wilson
Steve Canterbury, Administrative Director

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FIRST JUDICIAL CIRCUIT
OHIO, BROOKE AND HANCOCK COUNTIES

RONALD E. WILSON, JUDGE
HANCOCK COUNTY COURTHOUSE
NEW CUMBERLAND, WEST VIRGINIA
26047

TELEPHONE
304 / 564-3311 Ext. 231
FAX: 304 / 564-5602

February 8, 2008

The Hon. Elliott E. Maynard, Chief Justice
The Hon. Robin Jean Davis
The Hon. Brent D. Benjamin
The Hon. Larry V. Starcher
The Hon. Joseph P. Albright
Supreme Court of Appeals
State Capitol Building
1900 Kanawha Boulevard
Charleston, West Virginia 25305

Re: Attorneys in Child Abuse and Neglect Cases

Dear Justices:

I know that the Court is aware of the exploding number of child abuse and neglect cases in our state courts. In Hancock County alone the number of child abuse and neglect filings jumped from 16 in 2006 to 71 in 2007. Fortunately, because of the positive changes brought about by the Supreme Court of Appeals, Circuit Judges now have the rules and the training to protect children in these proceedings.

I want you to be aware of a growing problem that threatens the procedure we now have in West Virginia to provide fair, timely and efficient disposition of cases involving children. The problem is that the Public Defender Services is so under funded that it cannot timely pay court appointed abuse and neglect attorneys. As a result of the failure of the legislature adequately to

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fund the Public Defender Services to compensate attorneys for their work and expenses within a reasonable time period, an increasing number of attorneys are refusing to take abuse and neglect cases or are threatening to stop taking cases if they don't get any relief. This is causing a critical shortage of qualified and dedicated attorneys in these critically important cases.

For example, one of the most dedicated and qualified attorneys in the First Judicial Circuit, Cathryn A. Nogay, an attorney who has served as a guardian ad litem in child abuse and neglect cases for over a decade, recently informed the judges that she will no longer accept child abuse and neglect cases. Ms. Nogay has reluctantly reached this decision because of her frustration with our Public Defender program in West Virginia. Public Defender Services is more than six months behind in payment to attorneys and owes Ms. Nogay more than $39,500.00 for services billed in 2007. For more than ten years she has attempted to receive some help for this recurring problem. Instead of seeing any improvement, the problem has gotten progressively worse.

Some seasoned abuse and neglect attorneys are using the Daniels Corporation, (a third party company that "fronts" billed invoices to attorneys, for a steep interest rate) to obtain their money more promptly. Not only is it shocking that an attorney would have to do that to survive, it may get worse because the Daniels Corporation is now threatening to stop providing funds to West Virginia attorneys because of the money that it is owed by Public Defender Services. Another outstanding abuse and neglect attorney, a University of Virginia law school graduate, uses the Daniels Corporation and reports that he nets less than $5.00 per hour on court appointed cases. He also has said that he is not going to take any more cases if the situation doesn't improve by this Summer.

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You are also aware that Public Defender Services funding runs out of money in the Spring of each year and no payments are made until July 1 of the next fiscal year. We must do something about this problem before the system totally breaks down and children are harmed, and then we will all have to take emergency action to protect children. Abuse and neglect proceedings, more than any other area of the law, must have attorneys with a social conscience and a deep concern for children. The work of abuse and neglect attorneys is often devalued by trial attorneys who do not feel that they should not be involved in social work. Thus, the number of quality attorneys willing to accept abuse and neglect cases is much more limited than in criminal defense cases. In addition, abuse and neglect attorneys are required to receive a minimum of three hours continuing legal education before they are eligible to participate in these cases.

You are also aware that an overwhelming number of neglect cases require court appointed attorneys. In the simplest case of a father, mother, and a child, three attorneys have to be appointed. In most cases four or five is a more likely number. The system has worked because a small number of dedicated and conscientious attorneys have chosen to devote a substantial portion of their legal work to abuse and neglect cases. It is a very frustrating job. By its very nature, much of their work involves more social work than legal work. Children are being protected in this system and its success is based, in large part, upon the work of these attorneys. Their income is very modest and, because they are willing to devote a substantial portion of their time to these types of cases, they must be paid in a timely manner if they are to continue to maintain their offices.

In Jewell v. Maynard, 181 W.Va. 571, 383 S.E.2d 536 (1989) the Court found "that delay in payment in court-appointed cases has had as detrimental an effect upon the willingness of

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lawyers to accept appointments as the low rate of pay itself." The Court also said that "the legislature must create some mechanism for periodic compensation of lawyers as services are performed." 181 W.Va. at 582.

We desperately need the Court's persuasive powers with the legislature, and as well the persuasive powers of our Administrative Director, to get involved with the problem now. The Public Defender Services program needs to be adequately funded and staffed so that we can eliminate the problem of the inordinate delay in the payment of Public Defender Vouchers. The legislature must understand that children will be harmed if we do not have enough dedicated lawyers representing children and parents in abuse and neglect cases. I am prepared to do whatever is necessary to help you do whatever is necessary to address this critical problem. I sincerely ask the Court's help in this effort.

Thank you for your consideration of this request.

