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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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WEST VIRGINIA LEGISLATURE

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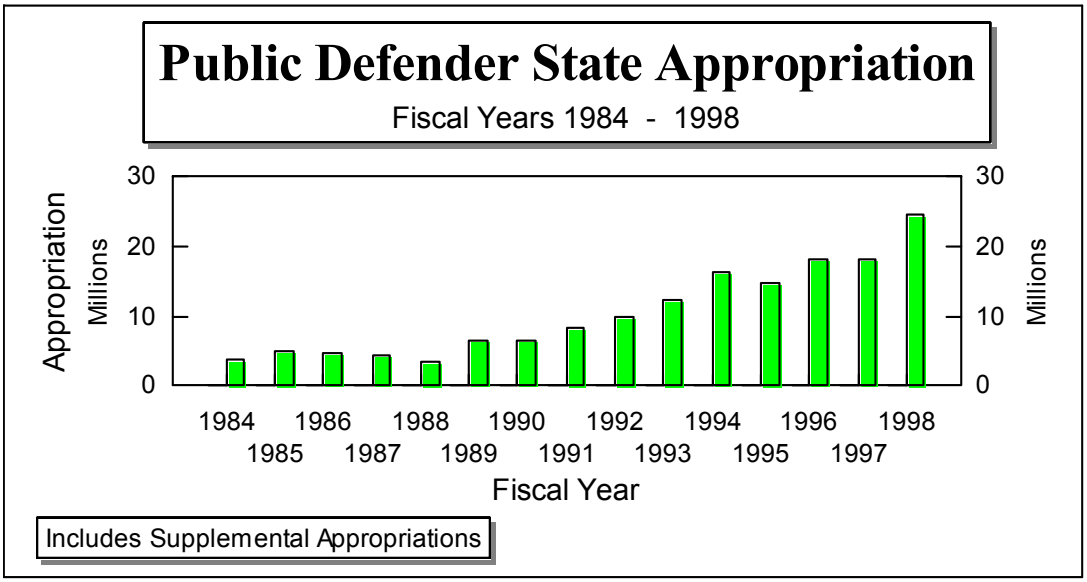
Issue Area 1: Rising Costs in Public Defender Services Warrants Maximizing the Use of Public Defenders Instead of Private Attorneys

