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WEST VIRGINIA PUBLIC DEFENDER SERVICES

REPORT OF THE INDIGENT DEFENSE TASK FORCE



JOHN A. ROGERS
EXECUTIVE DIRECTOR

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Recommendations of the West Virginia Indigent Defense Task Force

Introduction

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

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

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

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

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

The Task Force found the collaborative process involved in bringing together a broad based coalition to address indigent defense problems to be an effective way to improve the quality and cost-effectiveness of the indigent defense system. The Task Force believes that the indigent defense system can be substantially improved by continuing this process through the creation of a Public Defender Services Advisory Commission to aid the Executive Director in his mission. The

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Commission should be broad based, and include judges, legislators, prosecutors, court-appointed attorneys, public defenders and law enforcement representatives.

The Advisory Commission would provide advice, support, and guidance to the Executive Director of PDS on the following areas of concern: securing adequate financing; overseeing budget preparations; developing procedures to monitor the caseloads of public defenders; developing and instituting performance measures to permit qualitative reviews of each circuit's indigent defense system; establishing indigent defense standards and guidelines; evaluating the need to establish new public defender corporations; and conducting public education on the need for quality indigent defense services.

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

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

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

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

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

Any organization that is vested with overseeing a $27 million dollar public operation should be given the tools to ensure that the citizens of West Virginia are getting both qualitative and cost-

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

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

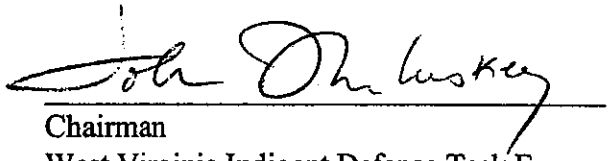
As highlighted in the Spangenberg Report, PDS's actual expenditures for the central office in FY 1989 were $383,643.14. Over ten years time, the central administration expenditure has actually decreased 2.52%, to $373,964.99. During the period from FY 1994 - FY 1998, voucher processing increased 19.84%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

Public Defender Services provides funds to attorneys and other service providers who defend indigent defendants accused of crimes and other wrongdoings in order to ensure that constitutionally

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

RESPECTFULLY SUBMITTED



Chairman
West Virginia Indigent Defense Task Force

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THE
SPANGENBERG
GROUP

1001 Watertown Street
est Newton, MA 02465
Tel: 617.969.3820
Fax: 617.965.3966
@spangenberggroup.com

Final Report to the West Virginia Indigent Defense Task Force

January 14, 2000

Prepared on behalf of: The West Virginia Indigent Defense Task Force

Prepared by:
Robert L. Spangenberg
David J. Carroll
Elizabeth A. Dever
David J. Newhouse

Robert L. Spangenberg
President

Marea L. Beeman
Vice President

William R. King
enior Research Associate

David J. Carroll
Research Associate

Dorothy M. Chan
Research Assistant

Elizabeth A. Dever
Research Assistant

Claudine S. King
Office Administrator

David J. Newhouse
Computer Analyst

Michael R. Schneider
Of Counsel

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Chapter 1
Introduction

Overview: Indigent Defense in West Virginia

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

Funding History of Public Defender Services

For several years, Public Defender Services has experienced recurring funding problems. The West Virginia Legislature appropriated the same amount of money ($14,210,905) for PDS in each of the three fiscal years FY 1995 - FY 1997. At some point during each of those years, PDS depleted its resources and because of this, PDS carried a certain level of debt from year to year. During this same time period a combination of factors, including a reported rise in drug-trafficking and domestic violence cases, new mandatory jail terms, changes to abuse and neglect representation policies and an increase in police hirings, resulted in a reported 33% increase in PDS's annual caseloads (up from 49,629 in FY1995 to 66,034 in FY1997).[1] Subsequently, PDS's accrued liability has grown from year to year. PDS closed FY 1995 with a debt of $3,795,053. In FY 1996, despite

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

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

Statewide Studies of Public Defender Services

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

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

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

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

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

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

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

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

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

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

Attempts to Redress the Issues Highlighted in the Reports

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

Despite the recommendations of the legislative oversight report and the joint standing committee on the judiciary, no new policy changes regarding PDS have been enacted by the

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Legislature.

West Virginia Indigent Defense Task Force

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

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

Our experience has led us to conclude that indigent defense improvements can be substantially enhanced by bringing together representatives from key criminal justice agencies, the Legislature, the judiciary, the executive branch, and others to collaboratively tackle a particular

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

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

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problem within the criminal justice system. The common ground found by task forces addressing problems in indigent defense systems can result in sensible, broadly supported proposals to improve indigent defense within the context of the overall criminal justice system.

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

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Chapter 2

West Virginia Indigent Defense Data Audit

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

Issues with Public Defender Services Data Reporting

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

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PDS Case-Tracking System and Case Counting Practices

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

In any evaluation TSG conducts, we generally like to look at a five-year time period, at the very least, to look for trends and abnormalities in the reported data. In 1994, PDS operated a Q&A Case Management System.[5] Diskettes were sent to PDS from each Public Defender Corporation on a monthly basis. Each disk contained data files in standard ASCII format that reflected total cases opened, total cases closed, and time spent on cases and office administration for that month. Prior to FY98, each disk was loaded into a master file one at a time. The data was checked for missing field data (only fields reported on were verified) and correctly entered field data. Reports were run for each month's data and printed out for manual compilation into statewide data. That data was then exported out of the database onto a diskette because PDS did not own a computer large enough to handle the data storage needs of 12-15 offices' data over a year's time. Unless a series of cases or the summarized data stood out as odd or unusual, an in-depth look at the data was not possible given the time frames in which the reporting needed to be completed.

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

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

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

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

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

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

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attempted to make valid comparisons between assigned counsel and public defenders by determining the number of cases for which public defenders did any work during a given year. Thus, a fiscal year's report of public defender cases would include any case open at the start of the fiscal year, plus any new assignments.

The Spangenberg Group's Independent Audit of PDS Data

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

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

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

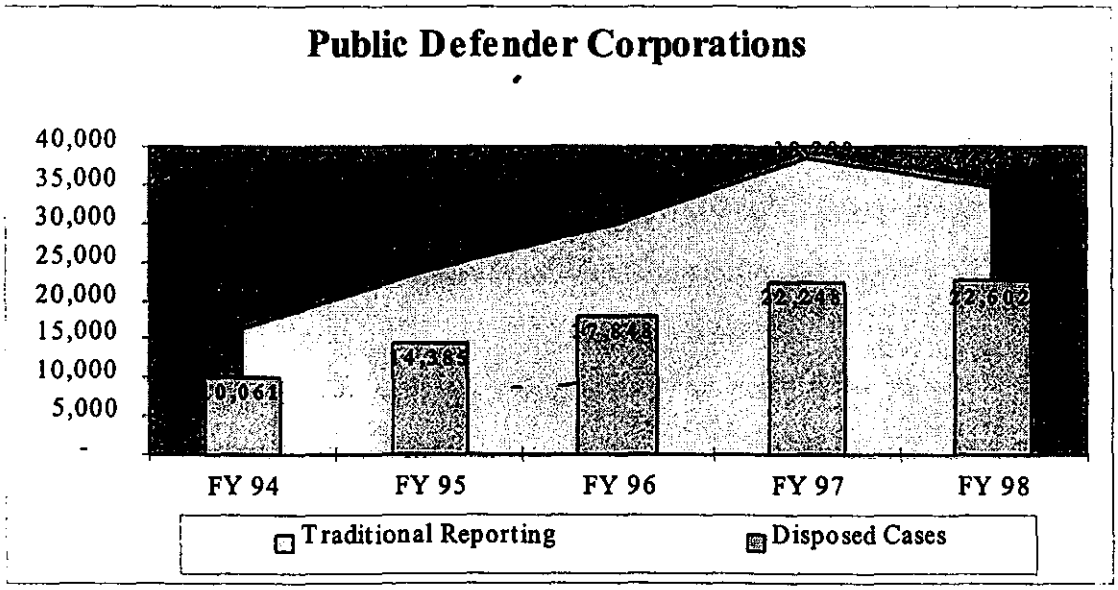
[7] The Spangenberg Group would like to acknowledge John Rogers and the PDS staff, most notably Kellie Carper and Sheila Coughlin, for their cooperation and valuable assistance in giving us access to all of their data. We would also like to acknowledge the assistance of our management information specialist,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

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Analysis of West Virginia Indigent Defense Data

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

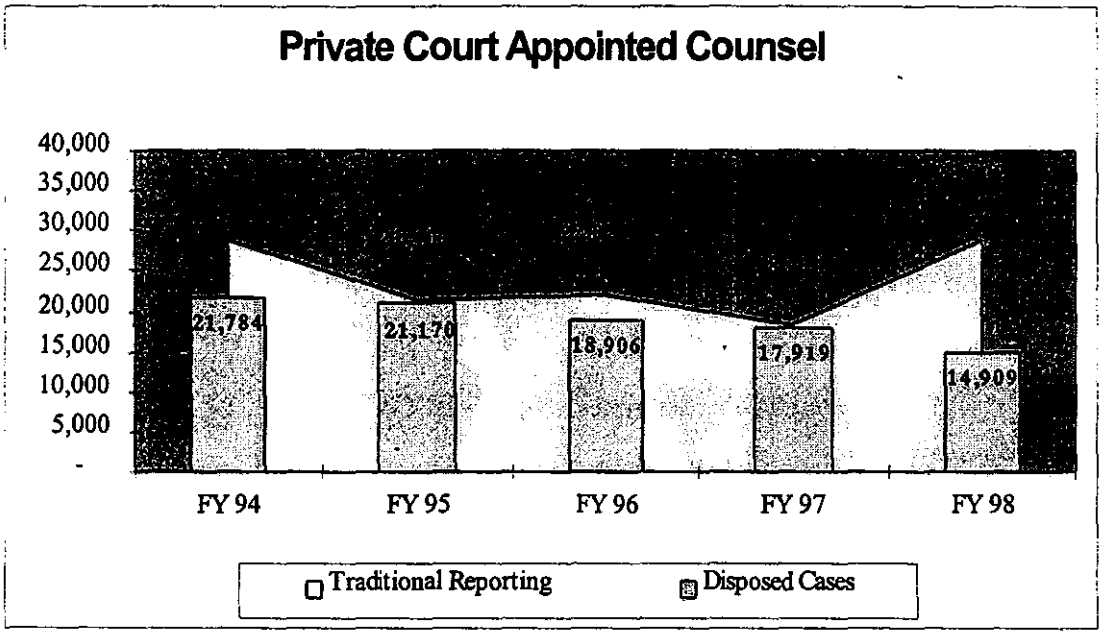
Chart 2-1
Comparison of Disposed Cases vs. Traditional Reporting of Cases, FY 94 - FY98



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Chart 2-1 (Continued)

Comparison of Disposed Cases vs. Traditional Reporting of Cases, FY 94 - FY98



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

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

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

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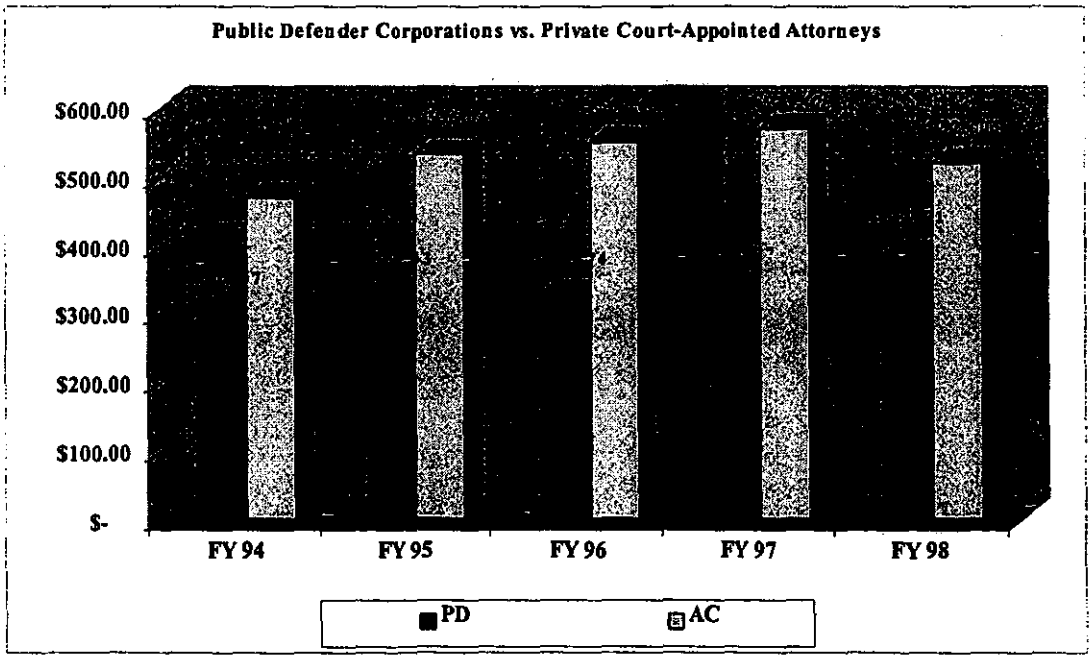
the best year to look at for analysis is FY 1997. Table 2-2 (see page 12) is a circuit-by-circuit analysis of West Virginia Public Defender Services' indigent defense expenditures and caseloads for FY 1997. Comparative tables for the other fiscal years (FY 94 - FY 98) are included in Appendix B.

In FY 1997, there were 40,167 indigent defense closed cases in the state. These cases cost the state $17,857,445. During that year, Public Defender Corporations in 14 circuits handled 55.39% of the closed cases (22,248) for 42.46% of the total expenditure ($7,581,415). Conversely, private court-appointed counsel handled 44.61% of the caseload (17,919) for 57.54% of the indigent defense expenditure ($10,276,030).

This means that in FY 1997, the average cost-per-case for Public Defender Corporations was $340.77. The average cost-per-closed-case for assigned counsel for the same time period was $573.47. The cost-per-closed-case figure for assigned counsel does not fluctuate dramatically between assigned counsel practicing in Public Defender Corporation circuits ($566.59) and those representing clients in circuits without a Public Defender Corporation ($579.40).

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

Chart 2-3
Analysis of West Virginia Indigent Defense Cost Per Case, FY 94-98



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

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
1st	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2nd	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3rd	24,773	$0	$160,884	$6.49	0	254		$633.40	0.00%	0.00%	100.00%	100.00%	0.010
4th	92,107	$0	$888,801	$9.65	0	1484		$598.92	0.00%	0.00%	100.00%	100.00%	0.016
5th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
6th/21st	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
7th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
8th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
9th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
11th	43,701	$0	$379,733	$8.69	0	626		$606.60	0.00%	0.00%	100.00%	100.00%	0.014
12th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
13th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
14th	41,379	$0	$283,885	$6.86	0	489		$580.54	0.00%	0.00%	100.00%	100.00%	0.012
15th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
16th	57,249	$0	$632,494	$11.05	0	1246		$507.62	0.00%	0.00%	100.00%	100.00%	0.022
17th	75,509	$0	$456,114	$6.04	0	927		$492.03	0.00%	0.00%	100.00%	100.00%	0.012
18th	29,037	$0	$132,623	$4.57	0	182		$728.70	0.00%	0.00%	100.00%	100.00%	0.006
19th	30,843	$0	$118,180	$3.83	0	418		$282.73	0.00%	0.00%	100.00%	100.00%	0.014
20th	27,803	$0	$308,694	$11.10	0	396		$779.53	0.00%	0.00%	100.00%	100.00%	0.014
21st	44,853	$0	$211,580	$4.72	0	306		$691.44	0.00%	0.00%	100.00%	100.00%	0.007
22nd	35,529	$0	$361,966	$10.19	0	467		$775.09	0.00%	0.00%	100.00%	100.00%	0.013
23rd	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
24th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
25th	47,252	$0	$327,961	$6.94	0	642		$510.84	0.00%	0.00%	100.00%	100.00%	0.014
26th	40,090	$0	$360,457	$8.99	0	691		$521.64	0.00%	0.00%	100.00%	100.00%	0.017
27th	28,990	$0	$306,898	$10.59	0	540		$568.33	0.00%	0.00%	100.00%	100.00%	0.019
28th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
29th	68,013	$0	$525,718	$7.73	0	757		$694.48	0.00%	0.00%	100.00%	100.00%	0.011
30th	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
31st	26,610	$0	$121,326	$4.56	0	201		$603.61	0.00%	0.00%	100.00%	100.00%	0.008
Total	1,793,477	$7,581,415	$10,276,030	$9.96	22,248	17,919	$340.77	$573.47	55.39%	42.46%	44.61%	57.54%	0.022
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Non-PDC	713,738	$0	$5,577,314	$7.81	0	9,626		$579.40	0.00%	0.00%	100.00%	100.00%	0.013

Districts with Public Defender Corporations = [illegible]

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

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

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

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

Table 2-4 (see page 15) has the breakdown of indigent defense cases by case type for the fourteen circuits that had Public Defender Corporations in FY 1997. Since public defenders are the primary provider in these circuits, it is not unexpected that they handled the majority of felonies (4,243 of 5,649, or 75.11%), misdemeanors (14,036 of 16,509, or 85.02%), and juvenile cases (2,334 of 3,266, or 71.46%). Additionally, public defenders handled the majority of paternity, parole revocation, habeas and other[9] cases. Private assigned counsel handled the majority of mental hygiene (2,242 of 2,905, or 77.18%) and abuse/neglect cases (844 of 944, or 84.91%).[10] A similar breakdown for the other fiscal years can be found at the end of the report (See Appendix C).