With thanks and every good wish, I remain

Sincerely yours,

Ronald E. Wilson, Judge

CC: The Hon. Alan D. Moats,
Judge, 19th Judicial Circuit
Steven D. Canterbury,
Administrative Director
WV Supreme Court of Appeals
John A. "Jack" Rogers, Esq.
Executive Director
West Virginia Public Defender Services

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January 20, 2008

Honorable Ronald E. Wilson
Judge, First Judicial Circuit
Hancock County Courthouse
New Cumberland, WV 26047

Dear Judge Wilson:

After much consideration I have decided I will no longer accept court appointed cases, particularly as Guardian ad litem in child abuse and neglect cases. A number of factors affected my decision, but the biggest factor is the never ending funding problems with the Public Defender Services. Abuse and neglect work is hard enough, both legally and emotionally, and those who choose to do it should have some expectation of fair and timely compensation. The PDS is now more than 6 months behind in payment, and owes me more than $39,500.00 for services billed in 2007. I have been writing letters, and lobbying my legislators and the Governor, for more than 10 years, asking that they address this problem, but it has only gotten progressively worse.

It has been a pleasure working with you, and I will, of course see all my current cases to completion. Thank you for your care and concern for the children, and families, in our cases - it has certainly made a positive difference in their lives. I have loved this work and hope to find another way to serve the children of Brooke and Hancock counties.

Thank you for your attention to this matter.

Sincerely yours,

Cathryn A. Nogay

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APPENDIX C

Statement of Opposition to Indigent Defense Commission Report

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STATEMENT OF OPPOSITION TO INDIGENT DEFENSE COMMISSION REPORT

I am writing to express my disagreement with certain portions of the recommendations of this commission. Although the enabling legislation for our commission was enacted in the spring of 2008, our members were not appointed until the fall and our first meeting was not held until early November of 2008. At that meeting, we received a large booklet which contained voluminous information. It included financial data for fiscal years 2006-2007, 2007-2008, and two reports from prior evaluations of the indigent defense system in W.Va. (legislative auditor, Jan,1999 & prior Indigent Defense Task Force report of 2000 which includes the Spandenberg report). Significantly, there has been no in-depth examination of the Public Defenders system since that time.

Besides, mandating the creation of our commission, the enabling legislation also significantly reduced the time frame within which appointed counsel vouchers could be submitted in cases. I believe that this change will significantly skew the data from fiscal year 2007-2008 and also 2008-2009. This is because under the previous system vouchers could be submitted for up to four years after completion of services. Under the present system vouchers must be submitted within 90 days on current cases and by December 31, 2008 on all previously closed cases.

Also, an evaluation of data reveals that appointed counsel cases average 1/6 of time as billed in court and 5/6 for out of court time. In my Circuit, counsel are frequently appointed who have offices in adjoining counties. Their appointment necessarily adds significant travel time to their expenses. This could be significantly reduced by tightening the law concerning appointment of local and regional counsel as is now provided. Local counsel could be more clearly defined as having an office in the county or circuit in which the crime was committed and regional counsel defined to be outside this boundary. This would significantly reduce billing for travel time.

Also, Judges should be given mare authority to remove lawyers or challenge billing for abuse of the process. For instance, we have data on the average cost to defend the various crimes set forth by law. Legislation or regulations could be enacted to provide that lawyers who consistently exceed this average by a set percentage be barred from appointments. Likewise, a limit could be placed on the total compensation allowed to any lawyer under the court appointed system.

Also, I am not totally convinced that public defenders are indeed less costly. For instance, compare 2000 per capita costs of Harrison County with Monongalia County or the 14th Judicial Circuit with the 5th Judicial Circuit. The public defender per capita costs for similar type populations are higher. Also, little or no consideration has been made of the continued costs to the system of public defender employees upon their retirement. Obviously, these costs have continued to escalate and remain a charge to the state. Finally, it is undisputed that costs increase, not decrease, following the adoption of a public defender system in a circuit. Also, even under a

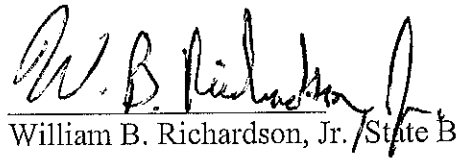
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public defender system, there will still continue to be a need for court appointed counsel such as in conflict of interest cases in which multiple defendants are involved.

Finally, the goal should not be to establish the cheapest system but the concern should be focused on the quality of representation. In that regard, I strongly believe that our trial courts should again be surveyed to determine their opinion regarding the quality of the two indigent defense mechanisms. The last survey found an insignificant difference between the two systems.

Finally, I commend the members of our commission for their diligent efforts concerning our mandate. However, I believe that the majority has, to a certain extent, been rushed to judgment by the statutorily fixed date of January 15, 2009. I believe that the state would be better served if a more thorough analysis of the data would be undertaken after this fiscal year to allow a more effective evaluation to be made after the recent legislative changes regarding processing of appointed counsel vouchers has taken full effect. I believe that this is needed before we make recommendations which could have a serious impact on the provision of indigent defense services.

Respectfully submitted,



William B. Richardson, Jr. /State Bar #4557