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

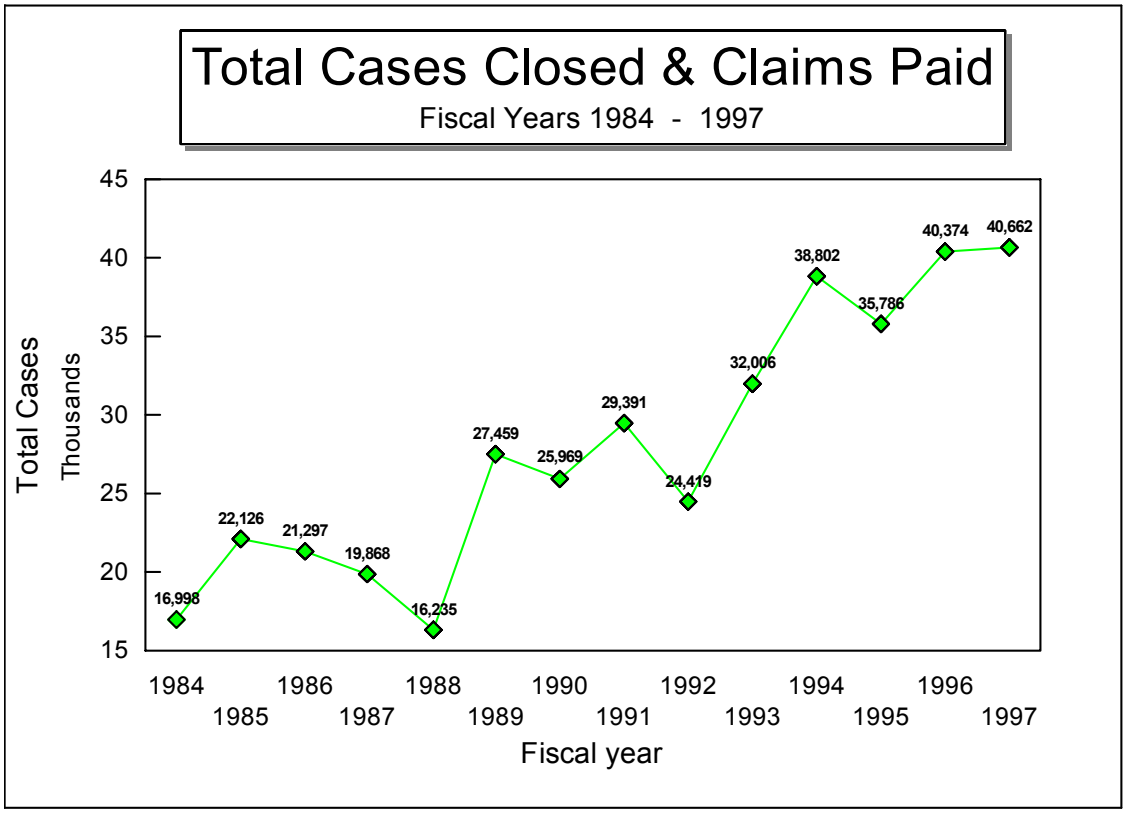


Table 3 compares the average annual growth rates for the periods of 1984-97 and 1993-97. From 1984 to 1997 cases grew on average by 9.2% a year, compared to 15.7% in appropriations for the same period. The higher growth rate in appropriations is largely explained by the change to higher private attorney 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: ***<u>Growth in Misdemeanor Cases is a Factor</u>***

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

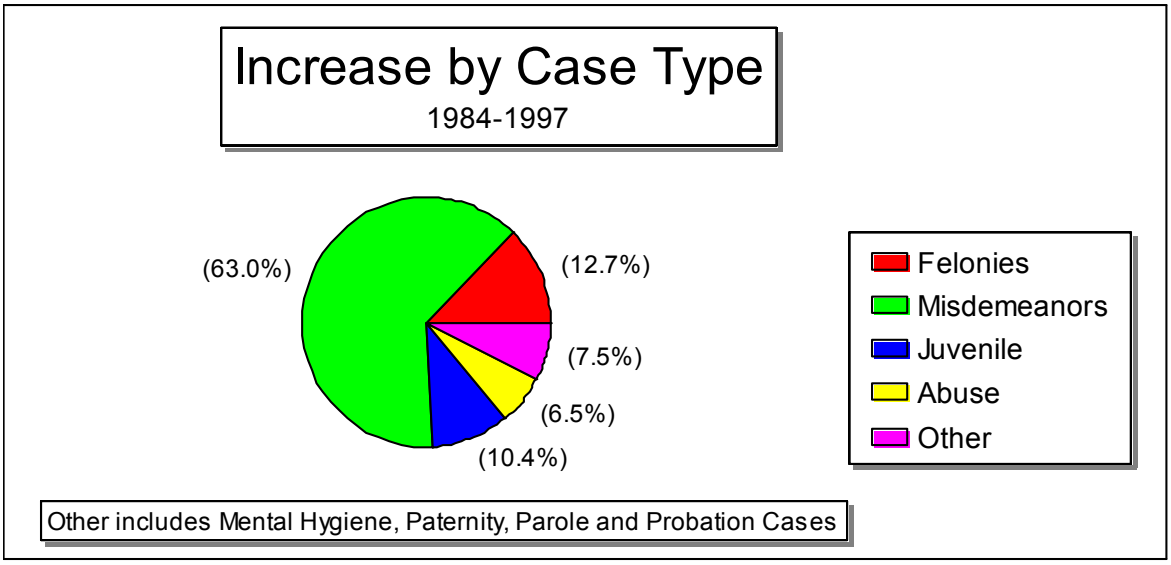


Table 7 shows the number of misdemeanor and felony cases for private attorneys and public defenders from 1984 to 1997. Misdemeanors have increased nearly four-fold. In 1984 misdemeanor cases were 30% of the total caseload. By 1997, they were 50% of total caseload. Felony cases have risen from 5,000 to 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.