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

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

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

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

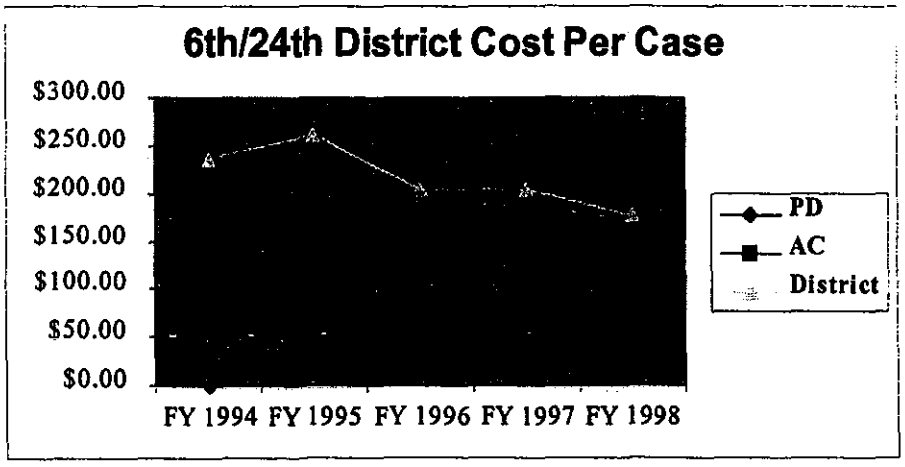
Thus, for comparison purposes, it may be prudent to remove mental hygiene and abuse/neglect cases from the court-appointed counsel caseload in an effort to compare apples to apples with the Public Defender Corporations' data in regard to cost per case. In FY 1997, court appointed attorneys represented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

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

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

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

Chart 2-7
Historical Analysis of Cost Per Case Before and After Start-up of PDC



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

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	TOTAL
3rd	$ 1,179.10	$ 480.47	$ 116.28	$ 665.47		$ 694.73	$ 1,454.75	$ 3,349.30	$ 796.93	$ 633.40
4th	$ 1,496.20	$ 374.31	$ 125.33	$ 610.19	$ 599.90	$ 408.05	$ 1,095.38	$ 2,230.53	$ 754.81	$ 598.92
11th	$ 1,514.01	$ 359.74	$ 116.41	$ 367.91	$ 442.00	$ 463.81	$ 1,687.73		$ 824.66	$ 606.60
14th	$ 1,105.31	$ 285.67	$ 182.65	$ 236.14	$ 142.41	$ 1,161.10	$ 1,312.41	$ 629.93	$ 495.59	$ 580.54
16th	$ 1,081.07	$ 336.00	$ 170.52	$ 268.94		$ 649.94	$ 1,382.80	$ 2,542.91	$ 1,312.86	$ 507.62
17th	$ 1,011.61	$ 374.55	$ 92.87	$ 481.20	$ 330.50	$ 337.18	$ 1,534.13	$ 2,210.35	$ 697.07	$ 492.03
18th	$ 1,089.42	$ 402.16	$ 126.29	$ 654.27	$ 173.40	$ 299.63	$ 2,369.14		$ 907.95	$ 728.70
19th	$ 432.17	$ 251.67	$ 139.94	$ 224.24		$ 325.50	$ 1,219.71		$ 278.26	$ 282.73
20th	$ 1,566.20	$ 433.28	$ 155.85	$ 590.71		$ 910.43	$ 1,919.61	$ 2,506.51	$ 485.37	$ 779.53
21st	$ 1,122.25	$ 432.85	$ 271.06	$ 429.41		$ 425.11	$ 1,467.26		$ 1,107.01	$ 691.44
22nd	$ 1,319.69	$ 380.24	$ 155.64	$ 848.41		$ 555.70	$ 1,550.58	$ 486.00	$ 951.79	$ 775.09
25th	$ 1,296.80	$ 293.87	$ 167.39	$ 343.76		$ 417.18	$ 608.62		$ 363.95	$ 510.84
26th	$ 1,210.87	$ 385.10	$ 128.91	$ 707.32	$ 297.41	$ 683.80	$ 1,640.32	$ 5,362.13	$ 616.12	$ 521.64
27th	$ 785.54	$ 359.68	$ 188.75	$ 541.15	$ 474.69		$ 1,387.80		$ 634.80	$ 568.33
29th	$ 1,338.11	$ 362.51	$ 186.98	$ 635.57		$ 597.03	$ 1,829.24	$ 2,604.37	$ 660.82	$ 694.48
31st	$ 994.54	$ 288.46	$ 46.53	$ 226.01		$ 159.28	$ 1,342.90	$ 5,690.86	$ 1,246.45	$ 603.61
AVG.	**$ 1,162.35**	**$ 347.13**	**$ 104.79**	**$ 465.71**	**$ 611.78**	**$ 568.46**	**$ 1,423.80**	**$ 2,254.92**	**$ 958.89**	**$ 573.47**
Non-PDC	$ 1,189.93	$ 356.90	$ 135.46	$ 443.58	$ 322.24	$ 554.40	$ 1,442.81	$ 2,538.21	$ 774.25	$ 579.40

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

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

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

For instance, the caseload levels of Public Defender Corporations must be looked at in light of the effect caseloads have on representation quality.[12] Though many states have workload standards are aspirational rather than binding, we found that 15 states have implemented some kind of workload guidelines. The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC), which published its standards in 1973. In that report, Standard 13.12 on Courts states:

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

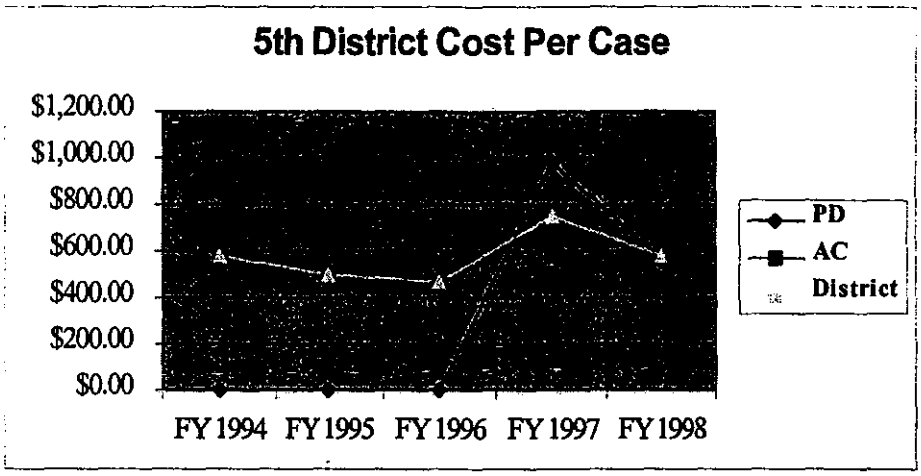
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[11] In this respect, we mirror the Legislative oversight report. On page 31, the report quotes: "A primary purpose of Public Defender Services is to '*provide high quality legal assistance to indigent person*' (§29-21-1). Achieving this purpose would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

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

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Chart 2-7 (Continued)
Historical Analysis of Cost Per Case Before and After Start-up of PDC



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

Assessing the Cost-Effectiveness of Public Defender Corporations

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

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

District	Year	PDC Staff			PDC Caseload	Cases Per Attorney	Support Staff Per Attorney
		Attorney	Support	Total			
1st	FY 98	8	3	11	2,245	280.63	0.38
	FY 97	8	3	11	2,060	257.50	0.38
	FY 96	8	3	11	1,326	165.75	0.38
	FY 95	7	3	10	1,252	178.86	0.43
	FY 94	5	3	8	1,417	283.40	0.60
2nd	FY 98	4	2	6	994	248.50	0.50
	FY 97	4	2	6	1,024	256.00	0.50
	FY 96	3	2	5	738	246.00	0.67
	FY 95	3	2	5	364	121.33	0.67
	FY 94	3	2	5	887	295.67	0.67
5th	FY 98	4	3	7	662	165.50	0.75
	FY 97	3	2	5	346	115.33	0.67
	FY 96	0	0	0	-	-	-
	FY 95	0	0	0	-	-	-
	FY 94	0	0	0	-	-	-
6th/24th	FY 98	13	4	17	5,227	402.08	0.31
	FY 97	12	4	16	4,666	388.83	0.33
	FY 96	11	4	15	4,074	370.36	0.36
	FY 95	9	5	14	2,592	288.00	0.56
	FY 94	0	0	0	-	-	-
7th	FY 98	4	2	6	589	147.25	0.50
	FY 97	4	2	6	636	159.00	0.50
	FY 96	4	2	6	649	162.25	0.50
	FY 95	2	1	3	369	184.50	0.50
	FY 94	2	1	3	329	164.50	0.50
8th	FY 98	3	2	5	758	252.67	0.67
	FY 97	3	2	5	1,195	398.33	0.67
	FY 96	3	2	5	984	328.00	0.67
	FY 95	3	2	5	950	316.67	0.67
	FY 94	2	1	3	1,080	540.00	0.50
9th	FY 98	6	3	9	1,947	324.50	0.50
	FY 97	6	3	9	1,995	332.50	0.50
	FY 96	6	3	9	1,593	265.50	0.50
	FY 95	4	2	6	1,318	329.50	0.50
	FY 94	4	2	6	1,321	330.25	0.50
10th	FY 98	6	4	10	1,649	274.83	0.67
	FY 97	6	4	10	1,504	250.67	0.67
	FY 96	6	3	9	1,332	222.00	0.50
	FY 95	5	3	8	1,328	265.60	0.60
	FY 94	5	2	7	1,314	262.80	0.40
12th	FY 98	4	2	6	734	183.50	0.50
	FY 97	4	2	6	731	182.75	0.50
	FY 96	3	2	5	725	241.67	0.67
	FY 95	2	2	4	591	295.50	1.00
	FY 94	2	1	3	481	240.50	0.50
13th	FY 98	24	14	38	3,158	131.58	0.58
	FY 97	21	11	32	3,503	166.81	0.52
	FY 96	19	11	30	2,542	133.79	0.58
	FY 95	15	8	23	1,984	132.27	0.53
	FY 94	10	6	16	1,123	112.30	0.60
15th	FY 98	7	4	11	1,500	214.29	0.57
	FY 97	6	3	9	1,316	219.33	0.50
	FY 96	5	3	8	1,000	200.00	0.60
	FY 95	4	2	6	873	218.25	0.50
	FY 94	4	2	6	141	35.25	0.50
23rd	FY 98	12	8	20	1,959	163.25	0.67
	FY 97	10	7	17	2,177	217.70	0.70
	FY 96	8	5	13	1,839	229.88	0.63
	FY 95	6	3	9	1,662	277.00	0.50
	FY 94	5	2	7	792	158.40	0.40
28th	FY 98	2	2	4	352	176.00	1.00
	FY 97	2	1	3	329	164.50	0.50
	FY 96	1	1	2	348	348.00	1.00
	FY 95	1	1	2	334	334.00	1.00
	FY 94	1	1	2	368	368.00	1.00
30th	FY 98	5	2	7	828	165.60	0.40
	FY 97	4	2	6	766	191.50	0.50
	FY 96	3	2	5	698	232.67	0.67
	FY 95	3	2	5	768	256.00	0.67
	FY 94	2	1	3	808	404.00	0.50
Total	FY 98	102	55	157	22,602	221.59	0.54
	FY 97	93	48	141	22,248	239.23	0.52
	FY 96	80	43	123	17,848	223.10	0.54
	FY 95	64	36	100	14,385	224.77	0.56
	FY 94	45	24	69	10,061	223.58	0.53

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

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

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

For instance, Table 2-8 shows that the Public Defender Corporation in the 13th judicial circuit has lower cases-per-attorney numbers than many of the other circuits. Yet, that does not mean that the attorneys in the Kanawha County public defender office are underutilized. In West Virginia, the public defender statute §29-21-6 calls for PDS to "operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of eligible clients in the supreme court of appeals." Given the limited resources of PDS, the appellate division is not operating out of the PDS offices. The majority of appellate cases are handled by the Public Defender Corporation in the13th circuit. Though The Spangenberg Group has not had the opportunity to assess the quality of appellate representation in the local Public Defender Corporation, we do believe that the practice of having

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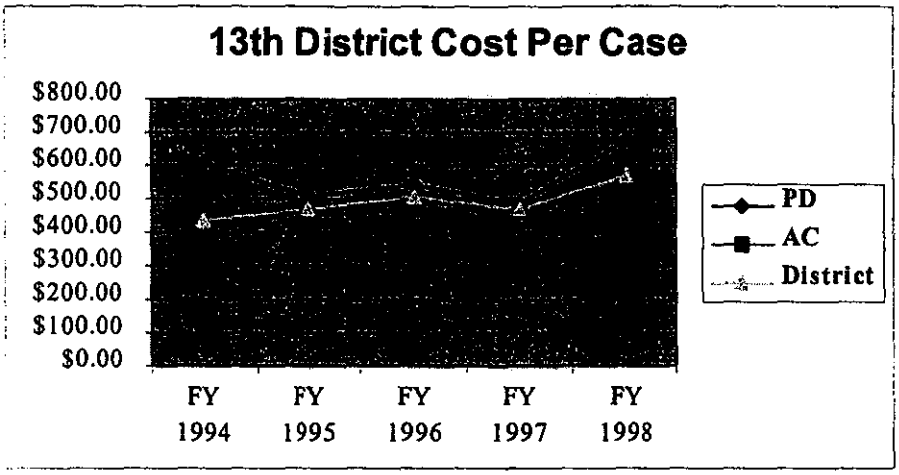
[13] National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts (Washington, D.C., 1973), p. 186.

