

**SUMMARY OF CRITICAL REPORTS, STUDIES, AND OPINIONS INCLUDED  
IN THE APPENDIX**

Over the decades since the *Gideon* decision the notorious inadequacy of Louisiana's system for providing indigent defense for the poor has been the subject of numerous critical reports and public comments.

In 1974, a study funded by the United States Department of Justice ("DOJ") concluded that the "present structure of [Orleans Parish public] defender office and its philosophy is not one which is designed to provide representation contemplated by the United States Supreme Court cases of the last decade and the existing national standards of criminal justice.

The gross lack of compensation [for defenders] inevitably affects the willingness of lawyers to volunteer their services to the [Indigent Defender Boards ("IDBs")], and conditions the quality of representation afforded by those who do volunteer. Moreover, the IDBs have no money for investigative services; consequently, the criminal cases are simply not investigated. Nor is there any money for expert witnesses or transcripts. . . . There is generally no money for appeals. Lawyers interviewed by us variously described the system as "terrible," "abominable," and "abysmal." (Cite to Appendix)

In 1992 a report commissioned by the Louisiana Judicial Conference found that the State's indigent defense system was "one of the most underfunded in the country," and described the system as "beyond the crisis stage" and "on the verge of collapse." The report concluded that "Louisiana remains unable to meet the demands placed on it by both the United States and Louisiana constitutions." Among the Report's recommendations were doubling funding, implementing a system of statewide funding, and creating a statewide public defender commission. (Cite to Appendix)

In 1993, the Louisiana Supreme Court recognized that the “general pattern has been one of chronic underfunding of indigent defense programs in most areas of the state.” *State v. Peart*, 621 So. 2d 780, 788 (La. 1993). (Cite to Appendix)

Also in 1993 a report by the Spangenberg Group – which had nationwide experience studying indigent defense systems – found that:

1. The indigent defense system in [Louisiana] is hopelessly underfunded in virtually every district in the state.
  2. Reliance on assessments on criminal violations as the sole sources of funds for indigent defense is unpredictable at best and wholly insufficient to ensure quality representation.
  3. Most indigent defenders around the state are suffering from overwhelming caseloads that are two or three times the acceptable national standards.
  4. Indigent defenders around the state are suffering from extremely low salaries, which are uniformly below those available in district attorney offices.
  5. Virtually without exception, indigent defender programs throughout the state have insufficient staff, at both the attorney and support level.<sup>1</sup>
- (Cite to Appendix)

In 2004 a report by The National Legal Aid Defenders Association (“NLADA”) added:

[T]he failure to ensure adequate funding and independence of the indigent defense system has led to the prevalence of flat fee contract systems in those districts with poor revenue streams in attempt to save money. Flat-fee contracts are universally rejected by all national standards because they create a monetary conflict between the defense provider and the client. (Cite to Appendix)

Although in 2007 the Louisiana Public Defender Act established a new statewide administrative structure for indigent defense, including the delegation of the state’s authority to the LPDB, that new structure has never been supported with the necessary funding, and it has never engendered the guidance, oversight and enforcement

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<sup>1</sup> [1993 Spangenberg, Report Package page 3 (Cite 38-40)]

necessary to remedy the deeply rooted deficiencies. Instead the 2007 legislation was passed with the understanding that necessary funding would not be provided. While the responsibility to provide a system of defense for the poor has been delegated by the State to the LPDB and the State Defender they have not been given the resources necessary to fulfill their responsibilities.

In 2010 a report by the National Legal Aid & Defender Association examined the impact of the 2007 Louisiana Public Defender Act in the District of Louisiana and concluded that “neither the legislative intent” of the Act “nor the constitutional imperative to provide a meaningful right to counsel” were met within that district. In examining the factors contributing to the failure of the public defense system within the 15th Judicial District, the report pointed to the lack of management, the inadequacy of the fee structure, the lack of counsel provided to indigent clients charged with misdemeanor or traffic offenses, and the high likelihood that indigent defendants would be represented by multiple lawyers over the course of their proceedings. (Cite to Appendix)

Similarly, a 2012 report evaluating the Office of the Orleans Public Defender found significant shortcomings within that office despite the passage of the 2007 Louisiana Public Defender Act. The report found, among other things, that the office was unpredictably funded and underfunded, that there were too few attorneys available to represent individuals in municipal court (with attorneys generally handling five times as many misdemeanor cases as would have been appropriate), that attorneys were severely undertrained, that leadership within the office regularly fell short of its responsibilities, and that the office was unable to provide clients with a number of essential services or even representation in certain cases. (Cite to Appendix)

In November 2015, Judge Arthur Hunter of the Orleans Criminal District Court held a hearing on Louisiana’s provision of counsel to indigent defendants in Orleans Parish. Derwyn Bunton, the Chief of the Orleans Public Defenders “testified that \$700,000 in state budget cuts, local funding shortfalls, and staff attrition left unchecked during a recently imposed hiring freeze has left his office unable to perform its work to standards demanded by the U.S. Constitution and the state bar’s Rules of Professional Conduct.”<sup>2</sup> At the hearing, Legal ethics professor Ellen Yaroshefsky “described indigent defense in New Orleans as a systematic failure by any measure, including caseloads, adding: ““To call this a justice system is really a misnomer. If we’re going to accept a system where we’re just processing people and keeping people in jails and prisons without providing counsel, we’re certainly letting down the profession and letting down the public.””<sup>3</sup> (Cite to Appendix)

As the LPDB acknowledged in its 2015 report, “[t]he public defense system has been persistently underfunded since its inception.”<sup>4</sup> (Cite to Appendix)

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<sup>2</sup> Ken Daley, “OrleansOrleans public defenders' bombshell: No new cases for us, please,” *The Times-Picayune* (Nov. 20, 2015), available at [www.nola.com/crime/index.ssf/2015/11/orleans\\_public\\_defenders\\_bombs.html](http://www.nola.com/crime/index.ssf/2015/11/orleans_public_defenders_bombs.html).

<sup>3</sup> John Simerman, “Orleans Public Defenders Office still short of money despite extra cash from city,” *The New Orleans Advocate* (Nov. 24, 2015), available at [www.theadvocate.com/new\\_orleans/news/article\\_9156ea56-0c2c-5ff5-92ef-781b9b90d342.html](http://www.theadvocate.com/new_orleans/news/article_9156ea56-0c2c-5ff5-92ef-781b9b90d342.html).

<sup>4</sup> James T. Dixon, Jr., *Criminal Justice System at a Crossroads* at 3.

AN EVALUATION OF INDIGENT CRIMINAL DEFENSE  
SERVICES IN LOUISIANA AND A PROPOSAL FOR  
A STATEWIDE PUBLIC DEFENDER SERVICE

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## I. INTRODUCTION

This report has been prepared under the auspices of the Criminal Courts Technical Assistance Project of the American University's Institute for Studies in Justice and Social Behavior. The Institute was requested by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice to undertake a study of the system for delivery of criminal defense services to indigent accused in the State of Louisiana, and to report on the feasibility of establishing a statewide public defender system in Louisiana. At the request of the Institute, Professor Addison M. Bowman, of Georgetown University Law Center, the principal author of this report, directed the Louisiana study. Assisting Professor Bowman in this technical assistance program were Honorable R.A. Green, Jr., Judge of the Eighth Judicial Circuit of Florida, Gainesville, Florida, Frederick F. Cohn, Esq., an attorney from Chicago, Illinois, Alan R. Parlapiano, Esq., an attorney from Gainesville, Florida, and Stuart Stiller, Esq., an attorney from Washington, D.C. Biographical data on these individuals is included in Appendix A.

The technical assistance team received valuable assistance from Colonel White, Ms. Catherine Kimball, and Mr. Brian Crawford of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice. Mr. Eugene J. Murret, Judicial Administrator of the Supreme Court of Louisiana, provided us with reports and materials. We are indebted to Professor Shelvin Singer of the Chicago-Kent College of Law and the other contributors to the recently completed New Orleans Management Assistance Study. The thoughtful comments and suggestions of numerous Louisiana judges, law professors, district attorneys, defenders, and private counsel are incorporated in this report.

Professor Bowman visited Baton Rouge and New Orleans on March 11 and 12, 1974, to meet with key state officials and to develop a preliminary sense of the fieldwork necessary for this study. He then formulated a plan to visit fifteen of the state's thirty-three judicial districts plus Orleans Parish. During the week of May 5-11, Messrs. Green, Cohn, Parlapiano, and Stiller were in Louisiana. On May 5 the team was briefed by Professor Robert Force of the Tulane Law School and Professor Arthur A. Lemann, III, of the Loyola University School of Law. Judge Green then visited Lake Charles in the 14th District, Lafayette and Abbeville in the 15th District, St. Martinville and New Iberia in the 16th District, Port Allen in the 18th District, and Baton Rouge in the 19th District. Judge Green was accompanied on this itinerary by Mr. Richard Broussard, a student from the Louisiana State University Law School.

Mr. Cohn visited New Orleans, Jefferson Parish (which is the 24th District), Houma in the 32nd District, Amite and Hammond in the 21st District, and St. Francisville in the 20th District. He was accompanied by Mr. Maurice Robinson, a student from the Louisiana State University Law School.

Mr. Stiller visited Monroe in the 4th District, Ruston in the 3rd District, Shreveport in the 1st District, Mansfield and Many in the 11th District, Natchitoches in the 10th District, and Alexandria in the 9th District. He was accompanied by Mr. Homer Singleton, a student from the Louisiana State University Law School. Mr. Parlapiano interviewed a number of state officials in Baton Rouge. A reasonably complete list of the individuals interviewed throughout this study comprises Appendix B.

We regret that time and cost considerations prevented us from studying each parish in Louisiana. Nevertheless, we have covered every major population center in the state. We also selected at random several rural parishes which we hope are representative. A map of the state indicating the places we visited appears as Appendix C. We do not have a good statistical study, but we had access to the Supreme Court Judicial Council's 1973 Annual Statistical Report which contains statistics from District and City Courts. In addition, Messrs. Broussard, Robinson and Singleton assembled caseload statistics from several representative parishes. Moreover, the team members collected some statistical information as they traveled.

In the preparation of this report, information and statistical data has been culled from the following sources: Judicial Council of the Supreme Court of Louisiana, The Louisiana Court Structure (1971); Institute of Judicial Administration, A Study of the Louisiana Court System (1972), with Statistical Appendix; American Judicature Society Research Project, Modernizing Louisiana's Courts of Limited Jurisdiction (1973); the Louisiana Comprehensive 1974 Criminal Justice Plan; Institute for Court Management, Court Management Study of the Orleans Parish Criminal District Court (1973); City of New Orleans 1974 Criminal Justice Plan; NLADA and Criminal Courts Technical Assistance Project, New Orleans Management Assistance Study (1974); Report of the Louisiana Supreme Court Judicial Council Special Committee, The Problem of Counsel for Indigents in Misdemeanor Cases; Office of Judicial Administrator, Report of a Survey of Louisiana Indigent Defender Boards (1970); State of Louisiana Attorney General, Report of Crime Statistics (1972). In addition, we have studied reports and statistics from the Orleans Indigent Defender Program, the Jefferson Parish Indigent Defender Program, the Lafayette Parish Indigent Defender Program, the Baton Rouge Public Defender Program, the 18th

District Public Defender Program, the East Feliciana Public Defender Program, and the West Feliciana Public Defender Program. We are satisfied that the conclusions presented in this report are valid, being based on a reasoned analysis of available data.

We express appreciation to all those in Louisiana who assisted us in our work. We are satisfied that there is a genuine desire in the Louisiana legal community to improve the criminal justice system there and to provide effective representation to indigent accused as mandated by the Sixth Amendment. We hope that this report will contribute to the attainment of these worthy goals.