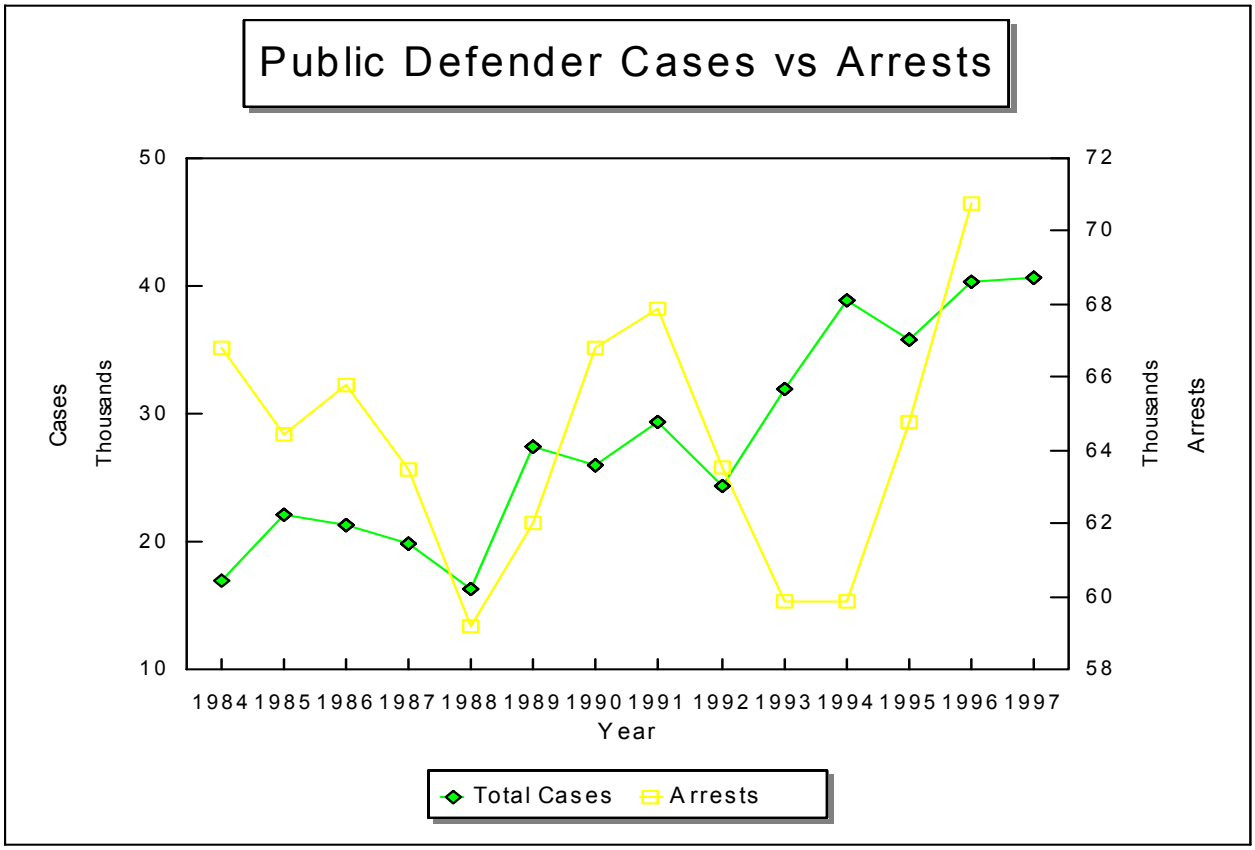
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[6] *The West Virginia State Police provided the Legislative Auditor with a comprehensive list of felonies and misdemeanors.*