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

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

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



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

PDS and Data Reporting

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

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

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

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

By FY 1998, the number of assigned counsel vouchers to be processed had risen 19.84% (from 28,741 to 34,442) and public defender caseloads had risen 124.64% (from 10,061 to 22,602). The total appropriation for assigned counsel and public defenders in FY98 was $24,210,905. In that year, the PDS central administration expenditure was $402,340.92, or less than 1.7% of the total indigent defense cost ($24,613,246). In our opinion, PDS has been expected to oversee a growing

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

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

Finally, the increasing expectations for PDS staff to audit and process more and more vouchers while monitoring Public Defender Corporation case reporting practices should be understood in light of staff salaries. For an organization responsible for processing and auditing payment vouchers in excess of $20 million a year, it is difficult to believe that there is no person on staff at PDS dedicated to overseeing the management information system. It is also important to point out that although each PDS staff member does not devote 100% of his or her time to data auditing/processing, the majority of the people responsible for processing and auditing the vouchers make, on average, approximately $20,000 per year. Table 2-8 lists PDS staff and salaries:

Table 2-8
PDS Staff & Salaries

Position	FY 98	Current
Executive Director	$55,000	$55,000
Admin. Officer	$31,212	$36,048
Supervisor II	$31,140	$36,048
Paralegal	$22,992	$26,976
Office Assistant III	$22,128	$26,028
Office Assistant II	$17,580	$22,032
Accounting Assistant (2)	$13,896	$16,236
Total:	**$206,404**	**$226,060**

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Chapter 3

Statewide Indigent Defense Survey

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

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

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

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

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

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

Survey Results

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

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

Table 3-1
Indigent Defense Survey Response Rates

Position	Survey Sent Out	Responses Received	Response Rate
Justice/Judge	71	31	43.66%
Prosecutor	55	26	47.27%
Public Defender	16	13	81.25%
Private Court-Appointed Lawyer	906	278	30.68%
Other[18]	0	5	--
Total	**1,028**	**353**	**34.44%**

Justices/Judges

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

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

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

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

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

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

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

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

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

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

Table 3-2
Justices/Judges Satisfaction Level with Current Indigent Defense System

Primary Indigent Defense Provider	Satisfaction level	Number	Percent
PDC	Very Satisfied	8	50.00%
	Somewhat Satisfied	5	31.25%
	Neither Satisfied nor Dissatisfied	1	6.25%
	Somewhat Dissatisfied	2	12.50%
	Very Dissatisfied	0	0.00%
AC	Very Satisfied	10	62.50%
	Somewhat Satisfied	2	13.33%
	Neither Satisfied nor Dissatisfied	2	13.33%
	Somewhat Dissatisfied	2	13.33%
	Very Dissatisfied	0	0.00%
Overall	Very Satisfied	18	56.25%
	Somewhat Satisfied	7	21.88%
	Neither Satisfied nor Dissatisfied	3	9.38%
	Somewhat Dissatisfied	4	12.5%
	Very Dissatisfied	0	0.00%

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

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

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

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

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

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

Table 3-3
Justices/Judges' Suggestions for Improving Indigent Defense Services

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

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

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

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

Another judge responded:

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

Prosecutors

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

Table 3-4

Prosecutors' Satisfaction Level with Current Indigent Defense System

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

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

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

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Table 3-(Continued)

Prosecutors' Satisfaction Level with Current Indigent Defense System

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

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

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

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

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

As with the judges, the prosecutors' responses for improvements to the system were also

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grouped under similar headings. Sixteen of the 27 prosecutors offered suggestions for improvements.

Table 3-5
Prosecutors' Suggestions for Improving Indigent Defense Services

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

Public Defenders

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

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

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Table 3-6
Public Defenders' Suggestions for Improving Indigent Defense Services

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

Private Court-Appointed Attorneys

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

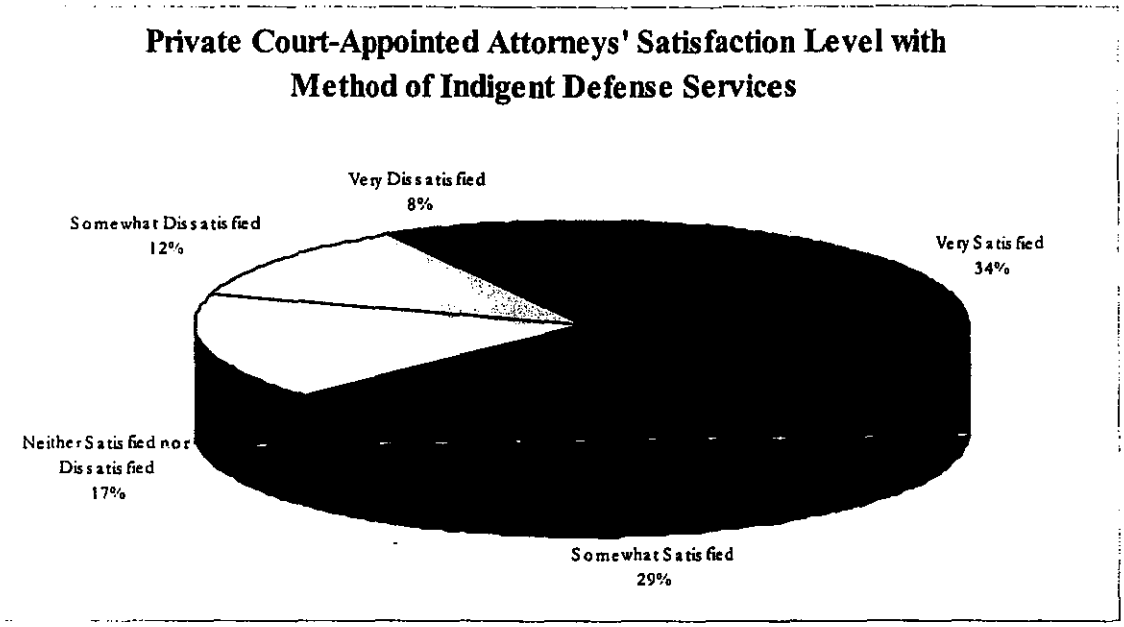
Table 3-7
Private Court-Appointed Attorneys' Satisfaction Level with Current Indigent Defense System

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

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

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

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

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

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

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

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

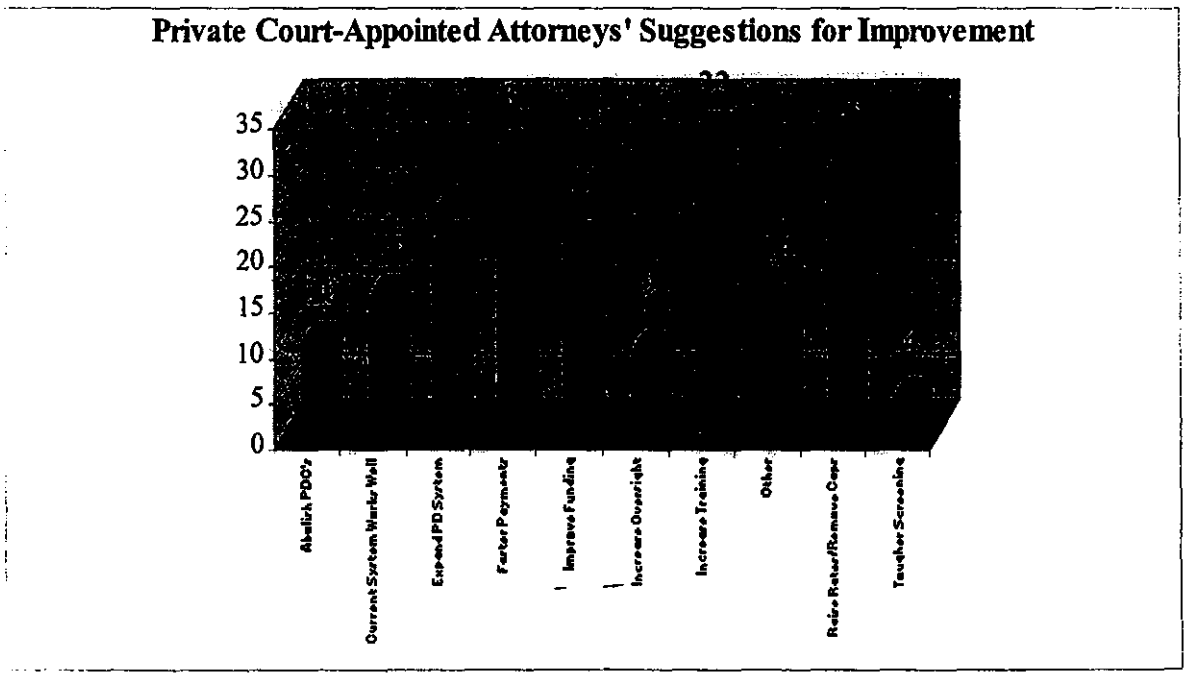
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- "Public defenders usually are better prepared and have more knowledge than other assigned counsel." and
- "Public Defenders have greater expertise and they specialize in certain areas."

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

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

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



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Table 3-8
Private Court Appointed Attorneys' Suggestions for Improving Indigent Defense Services

Suggested Improvement	Percent
Abolish PDC's	5.36%
Current System Works Well (No Changes)	8.02%
Expand PD system	11.23%
Faster Payments	16.58%
Improve Funding	11.23%
Increase Oversight	4.81%
Increase Training	17.65%
Other[24]	7.49%
Raise Rates/Remove Caps	15.51%
Tougher Screening	2.14%

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

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

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

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

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Chapter 4

Indigent Defense in West Virginia: A National Perspective

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

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

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

How States Organize and Fund Their Systems at the Trial Level

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

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delivery of indigent defense services statewide.[25]

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

How States Organize and Fund Their Appellate Indigent Defense System

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

State-by-State Indigent Defense Comparisons

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

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

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

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

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

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

Caveats on the Data

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

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

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

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

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

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

Table 4-2
Indigent Defense Cost Per Capita, FY 97

State	Population	Expenditure	Cost Per Capita
Missouri	5,358,692	$24,727,622.00	$4.61
Ohio	11,172,782	$62,378,131.00	$5.58
Oklahoma	3,300,902	$19,226,632.00	$5.82
Tennessee	5,319,654	$35,817,993.00	$6.73
New Jersey	7,987,933	$57,295,000.00	$7.17
Maryland	5,071,604	$36,588,453.00	$7.21
North Carolina	7,322,870	$58,622,732.00	$8.01
Vermont	588,654	$5,348,672.00	$9.09
Delaware	724,842	$6,902,126.00	$9.52
West Virginia	1,825,754	$18,264,056.00	$10.00
Connecticut	3,274,238	$34,095,150.00	$10.41
New Mexico	1,713,407	$17,956,300.00	$10.48
Wisconsin	5,159,795	$56,045,000.00	$10.86
Florida	14,399,985	$163,950,000.00	$11.39
Oregon	3,203,735	$53,158,841.00	$16.59
Average:			**$8.29**

FY 1998 data =

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

Table 4-2
Indigent Defense Cost Per Case

State	Caseload	Expenditure	Cost Per Case
Delaware	33,492	$6,902,126.00	$206.08
Ohio	287,126	$62,378,131.00	$217.25
Tennessee	151,827	$35,817,093.00	$235.91
Maryland	153,340	$36,588,453.00	$238.61
Florida	562,362	$163,950,000.00	$291.54
Vermont	17,735	$5,348,677.00	$301.59
New Mexico	59,154	$17,956,300.00	$303.55
Oklahoma	59,241	$19,226,832.00	$324.55
Missouri	76,034	$24,727,022.00	$325.22
North Carolina	184,443	$58,622,732.00	$317.88
Oregon	135,175	$53,158,841.00	$393.26
Connecticut	76,560	$34,095,150.00	$445.34
West Virginia	40,167	$18,264,056.00	$454.70
Wisconsin	118,555	$56,045,000.00	$472.73
New Jersey	88,343	$57,295,000.00	$648.55
Average:			**$323.00**

FY 1998 data =

Comparison of Central Administration Expenditures & Salaries

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

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Table 4-3
Central Administration Costs

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

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

Table 4-4
Central Administration Average Salaries (# of Positions)

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

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Chapter 5
Findings

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

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

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

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

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

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

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

The Spangenberg Group believes that many of the PDS data problems highlighted in this report could be resolved by shortening the time in which vouchers may be sent in for payment. Currently, PDS is forced to base budget requests on data that is incomplete. Good budget forecasting requires sound data. In turn, the ability to accurately forecast expenditure needs could lead to better planning and subsequently end the need for supplemental expenditures. This in turn could lead to faster payments to court-appointed attorneys.

The Spangenberg Group does not know of any other state that allows court-appointed

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

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

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

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

Similarly, a fully funded auditing department would be able to produce reports on a periodic and regular basis that could flag such things as: the number of times attorneys bill above the average cost-per-case; the number of hours billed in excess of a certain monthly/quarterly threshold; etc. This is not to imply that The Spangenberg Group thinks that there is rampant fraud within the West Virginia indigent defense system. Rather, an auditing division may be able to find additional cost-savings over time that could not have been uncovered given the parameters of this study and report.

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

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

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

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

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

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

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

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

This finding is consistent with recent data obtained from nine other states that were able to break down their average cost per case between private court-appointed counsel and public defenders. In each of these states, public defenders have a lower cost per case than do court-

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appointed attorneys.[27] It is our experience nationally that public defenders have a lower cost per case because of such factors as: more familiarity with criminal law; specialization for certain types of cases; centralization of administrative costs; and, the flexibility for accepting some amount of additional cases within approved budget levels. On the other hand, a private court-appointed counsel system operates on a fixed unit cost. That is, if the caseload increases above a projected level so will the overall costs.

Not withstanding the West Virginia data and The Spangenberg Group's experiences nationwide, there remains some uncertainty that the data in this report is sufficiently reliable to call for a recommendation by the Task Force that consideration should be given to expanding the public defender corporations to other circuits in the state.[28] The concerns that have been raised are twofold:

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

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

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

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

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

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findings whatsoever.

Second, it is our experience nationally that the total number of court appointments frequently does increase whenever a public defender system is established in a given jurisdiction. This is true for several reasons, including: public defenders are often assigned to courtrooms and therefore are more accessible to take appointments; judges generally are more likely to make an appointment because of their familiarity with the public defender system; and, clients are made aware of the public defender and often seek counsel prior to official appointment. Yet, it is also our experience that the cost efficiencies of public defender systems may offset this increase.

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

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

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

Finding #10: Our experience with the West Virginia Task Force has been a most rewarding one. In our judgement, the Task Force has reviewed the current system in a fair and thorough manner. Its preliminary findings reflect a desire to improve an already established system that has grown

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significantly over the years. We agree with the Task Force that a permanent commission would substantially assist in a better understanding and support of this critical program. It would also assure a more objective approach and balance to what appears to us to be the one divisive issue -- the need for further expansion of the public defender system in West Virginia, where appropriate.

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

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

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

The Spangenberg Group, on behalf of the American Bar Association Bar Information Program has prepared tables detailing basic information about these commissions. The most recent version of the table shows that 30 states now have a commission with varying responsibilities for all or a portion of the indigent defense work statewide. Another eight states (Alaska, Delaware, Iowa, New Jersey, New Mexico, Rhode Island, Vermont and West Virginia) have statewide oversight responsibilities placed in the hands of one person or

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agency with no commission.[29] Of the remaining 12 states, four are currently reviewing the possibility of creating both a statewide commission and/or statewide public defender.