## II. REPORT ON THE PROVISION OF DEFENSE SERVICES IN LOUISIANA

### A. The Louisiana Court Structure

The court structure is succinctly described in a publication of the Supreme Court Judicial Council entitled "The Louisiana Court Structure" (June 1, 1971).<sup>1</sup> The Louisiana Supreme Court is the only court with appellate criminal jurisdiction. The four intermediate Courts of Appeal<sup>2</sup> have appellate jurisdiction in juvenile matters. There are thirty-four District Courts with general trial jurisdiction. The state is divided, for this purpose, into thirty-three judicial districts plus Orleans Parish. A map of Louisiana indicating the judicial districts appears in Appendix C. A district may contain one or more parishes, and where two or more parishes make up a district, each parish has its own district courthouse. Apart from New Orleans, there are about 103 District Judges in the state. The New Orleans District Court has a separate criminal division with ten judges and a magistrate. The District Courts have general criminal and juvenile jurisdiction, and appeals *de novo* from courts of limited jurisdiction. There are four courts - in East Baton Rouge, Orleans, Caddo (Shreveport), and Jefferson Parishes - which have special exclusive jurisdiction in juvenile cases. Excluding Orleans and Jefferson Parishes, there are forty city courts which handle state misdemeanors, ordinance violations and juvenile cases. This jurisdiction is concurrent with that of the District Courts. Some

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<sup>1</sup>A copy of this publication is included as Appendix D. See also the 1974 Louisiana Criminal Justice Plan, pp. A-72 to A-79.

<sup>2</sup>The Courts of Appeal are located in Baton Rouge, Shreveport, Lake Charles, and New Orleans.

judicial districts have no city courts. The Municipal Courts of New Orleans and the two Parish Courts of Jefferson Parish are similar to the city courts elsewhere.<sup>3</sup>

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<sup>3</sup>Louisiana has Justices of the Peace, but they have no criminal jurisdiction. In addition, there are, according to the Judicial Council, some 240 Mayors' Courts, which may have jurisdiction in criminal cases carrying up to 30 days imprisonment. Most persons we talked to in Louisiana believe that the Mayors' Courts, insofar as their criminal jurisdiction is concerned, are unconstitutional under Ward v. City of Monroeville, 409 U.S. 57 (1972). See the discussion of these courts in American Judicature Society, Modernizing Louisiana's Courts of Limited Jurisdiction, 19-27 (1973). The American Judicature Society recommended that these courts be abolished, see id. at 113. The new Louisiana Constitution, Article V, Section 20, continues these courts. We suggest that the Mayor's Courts be abolished or at least divested of their criminal jurisdiction.

B. The Louisiana Criminal Justice System

Our task was not to study the criminal justice system,<sup>4</sup> but rather to focus on the problem of counsel for the indigent accused. Because of the obvious interrelationship, however, members of the consulting team observed the operation of the system from arrest through appeal. It seems appropriate here to set out some of these observations because of our overall conclusion that the criminal justice system, as it presently operates, deprives most criminal defendants of important constitutional and statutory rights, and that there is a need for effective defense services to initiate and to promote basic reforms.

The Louisiana system is characterized by inordinate delays between the arrest of an accused and his first appearance before a judicial officer. The Louisiana "144 hour rule" means in practice that the defendant's case must be lodged in court within six days of arrest. His arraignment, the stage at which he is brought into court and officially notified of the charge against him,<sup>5</sup> may be substantially delayed, depending on the frequency with which the court holds criminal arraignments. In Shreveport and Monroe, District Court arraignments are held once a week. The period is once a month in Natchitoches and Mansfield, and only twice a year in Many. These practices are in sharp contrast to that of Jefferson and E. Baton Rouge Parishes, where the accused is in court the day following his arrest.

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<sup>4</sup>This has been done, see Institute of Judicial Administration (hereinafter IJA), A Study of the Louisiana Court System (1972). Our observations tend to confirm the findings in this study, see, e.g., footnotes 7, 11, and 14.

<sup>5</sup>This may be his first actual notification of charges. We spoke to a lawyer in Many (11th District) who related having spoken to an inmate in the jail who asked if the lawyer could determine the inmate's charge. The lawyer later ascertained that the charge was for an offense that carried a maximum of three months imprisonment. The inmate had been in jail five months awaiting arraignment.

The significance of arraignment for our purposes is that this is the first opportunity for the indigent accused to request appointed counsel. In Jefferson Parish appointment of counsel typically occurs the day after arrest; in New Orleans, on the other hand, there may be a delay of from one week to one month.<sup>6</sup> Typical of the practice in many parishes is that of Houma, where the average delay in arraignment is three to four weeks, following which a further two to three week delay in appointing counsel is usual. This practice cannot be condemned too strongly. It violates the American Bar Association's Standards Relating to the Defense Function 2.1 (Approved Draft, 1971), which requires that "[e]very jurisdiction should guarantee by statute or rule of court the right of an accused person to prompt and effective communication with a lawyer..." To the same effect is the American Bar Association's Standards Relating to Providing Defense Services 5.1 (Approved Draft, 1968), which stresses that "[c]ounsel should be provided to the accused as soon as feasible after he is taken into custody..."

Louisiana has not reformed its bail laws and procedures, with the result that high surety bonds (sometimes pursuant to a schedule) are the rule in most parishes, and the bail bondsmen hold the keys to the jailhouses. The accused is not typically heard on the question of bail, because this matter is often resolved prior to arraignment. We were told that in Houma bail setting was sometimes the result of a telephone conversation between the sheriff and the judge. Persons awaiting arraignment in jail may be unaware of the amount of bail set in their cases. A few jurisdictions have alleviated this situation with release-on-recognizance projects patterned on the Vera

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<sup>6</sup>The New Orleans defendant will be presented in Magistrate Court soon after arrest, and a public defender may be "appointed" at this stage. This appointment gives only the appearance of counsel, however, because the defender does nothing further in the case. Counsel is actually appointed at arraignment which occurs much later. See Institute for Court Management, Court Management Study of the Orleans Parish Criminal District Court 44-45 (1973).

(New York) model. This is the case in New Orleans, but eligibility for the project appears to be restricted to misdemeanants and first offenders. Our observation of bail and pretrial release practices are confirmed by the Institute of Judicial Administration study of the Louisiana Courts, which reported that "[t]he bail determination does not result from an adversary hearing," and that "in no parish has the court established or supervised the process whereby individuals accused of crime and eligible for bail are brought automatically before judges for bail determination."<sup>7</sup>

Persons who secure their release pending trial in Louisiana are presumptively ineligible for appointed counsel. Indeed, in Jefferson Parish when an accused for whom counsel has been appointed manages to effect his release from custody the appointment is automatically terminated. The New Orleans Management Assistance Study<sup>8</sup> reported that several New Orleans judges will not appoint a defender for an accused who is free on bond, and that if the accused insists he is financially unable to retain counsel the judge will raise the bond, commit the accused, and then appoint counsel. Our experience teaches that, although ability to make bond in a misdemeanor case may be some evidence of ability to retain private counsel, there is very little relationship between the two in a felony case. These practices should be re-examined.

There appear to be few preliminary examinations in felony cases in Louisiana. If the defendant moves for a hearing, the prosecutor files a bill of information which defeats the right to preliminary examination.<sup>9</sup>

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<sup>7</sup>IJA, A Study of the Louisiana Court System 95-96 (1972).

<sup>8</sup>This study was conducted by the National Legal Aid and Defender Association under the auspices of the Criminal Courts Technical Assistance Project.

<sup>9</sup>This practice appears to violate the Fourth and Fourteenth Amendments, see Pugh v. Rainwater, 483 F. 2d 788 (5th Cir. 1973).

This practice is changed by the new Louisiana Constitution, which, in Article I, Section 14, guarantees the right to preliminary examination in felony cases "except when the accused is indicted by a grand jury." This provision will occasion an additional need for appointed counsel.<sup>10</sup> The preliminary examination is a vehicle which affords a measure of pretrial discovery. We were told that discovery in criminal cases in Louisiana is limited to inspecting the accused's statement given to the police; however, the courts are presently allowing limited discovery in cases involving Narcotics inspection and examination of corpses.

The Louisiana system appears to function by inducing as many defendants as possible to plead guilty at arraignment. A District Court judge and a district attorney in Monroe estimated a 90 to 95% guilty plea rate in felony cases. In Shreveport we observed arraignment court. Several defendants were in the dock awaiting arraignment. The prosecutor approached them, called out the names of two, announced the charge, and told them he would "take a plea" to a certain charge. They agreed, whereupon the judge "appointed" counsel from among several lawyers present in the courtroom. After a few moments of conversation in the courtroom between lawyer and clients, the pleas were entered and the cases terminated. It appears that many of the "appointments" of counsel are of this nature. The reader should bear in mind that this arraignment stage, as previously noted, is in most places the accused's first court appearance and his first opportunity to consult with counsel. The Institute of Judicial Administration estimated that only nine per cent of felony cases and thirteen per cent of misdemeanors actually go to trial in Louisiana.<sup>11</sup>

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<sup>10</sup> See Coleman v. Alabama, 399 U.S. 1 (1970), which establishes the right to counsel at the preliminary examination.

<sup>11</sup> IJA, A Study of the Louisiana Court System 135 (1972). A discussion of criminal appeals appears at pp. 35-38 infra.

c. The Indigent Defender Boards

Title 15 of the Louisiana Revised Statutes Section 141, provides that "[e]ach judicial district (including the parish of Orleans) shall establish an indigent defender board, which shall have the duty of providing adequate legal representation of indigent persons who are charged with commission of felonies or of state misdemeanors punishable by imprisonment or who are alleged to be juvenile delinquents." Thus Louisiana purports to implement the mandates of Argersinger v. Hamlin, 407 U.S. 25 (1972), and In re Gault, 387 U.S. 1 (1968). The boards are composed of from three to five uncompensated attorneys from each district, and they are charged with maintaining a panel of volunteer attorneys who receive appointments in criminal and juvenile cases. The statute also provides that in every criminal case "there shall be taxed as costs against every defendant who is convicted after trial or after a plea of guilty or who forfeits his bond, the sum of three dollars (in Orleans Parish, the sum of ten dollars)...." The fund thus established is the sole means of payment "for necessary expenses incurred in preparation and trial of cases, including cost of transcription, and for reasonable compensation to counsel for indigent defendants."<sup>12</sup> There is no additional provision for compensation of appellate counsel.

In 1970 the Louisiana Supreme Court Judicial Administrator conducted a survey of the state's indigent defender boards (hereinafter IDBs) "to determine the adequacy or inadequacy of the operation under the above described indigent defender board statute." The report based on this survey concluded that the IDB statute, "is not adequate to serve the requirement of furnishing counsel for indigent defendants on a statewide basis." The Judicial Administrator

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<sup>12</sup>Section 142 establishes public defender offices in several judicial districts. We discuss existing public defender offices at pp. 17-21 infra.

recommended that the state adopt legislation similar to the federal Criminal Justice Act, 18 U.S.C. §3006A. This recommendation has, of course, never been implemented, notwithstanding Argersinger has in the interim markedly increased the obligation of the state to furnish counsel to indigents.<sup>13</sup> In 1972 the Institute for Judicial Administration concluded:

The indigent defender board system...is not adequate...Indigent defense is being subsidized by the bar, and with increasing request for appointed counsel, the amount of subsidization can be expected to increase. Tying financial support for the boards to the costs to be paid by convicted defendants provides them with inadequate income...In general, it is an unsound and uncertain method of financing. A sound system of providing counsel for indigents requires that the state assume responsibility for funding the system.<sup>14</sup>

Our survey shows that the IDB system is grossly inadequate and should be abandoned. Except in those few districts which have state LEAA block grant funding,<sup>15</sup> the IDBs are paralyzed by lack of money. Many places, such as Monroe, accumulate the kitty of \$3 court costs over a one-year period, then divide it among the lawyers who volunteered. We visited two places where the available proceeds average \$10 to \$20 per case. In Hammond the standard fee in a felony case is \$35. It is not unusual for appointed counsel to receive \$100 or \$150 for a felony trial. In Lake Charles counsel are paid \$5 per hour out of court and \$10 per hour in court. In Houma, where the compensation rate is \$10 per hour, the IDB fund is \$6000 behind. In Abbeville

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<sup>13</sup>Argersinger requires that counsel be provided in any case where imprisonment is imposed as a sentence. As previously noted, the IDB statute imposes upon IDB's the duty of providing counsel in cases "punishable by imprisonment"; as we observe hereafter, however, this has not been the practice.