[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

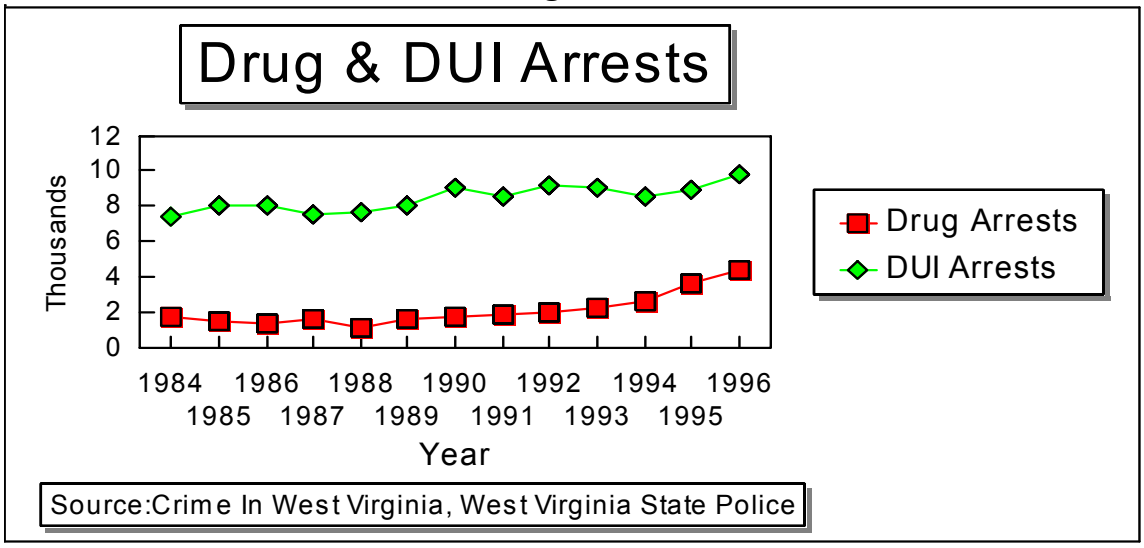


Drug Arrests & DUI's are Rising

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

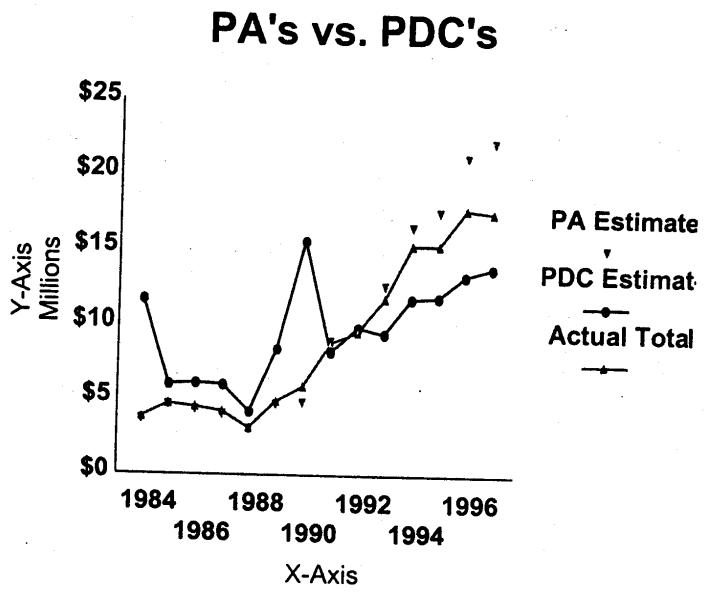
As a result of this expansion, **the Legislature has actually slowed the growth of public defender expenditures despite the relatively high growth rate that has occurred.** Although this seems contradictory because of rising costs, the fact is that if appointed counsels had been used exclusively, the 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 Defenders Corporations

Numbers indicate judicial circuit

1st Circuit — Brooke, Hancock, Ohio
2nd Circuit — Marshall, Tyler, Wetzel
5th Circuit — Calhoun, Jackson, Roane
6th Circuit — Cabell
7th Circuit — Logan
8th Circuit — McDowell
10th Circuit — Raleigh
12th Circuit — Fayette
13th Circuit — Kanawha
15th Circuit — Harrison
23rd Circuit — Berkeley, Jefferson, Morgan
24th Circuit — Wayne
28th Circuit — Nicholas
30th Circuit — Mingo

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
112	Class A Licensee Permitting Minor (<18) to Loiter on Premises	11-16-18
113	Beer Distributor Selling Outside of Assigned Territory	11-16-18
114	Retail Licensee Selling, Giving, or Permitting Sale of Liquor to Minor (<21)	60-3A-25
115	Retail Licensee Selling, Giving, or Permitting Sale of Liquor to an Intoxicated Person	60-3A-25
116	Retail Licensee Selling on Sunday, on Other than Permitted Hours	60-3A-25
117	Retail Licensee Selling, Giving, or Permitting Sale of Liquor to Minor (<18)	60-3A-25
118	Retail Licensee Purchasing or Obtaining Unauthorized Liquor	60-3A-25
119	Retail Licensee Permitting the Breaking of Seal on Liquor	60-3A-25
120	Retail Licensee Altering or Misrepresent Quality, Quantity or Brand Name w/ Intent to Defraud	60-3A-25
121	Minor (<21) Purchasing, Selling, Serving, or Possessing Liquor	60-3A-24

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122	Minor (<21) Misrepresenting Age to Purchase Liquor	60-3A-24
123	Buying, Giving, or Furnishing Liquor to Minor (<21)	60-3A-24
124	Consumption of Liquor on Retail Outlet Premises	60-3A-24
125	Retail Licensee Selling from Other than Original Package	60-3A-25
126	Selling or Delivering Wine from Unauthorized Source	60-8-20
127	Selling Wine in Other than Original Package	60-8-20
128	Selling or Furnishing Wine to Minor (<21), Mentally Incompetent, or Physically Incapacitated	60-8-20
129	Allowing Minor (<18) to Sell or Furnish Wine	60-8-20
130	Wine Distributor Selling, Deliver Purchased, or Acquire from Other than Primary Source	60-8-20
131	Minor (<21) Purchasing, Consuming, Selling, Possessing, or Serving Wine/Liquor	60-8-20A
132	Disorderly Conduct	61-6-1B
133	Trespassing on Student Residence, Facility of an Institution of Higher Learning	61-3B-4
134	Failure to Pay Tax, File Return or Report Income	11-9-4
135	Failure to Pay Tax, File Return or Report Income	11-9-4
136	Failure to Account for Other Income (>$1000) in Tax	11-9-5
137	Fail to Collect or Withhold Tax	11-9-6
138	Failure to Keep Records or Supply Information for Taxes	11-9-8
139	Engage in Business w/o Posting Business Franchise Registration Certificate	11-9-11
140	Aid, Assist, or Abet Violation of Taxation Law	11-9-9
141	Engage in Business w/o Paying Business Franchise Registration Tax	11-9-11
142	Engage in Business w/ Expired Business Franchise Registration Certificate	11-9-11
143	Engage in Business w/ Revoked Business Franchise Registration Certificate	11-9-11
144	False Statement Regarding Taxes to Purchasers, Lessees, or Employees	11-9-7
145	Transportation of Beer in Excess of 6.75 Gallons on Which Taxes Have not Been Paid	11-16-19
146	Interfere w/ Lawful Hunter, Trapper or Fisherman	20-2-2A
147	Exceeding Creel Limit on Trout	20-2-5B
148	1st Take, Sale, etc. on Bald Eagle, Nest or Eggs	20-2-5C
149	Not Wearing Proper Attire (Blaze Orange) when Deer Hunting	20-2-60
150	Forcibly Interfering with the Reporting of Cruelty to Animals	7-10-4A
151	Prohibited Use of Impounded Dogs and Cats	19-20-23