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

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

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Appendix A

Indigent Defense Task Force

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INDIGENT DEFENSE TASK FORCE MEMBERS

NAMES AND ADDRESSES	PHONE	FAX	E-MAIL
BARBARA ALLEN ATTORNEY GENERAL'S OFFICE BLDG 1 ROOM E-26 1900 KAN BLVD E CHARLESTON WV 25305	(304) 558-2021	(304) 558-0140	
ROBERT ALLEN ALLEN GUTHRIE & MCHUGH P O BOX 3394 CHARLESTON WV 25333-3394	(304) 345-7250	(304) 345-9941	rballen@kagwv.com
BENJAMIN BAILEY LAIDLEY TOWER; STE 202 500 LEE ST CHARLESTON WV 25301	(304) 345-6555	(304) 342-1110	bbailey@baileyglasser.com
NATHAN BOWLES JR BOWLES RICE MCDAVID & LOVE P O BOX 1386 CHARLESTON WV 25325-1386	(304) 347-1100	(304) 343-2867	nbowles@bowlesrice.com
WILLIAM CHARNOCK WV P A INSTITUTE 1206 KAN BLVD E SUITE 207 CHARLESTON WV 25305	(304) 558-3348	(304) 558-3360	wcharnock@state.wv.us
CHRISTOPHER CHILES CABELL COUNTY PROSECUTOR 750 FIFTH AVE STE 350 HUNTINGTON WV 25701	(304) 526-8653	(304) 526-8679	pros1@ezwv.com
FRANKLIN CLECKLEY WVU COLLEGE OF LAW P O BOX 4 MORGANTOWN WV 26507	(304) 292-3652	(304) 292-3652	
OTIS COX JR CABINET SECRETARY OFFICE OF THE GOVERNOR CAPITOL COMPLEX CHARLESTON WV 25305	(304) 558-2930	(304) 558-6221	ocox@governor.state.wv.us
OSHEL CRAIGO CHAIRMAN SENATE FINANCE COMMITTEE STATE CAPITOL COMPLEX CHARLESTON WV 25305	(304) 357-7980 Capitol (304) 722-3511 Business	(304) 357-7930	ocraigo@mail.wvnet.edu
AL EMCH JACKSON & KELLY P O BOX 553 CHARLESTON WV 25322-0553	(304) 340-1172	(304) 340-1050	eemch@jacksonkelly.com

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INDIGENT DEFENSE TASK FORCE MEMBERS			
NAMES AND ADDRESSES	**PHONE**	**FAX**	**E-MAIL**
JOHN FISHER II DEAN WVU COLLEGE OF LAW P O BOX 6130 MORGANTOWN WV 26506-6130	(304) 293-3199	(304) 293-6891	jfisher4@wvu.edu
HONORABLE FRED L FOX II MARION CO COURTHOUSE P O BOX 629 FAIRMONT WV 26554	(304) 367-5390	(304) 367-5374	
C E "Bert" GOODWIN P O BOX 636 RIPLEY WV 25271-0636	(304) 372-2651 1-800-655-2199	(304) 372-4807	ripleyoffice@citynet.net
HONORABLE ROBERT HALBRITTER P O DRAWER 750 KINGWOOD WV 26537	(304) 329-1073		
JOSEPH MARKUS SECRETARY DEPT OF ADMINISTRATION RM E-119; CAPITOL COMPLEX CHARLESTON WV 25305	(304) 558-4331	(304) 558-2999	jmarkus@gwmail.state.wv.us
JOHN F MCCUSKEY SHUMAN ANNAND ET AL 405 CAPITOL STREET CHARLESTON WV 25301	(304) 345-1400	(304) 343-1826	
MARJORIE MCDIARMID WVU COLLEGE OF LAW P O BOX 6130 MORGANTOWN WV 26506-6130	(304) 293-6821	(304) 293-6891	mcdiarm@wvnum.wvnet.edu
HAROLD MICHAEL CHAIRMAN HOUSE FINANCE COMMITTEE STATE CAPITOL COMPLEX CHARLESTON, WV 25305	(304) 538-6615 Office of Nationwide Ins.	(304) 538-7116	hmichl@mail.wvnet.edu
MARK MCOWEN Alternate for Harold Michael ATTORNEY AT LAW 1635 WILTSHIRE BLVD HUNTINGTON WV 25701	(304) 340-3230	(304) 340-3388	mmcowen@mail.wvnet.edu
DARRELL RINGER 68 DONLEY STREET MORGANTOWN WV 26501	(304) 292-1299	(304) 292-3372	dringer@wvbar.org
ALEX ROSS UPSHUR CO PROSECUTOR JD JENNINGS ANNEX - RM 202 38 W MAIN STREET BUCKHANNON WV 26201	(304) 472-9699	(304) 472-1452	

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INDIGENT DEFENSE TASK FORCE MEMBERS			
NAMES AND ADDRESSES	**PHONE**	**FAX**	**E-MAIL**
JUSTICE LARRY STARCHER WV SUPREME CT OF APPEALS BUILDING 1 ROOM E-317 1900 KAN BLVD E CHARLESTON WV 25305	(304) 558-2604	(304) 558-4308	starcl@mail.wvnet.edu
DELEGATE RICK STATON HOUSE JUDICIARY CHAIR P O BOX 357 MULLENS WV 25882-0357	(304) 294-7313	(304) 294-7324	rstaton@mail.wvnet.edu
JUDGE JAMES STUCKEY KANAWHA CO JUDICIAL ANNEX 111 COURT ST CHARLESTON WV 25301	(304) 357-0364	(304) 357-0594	
ED TIFFEY GENERAL COUNSEL OFFICE OF THE GOVERNOR CAPITOL COMPLEX CHARLESTON WV 25305	(304) 558-3829	(304) 558-1962	etiffey@governor.state.wv.us
SENATOR WILLIAM WOOTON P O BOX 59 BECKLEY WV 25802-0059	(304) 357-7880	(304) 255-5041	

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Appendix B

Indigent Defense Expenditures & Caseloads

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

Indigent Defense Expenditures and Caseloads, FY 1994

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
3rd	24,773	$0	$245,636	$9.92	0	344		$714.06	0.00%	0.00%	100.00%	100.00%	0.014
4th	92,107	$0	$686,654	$7.45	0	1424		$482.20	0.00%	0.00%	100.00%	100.00%	0.015
5th	48,943	$0	$370,089	$7.56	0	640		$578.26	0.00%	0.00%	100.00%	100.00%	0.013
6th/24th	138,463	$0	$1,052,834	$7.60	0	4,433		$237.50	0.00%	0.00%	100.00%	100.00%	0.032
11th	70,311	$0	$455,649	$6.48	0	979		$465.42	0.00%	0.00%	100.00%	100.00%	0.014
14th	41,379	$0	$309,182	$7.47	0	692		$446.79	0.00%	0.00%	100.00%	100.00%	0.017
16th	57,249	$0	$511,508	$8.93	0	1147		$445.95	0.00%	0.00%	100.00%	100.00%	0.020
17th	75,509	$0	$193,386	$2.56	0	427		$452.89	0.00%	0.00%	100.00%	100.00%	0.006
18th	29,037	$0	$155,122	$5.34	0	226		$686.38	0.00%	0.00%	100.00%	100.00%	0.008
19th	30,843	$0	$167,517	$5.43	0	540		$310.22	0.00%	0.00%	100.00%	100.00%	0.018
20th	27,803	$0	$237,111	$8.53	0	342		$693.31	0.00%	0.00%	100.00%	100.00%	0.012
21st	44,853	$0	$182,683	$4.07	0	270		$676.60	0.00%	0.00%	100.00%	100.00%	0.006
22nd	35,529	$0	$283,255	$7.97	0	342		$828.23	0.00%	0.00%	100.00%	100.00%	0.010
25th	47,252	$0	$475,603	$10.07	0	972		$489.30	0.00%	0.00%	100.00%	100.00%	0.021
26th	40,090	$0	$384,248	$9.58	0	648		$592.98	0.00%	0.00%	100.00%	100.00%	0.016
27th	28,990	$0	$244,699	$8.44	0	473		$517.33	0.00%	0.00%	100.00%	100.00%	0.016
29th	68,013	$0	$383,518	$5.64	0	597		$642.41	0.00%	0.00%	100.00%	100.00%	0.009
31st	0	$0	$79,434	$0.00	0	129	$0.00	$0.00	0.00%	0.00%	0.00%	0.00%	0.000
Total	1,793,477	$3,079,341	$10,344,143	$7.48	10,061	21,913	$306.07	$472.06	31.47%	22.94%	68.53%	77.06%	0.018
Non-PDC	901,144	0	6,418,127	$7.12	0	14,625		$438.85	0.00%	0.00%	100.00%	100.00%	0.016

Districts with Public Defender Corporations =

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

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
3rd	24,773	$0	$236,711	$9.56	0	356		$664.92	0.00%	0.00%	100.00%	100.00%	0.014
4th	92,107	$0	$829,633	$9.01	0	1704		$486.87	0.00%	0.00%	100.00%	100.00%	0.019
5th	48,943	$0	$369,747	$7.55	0	739		$500.33	0.00%	0.00%	100.00%	100.00%	0.015
11th	43,701	$0	$334,665	$7.66	0	636		$526.20	0.00%	0.00%	100.00%	100.00%	0.015
14th	41,379	$0	$305,459	$7.38	0	640		$477.28	0.00%	0.00%	100.00%	100.00%	0.015
16th	57,249	$0	$622,913	$10.88	0	1248		$499.13	0.00%	0.00%	100.00%	100.00%	0.022
17th	75,509	$0	$235,471	$3.12	0	547		$430.48	0.00%	0.00%	100.00%	100.00%	0.007
18th	29,037	$0	$196,472	$6.77	0	261		$752.77	0.00%	0.00%	100.00%	100.00%	0.009
19th	30,843	$0	$150,615	$4.88	0	443		$339.99	0.00%	0.00%	100.00%	100.00%	0.014
20th	27,803	$0	$323,927	$11.65	0	390		$830.58	0.00%	0.00%	100.00%	100.00%	0.014
21st	44,853	$0	$363,933	$8.11	0	334		$1,089.62	0.00%	0.00%	100.00%	100.00%	0.007
22nd	35,529	$0	$423,039	$11.91	0	416		$1,016.92	0.00%	0.00%	100.00%	100.00%	0.012
25th	47,252	$0	$581,866	$12.31	0	994		$585.38	0.00%	0.00%	100.00%	100.00%	0.021
26th	40,090	$0	$373,983	$9.33	0	739		$506.07	0.00%	0.00%	100.00%	100.00%	0.018
27th	28,990	$0	$307,266	$10.60	0	509		$603.67	0.00%	0.00%	100.00%	100.00%	0.018
29th	68,013	$0	$427,165	$6.28	0	621		$687.87	0.00%	0.00%	100.00%	100.00%	0.009
31st	26,610	$0	$126,821	$4.77	0	290		$437.31	0.00%	0.00%	100.00%	100.00%	0.011
Total	1,793,477	$4,810,723	$11,326,870	$9.00	14,385	21,170	$334.43	$535.04	40.46%	29.81%	59.54%	70.19%	0.020
Non-PDC	762,681	0	6,209,687	$8.14	0	10,867		$571.43	0.00%	0.00%	100.00%	100.00%	0.014

Districts with Public Defender Corporations =

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	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
[redacted]													
3rd	24,773	$0	$188,422	$7.61	0	330		$570.98	0.00%	0.00%	100.00%	100.00%	0.013
4th	92,107	$0	$880,432	$9.56	0	1616		$544.82	0.00%	0.00%	100.00%	100.00%	0.018
5th	48,943	$0	$399,010	$8.15	0	851		$468.87	0.00%	0.00%	100.00%	100.00%	0.017
[redacted]													
11th	43,701	$0	$365,439	$8.36	0	612		$597.12	0.00%	0.00%	100.00%	100.00%	0.014
[redacted]													
14th	41,379	$0	$247,897	$5.99	0	529		$468.61	0.00%	0.00%	100.00%	100.00%	0.013
[redacted]													
16th	57,249	$0	$684,180	$11.95	0	1360		$503.07	0.00%	0.00%	100.00%	100.00%	0.024
17th	75,509	$0	$317,468	$4.20	0	579		$548.30	0.00%	0.00%	100.00%	100.00%	0.008
18th	29,037	$0	$185,949	$6.40	0	282		$659.40	0.00%	0.00%	100.00%	100.00%	0.010
19th	30,843	$0	$180,150	$5.84	0	559		$322.27	0.00%	0.00%	100.00%	100.00%	0.018
20th	27,803	$0	$316,943	$11.40	0	327		$969.24	0.00%	0.00%	100.00%	100.00%	0.012
21st	44,853	$0	$266,742	$5.95	0	331		$805.87	0.00%	0.00%	100.00%	100.00%	0.007
22nd	35,529	$0	$387,198	$10.90	0	427		$906.79	0.00%	0.00%	100.00%	100.00%	0.012
[redacted]													
25th	47,252	$0	$534,714	$11.32	0	911		$586.95	0.00%	0.00%	100.00%	100.00%	0.019
26th	40,090	$0	$357,230	$8.91	0	804		$444.32	0.00%	0.00%	100.00%	100.00%	0.020
27th	28,990	$0	$234,560	$8.09	0	462		$507.71	0.00%	0.00%	100.00%	100.00%	0.016
[redacted]													
29th	68,013	$0	$453,074	$6.66	0	722		$627.53	0.00%	0.00%	100.00%	100.00%	0.011
[redacted]													
31st	26,610	$0	$128,660	$4.84	0	215		$598.42	0.00%	0.00%	100.00%	100.00%	0.008
Total	1,793,477	$5,885,279	$10,448,066	$9.11	17,848	18,906	$329.74	$552.63	48.56%	36.03%	51.44%	63.97%	0.020

[redacted]													
Non-PDC	762,681	0	6,128,068	$8.03	0	10,917		$561.33	0.00%	0.00%	100.00%	100.00%	0.014

Districts with Public Defender Corporations = [redacted]

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

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

Indigent Defense Expenditures and Caseloads, FY 1998

	Population	Expenditure		Cost Per	Caseload		Cost Per Case		Public Defender		Assigned Counsel		Cases Per
		PD	AC	Capita	PD	AC	PD	AC	% of Cases	% of $	% of Cases	% of $	Capita
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3rd	24,773	$0	$61,409	$2.48	0	115		$533.99	0.00%	0.00%	100.00%	100.00%	0.005
4th	92,107	$0	$641,338	$6.96	0	1062		$603.90	0.00%	0.00%	100.00%	100.00%	0.012
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
11th	43,701	$0	$316,910	$7.25	0	577		$549.24	0.00%	0.00%	100.00%	100.00%	0.013
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
14th	41,379	$0	$146,666	$3.54	0	308		$476.19	0.00%	0.00%	100.00%	100.00%	0.007
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
16th	57,249	$0	$593,189	$10.36	0	1281		$463.07	0.00%	0.00%	100.00%	100.00%	0.022
17th	75,509	$0	$479,622	$6.35	0	956		$501.70	0.00%	0.00%	100.00%	100.00%	0.013
18th	29,037	$0	$29,695	$1.02	0	52		$571.05	0.00%	0.00%	100.00%	100.00%	0.002
19th	30,843	$0	$87,136	$2.83	0	302		$288.53	0.00%	0.00%	100.00%	100.00%	0.010
20th	27,803	$0	$203,216	$7.31	0	394		$515.78	0.00%	0.00%	100.00%	100.00%	0.014
21st	44,853	$0	$177,774	$3.96	0	298		$596.56	0.00%	0.00%	100.00%	100.00%	0.007
22nd	35,529	$0	$302,243	$8.51	0	433		$698.02	0.00%	0.00%	100.00%	100.00%	0.012
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
25th	47,252	$0	$169,722	$3.59	0	532		$319.03	0.00%	0.00%	100.00%	100.00%	0.011
26th	40,090	$0	$215,539	$5.38	0	337		$639.58	0.00%	0.00%	100.00%	100.00%	0.008
27th	28,990	$0	$183,626	$6.33	0	338		$543.27	0.00%	0.00%	100.00%	100.00%	0.012
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
29th	68,013	$0	$385,735	$5.67	0	733		$526.24	0.00%	0.00%	100.00%	100.00%	0.011
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
31st	26,610	$0	$61,958	$2.33	0	150		$413.06	0.00%	0.00%	100.00%	100.00%	0.006
Total	1,793,477	$8,763,076	$7,798,142	$9.23	22,602	14,909	$387.71	$523.05	60.25%	52.91%	39.75%	47.09%	0.021

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Non-PDC	713,738	$0	$4,055,778	$5.68	0	7,868		$515.48	0.00%	0.00%	100.00%	100.00%	0.011

Districts with Public Defender Corporations = [illegible]

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Appendix C

Indigent Defense Caseload By Case Type

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For more information regarding this report, contact Jessica Reedy@wvlgo.org

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

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

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

Percentage of cases

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

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

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

Percentage of cases

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Comparison of West Virginia Indigent Defense Cases Assigned by Type, FY 1998

For more information regarding accessing this data, please contact Debra Riley at debra.l.riley@wv.gov.