<sup>14</sup>IJA, A Study of the Louisiana Court System 105 (1972). Similarly, the American Judicature Society, in its survey entitled Modernizing Louisiana's Courts of Limited Jurisdiction 48 (1973), noted that "[s]eventy-one of the city court judges indicated that they do not have money to compensate appointed counsel."

<sup>15</sup>See the discussion of Jefferson and Lafayette Parishes, pp. 13-16, infra.

the fund is \$7000 behind. This discussion by and large concerns only the district courts, for most of the IDBs do not even attempt to provide counsel in city courts or in juvenile cases. For example, the Shreveport, Alexandria, and Natchitoches IDBs do not function in their respective city courts. Nor does the Shreveport IDB function in the Caddo Juvenile Court.

This gross lack of compensation inevitably affects the willingness of lawyers to volunteer their services to the IDBs, and conditions the quality of representation afforded by those who do volunteer. Moreover, the IDBs have no money for investigative services; consequently, the criminal cases are simply not investigated. Nor is there any money for expert witnesses or transcripts. In Lake Charles, a few appointed counsel<sup>16</sup> who recognized that their clients needed psychiatric examinations gave their small IDB payments to psychiatrists so that the necessary examinations could be conducted. There is generally no money for appeals. Lawyers interviewed by us variously described the IDB system as "terrible," "abominable," and "abysmal."

#### D. Jefferson and Lafayette Parishes

There are several notable exceptions to the above analysis. Jefferson and Lafayette Parishes, with state block grant funding, have established viable appointed counsel systems.

Jefferson Parish, comprising the 24th Judicial District, has a capable IDB which has secured funding for the current fiscal year in the amount of \$85,710. The project employs a secretary-administrator who coordinates defense services under IDB direction. Counsel is ordinarily appointed the day

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<sup>16</sup>The chairman of the IDB in Lake Charles told us that volunteering attorney services to the IDB is like "volunteering in the army."

following arrest, and the coordinator notifies counsel of his appointment immediately by telephone, and in addition sends a confirmation letter. The appointed attorney is expected to interview his client within three days of appointment, and the coordinator actually checks at the jail to assure that this interview has taken place.<sup>17</sup> Appointed counsel are provided funds for investigators, expert witnesses, and transcripts. The IDB has 125 volunteer attorneys who are paid \$20 per hour for in-court time and \$15 per hour for out-of-court time. The average payment, we are told, is \$125.<sup>18</sup> We examined the Jefferson Parish IDB report for the period September 1, 1973 through October 31, 1973, and noted that 144 claims had been submitted in the amount of \$19,412.52, which if paid results in an average payment per case of \$134.80. We are told the Jefferson Parish IDB provides counsel in the parish and juvenile courts as well. The September and October, 1973, breakdown was 125 cases in district court, 15 cases in the two parish courts, and 4 cases in juvenile court.

Our overall evaluation of the Jefferson program is that it is functioning

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<sup>17</sup>We have previously mentioned the regrettable practice of terminating the appointment of counsel for a defendant who secures pretrial release. We suggest that this practice be modified. It is not uncommon for truly indigent defendants to secure release on bail bonds paid for by friends or relatives. In any event, the bail bond premium is the bondsman's fee and, of course, is not returned to the defendant. "[C]ourts should not consider the defendant's posting of a commercial bond as definitive." Note, Balance sheet of Appointed Counsel in Louisiana Criminal Cases, 34 La. L. Rev. 88,92 (1973).

<sup>18</sup>We question whether a \$125 cost per case adequately compensates appointed counsel. Jefferson's rates are too low, and should be adjusted to \$30 and \$20, respectively. Moreover, Jefferson has a rule that appointed counsel can receive compensation for no more than ten out-of-court hours, and this arbitrary limitation should be abandoned. We recognize that these measures are undoubtedly responses to the need to apportion limited funds on an equitable basis. Ten hours is simply not enough time to prepare a serious felony case for trial. Jefferson boasts that its volunteer attorneys are "experienced"; we have observed that the more experienced and competent criminal practitioners generally spend more, rather than less, time preparing their cases for trial, than do their less "experienced" colleagues.

well. It is noteworthy that there are factors other than the mere availability of money which distinguish this system from many other parts of the state. Jefferson Parish has a bench and bar genuinely dedicated to equal justice for the indigent, and this concern is reflected throughout the criminal justice system there. Jefferson is a suburb of New Orleans with a population of about 400,000. Its nine district court judges averaged 205 criminal cases terminated per judge during 1973, as compared with a statewide average of 1,629 criminal cases per judge.<sup>19</sup> There are lawyers there who specialize in criminal representation with a high degree of competence. For capital cases<sup>20</sup> in Louisiana the appointed counsel must have been admitted to practice for five years,<sup>21</sup> and Jefferson has twenty-five volunteer lawyers in this category who take an average of five to twenty appointments per year apiece.

Lafayette Parish, with a population of about 100,000, operates an IDB with \$63,897 in block grant funds per year.<sup>22</sup> The program employs a coordinator, Mr. Michael J. Barry. There are 51 participating volunteer attorneys on the panel, and they established 313 case files during calendar year 1973 for an

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<sup>19</sup>See Supreme Court Judicial Council, 1973 Annual Report, p. 43.

<sup>20</sup>This category includes murder, aggravated rape, and aggravated kidnapping, see La. Rev. Stat. 14:30, 14:42, and 14:46.

<sup>21</sup>See La. Rev. Stat 15:141 (c). This provision is a desirable safeguard in an appointed counsel system where no training in criminal trial advocacy is provided for the volunteer lawyers. With the kind of public defender system we propose, where the defender lawyers are full time, adequately paid and independent, and where the defender office is able to provide training, there is no need for a five-year experience requirement for any case. We have seen public defender lawyers, in good offices with good training programs, who are competent to try capital cases with two or three years experience.

<sup>22</sup>Although Lafayette's population is much lower than that of Jefferson, the Lafayette District Court terminated 2,314 criminal cases in 1973, compared with 1,845 in the Jefferson District Court. On the other hand, the Lafayette City Court closed 1,400 criminal cases compared with about 3,400 in the Jefferson Parish Courts. See Supreme Court Judicial Council, 1973 Annual Report.

average cost per case of \$204. The consensus of judges and lawyers in Lafayette is that their program is working well. The compensation rate is \$20 for in-court time and \$15 per hour out of court.<sup>23</sup>

Mr. Barry, the coordinator, visits the jail to ascertain the need for counsel on the part of those arrested, and promptly assigns counsel. He also conducts fact investigations and acts as agent for appointed counsel. For example, he plea bargains with prosecutors and sets up court conferences for the attorneys. In general, we believe the Lafayette program is sound, although we have some questions about the statistics. Our 1973 estimates indicate there were at least 400 felonies and 1000 misdemeanor cases (district and city court) calling for appointed counsel in Lafayette, excluding traffic cases. It is difficult to reconcile these figures with the 313 cases handled by the IDB during 1973. We assume that a certain percentage of defendants are not indigent and that a certain percentage voluntarily waive counsel, but are nevertheless left with a large number of unexplained cases without counsel. This situation deserves further study. Those defendants with IDB counsel, we believe, are adequately represented, but there may be many other defendants who simply do not receive counsel.<sup>24</sup>

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<sup>23</sup>The rates were previously \$25 and \$20, and when they were reduced the panel dwindled from 75 to 51 attorneys. We believe the rates should be \$30 and \$20, see note 18, supra.

<sup>24</sup>It could be that judges appoint counsel in some cases directly, rather than through the IDB. In that event, however, we would expect the appointed lawyer to submit a claim to the IDB for payment. It is conceivable that a number of lawyers do not bother to seek compensation for their appointed work.

E. Existing Public Defenders

We visited public defender offices in New Orleans, Baton Rouge, St. Francisville, and Port Allen. We did not conduct a thoroughgoing evaluation of these offices because, given available time and resources, such a project would have ruled out visits to other districts in the state. We spoke with the defenders and their investigators and interviewed judges, prosecutors, IOB members, and private lawyers in the districts in which the defenders are operating.

John Simmons' Orleans Parish Public Defender Office and the Orleans Municipal Defender office have very recently been evaluated by a New Orleans Management Assistance Team, from the National Legal Aid and Defender Association and funded by the same Criminal Courts Technical Assistance Project which has produced this statewide study. The New Orleans team was headed by Professor Shelvin Singer of the Chicago-Kent College of Law and our limited observations confirm his report's conclusion that "[t]he quality of indigent representation in the Orleans Parish criminal courts is largely passive and inadequate." The New Orleans team concluded that the poor quality of representation being afforded indigent defendants by the New Orleans Public Defender Office is attributable to: (1) interference from judges; (2) an inadequate salary scale; (3) the fact that the office is poorly administered; and (4) problems inherent in the New Orleans criminal justice system itself.

We noted that the New Orleans defenders appear to operate in the same fashion as do appointed counsel in some other parts of Louisiana. We visited the District Court on criminal arraignment day, May 6, and interviewed a defendant who had been arrested April 5 on a charge of aggravated battery. This

was this defendant's first court appearance and his first opportunity to consult with counsel. His original \$6,000 bond had been reduced some time previously when the prosecutor reduced the charge, but the defendant had not been notified of the bond reduction. He was perfunctorily interviewed by the defender, who had no file, only a copy of the complaint. No personal data was elicited from the defendant, nor did the defender probe into the facts of the case. The interview was simply geared toward inducing the defendant to plead guilty, and this seems to be the general spirit of the New Orleans office.

We spoke to private attorneys who tend to attribute the ineffectiveness of the New Orleans office to excessive caseloads. In New Orleans the public defender handles nearly all the indigent cases because there are no funds for private, appointed counsel. We believe that caseloads, plus interference and control by the judiciary, are critical problems. Lawyers in New Orleans tend to assume, we believe, that public defenders will always be underpaid, incompetent, and under the control of the judges before whom they appear. Thus, they see public defenders as an adjunct institution of the court, assisting in clearing up the backlog of cases by pleading clients guilty. This may be a correct assessment of the current situation in Orleans Parish, and Professor Singer's report is to this effect. We do not believe, however, that the solution to this problem is to replace the public defender with an appointed counsel system. We concur in the conclusion of Professor Singer and the New Orleans Management Assistance Study that, were the director of the Orleans Parish defender a full-time director, totally independent of the courts and the mayor, he could begin to provide effective representation in accordance with the American Bar Association's Standards Relating to the Defense Function (Approved Draft, 1971). In addition, we agree that there is evidence that the criminal justice system in New Orleans (unlike neighboring Jefferson Parish)

is not willing to accept vigorous, independent defense advocacy. At present the New Orleans bar is not involved in the work of the defender office and does not provide for its activity.

In Baton Rouge we interviewed Horace C. Lane, Esq., Project Director of the East Baton Rouge Parish (19th Judicial District) Public Defender Project, Murphy Bell, Esq., East Baton Rouge Public Defender, and other lawyers and officials from Baton Rouge. Mr. Bell, with a staff of five public defenders and three investigators, is considered to be doing as good a job as possible, given inadequate resources and support for his program. The problem is that the defender attorneys (as in New Orleans) are appointed in 90 to 95% of all indigent cases. Bell reported to the Louisiana Commission on Law Enforcement (his office is supported by state block grant funds) that his office closed 537 cases during a six-month period in 1973. He also reported, in January, 1974, a backlog of 600 cases in District Court plus 32 appeals.<sup>25</sup>

Mr. Bell's office is threatened with a drastic reduction in funding which would reduce his staff to a level considered unacceptable to him. We agree. Indeed, we do not believe his office has ever been adequately funded for the number of cases it has been expected to handle. The current problem has produced a difficult morale situation in this office. We were struck by a

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<sup>25</sup>We estimate a total of between 3,000 and 5,000 cases in Baton Rouge's District, City, and Family Courts needing appointed counsel per year. Unless there are wholesale waivers of counsel, there is some discrepancy between this estimate, Mr. Bell's assertion that his office handles 90% of the cases, and his caseload statistics; in any event, his office is handling too many cases. He admitted, in a letter dated July, 1973, that his caseloads were four times higher than NLADA guidelines.

sense of fatigue and futility among the staff. We believe that Mr. Bell should reduce his staff attorneys' caseloads to conform with National Legal Aid and Defender Association standards,<sup>26</sup> and advise the courts that he cannot provide effective representation at current caseloads.<sup>27</sup> This situation, and that in the New Orleans Public Defender Office, point up the urgent need for state funding, about which we will have more to say shortly.