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152	Selling Lottery Tickets w/o Authority	29-22-11
153	Unlicenced Lottery Retailer	29-22-11
154	Selling Lottery Tickets at Greater Price	29-22-11
155	Selling Lottery Tickets to Minor	29-22-11
156	Commission Officer/ Employee Purchasing Tickets or Receiving Prize	29-22-11
157	Prohibited Acts of Private Investigation or Security Service	30-18-8
158	Non - Possession of Required License for Drug Paraphernalia	47-19-1
159	Non - Possession of Required Records for Drug Paraphernalia Sale	47-19-4
160	No Label on Video Movies Designated for Sale or Rent	61-8E-3

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APPENDIX C:
Agency Response

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WEST VIRGINIA LEGISLATURE

Performance Evaluation and Research Division

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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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STATE OF WEST VIRGINIA

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JACK ROGERS
EXECUTIVE DIRECTOR

5 January 1999

Dr. Antonio Jones
Performance Evaluation and Review
Room W-314
State Capitol

Re: Performance review

Dear Dr. Jones:

I am writing to comment on the Preliminary Performance Review of Public Defender Services. First, let me compliment you and your staff on a very thorough and thoughtful report on a complex system. I note that the factors cited as reasons for growth in case load are substantially the same as factors I have cited for the past five-seven years. Taking the issues and findings in order, the following comments are relevant:

Issue Area 1: The State Should Maximize the Use of Public Defender Corporations to Cut Costs of Defending Indigent Persons

I agree completely. As I have said for seven years, the only effective way to cut costs is to increase the use of Public Defenders. Virtually all other measures are meaningless by comparison.

Within the limits of my statutory powers, I have maximized the use of Public Defenders. Further expansion will require some sort of legislative action to require Public Defenders in areas currently without them.

One caution is in order regarding expansion of the system to all Circuits. Because some cases involve so many people (the accused, victims, witnesses, all of their families, etc.), some conflicts must inevitably be handled by private counsel. Further, in some Circuits, the case load is insufficient to support a full-time Public Defender office. Because private attorneys would be used on a part-time basis, the savings will likely be less than for full-time offices if full benefits are given in addition to salary. Some initial start-up costs would be avoided but difficulty in recruiting will be a problem absent severe limitations on other private attorneys (i.e., the incentive will be less to take a part-time Public Defender job if for the same number of cases one could make more money as an appointed counsel).

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Even assuming the maximum expansion possible, the likelihood is that only 80-85% of the cases can be handled by full-time and part-time Public Defenders. Further, the lead time necessary in establishing a local Board (recruitment is always difficult), scheduling meetings, hiring staff, etc., means savings will be very difficult to realize in less than a two year cycle, given that private attorney work must be paid simultaneously for up to six months after a Public Defender office begins operations.

If legislative action is taken during the 1999 Regular Session savings will not be meaningful until approximately July, 2001. By that time the rates by which private counsel are compensated will be eleven years old and comparisons with private counsel may not be as favorable as they currently are.

Issue Area 2: Public Defender Services Does Not Adequately Monitor Improvement Needs, Compliance and Quality of Legal Services as Required by Statute

Generally, I agree with the findings. However, with current staff and current funding additional monitoring of any kind is absolutely impossible. It is important to note that Public Defender Services currently operates at less than half the average cost of comparable agencies in states of similar size (see chart, attached). Further, additional monitoring will not significantly affect payments to private attorneys nor improve the efficiency of Public Defenders.

(1) Monitoring of costs. With respect to private attorneys, the Circuit Courts have virtually complete authority as to what level of billing is reasonable. Although not all judges are diligent in reviewing attorneys' vouchers, many spend considerable time questioning submissions. I believe the report is inaccurate when it states that "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." All "costs" (the report refers to expenses and attorneys' fees generically as costs) are in fact substantially justified at all levels.