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

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

Percentage of cases

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

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

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

Percentage of cases

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

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	TOTAL
3rd	$ 2,025.88	$ 547.55	$ 87.43	$ 626.78		$ 629.31	$ 930.26	$ 2,311.12	$ 1,140.61	**$ 714.06**
4th	$ 988.16	$ 383.47	$ 127.61	$ 448.10	$ 271.30	$ 394.85	$ 816.64	$ 1,491.60	$ 669.22	**$ 482.20**
5th	$ 1,026.15	$ 287.80	$ 152.60	$ 611.09	$ 238.92	$ 517.99	$ 1,086.72		$ 1,238.77	**$ 578.26**
6th	$ 608.40	$ 207.61	$ 49.80	$ 229.34	$ 542.74	$ 289.47	$ 912.11	$ 2,041.94	$ 564.30	**$ 223.97**
11th	$ 961.31	$ 303.40	$ 91.84	$ 339.04	$ 342.13	$ 477.99	$ 439.95	$ 630.50	$ 653.03	**$ 442.61**
14th	$ 871.08	$ 325.28	$ 186.86	$ 362.68	$ 240.56	$ 487.88	$ 940.17	$ 1,400.75	$ 280.19	**$ 446.79**
16th	$ 885.37	$ 284.58	$ 121.65	$ 379.18	$ 268.62	$ 420.53	$ 885.60	$ 3,108.14	$ 1,136.16	**$ 445.95**
17th	$ 765.15	$ 370.29	$ 113.98	$ 439.24	$ 257.64	$ 163.50	$ 1,407.01	$ 1,375.46	$ 768.44	**$ 452.89**
18th	$ 1,235.41	$ 331.31	$ 118.25	$ 593.60	$ 335.28	$ 522.18	$ 1,681.78		$ 1,168.29	**$ 686.38**
19th	$ 647.81	$ 249.20	$ 167.89	$ 212.80	$ 1,005.00	$ 1,686.16	$ 807.14		$ 678.90	**$ 310.22**
20th	$ 1,215.53	$ 484.90	$ 202.79	$ 443.44	$ 770.71	$ 532.15	$ 760.75	$ 1,506.86	$ 1,466.05	**$ 693.31**
21st	$ 986.70	$ 468.24	$ 121.39	$ 741.58	$ 468.25	$ 412.41	$ 1,813.67	$ 3,024.41	$ 1,115.77	**$ 676.60**
22nd	$ 1,666.82	$ 381.54	$ 176.57	$ 954.57	$ 411.50	$ 847.98	$ 2,019.17	$ 633.64	$ 799.25	**$ 828.23**
24th	$ 816.48	$ 246.13	$ 95.75	$ 164.73	$ 688.65	$ 230.00	$ 854.79	$ 12,000.00	$ 1,564.53	**$ 381.39**
25th	$ 1,095.09	$ 307.98	$ 146.18	$ 301.33	$ 474.59	$ 496.68	$ 775.13	$ 81.00	$ 939.90	**$ 489.30**
26th	$ 1,515.20	$ 456.28	$ 144.27	$ 530.30	$ 481.79	$ 555.27	$ 1,486.91	$ 601.68	$ 888.72	**$ 592.98**
27th	$ 880.58	$ 398.79	$ 287.78	$ 469.85	$ 903.88	$ 429.00	$ 730.65		$ 559.52	**$ 517.33**
29th	$ 1,372.16	$ 376.02	$ 159.71	$ 593.32	$ 332.39	$ 520.43	$ 601.35	$ 2,513.70	$ 1,664.46	**$ 642.41**
31st	$ 1,081.75	$ 393.17	$ 53.88	$ 505.40	$ 271.00	$ 473.15	$ 752.44		$ 402.32	**$ 615.76**
AVG.	**$ 1,056.49**	**$ 316.51**	**$ 103.06**	**$ 462.12**	**$ 416.46**	**$ 516.28**	**$ 1,110.80**	**$ 1,677.07**	**$ 917.04**	**$ 471.20**
Non-PDC	$ 985.91	$ 307.20	$ 97.90	$ 378.36	$ 419.69	$ 484.09	$ 1,035.45	$ 1,812.87	$ 858.34	$ 437.27

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

Cost Per Case

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Appendix D

Private Court-Appointed Cost Per Case By Case Type

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Private Bar Panel Attorney Hourly Rates by Case Type FY 1995

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	TOTAL
3rd	$ 1,629.14	$ 427.34	$ 98.80	$ 648.84	$ 432.06	$ 806.61	$ 1,095.72	$ 1,470.65	$ 696.45	$ 664.92
4th	$ 1,175.37	$ 355.76	$ 106.87	$ 465.48	$ 333.51	$ 361.38	$ 716.29	$ 1,173.04	$ 531.20	$ 486.87
5th	$ 918.19	$ 276.92	$ 186.53	$ 417.42	$ 258.64	$ 289.13	$ 1,013.09	$ 2,260.28	$ 756.31	$ 500.33
11th	$ 936.08	$ 389.50	$ 119.06	$ 380.71	$ 238.60	$ 670.62	$ 1,031.83		$ 1,311.94	$ 526.20
14th	$ 1,046.76	$ 304.07	$ 157.52	$ 259.42	$ 384.74	$ 297.86	$ 829.11		$ 383.33	$ 477.28
16th	$ 1,072.30	$ 326.46	$ 131.38	$ 421.14	$ 279.61	$ 420.56	$ 882.03	$ 2,085.85	$ 658.42	$ 499.13
17th	$ 667.94	$ 328.63	$ 106.28	$ 572.42	$ 663.05	$ 172.11	$ 1,484.16	$ 1,455.83	$ 758.26	$ 430.48
18th	$ 1,318.89	$ 378.67	$ 103.81	$ 562.99	$ 587.92	$ 173.75	$ 2,298.77		$ 1,013.07	$ 752.77
19th	$ 707.56	$ 241.45	$ 168.85	$ 237.80	$ 502.38	$ 176.30	$ 1,068.27	$ 1,296.00	$ 294.94	$ 339.99
20th	$ 1,540.78	$ 420.97	$ 117.64	$ 632.64	$ 974.06	$ 1,140.46	$ 1,117.81	$ 6,579.68	$ 753.38	$ 830.58
21st	$ 2,163.66	$ 547.53	$ 146.95	$ 678.10	$ 862.50	$ 398.16	$ 1,732.16	$ 3,734.40	$ 931.71	$ 1,089.62
22nd	$ 1,977.02	$ 423.47	$ 229.36	$ 1,341.16		$ 412.39	$ 1,858.44		$ 990.67	$ 1,016.92
25th	$ 1,314.10	$ 308.36	$ 144.02	$ 392.75	$ 303.74	$ 354.92	$ 793.54	$ 399.96	$ 383.69	$ 585.38
26th	$ 1,394.40	$ 527.59	$ 114.72	$ 550.11	$ 419.57	$ 502.66	$ 1,291.73	$ 793.34	$ 644.70	$ 506.07
27th	$ 1,086.68	$ 409.23	$ 212.55	$ 456.16	$ 442.54		$ 1,462.57	$ 3,466.76	$ 541.59	$ 603.67
29th	$ 1,559.73	$ 347.74	$ 214.29	$ 724.65	$ 895.74	$ 698.90	$ 984.96		$ 837.90	$ 687.87
31st	$ 821.38	$ 240.99	$ 95.18	$ 363.87	$ 269.94	$ 576.30	$ 826.71		$ 415.80	$ 437.31
AVG.	$ 1,191.67	$ 334.67	$ 100.16	$ 502.47	$ 411.75	$ 463.03	$ 1,263.90	$ 1,966.64	$ 804.32	$ 535.04
Non-PDC	$ 1,228.90	$ 352.55	$ 132.14	$ 480.43	$ 383.95	$ 443.45	$ 1,092.47	$ 2,031.90	$ 691.80	$ 571.43

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

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	TOTAL
3rd	$ 1,315.62	$ 409.97	$ 84.44	$ 410.74		$ 615.48	$ 1,283.85		$ 1,023.38	$ 570.98
4th	$ 1,332.55	$ 392.81	$ 111.89	$ 595.98	$ 384.63	$ 331.71	$ 918.58	$ 643.48	$ 394.43	$ 544.82
5th	$ 881.42	$ 221.90	$ 171.85	$ 425.00	$ 176.50	$ 317.48	$ 1,403.63	$ 1,297.70	$ 553.30	$ 468.87
11th	$ 1,075.83	$ 394.72	$ 124.82	$ 335.76	$ 512.48	$ 713.19	$ 1,792.77		$ 1,630.93	$ 597.12
14th	$ 904.88	$ 297.49	$ 162.76	$ 402.52	$ 700.53	$ 798.38	$ 882.36	$ 477.83	$ 338.84	$ 468.61
16th	$ 1,048.65	$ 361.93	$ 181.70	$ 317.08	$ 404.70	$ 371.30	$ 2,025.41	$ 1,508.41	$ 625.40	$ 503.07
17th	$ 1,314.09	$ 423.96	$ 99.71	$ 684.39	$ 188.32	$ 449.52	$ 1,426.03		$ 510.05	$ 548.30
18th	$ 1,675.76	$ 398.55	$ 115.90	$ 613.81	$ 343.29	$ 225.00	$ 1,383.82	$ 1,795.53	$ 1,370.04	$ 659.40
19th	$ 787.10	$ 237.51	$ 160.44	$ 225.70		$ 310.69	$ 845.57		$ 519.84	$ 322.27
20th	$ 2,305.87	$ 501.29	$ 173.43	$ 555.17	$ 3,845.20	$ 654.73	$ 1,440.25	$ 232.84	$ 976.54	$ 969.24
21st	$ 1,353.14	$ 531.89	$ 115.47	$ 564.60		$ 383.89	$ 2,337.80		$ 1,004.56	$ 805.87
22nd	$ 2,258.70	$ 368.47	$ 160.33	$ 869.59		$ 578.48	$ 1,509.10	$ 1,250.95	$ 645.62	$ 906.79
25th	$ 1,486.49	$ 316.34	$ 125.60	$ 311.52	$ 374.86	$ 456.90	$ 1,469.48	$ 1,735.47	$ 556.60	$ 586.95
26th	$ 1,421.01	$ 435.74	$ 114.35	$ 398.43	$ 731.84	$ 425.18	$ 1,239.17	$ 557.72	$ 758.25	$ 444.32
27th	$ 852.03	$ 374.68	$ 189.29	$ 454.11	$ 836.16	$ 460.00	$ 969.89		$ 340.97	$ 507.71
29th	$ 1,438.79	$ 346.51	$ 219.71	$ 556.30	$ 352.25	$ 304.30	$ 1,063.01	$ 106.50	$ 670.77	$ 627.53
31st	$ 1,288.89	$ 280.48	$ 72.25	$ 395.30		$ 247.99	$ 1,035.53		$ 783.30	$ 598.42
AVG.	**$ 1,232.90**	**$ 345.30**	**$ 101.66**	**$ 445.09**	**$ 608.58**	**$ 518.18**	**$ 1,390.39**	**$ 1,753.22**	**$ 804.05**	**$ 552.63**
Non-PDC	$ 1,295.51	$ 353.88	$ 132.26	$ 427.26	$ 571.32	$ 421.65	$ 1,356.80	$ 983.87	$ 687.87	$ 561.33

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

	Cost Per Case Type									
	Felony	Misdr	M. Hygiene	Juv.	Paternity	Parole Rev.	A & N	Habeas	Other	TOTAL
3rd	$ 1,173.17	$ 377.74	$ 87.40	$ 747.76		$ 343.67	$ 796.12	$ 555.95	$ 502.70	$ 533.99
4th	$ 1,910.43	$ 346.24	$ 125.26	$ 553.81	$ 699.98	$ 386.38	$ 771.17	$ 405.19	$ 521.05	$ 603.90
11th	$ 1,117.96	$ 331.35	$ 124.72	$ 339.94		$ 440.65	$ 2,284.73	$ 6,506.75	$ 515.79	$ 549.24
14th	$ 783.97	$ 257.70	$ 185.62	$ 400.95		$ 247.04	$ 1,756.78	$ 405.04	$ 487.57	$ 476.19
16th	$ 1,177.73	$ 301.55	$ 144.57	$ 306.46		$ 410.14	$ 1,170.85	$ 2,516.71	$ 649.23	$ 463.07
17th	$ 904.39	$ 371.97	$ 103.65	$ 619.37	$ 362.00	$ 516.26	$ 1,959.01	$ 2,797.42	$ 1,027.43	$ 501.70
18th	$ 1,017.17	$ 506.00	$ 120.37	$ 356.21			$ 1,847.85		$ 1,341.65	$ 571.05
19th	$ 391.71	$ 220.56	$ 125.00	$ 216.79		$ 444.70	$ 798.47	$ 264.50	$ 301.79	$ 288.53
20th	$ 907.92	$ 370.59	$ 279.15	$ 621.44		$ 256.43	$ 1,142.98	$ 437.00	$ 315.06	$ 515.78
21st	$ 958.07	$ 379.68	$ 132.42	$ 470.05		$ 274.28	$ 1,047.62		$ 734.39	$ 596.56
22nd	$ 1,364.70	$ 305.73	$ 193.86	$ 695.27		$ 598.59	$ 1,521.72		$ 361.71	$ 698.02
25th	$ 610.96	$ 236.88	$ 141.36	$ 288.60		$ 421.22	$ 1,034.59	$ 295.50	$ 574.45	$ 319.03
26th	$ 1,105.96	$ 343.31	$ 105.50	$ 549.64		$ 351.88	$ 986.05	$ 1,528.03	$ 1,059.10	$ 639.58
27th	$ 991.16	$ 343.08	$ 114.25	$ 534.16		$ 567.00	$ 1,846.21		$ 469.76	$ 543.27
29th	$ 1,151.01	$ 314.22	$ 165.57	$ 614.82		$ 269.20	$ 1,353.73	$ 3,000.00	$ 817.96	$ 526.24
31st	$ 759.17	$ 218.05	$ 71.96	$ 164.60		$ 108.67	$ 1,432.00		$ 457.19	$ 413.06
AVG.	**$ 1,126.67**	**$ 312.53**	**$ 98.39**	**$ 422.26**	**$ 913.66**	**$ 453.85**	**$ 1,291.27**	**$ 1,516.22**	**$ 775.05**	**$ 523.05**
Non-PDC	$ 1,123.62	$ 319.02	$ 132.27	$ 412.08	$ 530.99	$ 407.88	$ 1,275.46	$ 1,770.27	$ 659.16	$ 515.48

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Appendix E

Indigent Defense Models

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Assigned Counsel Programs

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

The Ad Hoc Assigned Counsel Program

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

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

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

The Coordinated Assigned Counsel Program

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

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

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

Contract Attorney Programs

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

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

Fixed Price Contracts

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

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

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

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

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

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

The Fixed Fee-Per-Case Contract

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

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

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

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

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

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

Public Defender Programs

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

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

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

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Appendix F

Comparative State Narratives

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1. Connecticut

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

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

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

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

2. Delaware

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

Indigent Defense System:
The Delaware State Public Defender represents all indigent defendants in trial and appellate cases. The Public Defender has regional offices throughout the state, and the state pays all expenditures for indigent defense. The FY 2000 budget for the Delaware State Public Defender is $7,192,300. Conflict cases are primarily handled by a pool of six private attorneys who contract with the state to handle conflict cases. The average annual, flat-fee contracts are for $42,460 (per attorney), not including work on Class A felony cases (an additional $12,00), or capital and non-capital murder cases, which usually adds another $20,000 per year. The contract program is administered by a circuit court judge, who selects the contract attorneys.