We visited public defender offices in the 18th and 20th Judicial Districts. The 18th has two part-time defenders, an investigator and a secretary, and operates with \$47,000 in block grant funds. The office handled 550 cases during 1973, which is too great a caseload for two part-time defenders. We believe that at least half of these cases are felonies,<sup>28</sup> so that under NLADA guidelines two or three full-time defenders would be required in this district. Similarly, the 20th Judicial District, with block grant funding, has two part-time defenders,

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<sup>26</sup>See NLADA, Proposed Standards for Defender Services 4.1 (First Discussion Draft, 1973). A full-time defender attorney should handle no more than 150 felonies per year, or 400 misdemeanors per year, or 200 juvenile cases per year, or 20 appeals per year.

<sup>27</sup>See NLADA, Proposed Standards for Defender Services 4.1 (4) (First Discussion Draft, 1973) providing that, when the public defender "determines that the assumption of additional cases...might reasonably be expected to lead to inadequate representation...he shall have the power and duty to declare such fact to the courts...and may refuse to accept or retain such cases."

<sup>28</sup>We note that the LEAA report covering the period May through September, 1973, for this office pointed out that all appointments received during this period were felonies. We estimate that in the 18th District there are between 1,500 and 3,000 cases per year for which appointed counsel are needed, and that three-quarters of the cases would be misdemeanors. We conclude that most misdemeanor offenders in the district are probably not receiving counsel.

one for East Feliciana Parish and one for West Feliciana Parish. These two defenders handle all the cases except for offenses committed by inmates at Angola State Penitentiary, for which there is a special appointed counsel program. We estimate that these two defenders handle a total of about 200 cases per year. They have no investigative services and no funds for expert witnesses. They are underpaid.<sup>29</sup> We believe one adequately salaried full-time defender with proper support services could handle the indigent cases in the 20th District.<sup>30</sup> Everyone we spoke to in the 20th District feels strongly that a full-time defender is needed there, and we concur.

#### F. The Need for State Funding

There seems to have developed a consensus among Louisiana lawyers that the current system of funding defense services by extracting \$3 in costs from defendants is inadequate. It was inadequate before Argersinger, and it has resulted in a criminal justice system that denies the effective assistance of counsel to nearly all accused. Those districts that have obtained LEAA funds are improving their systems for provision of defense counsel, but those funds will not be provided forever.<sup>31</sup> The recognition that the state must provide defense services has been embodied in the new Louisiana Constitution, which in Article 1, Section 13, declares:

At each stage of the proceedings, every [accused] person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The Legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.<sup>32</sup>

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<sup>29</sup>Each makes \$6,000 per year, compared with the \$15,000 and \$12,000 salaries paid the part-time defender and assistant defender in the 18th District.

<sup>30</sup>His salary should be in the neighborhood of \$30,000. The local district attorney makes \$23,000, and this is a part time position.

<sup>31</sup>We were told that LEAA funding for the Baton Rouge defender will terminate in August, 1974.

<sup>32</sup>Emphasis added.

Thus, the question becomes, not whether the state should undertake this burden, but how shall it discharge this constitutional mandate. We conclude that Louisiana should adopt a statewide public defender system, and believe that such a program will work only if the state is willing to pay for it.<sup>33</sup> What we have reported thus far should demonstrate amply that there is a direct correlation between the amount of money available for defense services and the quality of the services generated. This is not to say that the Louisiana bar has not responded to the demands of Gideon v. Wainwright, 372 U.S. 335 (1963), and Argersinger v. Hamlin, 407 U.S. 25 (1972), consistent with the highest ideals of the legal profession. In the long run, this is simply too great a burden for the private bar to bear without adequate compensation. In this observation there is general agreement in Louisiana. Differences arise on the question how should the services be structured. Why, for example, should not the IDBs be given adequate funds for appointed counsel? Why should not each parish determine its own system?<sup>34</sup> The answers to these questions are complex, and we address them in the following section.

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<sup>33</sup>We were told by many persons that a statewide system of defenders would not be "politically" feasible. Some opponents of the unified defender concept feared that public defenders would be incompetent; others feared that they would be competent. All suggested that the parishes would be unwilling to yield control of defense services to a centralized office. We cannot address ourselves to state politics; rather, we have defined our task as one of proposing the best possible criminal defense system for the state. We believe the plan we propose here is unassailable on the merits.

<sup>34</sup>The concept of local option is embodied in a bill proposed (or to be proposed) by Messrs. Reilly, Jones and Simoneau and Senator De Blieux. The bill would enable any parish to adopt a public defender, with half of the funding provided by the state and half by the parish or parishes concerned.

### III. A STATEWIDE PUBLIC DEFENDER SYSTEM FOR LOUISIANA

The Institute for Judicial Administration,<sup>35</sup> in its March, 1972, study of the Louisiana courts, recommended:

A flexible state-funded public defender system should be instituted, which would include a number of full-time regional public defenders who could be moved to temporarily assist any court. Although the greatest demand for such defenders will be in the urban areas, even in predominantly rural areas at least one full-time public defender will be needed on the regional level, supplemented by one or more part-time attorneys as the needs require.<sup>36</sup>

The American Judicature Society studied Louisiana's courts of limited jurisdiction in 1973 and concluded:

Louisiana should establish a statewide system of public defender offices, fully staffed with full-time attorneys, to assure that indigent defendants are afforded their constitutional right to counsel.<sup>37</sup>

The Louisiana Judicial Council Committee Assigned to Study the Problem of Counsel for Indigents in Misdemeanor Cases, chaired by Silas B. Cooper, Jr., Esq.,<sup>38</sup> recently reported: "Louisiana's present system of Indigent Defender Boards plus Public Defenders in metropolitan

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<sup>35</sup>The IJA is located at 40 Washington Square South, New York, New York 10012.

<sup>36</sup>IJA, A Study of the Louisiana Court System 114 (1972).

<sup>37</sup>American Judicature Society, Modernizing Louisiana's Courts of Limited Jurisdiction 138 (1973).

<sup>38</sup>Other members of the committee were Judge Daniel W. LeBlanc, Judge Cecil C. Lowe, Judge J. Burton Foret, and consultant Frank V. Moise, Jr.

areas has several disadvantages. It fails to provide uniform protection for indigent accused throughout the state. Justice becomes a matter of geographic accident. An accused may be defended by a competent, full-time defender or may not even have an attorney available for appointment in rural areas.... Also, appointed [counsel] tend to be attuned to civil practice or lacking in trial experience." The committee recommended:

That in order to provide uniform and adequate defense of indigent accused, a statewide system of regional Defenders of Needy Persons be established... to be funded from state sources and with pay and staff commensurate with the prosecuting system.<sup>39</sup>

On October 1, 1973, the Louisiana Bar Association mailed to each of its members a form containing fourteen items with a request that the respondent rate each item in terms of its importance as an area of concern for the bar association. In the recently published survey results, "Establishment of a Statewide Defender Program" was rated sixth, ahead of specialization, standards for legal education, and uniform district court rules. We spoke with many knowledgeable persons who favor a statewide public defender system. For example, Douglas M. Gonzales, Esq., United States Attorney in Baton Rouge and former Baton Rouge Public Defender, favors the concept. He believes that the system should have full state funding, and that the defenders should be independent, full-time, and adequately salaried.

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<sup>39</sup>The committee recommended, alternatively, that the IDBs be expanded "in all areas of the state to meet the impact of Argersinger." It admitted, however, that "expansion [of the IDBs] to meet Argersinger, if Argersinger is widely applied, may make it economically unfeasible." We concur.

He believes that adequate investigative services should be provided, and in this nearly all those interviewed by us would agree. Gonzales also believes that the state public defender director should be politically independent.

We believe that, apart from New Orleans and Baton Rouge, which have already been discussed, Louisiana's judicial districts can be grouped in three categories for purposes of planning defender services: (1) essentially rural districts with few lawyers available for court appointments in criminal cases; (2) more populous districts which lack an organized bar willing to involve itself in indigent criminal defense; and (3) urban centers with large numbers of lawyers interested in criminal law and willing to undertake the defense of indigents.

A. Rural Districts

Of the districts we visited we would include the 3rd, 11th and 20th here. We have discussed the 20th District, which has a public defender office. We visited Ruston in the 3rd District, and Mansfield and Many in the 11th. Ruston has a very small lawyer population, with only twelve lawyers available for appointments. The Chairman of the IDB in Ruston, Mr. James Wright, and Judge Fred W. Jones, Jr., of the District Court say there are simply not enough lawyers to handle the cases. They estimate that there are about 150 felonies per year requiring appointed counsel. We estimate an additional 400 misdemeanor cases calling for counsel under Argersinger. Many has six lawyers available for appointments, and Mansfield has five. None of these lawyers has any particular interest in criminal law. Yet we

estimate that the 11th District has about 1000 cases per year requiring assigned counsel.<sup>40</sup> We understand that the eleven lawyers in this district feel a strong need for a public defender, and we believe the need is obvious. It becomes apparent that the need for a public defender in rural areas is even greater than that in the cities, because of the enormous burden that an appointed counsel system, even if adequately funded, imposes on a few private attorneys who have no interest in devoting a substantial amount of their professional efforts to criminal cases. We recommend that, in all districts such as the 3rd and 11th, full-time public defenders be established to handle nearly all the indigent cases.

B. Populous Districts Lacking Bar Involvement in Criminal Defense

Here we include the 1st District (Shreveport), the 4th District (Monroe), the 10th District (Natchitoches), the 14th District (Lake Charles), the 16th District (Franklin, New Iberia, St. Martinville), and the 32nd District (Houma). A number of districts we did not visit would probably fall in this category. Each of these districts has substantial Argersinger caseloads in District and City Courts. Richard Gerard, Sr., Esq., Chairman of the Lake Charles IDB, favors an adequately funded public defender system. He points out that in Lake Charles (with a population of 78,000) the bar is not interested

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<sup>40</sup>of which probably 200 are felony charges.

in the cases and would like to get rid of them. In Monroe a prosecutor told us the private bar was "sick of the cases." There are no criminal law library facilities in Monroe, and no interest in the criminal law practice. There is no criminal law bar in Shreveport, and the IDB there does not function at all in the City Court or in the Caddo Juvenile Court.<sup>41</sup> A private lawyer in Shreveport told us the lawyers there simply don't want to be bothered with these cases. They make the effort when they receive appointed cases, but there are no criminal law resources and the representation is inadequate. The same is true in Natchitoches, where there are no criminal law practitioners and no organized bar involvement in the business of indigent defense.

In Houma, Charles Hanamann Esq., head of the IDB, told us he would favor a public defender system for Houma because there are too few lawyers who have any interest at all in the indigent cases. Thus, he pointed out, the appointed counsel system would not necessarily function well even if adequately funded. Charles Schrader, Esq., a private lawyer in Houma, stopped taking IDB cases not only because it was financially unrewarding but because he is a civil lawyer and cannot possibly keep up with developments in criminal law and procedure. Although not an advocate of public defenders in general, Schrader favors one in Houma because of the lack of criminal law knowledge and experience there.

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<sup>41</sup>We estimate at least 2000 cases per year calling for appointed counsel in these two courts in Shreveport.