Although Public Defender costs are significantly lower, even private attorney costs are well below market rates and certainly do not appear excessive on average. Little can be gained by further "controls," especially since the ultimate decision as to how much work and what sort of expense is reasonable in a given case must, of necessity, be left to the discretion of the Circuit Court. Averages are often meaningless when applied to the facts of a specific case. Sending notices to attorneys and judges of "excessive" billings will not yield savings. For the last four years, judges have received the PDS annual report showing billings by case type within their counties and Circuits. The FY 96/97 report also included, in alphabetical order, amounts paid to all private attorneys and other providers (amounts paid include both attorneys' fees and expense reimbursement). In response to the report's recommendations, case type averages will be included with the FY 97/98 report.

Within the limited parameters of scrutiny possible (math errors, ineligible proceedings, etc.), the diligence of Public Defender Services staff results in refusal of over $250,000 in bills annually. This savings is accomplished even after scrutiny by the Circuit Court. If all state bills were so closely monitored surely significant savings would result. The final solution to whatever unnecessary billing may still obtain is to increase the number of Public Defenders, thereby reducing private attorney billing. The report very rightly makes this recommendation.

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(2) Assignment of cases. Public Defender case overloads, leading to unnecessary private counsel work, were severely exacerbated this fiscal year by the line item restrictions placed on each Public Defender office. With those restrictions in place, no additional Public Defender work was possible, even in the face of rising case loads. The report states that "the executive director should know when caseload problems in a corporation inhibit cases from being assigned to it." The Executive Director does know but currently has his hands tied.

The maximization of Public Defenders is not directly within the control of Public Defender Services under the current statutory scheme. The report appears to assume that the Director of Public Defender Services assigns cases. Only circuit judges can determine which cases are assigned to which attorneys. As a practical matter, maximization of case loads in Public Defender offices occurred routinely until the recent line item restrictions. Most offices undertook 65% or more of the workload in their Circuits.

(3) Comparing Public Defenders and private counsel. The report claims an accurate comparison is not being made between private attorneys and Public Defenders in that only closed cases are counted for private attorneys, while cases in progress are counted for Public Defenders. This is both inaccurate and misleading; the cost per case is calculated using new cases opened and cases in progress (i.e., carried over from the previous year). CLOSED CASES ARE NOT USED SINCE THAT WOULD INFLATE THE COUNT. This method accurately and completely accounts for funds spent in that Public Defenders have performed work on cases and were funded for that work during the fiscal year.

While it is true this method slightly inflates the case count comparison, most cases begin and end in a given fiscal year. To count only closed cases undervalues the work done by Public Defenders. In neither case is it possible to count Public Defender work in exactly the same manner but using either method clearly shows a significant cost advantage in the use of Public Defenders, as the report definitely acknowledges.

This problem is further aggravated by the arbitrariness of when a case is "closed." Private work is skewed in this area since attorneys can bill for any case after six months has elapsed following appointment, then bill again at the end of the case. Further, juvenile cases can be billed as a "case" after any intermediate disposition, i.e., improvement period or other temporary ruling. Appeals are counted as separate cases, as are guardians in abuse and neglect and other types of cases. Public Defender cases are only counted closed after the attorney of record deems them closed. No clear standard can be established which fits all situations and some attorneys will call a case closed when others would allow it to remain pending.

In truth, counting "cases" is distorted by factors beyond the control of Public Defender Services. Major national studies by the American Bar Association and other organizations acknowledge the arbitrariness of the definition of the term "case." Local practice and procedure and individual variations from one prosecuting attorney to another and from one judge to another further muddy these waters. All factors taken into account, however, the methods currently used by Public Defender Services render as complete and accurate a comparison as can be made and yield data which is more than reasonably comparable. When expansion of existing offices or the placement of new offices are considered, the total numbers of hours worked are used as the primary measure, not cases.

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(4) Quality of service. I am delighted that the auditors found this area worthy of mention; generally, no one but the people working within this system care about quality of service. However, the proposed measures (conviction rates of clients, comparing costs per type of charge, establishing case load standards, etc.) are not reliable measures of quality. National organizations have attempted for many years to develop accurate measures and have generally been unable to do so. Currently, we rely on the good judgment of the Chief Defenders, Board Chairs and the feedback of prosecuting attorneys and judges. These more informal measures are not only more effective, they do not require additional staff and computer equipment.

(5) Timekeeping. The report states that "the agency is not in compliance with WVC 29-21-6(d)." It is clear the collecting of in court and out of court attorney time, including administrative and other nonbillable time for all Public Defenders, complies fully with the statute.

Since I wrote the first draft of the original statute and have had a hand in amending it since 1990, I feel uniquely qualified to say that the intent of this section was to insure a reasonable level of record keeping. To collect data at a greater level of detail than we now do would necessitate enormous numbers of increased staff for data entry, at least doubling or tripling current clerical staff in both Public Defender offices and in this office. Even if additional data were on hand, it is doubtful that any billing patterns would change, in that circuit judges appoint private attorneys and approve their bills. We do not have control over this area.