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

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3. Florida

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

Indigent Defense System:

In Florida, the 20 judicial circuit public defenders are publicly elected and provide representation at trial. Appellate cases are handled on a regional basis by five of these offices. Conflict cases are handled by private court-appointed counsel, and the rates vary from judge to judge, and from circuit to circuit. By statute, the state is responsible for public defender salaries and "the necessary expenses of office," and the counties pay for office overhead expenses and court-appointed counsel costs. While state funds are distributed to the circuit public defender offices based on a recently restructured funding formula designed to fairly distribute the monies, some counties make more funding available for indigent defense than others. This new funding formula has contributed to increased appropriations for the Florida Public Defender Association (FPDA), a network of Florida's 20 elected circuit public defenders. Its FY 1999 state appropriation of $126 million is a 6% increase from last year's appropriation.

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

Indigent Defense Commission:

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

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

Alternative Revenue:

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

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

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without causing substantial hardship." Florida's statute does not allow for those facing substantial hardship to avoid payment.

In passing this legislation, the Florida state legislature took steps to help ensure that the fee would be collected from those defendants who are capable of paying it. First, the law creating the administrative fee also aims to tighten up indigency screening by expanding the affidavit which applicants for public defender services must submit in order to be appointed counsel. The 1997 amendment to §27.52 requires that the affidavit of indigency contain a statement affirming the applicant's obligation to report to the court or to the indigency examiner a change in financial circumstances. Second, the State Court Administrator's office was allocated 20 positions statewide to conduct indigency screening so that the courts are not overburdened with new responsibilities and will be able to devote adequate time to administering the screening program. Under legislation passed during the 1997 legislative session, as incentive to the clerks of the court who oversee collection of the fee, the clerks may retain two percent of the application fees collected monthly for administrative costs prior to remitting the remainder to the Judicial Administrative Commission. In FY 1998, $1.1 million was generated from the $40 application fee, a figure which was almost matched in FY 1999, when the fee brought in $1 million.

4. Maryland

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

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

In the most recent legislative session, the public defender office received a 2% increase in its FY1999 budget – up to approximately $40 million. Though some of the increase will be used to offset the costs of representing children in termination of parental rights cases -- a new responsibility for the Maryland Public Defender Office -- most of the new money is slated to help pay for computers and staffing for both a pilot community court project and a social work unit.

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

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5. Missouri

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

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

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

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

6. New Jersey

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

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

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

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Alternative Revenue:

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

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

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

7. New Mexico

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

Indigent Defense System:

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

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

Alternative Revenue:

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

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8. North Carolina

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

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

9. Ohio

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

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

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

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

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

Many of Ohio's other counties have also established up-front fees. The amount and administration of the fee, however, varies from county to county.

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10. Oklahoma

Population:	3,300,902	Primary Funding:	Mixed State & County
Density:	45.8 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	14.8%		
Counties:	77	Death Penalty:	Yes

Indigent Defense System:
In Oklahoma's two largest counties, Tulsa and Oklahoma (Oklahoma City), the counties fund indigent defense services at the trial and direct appeal levels. Both counties have full-time public defender offices.

In 1991, the Oklahoma legislature created and funded a new state agency for providing indigent defense services, the Oklahoma Indigent Defense System (OIDS). OIDS, with its five-member Board of Directors, is responsible for providing indigent defense services in 75 of Oklahoma's 77 counties. OIDS has separate, staffed capital trial, capital direct appeal, non-capital direct appeal and capital state post-conviction divisions. The majority of non-capital trial cases are handled by attorneys working under contract with OIDS. Impetus for the statewide system was a 1990 Oklahoma Supreme Court decision which held that the compensation system in effect for court-appointed counsel at the trial level was unlawful as an unconstitutional taking of property of court-appointed attorneys. *State v. Lynch*, 796 P.2d 1150 (Okla. 1990).

Following the 1997 legislative session, OIDS opened three non-capital trial satellite offices, and, in the 1998 legislative session, received funds to expand one of the three offices. For FY 2000, OIDS received a budget of $14,883,111.

Indigent Defense Commission:
The Governor of Oklahoma selects each of the five members who serve on the Oklahoma Indigent Defense System Board. At least three of the members must be lawyers. This Board makes policies for indigent defense programs, approves a budget for OIDS, appoints an advisory council of indigent defense attorneys, establishes policies on maximum caseloads and appoints the OIDS Executive Director.

Alternative Revenue:
Oklahoma requires any indigent defendant requesting representation by the Oklahoma Indigent Defense System to pay a $40 application fee to the court clerk. Today, all the revenue generated by the fee is allocated to the Court Clerk's Revolving Fund. However, at the fee's inception in 1992, 90% of the then-$15 fee went to the Indigent Defense Revolving Fund and just 10% reverted back to the Court. This distribution scheme changed in 1996, when the fee was raised to $40 and statutory language specified that the first $20 collected should go to OIDS, and the balance would be deposited in the Court Clerk's Revolving Fund. In November of 1997 the statute changed again, this time declaring that all revenue brought in would be transmitted to the Court Clerk's Revolving Fund.

11. Oregon

Population:	3,203,735	Primary Funding:	State
Density:	29.6 people per square mile	Primary System:	Public Defender, Assigned Counsel & Contract Defender
Poverty Rate:	12.8%		
Counties:	36	Death Penalty:	Yes

Indigent Defense System:
In Oregon, the state provides all funding for indigent defense services. At the trial level, the Indigent Defense Services Division of the Administrative Office of the Courts administers contracts with each county program, which may choose a public defender, private bar contract or court-appointed counsel system. The State Public Defender handles direct appeals.

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Alternative Revenue:
In 1997, ORS 151.487 was revised and became the primary vehicle for a new statewide program allowing courts to order persons who apply for court-appointed counsel in any case to pay in full or in part "the administrative costs of determining the eligibility of the person and the costs of legal and other services to be provided" prior to the conclusion of the case. As a result, the state implemented a recoupment program and a $20 application fee. The court must first determine whether the person applying for appointed counsel has the financial ability to pay such costs without creating substantial hardship in providing basic economic necessities to the person or the person's dependent family. As in other states, failure to obey a court order to pay an application fee or contribution amount cannot be used as grounds for contempt or the withdrawal of court-appointed counsel. However, application fee and contribution amounts ordered by the court are enforceable against the person "as if the order is a civil judgement," and a court's decision to order or to not order payment of either cost is subject to review at any time. Lastly, the State Court Administrator's guidelines and standards for operation of this new program prohibit delay in the appointment of counsel to individuals eligible for indigent defense services which may arise if the individuals disagree with the decisions regarding their eligibility or contribution amount.

The Oregon application fee and contribution program came into effect in November 1998, and has been operating in five counties on a pilot basis. The program is expected to expand to the entire state as of January 1, 2000. The application fee was set at $20 and all revenues generated go to the State Court Indigent Defense Account. The Office of the State Court Administrator is not able to discern between revenues generated by the application fee and money brought in by client contribution. These two sources generated approximately $360,000 in the five counties in FY 1999.

12. Tennessee

Population:	5,319,654	Primary Funding:	Primarily State/Some County
Density:	118.3 people per square mile	Primary System:	Public Defender
Poverty Rate:	14.5%		
Counties:	95	Death Penalty:	Yes

Indigent Defense System:
In Tennessee, with the exception of Shelby County (Nashville) and Davidson County (Memphis), which have their own respective county public defender offices funded through a combination of state and local monies, the state funds indigent defense and each judicial district has an independent public defender office. The Tennessee District Public Defenders Conference oversees the delivery of indigent defense services throughout the state. Its FY 1999 appropriation was $21 million, a 4.7% increase from FY 1998. Another program, the Office of the Post-Conviction Defender, represents indigent defendants convicted of capital offenses who are seeking state post-conviction relief.

In the 1998 legislative session, the state legislature appropriated funds to conduct a weighted caseload study for judges, prosecutors and public defenders; this study was completed in spring of 1999.

Indigent Defense Commission:
The Tennessee Indigent Defense Commission of the Supreme Court of Tennessee is composed of 11 members who are appointed by the state Supreme Court. Duties of the Commission include: appointing officers; adopting rules for operation of the Commission; developing a comprehensive plan for indigent defense services in the state court system; collecting case information; determining reasonable caseloads for district defenders; set standards for criminal defense attorneys representing indigent defendants; setting compensation for assigned counsel; setting annual budget for court-appointed counsel expenditures; and developing a voucher review process.

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The Post-Conviction Defender Commission has nine members, appointed by the Governor, lieutenant governor, the Speaker of the House of Representatives, and the Supreme Court of Tennessee. Their tasks are to appoint the Post-Conviction Defender and prepare an annual budget for the Office of the Post-Conviction Defender.

Alternative Revenue:
Since July 1, 1997, Tennessee has required indigent defendants and parents or guardians of indigent minors facing juvenile proceedings to pay a $50 administrative fee. If a court finds that the defendant or guardian can pay more than $50, the fee can be increased to an amount not to exceed $200. Court clerks collect the fee, and 5% of the revenue reverts back to the court, while the other 95% is deposited into the state's general fund. In calendar year 1998, the fee generated $543,300.

13. Wisconsin

Population:	5,159,795	Primary Funding:	State
Density:	90.1 people per square mile	Primary System:	Public Defender
Poverty Rate:	8.6%		
Counties:	72	Death Penalty:	No

Indigent Defense System:
Wisconsin has an integrated state public defender system with regional trial offices providing trial and appellate representation throughout the state.

Indigent Defense Commission:
Wisconsin has a nine member commission appointed by the Governor and approved by Senate. At least five must be attorneys with the Chair elected by Board. The commission's duties include: Appoint state Public Defender and establish salary; Approve budget and submit to Governor; Promulgate standards of indigency; Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs; Perform all other duties necessary and incidental; Contract with federal agencies and local public defender organizations for provision of services.

Alternative Revenue:
Technically there is no up-front application fee for indigent defendants seeking court-appointed representation in Wisconsin, but there is a bifurcated reimbursement system that in some ways resembles an application fee.

Under Wisc. Stat. Ann. §977.075 (West Supp. 1996), the Board for the Office of the State Public Defender (SPD) is required to establish, by rule, fixed amounts for the cost of legal representation. Under the program adopted in August 1995, SPD staff screen defendants for indigency and inform them that they are expected to pay a per-charge fee for representation rendered. Each misdemeanor charge is assessed at $200, and felony representation runs $400 per charge. An appeal of a case that went to trial will cost the defendant $1,000, while reimbursement for representation in an appeal where there was no trial runs $400. However, under the bifurcated nature of the program, defendants can elect to pre-pay the reimbursement charges at substantially reduced rates, if they do so within 30 days from application for counsel. Felony and misdemeanor fees can be pre-paid at a rate of $50 per offense, while reimbursement for representation in an appellate trial case can be pre-paid at $100. Thus, a defendant facing two misdemeanor charges can elect to pay $100 within 30 days from appointment or pay $400 at the disposition of the case. If the defendant elects to pay a fee in installments, he or she loses out on the pre-payment discount. Following the screening interview, defendants are given a payment envelope.

As in other states, defendants will not be denied counsel if they are unable to pay the fee, but their accounts will be turned over to a collection agency retained by the SPD. All monies collected revert back to the public defender.

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Start-up costs for the program were minimal, consisting of transferring two positions from public defender field offices to the central office to handle the payments. Initial projections for revenue generated by the program were forecast at $7 million, based on the number of charges defended by public defenders in past years. Actual collections totaled $626,000 in FY 1996, and increased to $825,900 in FY 1998.

14. Vermont

Population:	588,654	Primary Funding:	State
Density:	60.8 people per square mile	Primary System:	Public Defender & Contract Defenders
Poverty Rate:	10.6%		
Counties:	14	Death Penalty:	No

Indigent Defense System:

Vermont has a state-funded public defender system with full-time staff offices in approximately half of the counties and contract counsel in the remaining counties providing trial and appellate representation. The Vermont Office of the Defender General reported a slight decrease in its FY 1998 budget appropriation for general operations ($5,304,722 down from $5,355,000). However, two separate, one-time appropriations - one for $132,000 to address a growing backlog in termination of parental rights cases, the other $175,000 for computer upgrades - gave the Office of the Defender General a net gain in its FY 1998 appropriation. Funding rates continued to increase through 2000, as the Defender General's budget for the current fiscal year is $6,321,581.

Alternative Revenue:

As of March 1996, Vermont has imposed a $25 fee on individuals applying for representation. The money collected by the fee is deposited into the public defender special fund, which is used almost exclusively to support public defense in Vermont. In FY 1998, the fee brought in $255,172. Juvenile clients requiring counsel are not required to pay the fee.

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Appendix G

Additional Comparative Data

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The 6th/24th Circuit Public Defender Corporation began at the start of FY 1995. Between FY 1994 and FY 1998, the circuit's indigent defense caseload increased by 48.82%. This occurred at a time that the state's total indigent defense caseload increased by only 17.32% (from 31,974 to 37,511).

Caseload	1994	1995	1996	1997	1998
PD		2,592	4,074	4,666	5,227
AC	4,433	2,751	1,825	1,636	1,370
Total	4,433	5,343	5,899	6,302	6,597

Yet, during this same time period, the state's indigent defense expenditure grew by 23.37% (from $13,423,484 to $16,561,218) while the 6th/24th circuit increased by only 10.63%. In this circuit, we believe it is fair to say that the public defender corporation saved money for the state while ensuring that eligible clients received representation.

Expenditure	1994	1995	1996	1997	1998
PD		$ 679,860.00	$ 745,502.00	$ 853,055.00	$ 883,180.00
AC	$ 1,052,834.00	$ 726,034.00	$ 454,068.00	$ 425,971.00	$ 281,555.00
Total	$ 1,052,834.00	$ 1,405,894.00	$ 1,199,570.00	$ 1,279,026.00	$ 1,164,735.00

The other circuit that instituted a Public Defender Corporation during this time period was the 5th circuit. Because that PDC was established after the start of FY 1997, we believe that the real cost savings will not be felt until FY 1999 and beyond. As indicated in this report, we do not believe that enough of the indigent defense data is reliable after FY 1997 to draw definite conclusions. Still, the data that we do have indicates that the 5th circuit's indigent defense caseload has not been affected by the introduction of the PDC, though the indigent expenditure has increased.