In the 16th District we interviewed Gerard B. Wallingny, Jr., Esq., and S. Gerald Simon, Esq., of the 16th District IDB, and Wayne Bourg, Esq., from St. Mary Parish. They told us that the IDB volunteers are young and inexperienced, and that as they develop experience they cease volunteering because of low pay and general lack of interest. There is consequently no bar involvement in the problem of indigent defense. Bourg would like to see a public defender in St. Mary Parish because there are only seven lawyers on the panel, and only two of them are qualified for capital cases.<sup>42</sup>

Each of these districts needs a public defender office adequately staffed to handle between 50% and 75% of the indigent cases.<sup>43</sup> Why a "mixed" system of defenders and appointed counsel? We believe a mixed system is best for Louisiana for a number of reasons. The Institute for Judicial Administration recommended a mixed system for Louisiana because it would permit and encourage private attorney participation, and "[t]he experience and resources (investigation, legal research, etc.) of the regionally staffed public defender offices could be made available to volunteer attorneys." We believe participation of the private bar in the work of the defender is important and should be encouraged. In the first place, more private lawyers would be willing to undertake this work if they were adequately paid and if

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<sup>42</sup>We estimate a need for appointed counsel in approximately 1500 cases per year in St. Mary Parish alone.

<sup>43</sup>These figures are at best reasoned estimates. We recommend that each district determine for itself the most appropriate division between defender and assigned cases. For the reasons stated, however, we strongly oppose requiring the defender office to handle all the cases.

there were a source of criminal law expertise which a full-time defender office would provide. Moreover, the defender office should not become isolated from the bar,<sup>44</sup> because active support and participation by private lawyers contributes to the salutary goal of independence from the judiciary. In addition, participation in appointed criminal cases by skilled civil trial lawyers can sometimes provide a measure of public defender competence. We know that in some states with mixed systems the very best civil trial lawyers in the community participate in an occasional assigned case, and the understanding they gain of the problems of the public defender produces strong bar advocacy for needed reforms in the entire criminal justice system. Such lawyers will participate in a mixed system when investigative, research, and forensic science support services are provided by a capable defender office. This is the system we believe should be promoted in Louisiana.

C. Urban Centers with Bar Involvement

We have discussed Jefferson and Lafayette Parishes, which we place in this category. Alexandria also belongs here because it has an active bar association, a good trial bar, and a number of lawyers who are interested in criminal law work. Lawyers we talked to in Alexandria want a public defender, but not a defender who takes all the indigent cases. In each of these places we favor a full-time public defender office staffed to handle somewhere

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<sup>44</sup>We fear that this is surely a partial reason for the difficulties in the New Orleans and Baton Rouge offices.

between 25% and 50% of the cases.<sup>45</sup> The defender should of course be adequately staffed and funded to administer a good appointed counsel panel. As previously indicated, we recommend that volunteer lawyers be compensated according to federal guidelines, that is, \$30 and \$20 for in-court and out-of-court time, respectively.

Even though Jefferson and Lafayette Parishes have developed good appointed counsel systems, we believe small public defender offices should replace the existing coordinator's activities, because the defender office can provide better support for the volunteer panel.<sup>46</sup> In addition to accepting its share of the indigent cases, the defender office should be equipped to perform the following functions:

- (1) Assignment of appointed counsel in particular cases, and approval and payment of vouchers.
- (2) Provision of investigative services, and training of investigators.
- (3) Maintenance of an adequate criminal law library and pleadings bank.
- (4) Training of volunteer lawyers by means of periodic newsletters and seminars.
- (5) Assistance to volunteer lawyers in individual cases.
- (6) Undertaking test litigation to bring about reform of the criminal justice system.

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<sup>45</sup>See note 43 supra.

<sup>46</sup>Moreover, Lafayette is only one of three parishes in the 15th District, and a defender office is needed to provide service to Acadia and Vermilion Parishes, both of which have substantial Argersinger caseloads.

It goes without saying that these functions are part of any defender's business, and their inclusion here should not suggest that they are not equally applicable in the two preceding categories of districts. The smaller the percentage of cases being handled by the defender, however, the more important these functions become in the effort to provide a consistently even quality of good representation for indigent accused.

D. New Orleans and Baton Rouge<sup>47</sup>

We favor a mixed system in both of these cities. There is no reason why the private bar cannot involve itself in the work of these defenders. We believe this would happen if there were adequate funds for payments for appointed counsel, and if the defenders were equipped to provide the above-mentioned services to the volunteer panel. We recommend that each of these defender offices be reorganized and staffed to handle about 50% of the indigent criminal cases. This will not result in a reduction of existing staff (see Chapter VI), because current caseloads in these offices are more than double the recommended guidelines.

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<sup>47</sup>See the discussion of the New Orleans and Baton Rouge public defender offices on pp. 17-20 supra.

#### IV. CENTRALIZED ADMINISTRATION VERSUS LOCAL CONTROL

The first point to be made is that a public defender should not be controlled by anyone. The American Bar Association's Standards Relating to Providing Defense Services 1.4 (Approved Draft, 1968) provides: "The [defense services] plan should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice." (Emphasis added.) Similarly, the National Legal Aid and Defender Association's Proposed Standards for Defender Services 3.1 (First discussion draft, 1973), admonishes:

However attorneys are selected to represent non-fee paying clients, they shall be as independent as any other private counsel who undertakes the defense of a fee-paying criminally accused person. To accomplish this end, the assigned counsel whether public defender or private assigned counsel should not be selected by the judiciary or an elected official, nor should he be an elected official. The most appropriate method of assuring independence modified with a proper mixture of supervision, is to create a board of directors representing various segments of the community who will hire the top administrator and establish policy and guidelines of the office, but will not interfere with the handling of individual cases.

To the same effect is the recommendation of the National Advisory Commission on Criminal Justice Standards and Goals in its publication entitled Courts 268-73 (1973). The thrust of these standards is that judges should be totally removed from the selection and control of defenders or assigned

counsel to ensure the actual and apparent independence of the defender, and to preclude even the implication that appointed counsel can be supervised by the judges before whom they appear.<sup>48</sup> This makes good sense if we really believe in equal justice for the poor. Prosecutors are independent. Privately retained counsel are independent. Is there any valid argument for diminishing the independence of counsel for our indigent accused? Why should judges, or mayors, have any greater authority over appointed counsel than over privately retained counsel?

We have previously mentioned that a major problem in the New Orleans and Baton Rouge defender offices is excessive caseloads which severely hamper the effectiveness of defender lawyers. Why, then, do not these defenders simply refuse to take all the cases? A partial answer is that they are not independent enough to survive such a move, and this lack of independence is a result of local control. Since no funds are available for appointed counsel in these cities, the defenders yield to the inevitable systemic pressures to provide at least the appearance of counsel in all the cases. This situation can be changed only if the bench, the bar, and the entire community recognize the problem and demand change.

Independence and adequate funding are the necessary attributes of an effective defender system. The only way to assure independence of defenders is to follow the NLADA guidelines and to establish an independent board of directors which appoints a State Public Defender who in turn appoints thirty-four District Public Defenders who in turn appoint their staffs. The independent board should have a majority of lawyers. Its independence is virtually assured if some of its members are appointed by the Governor,

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<sup>48</sup>Supreme Court Justices Joe W. Sanders, Mack E. Barham and Albert Tate, Jr., agree that the public defender should be independent of the judiciary.

some by the Supreme Court, some by the Judicial Council, some by the state bar association, some perhaps by law school deans, and some perhaps by "groups whose members derive a particular benefit from the proper functioning of the public defender's office." NLADA, Proposed Standards for Defender Services 3.2 (First discussion draft, 1973). The goal is to select a State Public Defender who will be insulated from political pressures and responsive to the needs of the population served by the defender offices. The board of directors should exercise general supervisory authority over the entire system, but have no control over the conduct of individual lawyers or individual cases.

We have been told that centralized control is politically infeasible in Louisiana. The persons we interviewed repeated this theme, and coupled it with vague fears of young defenders disrupting the status quo by bringing cases in federal courts. We are proposing a plan which we believe would provide good defense representation in Louisiana, and would fulfill the constitutional mandate that "[t]he legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents." We do not believe that these goals will be realized unless the defender system which is adopted is independent and adequately funded. Nor do we believe that the defender offices will be independent or adequately funded unless they are removed from local control. This is the heart of our proposal. Without independence, we do not wish to be understood to endorse any defense services in Louisiana.

## V. AUXILIARY DEFENSE SERVICES

### A. The Appellate Function

The Louisiana Supreme Court has exclusive appellate jurisdiction over all criminal cases in which a sentence of death or imprisonment at hard labor for over six months is imposed. The intermediate appellate courts have no criminal appellate jurisdiction. The new Louisiana Constitution provides a right to review in Article 1, Section 19:

No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based on a complete record of all evidence upon which the judgment is based. This right may be intelligently waived. The cost of transcribing the record shall be paid as provided by law.

We believe there have been relatively few indigent appeals in Louisiana. The Institute for Judicial Administration reported that during the entire decade 1960-69 the Supreme Court reviewed only 374 criminal convictions. From January 1, 1970, to April 30, 1973, the Court reviewed 422 criminal convictions.<sup>49</sup> We cannot determine how many of these appeals were in forma pauperis, but our observations lead us to conclude that appointed counsel do not appeal their convictions because there are no funds for this purpose. Even in Jefferson Parish, there is currently no provision for additional compensation for time spent preparing an appeal.<sup>50</sup>

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<sup>49</sup>IJA, A Study of the Louisiana Court System 201 (1972).

<sup>50</sup>The Jefferson IDB attorney voucher-compensation form contains no category for appellate work and appears to limit compensation to ten out-of-court pretrial hours, see note 18, supra. The Jefferson IDB administrator, Ms. Sandra Joaen, told us that no decision had yet been made on the question whether the ten maximum compensable hours must include appellate preparation time, because the question has not arisen yet. She suggested that a "few extra hours" might be approved for an appeal.

We have examined the Jefferson IDB LEAA report covering the period October 1972 through August 1973, and find evidence of only one appeal having been undertaken during that period. We have examined some appellate briefs prepared in the Baton Rouge public defender office and find them adequate. We are amazed to discover that an office with such heavy caseloads can find time to write appellate briefs. The public defender office in New Orleans has taken a total of 40 appeals since its inception in 1971.<sup>51</sup>

The four intermediate Courts of Appeal, located in Baton Rouge, Shreveport, Lake Charles, and New Orleans, have jurisdiction over the juvenile cases. We have no statistical data on juvenile appeals, but are virtually certain that the number of indigent juvenile appeals is negligible. We base this conclusion on inquiries we made, and by deduction from our knowledge that most IDBs do not provide counsel in juvenile court.

We believe the number of indigent criminal and juvenile appeals is bound to increase substantially in the next several years in Louisiana. This will be the inevitable effect of the new constitutional provision. It will also result from the upgrading of criminal defense services. And this is as it should be. A substantial percentage of non-indigent defendants appeal their convictions. A system purporting to provide equal justice should expect, indeed welcome, a like percentage of indigent appeals. With this in mind, we propose that the office of State Public Defender be appropriately staffed to discharge the entire statewide indigent appellate function, rather than requiring district defender offices to manage their own appellate caseloads. There are a number of reasons for this recommendation:

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<sup>51</sup>NLADA and Criminal Courts Technical Assistance Project, New Orleans Management Assistance Study (1974).

(1) It is inefficient to saddle trial-level defender attorneys with trial and appellate caseloads, particularly if, as we understand, the Supreme Court usually sits in New Orleans.

(2) It makes sense, in terms of cost, administration, and logistics, to create an appellate division near the appellate court.

(3) Sharing of research and briefs is facilitated in a central office, thereby avoiding costly duplication of effort and reducing the number of frivolous appeals.

(4) Appellate work requires a much more extensive library, and better typing and duplicating facilities, than does trial work. District offices need not be as extensively equipped when the appellate function is removed.