So-called "aggregate" data, which yields an accurate cost per case measure is sufficient to monitor overall efficiency and effectiveness. As the report so clearly states, this data shows beyond any doubt that the Public Defender system should be expanded. Because the system functions on a decentralized basis, there is no need for the type of management information suggested. The control over Public Defenders offices must and should remain at the local level. It should be the responsibility of local Corporation Boards and Chief Defenders to monitor efficiency and effectiveness. A new case management system is currently being installed to help in this area but with only one employee to design, configure, install and monitor data entry for eighteen offices, progress is painfully slow.

Even with the above minor qualifications, I would like to say once more that the report is an excellent effort to understand and improve a very complicated system involving thousands of clients, attorneys, judges and support staff. Generally, the recommendations are excellent, despite the above comments.

The most important point, in comparison with which all other recommendations are insignificant, is that Public Defenders are far more cost effective than private counsel. Moving more work to the Public Defender side of the process completely avoids any lingering minor problems with paying private counsel. Thank you for the opportunity to comment.

Sincerely,

John A. Rogers
Executive Director

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STATE OF WEST VIRGINIA

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER SERVICES
BUILDING 3, ROOM 330
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25305-0730
304-558-3905
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CECIL H. UNDERWOOD
GOVERNOR

JOHN A. ROGERS
EXECUTIVE DIRECTOR

28 June 1998

Dr. Antonio Jones
Performance Evaluation and Research
Room W-134, Bldg. 1
State Capitol

Re: Costs savings; comparisons with other state

Dear Dr. Jones:

Please find attached an unaudited preliminary report showing the cost savings effected by our voucher processing staff. The figures represent payments either refused or reduced on appointed counsel vouchers during FY 96, 97 and 98. As you can see, we have saved the State some $623,638.31 in the last three years, a figure which more than pays for the salaries and related costs of the voucher processing section.

Also attached is a comparison of overall budgets, selected staffing and salaries in other states' administrative offices. The only state which is below West Virginia is Iowa and I am sure they do not process all private appointed counsel vouchers as we do. The administrative budget average of the states shown is $1,018,851; the average salary of the executive director is $91,436.36. As you know, our administrative budget is less than half the average total budget ($436,889 for FY 99), and our salaries are generally no more than 50-60% of those in other states, and these figures are from FY 97.

Even relatively poor states like New Mexico have twice the budget we do. Note also that we are the only state which does not have MIS (computer) personnel. I requested one to two MIS positions over the last four years but have never been successful; I cannot even get the Division of Personnel to adequately reclassify my paralegal so as to assign MIS-related duties to her.

Sincerely,

John A. Rogers
Executive Director

Cc: Joseph Martin
Joe Altizer
Jennifer Walker

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Analysis of Indigent Defense Systems' Central Administration Costs in Comparable States, 1997

	Chief Public Defender/ Ex. Director	Deputy Defender	Financial Officer/ Comptroller	Payroll/ Human Resources	Administrative Assistants/ Secretarial Support	MIS	Social Workers	Chief Trainer	Chief Investigator	Other	Total Central Administrative Staff	Total Central Administrative Costs
Colorado	$86,500	$169,612 (2 Positions)	$84,516	$45,816	$155,004 (4 Positions)	$121,416 (3 Positions)	--	$73,008	--	$58,446 (1 Position)	14	$794,318
Connecticut	$103,177	$98,091	$84,850	$45,928	$506,449 (13 Positions)	$140,000 (3 Positions)	$72,729	$83,984	$72,729	$72,000 (1 Position)	24	$1,279,937
Delaware	$79,700	$84,308	$35,265	--	$60,958 (2 Positions)	$121,701 (3 Positions)	--	--	--	$44,977 (1 Position)	9	$426,909
Iowa	$75,766	$68,456	$63,556	--	$82,322	$55,405	--	--	--	--	5	$145,505
Maryland	$94,191	$84,673	$219,828 (7 Positions)	$97,405 (3 Positions)	$336,406 (11 Positions)	$157,207 (4 Positions)	--	--	--	$233,388 (6 Positions)	33	$1,223,098
Massachusetts	$95,700	$180,000 (2 Positions)	$80,000	--	$67,000 (2 Positions)	$200,000 (4 Positions)	$250,000 (7 Positions)	--	--	--	17	$872,700
Minnesota	$86,000	--		$480,000		$434,000	--	--	--	--	N/A	$1,000,000
Missouri	$86,652	$81,096	$57,612	$40,248	$30,240	$48,060	--	$71,652	--	$364,376 (14 Positions)	21	$719,936
New Jersey	$95,000	$178,549 (4 Positions)	$152,654 (2 Positions)	$2,289,142 (54 Positions)		$211,866 (4 Positions)	--	--	--	$60,011 (1 Position)	65	$3,137,222
New Mexico	$99,100	$176,400	$32,200	$108,800	$183,600	$191,900	--	$76,600	--	--	19	$888,600
Virginia	$104,014	--	$68,166	$150,661 (3 Positions)		$35,730	--	--	--	$160,345 (4 Positions)	12	$519,116