Caseload	1994	1995	1996	1997	1998
PD				346	662
AC	640	739	851	469	199
Total	640	739	851	815	861

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Expenditure	1994	1995	1996	1997	1998
PD				$ 337,950.00	$ 371,200.00
AC	$ 370,089.00	$ 369,747.00	$ 399,010.00	$ 270,033.00	$ 130,607.00
Total	$ 370,089.00	$ 369,747.00	$ 399,010.00	$ 607,983.00	$ 501,807.00

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Appendix H

State Indigent Defense Commission Table

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
ALABAMA	None	Not applicable	None	Not applicable
ALASKA State Public Defender Agency (Executive agency, Department of Administration)	None	Not applicable	Appointed by Governor from nominations of judicial council. Confirmed by majority of legislature in joint sitting. Four-year term; renewal requires legislative confirmation. Member of bar. Governor can remove for good cause.	Appoint, supervise and control assistant public defenders and other employees. Submit annual report to legislature & Supreme Court on number and types of cases, dispositions and expenditures. Full-time; private practice prohibited.
ALASKA Office of Public Advocacy (Executive agency, Department of Administration)	None	Not applicable	Public Advocate appointed by Governor. Serves at will of Governor.	Provides Guardians Ad Litem for abused and neglected children and status offenders. Provides representation in conflict cases from the Alaska Public Defender Agency. Acts as Public Guardian and conservator for citizens with disabilities.
ARIZONA	None	Not applicable	None	Not applicable
ARKANSAS Arkansas Public Defender Commission (Executive agency)	Seven members appointed by Governor: at least four licensed Arkansas attorneys experienced in criminal defense; at least one county judge. Governor designates one member as Chair. No more than two residents of same congressional district. No two members from same county. Serve five-year terms.	Establish policies and standards for Public Defender System. Approve budgets for trial public defender offices. Require annual reports from trial public defender offices. Appoint Executive Director. Evaluate performance of Executive Director, Capital, Conflicts & Appellate Office, trial public defenders and private assigned counsel. Maintain list of private attorneys willing and qualified to accept capital case appointments. Authorize contracts with trial public defenders.	Executive Director appointed by Commission. Must have experience in defense of capital cases. Serves at will of commission.	Supervise capital conflict and appellate office. Maintain records of operation of public defender system. Prepare budget for commission. Implement attorney performance procedures pursuant to commission's standards. Maintain court opinions, statutes, etc. for use by trial public defenders and court- appointed counsel. Maintain appellate brief bank. Convene training program related to public defender system. Prepare annual report.
CALIFORNIA California Habeas Resource Center (Judicial Branch)	Five-member Board of Directors confirmed by the Senate. Each of the state's five Appellate Projects shall appoint one board member; all must be attorneys. No lawyer working as judge, prosecutor or in a law enforcement capacity is eligible. Four year terms.	Appoint Executive Director.	Executive Director appointed by Board of Directors. Must be member of California state bar during the five years preceding appointment and possess substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time. Serves at the will of the board.	Hire up to 30 attorneys to represent any indigent person convicted and sentenced to death in California in postconviction actions in state and federal courts. Work with the supreme court to recruit attorneys to accept death penalty habeas case appointments and to maintain a roster of attorneys so qualified. Employ investigators and experts to provide services to appointed attorneys in capital postconviction cases. Develop and maintain brief bank for use by appointed counsel. Review case billings and recommend compensation of members of the private bar to the court. Prepare annual report on the status of appointment of counsel for indigent prisoners in capital postconviction cases.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
COLORADO Office of State Public Defender Commission (Judicial agency)	Five members appointed by Supreme Court. No more than three from same political party. Three attorneys, two non-attorneys. No judges, prosecutors, public defenders or law enforcement personnel.	Appoint State Public Defender and discharge for cause.	State Public Defender appointed by Commission. Five-year, renewable term. Member of bar five years prior to appointment. Full-time position.	Employ and set compensation for all employees (rates approved by Supreme Court); establish regional offices as necessary; provide commensurate legal services to indigents accused of crimes as are available to non-indigents, independently of any political consideration or private interests.
COLORADO Office of Alternate Defense Counsel (Judicial Agency)	Nine members appointed by Supreme Court. No more than five from same political party. Six lawyer members, each representing one of the six congressional districts, all of whom are Colorado licensed lawyers practicing criminal law. Three members citizens not licensed to practice law in Colorado. No member at any time a judge, prosecutor, public defender or employee of a law enforcement agency. Serve four-year terms.	Select an Alternate Defense Counsel; serve as an advisory board to the alternate defense counsel; advise alternate defense counsel on development and maintenance of competent and cost-effective representation. Shall meet at least annually.	Alternate defense counsel appointed by Commission to renewable five-year term. Must be licensed to practice law in Colorado for at least five years prior to appointment. May not hold private practice. Serves at will of the Commission.	Employ and set compensation for all employees. Provide legal representation to indigent persons and partially indigent persons in circumstances when the state public defender has a conflict of interest by contracting with licensed attorneys and investigators. Legal services provided to indigents shall be commensurate with those available to non-indigents and independent of any political considerations or private interests.
CONNECTICUT Public Defender Services Commission (Autonomous body within judicial department for fiscal and budgetary purposes only.)	Seven members: two judges appointed by Chief Justice; one member appointed by each: Speaker of House, President Pro Tem of Senate, minority leader of House, minority leader of Senate. Chairman appointed by Governor. Three-year term. No more than three, other than chairman, from same party. Two of four non-judicial members non-attorneys. No public defenders.	Adopt rules for Division of Public Defender. Establish a compensation plan comparable to state's attorneys. Establish employment standards. Appoint Chief Public Defender and Deputy Chief Public Defender. Remove Public Defender and Deputy Public Defender for cause following notice and hearing. Submit annual report to Chief Justice, Governor and Legislature by October 15. (See duties of public defender.)	Chief Public Defender appointed by Commission to a four-year term. Member of state bar for five years. Full-time position.	Direct and supervise work of all personnel. Submit annual report, including data and recommendations for changes in law, to Commission by September 15. (Note extensive list in Sec. 51-291.)
DELAWARE Office of the Public Defender (Executive agency)	None	Not applicable	Public Defender appointed by Governor. Six-year term. Qualified attorney licensed in Delaware.	Appoint assistant attorneys, clerks, investigators and other employees as necessary and set salaries. Determine indigency prior to arraignment. Prepare annual report.
DISTRICT of COLUMBIA D.C. Public Defender Service (independent agency)	Eleven member Board of Trustees. Appointed by panel of two U.S. judges, two D.C. judges and Mayor of D.C. Three-year term; not more than two consecutive. No judges. Four of eleven members non-attorney residents of D.C.	Establish general policy but shall not direct conduct of particular cases. Submit fiscal year report to Congress, chief judges of U.S. Courts and D.C. Courts and D.C. Mayor. Arrange annual independent audit. Quarterly reports to court on matters relating to appointment system. Appoint Director and Deputy Director and set their salaries.	Director appointed by Trustees. Serve at pleasure of Trustees. Member of D.C. Bar. No private practice.	Employ and supervise personnel. Set compensation not to exceed salary paid to U. S. Attorneys and staff.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
FLORIDA Florida Public Defender Association (FPDA); Florida Public Defender Coordination Office (FPDCO)	None per se, but the FPDA is governed by a Board of Directors comprised of the 20 elected public defenders in Florida, two representatives of the assistant public defender staff and one representative apiece from public defender investigative and administrative staff. The FPCDO works with the FPDA.	The FPDA engages in activities that promote and develop the public defender system in Florida. The FPCDO coordinates FPDA meetings; collects caseload and budget information from public defenders; analyzes public defender workload; prepares annual funding formulae which are based on caseload and attorney unit cost and used by the three branches of government and the circuit public defenders in the budget request process; monitors pertinent legislative developments; conducts training for public defender staff; and circulates pertinent case law to the elected public defenders.	Not applicable	Not applicable
GEORGIA Georgia Indigent Defense Council (separate agency within Judicial branch)	Fifteen member council. Supreme Court selects members: ten lawyers; three lay persons; and two county commissioners. Selected for four year terms.	Recommend standards and guidelines for local programs. Administer state funds to local public defender programs that comply with standards. Support local defenders. Provide local attorneys with technical, clinical help and training. Prepare budget.	Director selected by Council.	Duties and responsibilities not contained in statute.
HAWAII Office of State Public Defender (Executive agency, Department of Budget and Finance)	Five member Defender Council. Appointed by Governor. Serve at Governor's pleasure. One member form each county. Chairman selected by members.	Council shall be governing body of Office of State Public Defender. Shall appoint Public Defender. Approve employment decision of Public Defender.	State Public Defender appointed by Council. Four-year term. Qualified to practice law in Hawaii. Full-time position.	Subject to approval of Council: employ assistant public defenders, investigators and other support personnel. Assistant public defenders may be part-time and engage in private practice other than criminal law.
IDAHO State Appellate Public Defender (The Department of Self-Governing Agencies)	None	Not applicable	State Appellate Defender appointed by the governor with advice and consent from the senate from a list of 2-4 persons recommended by a committee comprised of the president of the Idaho state bar association, chairmen of the senate judiciary and rules committee, and a citizen at large appointed by the governor. The chief justice of the Idaho supreme court, or her designee, is ex officio member of the committee. Public defender must be attorney licensed to practice in Idaho with at least five year experience practicing law. Four-year term; removed only for good cause.	Provide appellate and postconviction representation to indigent defendants convicted of felony offenses in those counties which participate in the capital crimes defense fund; prepare annual report. Employ deputy state appellate defenders and othe employees. Adopt necessary policies or rules.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
ILLINOIS Office of State Appellate Defender (agency of the Judicial department)	Board of Commissioners. Nine members. Appointed by various courts and bars. Governor appoints Chair. Serves one six-year term.	Approve budget. Advise Appellate Public Defender on policy. Can recommend dismissal of the Appellate Public Defender.	State Appellate Defender appointed by Illinois Supreme Court. Four-year term. Qualified to practice law in Illinois.	Provide representation in criminal appeals. Establish offices around the state. Train and assist trial level defenders.
INDIANA Public Defender Commission (Policy board for capital and non-capital representation) (Judicial agency)	Public Defender Commission: Eleven members: three appointed by Governor; three appointed by Chief Justice; one appointed by Board of Indiana Criminal Justice Institute; two House members appointed by the Speaker of the House; two Senate members, appointed by Speaker Pro Tempore of the Senate. Four-year term. No law enforcement officers or court employees. Members designate one member Chair.	Set standards for indigent defense services in capital and non-capital cases. Adopt guidelines and fee schedule under which counties may be reimbursed. Make recommendations concerning the delivery of indigent defense services in Indiana. Prepare annual report on operation of public defense fund.	Not applicable	Not applicable
INDIANA Public Defender of Indiana (State post-conviction public defender) (Judicial agency)	None	Not applicable	Public Defender appointed by Supreme Court. Four-year term. Resident. Practicing lawyer in Indiana for three years.	Represent all indigent defendants in post-conviction proceedings.
IOWA Office of the State Public Defender (independent agency within Executive branch)	None	Not applicable	State Public Defender appointed by Governor. Four-year term. Licensed to practice law in Iowa.	Oversee all 18 public defender offices. Coordinate non-public defender indigent defense program. Contract with attorneys when public defender unable to take case.
KANSAS State Board of Indigent Defense Services (Executive branch agency)	Nine members: five lawyers, four non-lawyers. Appointed by Governor and confirmed by Senate. Two members from First Congressional District, one of whom is a registered Kansas lawyer, and at least one member from each other Congressional District. At least one (and up to five) registered Kansas lawyer from each county with over 100,000 population. No members may be judicial or law enforcement personnel. Three-year terms.	Appoint Director and public defenders. Maintain statistics on indigent defense representation. Conduct training programs. Establish public defender offices. Enter into contracts with attorneys to provide indigent defense representation and with cities or counties for misdemeanor representation. Provide technical assistance to public defenders and private attorneys.	Board appoints Director who must be licensed in Kansas and demonstrate commitment and ability in criminal law.	Serve as Chief Executive Officer of Board. Supervise operation, policies, procedures of Board. Prepare annual report.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
KENTUCKY Department of Public Advocacy (independent state agency within Executive branch)	Nine appointed members plus deans of Kentucky law schools. Two members appointed by Governor. One by speaker, one by president of the senate, two by Supreme Court; two criminal lawyers appointed by Governor from list of five submitted by Bar Association, one appointed by Governor from list submitted by Kentucky Protection and Advocacy Advisory Board. Four-year term. No prosecutors or law enforcement officials. Chair elected by Commission to one-year term. Also a 17-member citizen advisory board appointed by the Public Advocate.	Recommend to Governor three attorneys as nominees for Public Advocate. Assist Public Advocate in selecting staff. Provide general supervision of Public Advocate and review performance. Engage in public education and generate political support. Review and adopt annual budget. Not interfere with handling of cases.	Public Advocate appointed by Governor from nominees submitted by Commission. Member of Kentucky Bar with five years experience. Four-year term.	Appoint Deputy Public Defender. Appoint assistant public defenders and other personnel. Serve as ex officio, non-voting member of Commission. Appoint 17-member Advisory Board for Protection and Advocacy Division.
LOUISIANA Louisiana Indigent Defender Program (separate agency within Executive branch created by Supreme Court Rule)	Seven to fifteen members. Appointed by Chief Justice of Supreme Court with concurrence of majority of justices. Renewable three-year terms. One member from each of the six Supreme Court districts. One additional member from First Supreme Court District. Not more than three non-lawyer members. At least three experienced criminal lawyers.	Members elect Chair. Establish uniform standards and guidelines for statewide program. Subdivide state into regions. Select most appropriate system for delivery in each region. Select regional full-time public defenders. Set policy for the Expert Witness/Testing Fund and the District Assistance Fund. Set eligibility standards and guidelines for district defender boards to receive Expert Witness/Testing and District Assistance Funds.	Chief Executive Officer selected by Board. Attorney with five years prior experience in criminal practice. Board sets term.	Supervise attorneys in Appellate Division and Capital Litigation programs. Manage monies in Expert Witness/Testing Fund and District Assistance Fund. Assist Board in enforcing its standards and guidelines.
MAINE	None	Not applicable	None	Not applicable
MARYLAND Office of the Public Defender (Executive agency)	Three-member Board of Trustees; two must be active attorneys. Appointed by Governor. Three-year term. Chair designated annually by Trustees.	Study and observe operation of Public Defender office. Coordinate activities of district Advisory Boards. Appoint Public Defender. Advise Public Defender on all relevant matters.	Public Defender appointed by Board of Trustees. Term is at the pleasure of Trustees. Attorney admitted in Maryland plus five years in practice.	Appoint Deputy Public Defender with Board approval. Appoint First District Defender in each judicial district. Appoint assistant public defenders with advice of District Defenders. Appoint other employees. Maintain at least one office in each district. General responsibility for operation of all offices. Maintain records. Supervise district defenders' maintenance of local attorney panels.
MASSACHUSETTS Committee for Public Counsel Services (independent agency; Judicial branch for budget purposes only)	Fifteen members. Appointed by Justices of Supreme Judicial Court. Three-year term. Chair elected by the Committee.	Establish standards for public counsel and private counsel divisions. Establish uniform standards of indigency. Establish guidelines for training and for qualification and removal of counsel in public and private divisions. Prepare annual report. Appoint chief counsel and two deputies. Extensive list of other duties and responsibilities enumerated by Statute.	Chief Counsel appointed by Committee. Attorney. Serves at pleasure of Committee.	Overall supervision of various divisions of committee. Perform duties as defined by the Committee. Authorize all payments certified by judges for private counsel.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
MICHIGAN State Appellate Defender Office, Appellate Defender Commission (agency of Judicial branch)	Seven members appointed by Governor. Two recommended by Supreme Court; one recommended by Court of Appeals; one recommended by Michigan Judges Association; two recommended by State Bar; one non-attorney. Four-year term. No member a sitting judge, prosecutor or law enforcement officer.	Choose State Appellate Defender. Develop appellate defense program. Develop standards for program. Maintain list of attorneys willing and qualified for appointment in indigent appellate cases. Provide CLE training for attorneys on list.	State Appellate Defender chosen by Commission. Can only be removed for cause.	Provide appellate representation. Maintain a manageable caseload. Prepare and maintain brief bank available to court-appointed attorneys who provide appellate services to indigents.
MINNESOTA State Board of Public Defense (separate agency within Judicial branch)	Seven members. One district court judge appointed by Supreme Court. Four attorneys familiar with criminal law but not employed as prosecutors, appointed by Supreme Court. Two public members appointed by Governor.	Elect chair and appoint State Public Defender. Chair may appoint Chief Administrator. Prepare annual report. Recommend budget for Board, Office of State Public Defender and public defense corps. Establish procedures for distribution of funds for public defense. Set standards for state and district public defenders and court-appointed system.	State Public Defender appointed to four-year term. Full-time position.	Provide appellate and post-conviction proceeding representation in all indigent cases. Assist in trial representation in conflict of interest cases when requested by a district public defender or appointed counsel. Conduct training programs.
MISSISSIPPI Public Defender Commission of the State of Mississippi	Nine members, no active prosecutors may serve. The Governor, Lieutenant Governor, Speaker of the House of Representatives, Chief Justice of the Supreme Court of Mississippi, Conference of Circuit Judges of the State of MS, Conference of County Court Judges of the State of Mississippi, President of the Mississippi Bar, President of the Magnolia Bar and the President of the Public Defenders Association each appoint one member. The Chairman of the Senate Judiciary Committee and House of Representatives Judiciary B Committee, or their designees, serve as legislative liaisons and non-voting members. Members serve three-year terms.	Appoint an Executive Director of the Statewide Public Defender System; establish, implement and enforce policies and standards for a comprehensive and effective public defender system throughout the state of Mississippi. The Commission may delegate to the Executive Director, in whole or in part, these duties.	Executive Director shall be an experienced criminal lawyer, licensed to practice law in Mississippi for four years prior to appointment.	Commission's duties, which it may delegate to the Executive Director, include: appoint a District Defender in each circuit court district; supervise the Conflicts and Appellate Divisions; develop indigency eligibility and caseload standards; establish qualification and performance standards for all attorneys working for the statewide system; re-assign conflict or overload cases from one district office to another; maintain lists of attorneys willing and able to accept appointments to individual cases, including capital cases; provide CLE and training seminars; compile and maintain a law library and brief bank for district defenders and private attorneys participating in the Statewide Public Defender System; assume all budgeting and reporting responsibilities for the System.
MISSOURI Office of State Public Defender (independent department in Judicial Branch)	Public Defender Commission: Seven members: four lawyers; no more than four from same party. Appointed by Governor with advice and consent of Senate. Six-year term. State Public Defender is ex officio member without vote. Chair elected by members.	Select director and deputies. Establish employment procedures. Review office performance and monitor director. Public education to ensure independence of system. Advise on budgetary matters. Contract with private attorneys. Approve fee schedule for assigned counsel.	Director appointed by Commission. Four-year term. Attorney with substantial criminal law experience, also experienced in personnel administration.	Administer and coordinate operation. Direct and supervise work of employees. Submit annual report to budget to Commission. Supervise training. Contract out for legal services with approval of Commission.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
MONTANA State Appellate Public Defender (Executive branch agency)	Five members. One trial level judge, nominated by Judges Association. Three attorneys, nominated by State Bar, who must have criminal defense experience. One lay person nominated by Governor. Staggered terms, one or two years.	Appoint Appellate Public Defender. Help gather attorney list for appointments of counsel at trial and state post-conviction. Draft criminal defense standards for counsel.	State Appellate Defender hired by Commission. No term limit.	Provides representation in state post-conviction or appeals if defendant claims ineffective assistance. Help in or assume responsibility in appeals. Assume case if trial or Supreme Court judge appoints.
NEBRASKA (Executive branch agency)	Commission for Public Advocacy. Nine members: six members for each judicial district; chair and two positions at large. Governor appoints from list prepared by State Bar. Non-salaried. Qualified attorneys with criminal defense experience or demonstrated commitment. Budget is from general funds and recovery of one-third of expenses from Nebraska's counties.	Provide legal services and resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony resource center divisions. Select a chief counsel.	Chief Counsel selected by Commission. Serves at will of Commission. Five years Nebraska practice. Criminal defense experience including capital case defense.	Overall supervision of appellate, capital and major case divisions and litigation support fund. Prepare budget and annual report. Establish and administer projects and programs for the operation of the commission. Oversee training programs.
NEVADA State Public Defender (Judicial branch agency)	None	Not applicable	Four-year term. Selected by Governor. Nevada Bar member.	Establish statewide system for all counties who choose to be part of state system. Oversee activities of these programs. Prepare annual budget. Annual report to legislature.
NEW HAMPSHIRE Judicial Council (Judicial branch agency)	State-level Judicial Council. Fourteen members. One selected from each court level: Supreme, Superior, Probate; President of the New Hampshire Municipal and District Court Justices Association (ex officio); Attorney General (ex officio); President of New Hampshire Bar Association (ex officio); representative from Superior Court Clerks; seven others appointed by Governor, four of whom must be attorneys.	The Judicial Council's responsibilities related to indigent defense include contracting with local defender corporations and individual attorneys for provision of defense services and general supervision of indigent programs in regard to: allocation of cases between public defender program and assigned counsel; performance of counsel; competence of counsel; fiscal and budgetary matters.	See below.	Executive Director's responsibilities are contained in a contract with the Judicial Council.
NEW HAMPSHIRE New Hampshire Public Defender (Judicial branch)	The New Hampshire Public Defender is a private non-profit corporation under contract with the Judicial Council and has an oversight Board of Directors.	Select Executive Director.	The Executive Director of the New Hampshire Public Defender is selected by the corporation's board of directors.	Represent indigent defendants in criminal cases or juveniles charges as delinquents in the district, municipal, superior and supreme courts.
NEW JERSEY Office of the Public Defender (Executive Agency, Part of Division of the Public Advocate)	None	Not applicable	Appointed by Governor with advice and consent of Senate. Five-year term. Attorney, experienced in practice in New Jersey.	Appoint deputy and assistant public defenders as well as support personnel. Establish State Public Defender system for all counties. Engage and compensate assigned counsel.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
NEW MEXICO State Public Defender (Executive department)	None	Not applicable	Chief Public Defender appointed by and serves at pleasure of Governor. Attorney active for five years prior to appointment and is experienced in defense or prosecution.	Manage all operations of department. Set fee schedule for assigned counsel. Establish local public defender districts. Appoint district public defenders who serve at his/her pleasure.
NEW YORK Capital Defender Office (independent agency in Judicial branch)	Three-member Board of Directors: one appointed by the chief judge of the Court of Appeals; one by the temporary president of the Senate; and one by the Speaker of the Assembly. Three-year terms.	Appoint a Capital Defender. Determine, with the Capital Defender, the number of attorneys, investigators and other staff necessary to the office.	Capital Defender selected by Capital Defender Office Board of Directors.	In consultation with Board of Directors, hire attorneys as deputy capital defenders, investigators and other staff. The Capital Defender Office provides both direct representation and consultation services; it also has responsibility for determining, in consultation with the administrative board of the judicial conference, attorney qualification standards.
NORTH CAROLINA Appellate Defender Office (Judicial branch agency)	None	Not applicable	Appellate Defender appointed by Chief Justice.	Provide appellate representation to indigents. Maintain appellate brief bank. Provide CLE training. Consult with attorneys representing defendants in capital cases. Recruit qualified, willing attorneys for state and federal death penalty post-conviction proceedings.
NORTH DAKOTA North Dakota Legal Counsel for Indigents Commission (Judicial agency)	Eight members. Chief Justice appoints: one county government representative recommended by North Dakota Association of Counties; one judge recommended by Chief Presiding Judge; three recommended by State Bar; and two recommended by Attorney General. Three-year terms. Chief Justice appoints Chair. State Court Administrator provides staff.	Review cost and caseload data. Prepare annual report and budget. Provide planning, guidelines and technical assistance to counties and judicial districts re: indigent defense services. Adopt guidelines for indigent defense services. Review disputed fee decisions of trial judges.	None	Not applicable
OHIO Ohio Public Defender Commission (independent commission within the Executive branch)	Nine members. Chair appointed by Governor. Four appointed by Governor; two of whom are from each political party. Four members appointed by Supreme Court. Chair and at least four members are bar members. Four-year terms.	Provide, supervise and coordinate legal representation. Establish rules for Public Defender such as compensation, indigency standards and caseloads. Approve budgets.	State Public Defender appointed by Commission. Attorney with minimum of four years experience. State bar member.	Appoint Assistant State Public Defender. Supervise maintenance of Commission standards. Keep records and financial information. Establish compensation procedures.
OKLAHOMA Oklahoma Indigent Defense System Board (Executive branch agency)	Five members for five-year terms. Appointed by Governor, subject to advice and consent of Senate. At least three lawyers. Governor designates Chair.	Make policies for indigent defense programs. Approve budget. Appoint advisory council of indigent defense attorneys. Establish policies on maximum caseloads. Appoint Executive Director.	Executive Director appointed by and serves at pleasure of Board. Licensed as Oklahoma attorney for four years. Experienced in criminal defense.	Develop state system, with exception of Oklahoma and Tulsa counties. Prepare system budget. Keep list of private attorneys for capital and non-capital case appointments. Advisor to indigent defenders. Act on system's behalf in legislative efforts. Conduct training.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
OREGON State Public Defender Office (agency of Judicial branch)	Six-member Board appointed by Chief Justice of Supreme Court for four-year terms.	Make policy for statewide appeals. Selects state Public Defender. Chairman chosen by committee. Responsible for establishing policy of program.	Selected by independent committee under Judicial branch. Four-year term. Full-time; private practice prohibited.	Two levels - appellate (on-staff) and trial (contract provider). Report to Legislature biannually.
PENNSYLVANIA	None	Not applicable	None	Not applicable
RHODE ISLAND Office of the Public Defender (agency of Executive branch)	None	Not applicable	Appointed by Governor with advice and consent of Senate. Three-year term. Attorney with five years experience.	Appoint, supervise and direct assistants as necessary. Develop and oversee statewide system by regions.
SOUTH CAROLINA Office of Indigent Defense (independent agency within Executive branch)	Commission on Indigent Defense. Seven members appointed by Governor on recommendation of South Carolina Public Defender Association. One from each congressional district. One from state at-large who serves as Chair. Four-year terms.	Appoint Executive Director of Office of Indigent Defense. Supervise operation of Office of Indigent Defense.	Executive Director appointed by Commission.	Administer Office of Indigent Defense. Distribute state funds to counties. Compile statistics on indigent defense statewide. Report to General Assembly on indigent defense. Maintain list of attorneys qualified to accept appointments in death penalty cases. Administer collection and distribution of public defender application fees and surcharge fines imposed on specified criminal offenses. Supervise staff and carry out requirements of Commission.
SOUTH CAROLINA Office of Appellate Defense (independent state agency within Executive branch)	Commission on Appellate Defense: Dean of the University of South Carolina Law School; President of the South Carolina Public Defenders Association; President of the South Carolina Bar Association; President of the South Carolina Trial Lawyers Association; Chairman of the South Carolina Judicial Council; Chairman of the Senate Judiciary Committee or his designee; and Chairman of the Judiciary Committee of the House of Representatives or his designee. Commission elects Chairman for one-year term.	Appoint Chief Attorney. May, subject to rules of Supreme Court, recommend or establish policies for the operation of the Office of the Appellate Defense. Approve annual budget. Establish indigency criteria.	Chief Attorney appointed by Commission to four-year term. Licensed to practice law in South Carolina.	Submit budget to Commission. Establish training for employees. Represent indigent defendants in appeal of a conviction in trial court or decision of any proceeding in civil commitment or other involuntary placement.
SOUTH DAKOTA	None	Not applicable	None	Not applicable
TENNESSEE District Public Defenders Conference (agency of the Judicial branch)	Not applicable, but see below.	Not applicable, but see below.	The District Public Defender Conference has an Executive Secretary who is elected by the Conference for eight-year term.	Assist district public defenders to coordinate their responsibilities. Serve as liaison among various branches of state government. Prepare budgets for each district for submission to state. Provide public defenders with minimum law libraries.