The appellate issue should be squarely faced. In view of the obvious advantages of a centralized appellate division for a state such as Louisiana, with all criminal appeals in one Supreme Court,<sup>52</sup> arguments to the contrary should be closely scrutinized. The trial attorney knows the record best, the argument goes. This knowledge is hardly an asset if the trial attorney cannot spare the time to perfect, brief, and argue an appeal in a distant court. It is possible that some of the opponents of a centralized appellate function fear increased caseloads, caseloads perhaps too great for one appellate court to manage. If this is a consideration, it should, we suggest, be recognized. Effective defense advocacy places strains on the criminal justice process, but these strains are the stuff of the adversary system. The question is: Will Louisiana be willing to bear the costs of truly effective defense services? This is a pervasive question.

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<sup>52</sup>We would tend to favor three mini-appellate divisions in the defender offices of New Orleans, Shreveport, and Lake Charles to handle juvenile appeals in the respective Courts of Appeal. The main appellate division located in the office of the State Public Defender (which we assume would be in Baton Rouge) could handle juvenile matters in the Baton Rouge Court of Appeal.

B. Mental Health Proceedings

The Louisiana Mental Health Code<sup>53</sup> provides a right to counsel in judicial commitment proceedings,<sup>54</sup> which are necessary if a mentally ill person is to be committed for longer than 60 days.<sup>55</sup> The statute specifies that attorney compensation shall be paid from IDB funds. We have no statistics on mental health commitment proceedings in Louisiana. We suggest that public defender offices can develop the expertise, on a statewide basis, to render effective assistance of counsel in these cases. In addition, the 20th District public defender office should have a small mental health unit to provide legal assistance to the patients at East Louisiana State Hospital.

C. Parole Revocation Proceedings

We did not determine whether appointed counsel are provided in parole revocation proceedings in Louisiana,<sup>56</sup> but whatever the practice has been there will be some need in the future occasioned by Gagnon v. Scarpelli, 411 U.S. 788 (1973). We would tend to favor a parole and post-conviction relief component in the Baton Rouge defender office to service the parole board and the inmates at Angola Penitentiary. We were told that Professor Ray Lamonica's LSU students provide services to inmates at Angola and St. Gabriel,<sup>57</sup> and the Baton Rouge office could coordinate these efforts.<sup>58</sup>

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<sup>53</sup>La. Rev. Stat. 28:50-28:56.

<sup>54</sup>La. Rev. Stat. 28:53

<sup>55</sup>Commitments are to the East Louisiana State Hospital at Jackson. This hospital has been described in Plotkin, The Dark at the End of the Tunnel, Louisiana's False Promise of Psychiatric Care for the Criminally Incompetent, 32 NLADA Briefcase, No. 1, p. 5 (1974).

<sup>56</sup>See La. Rev. Stat. 15:574.9 (A).

<sup>57</sup>St. Gabriel, located near Baton Rouge, is the women's reformatory.

<sup>58</sup>Alternatively, a post-conviction relief component could be created in the 20th District defender office, which is nearer to Angola.

## VI. Organization of Proposed Defender System

### A. Structure

Available statistics in Louisiana are not adequate to permit prediction of the need for counsel with accuracy. For example, the Judicial Council publishes only total criminal caseload statistics for the District Courts. There are no breakdowns into felony-misdemeanor-juvenile categories, and no indication of indigency rate. Since a full time defender lawyer could handle 150 felonies or 400 misdemeanor offenses per year, these breakdowns are essential in projecting the number of lawyers to be assigned to particular offices. The City Court statistics are also deficient. (See Supreme Court Judicial Council, 1973 Annual Report with Statistics and Related Data.) What is needed is a fairly accurate prediction of Argersinger cases in the following categories:

- (1) District Court felony cases
- (2) District Court Argersinger misdemeanors<sup>59</sup>
- (3) City Court Argersinger misdemeanors
- (4) District and City Court juvenile cases
- (5) Mental health case statistics
- (6) Appellate case projections.

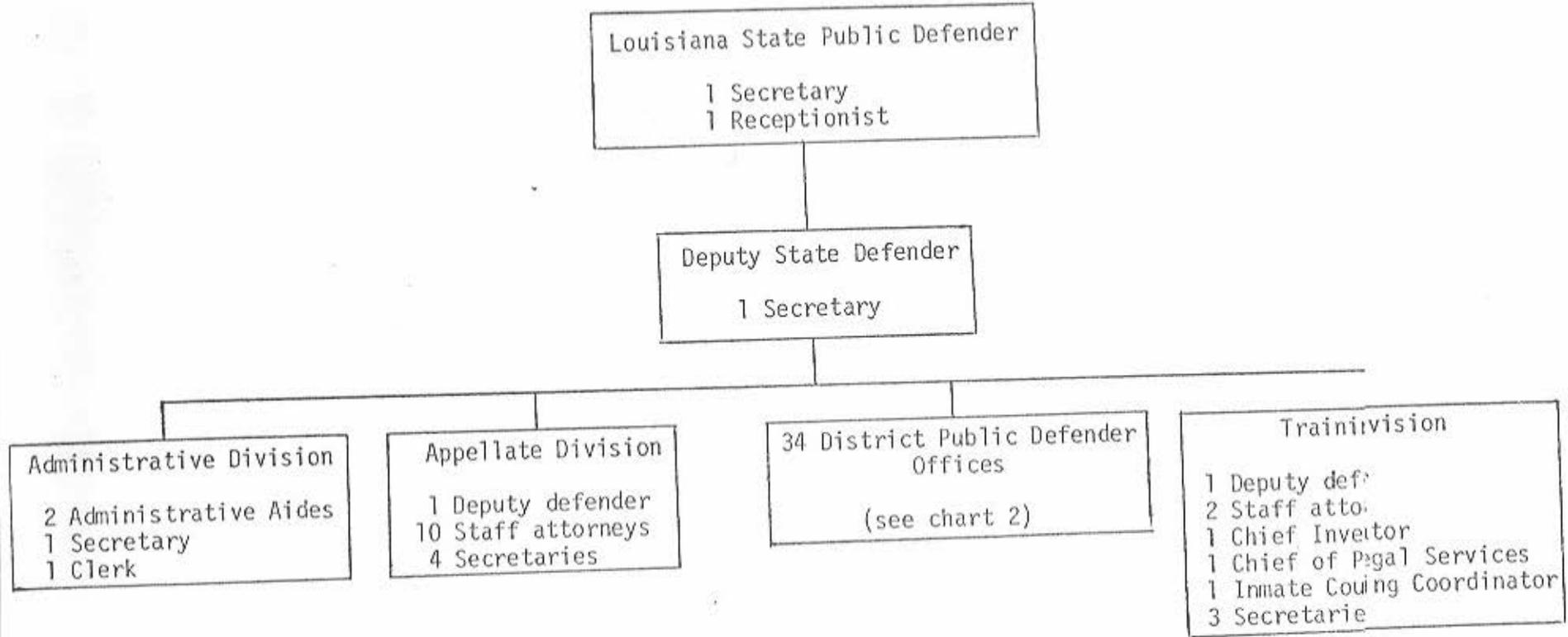
When such figures are available, the size of defender offices can be determined, on a district basis, by taking the total number of cases in each category and subtracting the number of cases allocated to appointed counsel. The public defender cases are then apportioned as follows: each public de-

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<sup>59</sup> i.e., those offenses, whether misdemeanors, traffic cases, or ordinance violations, for which imprisonment is possible with an indigency factor applied.

fender attorney (according to NLADA guidelines) should be assigned in one year not more than (1) 150 felonies, or (2) 400 misdemeanors, or (3) 200 juvenile court cases, or (4) 200 mental health cases, or (5) 20 appeals. The plan should include a substantial lump-sum appropriation to compensate appointed counsel in the non-defender cases.

Obtaining accurate statistical information could be an extremely lengthy and complicated process, given the number of courts and courthouses involved. An interim solution, which we favor, would be to create at once the entire defender structure pursuant to the following organizational charts. We have deliberately underestimated the number of defender personnel we believe will be needed; hence, this structure represents a mere initial plan pending receipt of better data. We hasten to repeat that, in addition to funding 35 offices, which are deliberately designed to handle but a fraction of the indigent cases, the legislature should appropriate a substantial sum for appointed counsel. The defender offices so created could then assist in the development of an ideal plan according to the guidelines set forth in this study.



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Chart 1 - Organization of State Defender Office

Chart 2 - Proposed Staffing Pattern

District	District defender	Staff attorneys	Investigators	Secretaries	Paralegal Aides*
1	1	8	5	4	2
2	1	1	1	1	1
3	1	1	1	1	1
4	1	9	5	4	2
5	1	1	1	1	1
6	1	1	1	1	1
7	1	1	1	1	1
8	1	1	1	1	1
9	1	5	3	2	1
10	1	2	1	1	1
11	1	1	1	1	1
12	1	1	1	1	1
13	1	1	1	1	1
14	1	4	2	2	1
15	1	3	2	2	1
16	1	5	3	2	1
17	1	2	1	1	1
18	1	4	2	2	1
19	1	7	4	3	2
20	1	0	1	1	1
21	1	3	2	2	1
22	1	3	2	2	1
23	1	2	1	1	1
24	1	2	1	1	1
25	1	2	1	1	1

(continued)

\*See note 62, infra.

Chart 2 (continued)

District	District defender	Staff attorneys	Investigators	Secretaries	Paralegal Aides
26	1	4	2	2	1
27	1	3	2	2	1
28	1	0	1	1	1
29	1	2	1	1	1
30	1	3	2	2	1
31	1	1	1	1	1
32	1	3	2	2	1
33	1	1	1	1	1
New Orleans	1	14	7	5	2

B. Proposed Cost of the System

1. Salaries

State Defender		\$ 40,000
Deputy Defender		35,000
Chief, Appellate Division		30,000
Chief, Training Division		30,000
Administrative Aides	(2) (@ 11,000)	22,000
Chief Investigator		15,000
Chief of Paralegal Services		12,000
Inmate Counseling Coordinator		20,000
District Defenders	(34) (@ 30,000)	1,020,000
Staff Attorneys	(112) (@ 15,000)	1,680,000
Investigators	(64) (@ 9,000)	576,000
Secretaries	(57) (@ 7,000)	399,000
Paralegal Assistants	(38) (@ 7,500)	285,000
		<hr/>
	Total Salaries	\$4,164,000

2. Expenses

Fringe benefits	(10% of salaries)	\$ 416,400
Rent	(150 sq. ft./atty. x \$5, 90 sq. ft./other x \$5)	186,600
Telephone	(\$200/mo. x 35 offices)	84,000
Supplies	(\$20/non-sec'y employee/ mo.)	61,440
Utilities	(\$100/mo. x 35 offices)	42,000
Postage	(\$5/mo./lawyer)	9,060
Travel	(1000 mi./mo./investigator @ .12/mi.)	92,160
Transcripts		20,000
Expert Witnesses		50,000
Equipment lease	(Xerox at \$200/mo. x 35 offices)	84,000
Miscellaneous	(Library upkeep, etc., @ \$200/mo. x 35 offices)	84,000
		<hr/>
	Total Expenses	\$1,129,660

(continued)

3. Operating Capital Outlay

Furniture	(\$550/lawyer, \$450/sec'y, \$250/other)	\$ 135,400
Office machines	Typewriters (57@ \$495)	28,215
	Dictaphones (257 @ \$520)	133,640
	Adding machines (35 @ \$150)	5,250
Law libraries	(\$5000 x 34, main office \$10,000)	<u>180,000</u>
	Total Capital Outlay	\$ 482,505

Budget Summary

Salaries	\$4,164,000
Expenses	1,129,660
Capital Outlay	<u>482,505</u>
Total 1st year budget	\$5,776,165

Note: Our cost estimates are rough and need to be refined considerably by persons with knowledge of local cost factors. Salaries of defenders should be comparable to those paid prosecutors, but if the prosecutors are part time, the defenders should receive correspondingly greater salaries. Investigators' salaries should be comparable to those paid police officers. Finally, a substantial sum should be budgeted for payments for appointed counsel. We cannot estimate this sum accurately because, again, we have no accurate statistical data. We suggest that \$2,000,000 be appropriated for appointed counsel cases for the first year. The total budget for the entire system for the first year thus becomes \$7,776,165.