Prepared for the Delaware State Public Defender by
The Spangenberg Group 1001 Watertown Street West Newton, MA 02165 (617) 969-3820
(Positions of the data were collected on behalf of the Colorado State Public Defender)
October 16, 1997

Exhibit H

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
FINAL VOUCHER PAYMENTS REFUSED
JULY 1, 1995 TO DATE

REASON		FY 96	FY 97	FY 98	ANNUAL
ADULT ABUSE & NEGLECT PROCEEDING	Tot	$1177.29	$0.00	$0.00	$1177.29
	Cnt	3	0	0	3
ADULT GUARDIAN AD LITEM PROCEEDING	Tot	$8256.72	$2505.39	$2250.28	$13472.39
	Cnt	16	10	6	32
AID/PROSECUTING ATTORNEY	Tot	$124.43	$5173.23	$562.25	$5859.91
	Cnt	1	9	5	15
CHILD SUPPORT/CUSTODY	Tot	$517.50	$1300.56	$4779.45	$6597.51
	Cnt	1	3	9	13
DIVORCE PROCEEDING	Tot	$1534.34	$1481.51	$409.67	$3426.12
	Cnt	4	4	2	10
DUPLICATE VOUCHER	Tot	$66254.47	$31568.48	$46461.96	$144284.91
	Cnt	91	40	45	176
EMERGENCY RELIEF FOR ELDERLY	Tot	$0.00	$0.00	$123.36	$123.36
	Cnt	0	0	1	1
FOSTER CARE	Tot	$0.00	$0.00	$262.88	$262.88
	Cnt	0	0	1	1
FROM FISCAL YEAR 1995/1996 DATABASE	Tot	$127862.57	$0.00	$0.00	$127862.57
	Cnt	1	0	0	1
FROM FISCAL YEAR 1996/1997 DATABASE	Tot	$0.00	$45959.93	$0.00	$45959.93
	Cnt	0	1	0	1
FROM FISCAL YEAR 1997/1998 DATABASE	Tot	$0.00	$0.00	$39269.29	$39269.29
	Cnt	0	0	1	1
GUARDIAN AD LITEM CIVIL LITIGATION	Tot	$0.00	$0.00	$1582.00	$1582.00
	Cnt	0	0	2	2
GUARDIAN AD LITEM IN [illegible]PTION	Tot	$0.00	$1416.91	$0.00	$1416.91
	Cnt	0	2	0	2
GUARDIANSHIP/CONSERVATORSHIP	Tot	$2112.50	$11398.87	$19267.52	$32778.89
	Cnt	6	26	62	94
INCARCERATED GUARDIAN AD LITEM	Tot	$663.00	$936.32	$0.00	$1599.32
	Cnt	2	3	0	5
NEGLIGENCE TO PAY	Tot	$0.00	$297.00	$0.00	$297.00
	Cnt	0	1	0	1

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WEST VIRGINIA PUBLIC DEFENDER SERVICES
TOTAL VOUCHER PAYMENTS REFUSED
JULY 1, 1995 TO DATE

5/22/98
12:08 pm

REASON		FY 96	FY 97	FY 98	AMOUNT
DENTAL HYGIENE COMMISSIONER	Tot	$5587.00	$17087.29	$29036.00	$52510.29
	Cnt	9	20	42	71
OVER FOUR YEARS OLD	Tot	$9888.47	$25575.18	$36448.30	$71912.95
	Cnt	29	46	34	109
PATERNITY PROCEEDING	Tot	$5074.74	$3663.38	$2510.41	$11249.33
	Cnt	8	14	7	29
PROTECTED PERSON PROCEEDING	Tot	$11760.25	$17138.17	$29671.68	$58570.10
	Cnt	43	52	117	212
SUPREME COURT APPEAL TRANSCRIPT	Tot	$0.00	$376.75	$0.00	$376.75
	Cnt	0	1	0	1
SUPREME COURT EXPERT WITNESS	Tot	$0.00	$1571.30	$0.00	$1571.30
	Cnt	0	1	0	1
VICTIM IN CRIMINAL MATTER	Tot	$0.00	$519.31	$359.50	$878.31
	Cnt	0	1	1	2
VISITATION	Tot	$691.50	$0.00	$0.00	$691.50
	Cnt	2	0	0	2
WITNESS FEES	Tot	$0.00	$0.00	$0.00	$0.00
	Cnt	1	0	0	1
AMOUNT	Tot	$241504.97	$169193.29	$212940.05	$623638.31
	Cnt	217	234	335	786