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TENNESSEE Tennessee Indigent Defense Commission of the Supreme Court of Tennessee (Judicial branch)	Tennessee Indigent Defense Commission of the Supreme Court of Tennessee. Eleven members appointed by Supreme Court from recommendations made by petitioner organizations who pushed for creation of Commission through Supreme Court rule. Three-year terms. Chair appointed by Supreme Court.	Appoint officers. Adopt rules for operation of Commission. Develop a comprehensive plan for indigent defense services in state court system. Collect case information; determine reasonable caseload for district defenders; set standards for criminal defense attorneys representing indigent defendants; set compensation schedule for assigned counsel; set annual budget for court-appointed counsel expenditures; and develop voucher review process.	Not applicable, but see above.	Not applicable, but see above.
TENNESSEE Office of the Post-Conviction Defender and Post-Conviction Defender Commission	Nine members: two appointed by the Governor; two appointed by the lieutenant governor; two appointed by the speaker of the House of Representatives; three appointed by the Supreme Court of Tennessee. Serve four-year terms.	Appoint Post-Conviction Defender; prepare annual budget for the Office of Post-Conviction Defender.	Post-Conviction Defender appointed by Post-Conviction Defender Commission. Four-year term. Must be lawyer in good standing with Supreme Court of Tennessee and possess demonstrated experience in capital case litigation.	Provide legal representation to indigent persons convicted and sentenced to death; hire assistant post-conviction defenders, investigators and support staff; maintain clearinghouse of materials and brief bank for public defenders and private counsel who represent indigents charged or convicted of capital crimes; provide CLE training and consulting services to lawyers representing defendants in capital cases; recruit qualified members of the bar to provide representation in state death penalty proceedings.
TEXAS	None	Not applicable	None	Not applicable
UTAH	None	Not applicable	None	Not applicable
VERMONT Office of the Defender General (agency of Executive branch)	None	Not applicable	Defender General appointed by Governor with advice and consent of Senate. Four-year term.	Operates program thru public defenders and deputy public defenders or by contracting out to private attorneys. May establish local offices headed by a public defender. Contract with member of bar to serve as assigned counsel coordinator.
VIRGINIA Public Defender Commission (agency of Judicial branch)	Nine members. Appointed by Speaker of the House in consultation with Senate and House Courts of Justice Committees. Three judges, three practicing attorneys, three lay people. Three-year terms.	Oversee administration of Public Defender Commission. Select Executive Director and individual head public defenders.	Commission selects Executive Director who serves at pleasure of Commission. Member of Virginia State Bar and experienced.	Statute sets up office. Hire staff. Establish and oversee local public defender offices mandated by state legislature.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
WASHINGTON Office of Public Defense (independent agency of the Judicial branch)	Advisory Committee has nine members: three persons appointed by the chief justice; two non-attorneys appointed by the governor; two senators and two members of the house of representatives; one person appointed by the court of appeals executive committee; and one member appointed by the Washington State Bar Association.	Submit three names to the Supreme Court for Director of the Office of Public Defense.	Director serves at the pleasure of the supreme court, which selects from list of three names submitted by Advisory Committee. Director must: have practiced law in Washington for at least five years, represented criminal defendants, and possess proven managerial or supervisory experience.	Administers all criminal appellate defense services; submits to state legislature a biennial budget for costs related to appellate indigent defense; recommends indigency standards; collects information and reports to the legislature on indigency cases; coordinates with the supreme court and judges of each division of the court of appeals to determine how attorney services should be provided. The Office of Public Defense does not provide direct representation.
WEST VIRGINIA Public Defender Services (Executive Agency)	None	Not applicable	The Executive Director of Public Defender Services is appointed by the Governor with the consent of the Senate.	Public Defender Services administers, coordinates and evaluates local indigent defense programs in the state's 31 judicial districts. PDS is statutorily required to provide training and technical assistance to indigent defense providers and operates an appellate division to represent indigent defendants in appeals in the state's supreme court. The Executive Director of PDS is authorized to make grants to and contract with Public Defender Corporations in those judicial districts in which the chief judge and/or the majority of active local bar members have determined a need for a public defender office. By statute, all Public Defender Corporations must have a Board of Directors consisting of appointees by the local county commissioner, the county bar association and the Governor. Currently, 23 of West Virginia's 55 counties are served by 15 Public Defender Corporations. The remaining 32 counties rely solely on assigned counsel to provide representation to indigent defendants.
WISCONSIN Wisconsin State Public Defender (independent agency within Executive branch)	Nine members. Appointed by Governor, approved by Senate. At least five must be attorneys. Three-year terms. Chair is elected by Board.	Appoint state Public Defender and establish salary. Approve budget and submit to Governor. Promulgate standards of indigency. Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs. Perform all other duties necessary and incidental. Contract with federal agencies and local public defender organizations for provision of services.	State Public Defender appointed by Board. Member of Wisconsin Bar. Five-year term.	Supervise operation of all state and regional public defender offices. Maintain data and submit biennial budget to Board. Delegate cases to any member of Wisconsin Bar. Negotiate contracts out for representation as directed by Board. Appoint staff.

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WYOMING State Public Defender (Executive agency)	None	Not applicable	State Public Defender appointed by Governor. No term specified. Member of Wyoming Bar with experience in defense or prosecution.	Administer public defender program in districts and oversee operation of public defender system statewide. Assistant public defenders appointed by Governor and serve at pleasure of Public Defender. Public Defender may require them to be full-time. Public defender in each district appointed by Governor upon recommendations from district judge and county commissioners.

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