## VII. SUMMARY OF FINDINGS AND RECOMMENDATIONS

A. The Indigent Defender Board system fails to provide effective assistance of counsel to indigent defendants.

1. The scheme of funding IDBs by making defendants pay a \$3 cost per case is unrealistic and unworkable. It results in:

(a) Grossly inadequate compensation for appointed counsel in felony cases.

(b) No compensation for counsel in misdemeanor and juvenile cases and mental health proceedings.

(c) No funds for investigation of cases, for transcripts, or for expert witnesses.

2. Since the vast majority of criminal defendants are indigent, the court cost system of funding is bound to provide insufficient money as a matter of simple arithmetic.

3. As presently operated, the indigent defense system is in reality being subsidized by the bar. This is unfair, particularly in areas where there are few lawyers available to bear this burden. The cost of indigent criminal defense services should be borne by the state.

B. The new Louisiana Constitution provides a right to counsel for every defendant who "is indigent and charged with an offense punishable by imprisonment." There is also a right to appointed counsel at preliminary hearings, for appeals, in juvenile cases, in mental health commitment cases, and in some parole and probation revocation cases. Even if the Indigent Defender Boards

were substantially funded, they could not meet these demands on a statewide basis.

C. The Louisiana Constitution directs the legislature to "provide for a uniform system for securing and compensating qualified counsel for indigents." This mandate can be discharged only through creation of a statewide public defender system, and the bench and bar in Louisiana recognize this fact.

D. The legislature should establish a public defender office in each of the State's 34 judicial districts. (The proposed organization of these offices is discussed in Chapter VI of this report.) Every district should have a mixed system of indigent defense representation, with a certain percentage of cases handled by the defender and a certain percentage by appointed counsel. These percentages should be determined locally, with regard to (1) the number of lawyers eligible for appointed cases; (2) the number of lawyers willing to accept appointed cases; and (3) the number of lawyers possessing some competence in trial advocacy. Except in strictly rural districts having few or no lawyers, the percentage of indigent cases allotted to the public defender office should not exceed 75%. In addition to creating the 34 defender offices, the legislature should appropriate a substantial amount of money for payments for appointed counsel.

E. In order to guarantee the independence and integrity of the system, there should be created the office of State Public Defender. The State Defender would exercise operational and supervisory control over the entire system, and would have sole responsibility for hiring and firing District Public Defenders. The State Defender should serve at the pleasure of an independent board or commission.<sup>60</sup> Members of the judiciary and district attorneys

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<sup>60</sup>We have discussed the possible composition of such a commission at p. 33 supra.

should not serve on this board. The goal of the board is to assure that the State Public Defender and the entire defense services system is insulated from judicial and political pressures.

F. The State Public Defender office should be adequately staffed and equipped to exercise administrative control over the system. The office should maintain an appellate division and a training and publications component.<sup>61</sup> It should have a Chief Investigator and a Chief of Paralegal Services.<sup>62</sup>

G. The 34 District Public Defender offices should be organized as follows:

(1) Each District Public Defender should be answerable only to the State Public Defender.

(2) All public defender lawyers should be adequately paid and should devote full time to their defender work. The salaries should be comparable to those paid prosecutors, unless the prosecutors are part-time, in which event the defenders should receive correspondingly greater salaries.

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<sup>61</sup>We note with approval the recently inaugurated "District Attorney Newsletter," published and distributed by the Louisiana District Attorneys Association. This is one example of the kind of training a central administrative office can provide.

<sup>62</sup>Our plan (see Chapter VI) calls for a number of paralegal aides assigned to the various district offices. We define a paralegal employee as a person without a law degree who is trained to perform tasks ordinarily done by lawyers, thus significantly increasing the productivity of staff lawyers at low cost. Paralegal persons may be part-time college or law students, persons with or without college degrees, or ex-offenders. Experience in other states demonstrates that paralegal aides are an important component of a defender office. They can obtain the information and resources needed to secure pretrial release for clients, conduct interviews of clients and their families, assist investigators, coordinate job development efforts for accused persons and ex-offenders, and maintain liaison with community based rehabilitation programs. They can facilitate pretrial diversion for certain types of offenders such as those with mental health problems, narcotic addicts, and first offenders. They can prepare presentence reports and rehabilitative programs for defenders' clients. See generally, National Institute of Law Enforcement and Criminal Justice, Rehabilitative Services for the Criminal Defense (U.S.G.P.O. 1970).

(3) Caseloads of defender attorneys should not exceed National Legal Aid and Defender Association guidelines.<sup>63</sup> Each defender office should have that number of attorneys which will enable it to handle its projected percentage of cases without violating those guidelines.

(4) Each defender office should administer an adequately funded appointed counsel system for that percentage of cases allocated to appointed counsel.

(5) Each defender office should have adequate investigative, secretarial and paralegal assistance, and funds for transcripts, expert witnesses, training of staff and volunteer lawyers, an adequate library, and proper furniture and equipment.

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<sup>63</sup>See note 26 supra, and Chapter VI.

APPENDIX A

RESUMES OF:  
Addison M. Bowman  
Robert Alexis Green, Jr.  
Frederick F. Cohn  
Stuart Stiller  
Alan R. Parlapiano

## RESUME

Addison M. Bowman  
Professor of Law  
Georgetown University Law Center  
Washington, D.C. 20001

Born March 7, 1935

### Education

A.B., 1957, Dartmouth College  
L.L.B., 1963, Dickinson School of Law  
L.L.M., 1964, Georgetown University Law Center

1963-64: Awarded E. Barrett Prettyman Fellowship in Trial Advocacy at Georgetown. Received certificate of trial proficiency in 1964.

### Employment

Professor of Law, Georgetown University Law Center. Teaching courses in criminal justice, evidence, and professional responsibility and the administration of criminal justice. Participating faculty member in the appellate litigation clinic.

1973-74: Training Director, Public Defender Service for the District of Columbia (on leave of absence from Georgetown).

1967-73: Georgetown University Law Center faculty (promoted to professor in 1970). Co-Director, E. Barrett Prettyman Fellowship Program in Trial Advocacy, 1970-73. Founder and Director, Georgetown Criminal Justice Clinic, 1971-73.

1964-67: Legal Aid Agency for the District of Columbia (now Public Defender Service). Deputy Director, 1966-67.

### Publications

Appeals From Juvenile Courts, 11 Crime & Delinquency 63 (1965).

Narcotic Addiction and Criminal Responsibility under Durham, 53 Geo. L.J. 1017 (1965).

Defense of a Homicide Case (with Bowman), ch. 50 in Cipes, Criminal Defense Techniques (1969).

Readings in Criminal Justice (1969), and Readings in the Criminal Process (1971), with Dash and Pye (locally published first-year teaching materials).

Trial Experience: Have tried approximately 100 jury trials as defense counsel, including ten or twelve capital cases. Coordinated defense services during 1971 Mayday demonstrations. Wrote pretrial motions in recent Harrisburg conspiracy case.

Special Interests

Narcotics and the law  
Law and psychiatry  
Law and sociology

Bar Admissions

U.S. Supreme Court  
District of Columbia Bar

Miscellaneous

Lecturer in criminal procedure, Duke Law School (1970-71)  
Consultant, National Legal Aid and Defender Association (1972 New Mexico statewide public defender study)  
Consultant, Criminal Courts Technical Assistance Project of American University (1974 Louisiana statewide public defender study)  
Member, National Association Criminal Defense Lawyers  
Member, American Judicature Society  
Member, National Lawyers Guild  
Vice Chairman, D.C. Judicial Conference Committee on Implementation of A.B.A. Standards for Criminal Justice  
Member, D.C. Judicial Conference Committee on Criminal Defense Services in the District of Columbia.  
Consulting Attorney, American Civil Liberties Union Fund  
Member of board of directors, Legal Action Support Project of the Bureau of Social Science Research, Inc. (D.C.)  
Recent panel discussion appearances:  
1. "Teaching the teachers," Council on Legal Education for Professional Responsibility, 1973.  
2. "Jury selection in political cases," American Psychological Ass'n annual meeting, 1973.  
3. "In service training and utilization of expert witnesses and forensic scientists in a defender office," NLADA annual meeting, 1973.

## RESUME

Robert Alexis Green, Jr.  
Judge, Eighth Judicial Circuit of Florida  
Gainesville, Florida

Born: 14 June 1938

### Education:

Attended public schools of Bradford County, Florida, graduated from Bradford High School in June, 1956. Enrolled in the University of Florida in 1956, received Bachelor of Arts degree in June 1960. Enrolled in the University of Florida College of Law, September, 1960, and received Juris Doctor in December, 1962.

### Employment:

1973 - present: Judge, Eighth Judicial Circuit of Florida

1963 - 1973: Public Defender, Eight Judicial Circuit

Admitted to practice June 1963. Appointed Public Defender of the Eighth Judicial Circuit effective 1 July 1963. Elected in 1964; re-elected in 1968. Was one of the original seventeen Public Defenders designated after the system was created.

Since the position was a part-time one in 1963, he engaged in private civil practice with his father and uncle in Starke, Florida. By July 1965, the Alachua County caseload of the Office of the Public Defender had grown to the degree that a relocation in Gainesville was necessary.

In November 1965, he and James R. Pierce, formed the civil firm of Green & Pierce. The firm engaged in the general practice of civil law with an emphasis on probate, domestic relations and trial work.

The 1969 session of the Florida Legislature made full-time service as Public Defender optional with the Defender. He became full-time Public Defender in September of that year--thus becoming the first full-time Public Defender in the state.

After the case of In Re: Gault was handed down by the U.S. Supreme Court, the office made itself available for appointment in Juvenile Court matters.

Bar Admissions:

Stood Florida Bar Examination in April 1963 and was admitted to practice 6 June 1963. Admitted to Bar of the Supreme Court of the United States on 5 June 1967; is admitted to practice before the U.S. District Court of Florida.

Professional Activities:

- (1) Institute for law student/Public Defender intern program in Florida in September 1963.
- (2) Office received National Defender Project grant in the amount of \$35,500 in 1956-67. Grant project was for innovations in criminal procedure, e.g., expansion of scope of representation. Obtained passage of legislation allowing office to accept grant.
- (3) Institute first experimental Recognizance pre-trial release program in state (second in nation)--1964. Current statewide pre-trial release system in patterned after this program.
- (4) Expanded Student Intern Program to allow operation under Section 3.860 Florida Rules of Criminal Procedure, 1969.
- (5) Obtained ABA Endowment Grant to finance, under auspices of NLADA, Florida Defender Training Seminar held in Gainesville, 1966.
- (6) Evaluator of Defender offices--instituted national evaluation team to evaluate performance of Defender offices--1971. Evaluated Seattle, Washington Public Defender Office, 1971; Massachusetts Defender Committee (Massachusetts State Defender System), 1972; Office of Public Defender, Dade County, Florida-1972.
- (7) Member of Special Advisory Committee to the Florida Supreme Court. Function: to draft amendments to Florida Rules of Criminal Procedure to comply with ABA Minimum Standards of Criminal Judge. (See below)
- (8) Member of Jail Study Committee--Alachua County-1971.

- (9) Teacher of law and procedure:
- (a) Taught Law of Evidence and Law of Search and Seizure as part of the Law Enforcement Minimum Standards Curriculum at Santa Fe Junior College, Gainesville--1970.
  - (b) Guest Lecturer on Ethics and Problems of Volume Representation of Defendants at NLADA annual conferences.
  - (c) Guest Lecturer--Legal Ethics Seminar--University of Florida College of Law--1966 to date.
  - (d) Guest Lecturer--Gideon's Trumpet-Honors Seminar, University of Florida College of Arts & Sciences, 1968 to date.
  - (e) Guest Lecturer--State & Local Government Seminar, University of Florida College of Arts & Sciences, 1970.
  - (f) Guest Lecturer on Courts--Current Events Classes, Gainesville High School and P.K. Younge High School--1971-72.
  - (g) Guest Lecturer--Emerging Legal Concepts-Santa Fe Junior College-1972.
- (10) Director, 1972 New Mexico Statewide Public Defender Study.
- (11) Technical Assistance Project, Consultant; State Court Planning Agency, Mississippi, 1973.
- (12) Consultant, Judicial Council, Implementation of New Judicial Article of State Constitution, Alabama, 1974.

Professional Affiliations:

- (1) BAR ASSOCIATION OF THE EIGHTH JUDICIAL CIRCUIT  
Member by-laws Study Committee; Drug Abuse/Methadone Maintenance Program Committee. Courthouse Space Study Committee.
- (2) FLORIDA BAR ASSOCIATION  
Presently serving on Supreme Court Advisory Committee for the Implementation of the American Bar Association Minimum Standards of Criminal Justice and on Committee on Providing Counsel in Courts of Lesser Jurisdiction. Previously served on Law Student Liaison Committee; Committee Mass Civil Disorders & Riots. Member of Trial Lawyers Section.
- (3) AMERICAN BAR ASSOCIATION  
Member of Special Florida Executive Committee for Implementation of ABA Minimum Standards of Criminal Justice. As such was a speaker on Providing Defense Services standards at special Florida Convocation (which resulted in the Chief Justice of the Florida Supreme Court establishing the advisory committee mentioned in (2) above). Members of Criminal Law Section.

- (4) NATIONAL LEGAL AID AND DEFENDER ASSOCIATION  
Chairman, Defender Committee Subcommittee on Seminars 1965-69.  
Chairman, Defender Committee Subcommittee on Annual Conference Program 1965-69.  
Vice-Chairman, Defender Committee--1969-70.  
Chairman, Defender Committee--1970-72. Member, Board of Directors--1970 to date. Member, Executive Committee--1970 to date. Member, National Defender College Advisory Committee--1971 to date. National Defender Survey Advisory Committee-1972.
- (5) FLORIDA STATE PUBLIC DEFENDERS ASSOCIATION  
Treasurer - 1968-69  
President-Elect - 1969-70  
President - 1970  
Member, Executive Committee - 1971-date.
- (6) FLORIDA COUNCIL ON CRIME AND DELINQUENCY  
North Florida Chapter--1963-71.
- (7) INTERAGENCY LAW ENFORCEMENT PLANNING COUNSEL  
Task Force on Corrections--1968-70.
- (8) GOVERNOR'S COUNCIL ON CRIMINAL JUSTICE  
(a) Member, Task Force on Corrections -- 1971-72.  
(b) Chairman, Region II Planning Council -- 1971-72.
- (9) AMERICAN JUDICATURE SOCIETY
- (10) NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (Formerly National Association of Defense Lawyers in Criminal Cases).

## RESUME

Frederick F. Cohn  
Chicago, Illinois

For the past six years I have been in the private practice of criminal law, in association with Julius Lucius Echeles. My practice has been divided equally between trial and appellate matters.

Prior to entering private practice, my employment was as follows:

1967 -- Chief Attorney, North Office  
Cook County Legal Assistance Foundation

1964-  
1967 -- Cook County Public Defender's Office

1963-  
1964 -- Klein & Thorpe, 111 W. Washington St., Chicago

1962 -- Law Clerk, Illinois Appellate Court, First District

I graduated from the University of Chicago Law School in 1962.

Since 1964 I have been involved with continuing legal education. I teach courses in both Criminal Procedure and Appellate Practice in the Law Institute of the John Marshall Law School. I have also lectured for the following:

Young Members Section, Chicago Bar Association  
"Criminal Practice in Cook County"

Illinois Public Defenders Association  
"Discovery and Identification in Criminal Cases"

Cook County Public Defender Association  
"Identification in Criminal Cases"

National Legal Aid and Defender Association  
"Identification in Criminal Cases"

Illinois Institute for Continuing Legal Education  
(assisted in preparation of chapter on "Pre-Trial Motions")

Decalogue Society of Lawyers  
"Recent Developments of Constitutional-Criminal Law"

I have served on the Board of Directors and as Second Vice-President of the Association of Defense Lawyers; I have similarly served on the Chicago Bar Association's Committees on Ethics, Juvenile Courts, and Defense of Prisoners.

## RESUME

### STUART STILLER

#### Business Address:

Stiller, Adler & Schwartz  
Suite 801  
1725 K Street, NW  
Washington, D.C. 20006  
(202) 331-7530

#### Home Address:

121 7th Street, NE  
Washington, D.C. 20002  
(202) 544-2909

#### Education:

1. Cornell University - B.S. - 1966
2. Georgetown University Law Center - J.D. - 1969

#### Legal:

1. Public Defender Service for the District of Columbia - October, 1969 - May, 1974. As staff attorney represented criminal felony defendants in United States District Court and Superior Court for the District of Columbia. From February, 1973 through May, 1974 held position of Chief, Criminal Trial Division.
2. Stiller, Adler & Schwartz - present Partner, general practice of law.

#### Other Legal:

1. Columbus School of Law, Catholic University of America - Lecturer 1972 to present. As a part-time professor I teach courses in first year Criminal Law, Advanced Criminal Procedure and Criminal Practice.
2. Georgetown University Law Center - Adjunct Professor - 1973 to present. As adjunct professor teach Evidence and Professional Responsibility.
3. Bar Review, Incorporated - Professor - 1972 to present.
4. American Academy of Judicial Education - Professor - Lectures on Criminal Law and Supreme Court decisions given to State judges under the auspices of this LEAA funded educational organization.
5. Maryland States' Attorneys Association - 1969 to present. Twice yearly I prepare and present a summary of the Supreme Court decisions applicable to State Criminal procedure.

#### Writings:

1. "PINS - A Statute in Need of Supervision", American Criminal Law Review, July, 1974.
2. Law and Tactics in Exclusionary Hearings; Law and Tactics in Sentencing - Both books published by Coiner Publications in 1968 and 1969 respectively. I provided research and editorial assistance to the authors.

#### Personal:

Born March 13, 1944

Marital Status: Single

RESUME

Alan R. Parlapiano

Born: July 19, 1945

CHIEF ASSISTANT PUBLIC DEFENDER EIGHTH JUDICIAL CIRCUIT, FLORIDA; FORMERLY HEAD OF THE APPELLATE DIVISION FOR THE PUBLIC DEFENDERS OFFICE IN THE FIFTEENTH JUDICIAL CIRCUIT IN CHARGE OF ALL INDIGENT APPEALS ARISING IN THE FOURTH APPELLATE DISTRICT; JURIS DOCTOR UNIVERSITY OF FLORIDA LAW SCHOOL 1970; FIRST STUDENT INTERN TO ARGUE BEFORE A FLORIDA DISTRICT COURT OF APPEAL; HEAD OF FELONY DIVISION B, PUBLIC DEFENDERS OFFICE FIFTEENTH JUDICIAL CIRCUIT; SUPERVISOR UNIVERSITY OF FLORIDA PUBLIC DEFENDER INTERN PROGRAM; MEMBER OF DEATH PENALTY COMMITTEE, FLORIDA PUBLIC DEFENDER ASSOCIATION; MEMBER N.L.A.D.A. EVALUATION TEAM FOR ILLINOIS APPELLATE DEFENDER PROJECT.

APPENDIX B

PERSONS INTERVIEWED BY THE TECHNICAL ASSISTANCE TEAM

### New Orleans

Supreme Court Chief Justice Joe W. Sanders  
Supreme Court Justice Mack E. Barham  
Supreme Court Justice Albert Tate, Jr.  
District Judge Rudolph F. Becker, III  
District Judge Jerome M. Winsberg  
Judicial Administrator Eugene J. Murret  
Public Defender John Simmons, Esq.  
District Attorney Harry Connick, Esq.  
John Lawrence, Esq.  
Milton Masator, Esq.  
Professor Robert Force, Tulane Law School  
Professor Arthur A. Lemann, III, Loyola School of Law  
Mr. Robert E. Donnelly, ROR Program  
Ms. Karen Venable, ROR Program

### Baton Rouge

Senator J.D. DeBlieux  
Representative Kevin Reilly  
Colonel Wingate White, LCLE  
Mrs. Catherine Kimball, (Esq.), LCLE  
Douglas M. Gonzales, Esq., U.S. Attorney  
Mr. Webber Stevens, Louisiana Parole Board  
Richard Crane, Counsel, Louisiana Dept. of Corrections  
Murphy Bell, Esq., Public Defender  
John Carpenter, Esq., Louisiana D.A. Association  
Walter G. Monsour, Esq., Assistant D.A.  
Professor Ray Lamonica, L.S.U. Law School  
Dean Francis Sullivan, L.S.U. Law School  
J. Fred Blanche, Esq.  
Horace C. Lane, Esq., IDB Chairman  
James Lopez, Esq.  
Billy O. Wilson, Esq.  
John V. Parker, Esq., IDB member

### Jefferson Parish

District Judge Louis G. DeSonier, Jr.  
Parish Court Judge Douglas A. Allen  
John M. Mamoulides, Esq., District Attorney  
Frank Moise, Esq., Judicial Administrator  
Ronald P. Herman, Esq., IDB member  
Sam Showpay, Esq., IDB member  
Shelvin Hernandez, Esq., IDB member  
Sheriff Alwynn Cronvich  
Deputy Sheriff Andrew Aber  
Ms. Sandra Joaen, Judicial Administrator  
Ms. Paddrawn, Administrative Secretary

Houma

Judge Ashley W. Pettigrew, Jr.  
Charles Hanamann, Esq., IOB chairman  
Charles J. Schrader, Esq.  
Norval J. Rhodes, Esq., District Attorney  
Several prisoners in jail

Amite

District Judge Gordon E. Causey  
District Judge William M. Dawkins  
Joseph H. Simpson, Esq., Assistant D.A.  
Autley Newton, Esq.  
Several indigent defendants

St. Francisville

Leon A. Picou, Jr., District Attorney  
Fred C. Jackson, Public Defender  
William E. Woodward, Public Defender  
Leslie Liggin, Esq., IDB Chairman

Lake Charles

District Judge Cecil C. Cutrer  
Frank T. Salter, Jr., Esq., District Attorney  
Richard Gerard, Sr., Esq., IDB Chairman  
Charles King, Esq.

Lafayette

District Judge Lucien C. Bertrand, Jr.  
J. Nathan Stansbury, Esq., District Attorney  
Mr. Michael J. Barry, IDB Coordinator  
John Bevins, Esq.  
Ronald Cox, Esq.  
David Hutchins, Esq.  
John Hyde, D.A. Investigator  
Art Mouton, Esq.  
C.J. Brasseaux, Police Department  
Two inmates

Abbeville

District Judge Carol L. Spell

St. Martinville

Steven Bordet, Esq., IDB member  
Paul DeMahy, Esq.

New Iberia

District Judge Robert E. Johnson  
Gerard B. Wattigny, Esq., IDB member  
S. Gerald Simon, Esq., IDB member  
Dracos D. Burke, Esq., Assistant D.A.

St. Mary Parish

Wayne Bourg, Esq.

Port Allen

Gerald D'Aquilla, Esq., Public Defender  
Barry Marionneaux, Esq., Assistant P.D.  
Mr. Larry Jones, Investigator

Monroe

District Judge Fred Fudickar, Jr.  
Charles A. Traylor, II, Esq., Assistant D.A.

Ruston

District Judge Fred W. Jones, Jr.  
Howard Wright, Esq., IDB Chairman

Shreveport

District Judge C.J. Bolin, Jr.  
City Court Judge Garner R. Miller  
Caddo Juvenile Judge Gorman Taylor  
John A. Richardson, Esq., District Attorney  
Henry Walker, Esq.

Mansfield

Robert Plummer, Esq., IDB member

Many

James L. Davis, Esq., IDB member

Natchitoches

District Judge W. Peyton Cunningham, Jr.  
City Court Judge Marvin F. Gahagan  
Ronald C. Martin, Esq., District Attorney  
John Richardson, Esq.

Alexandria

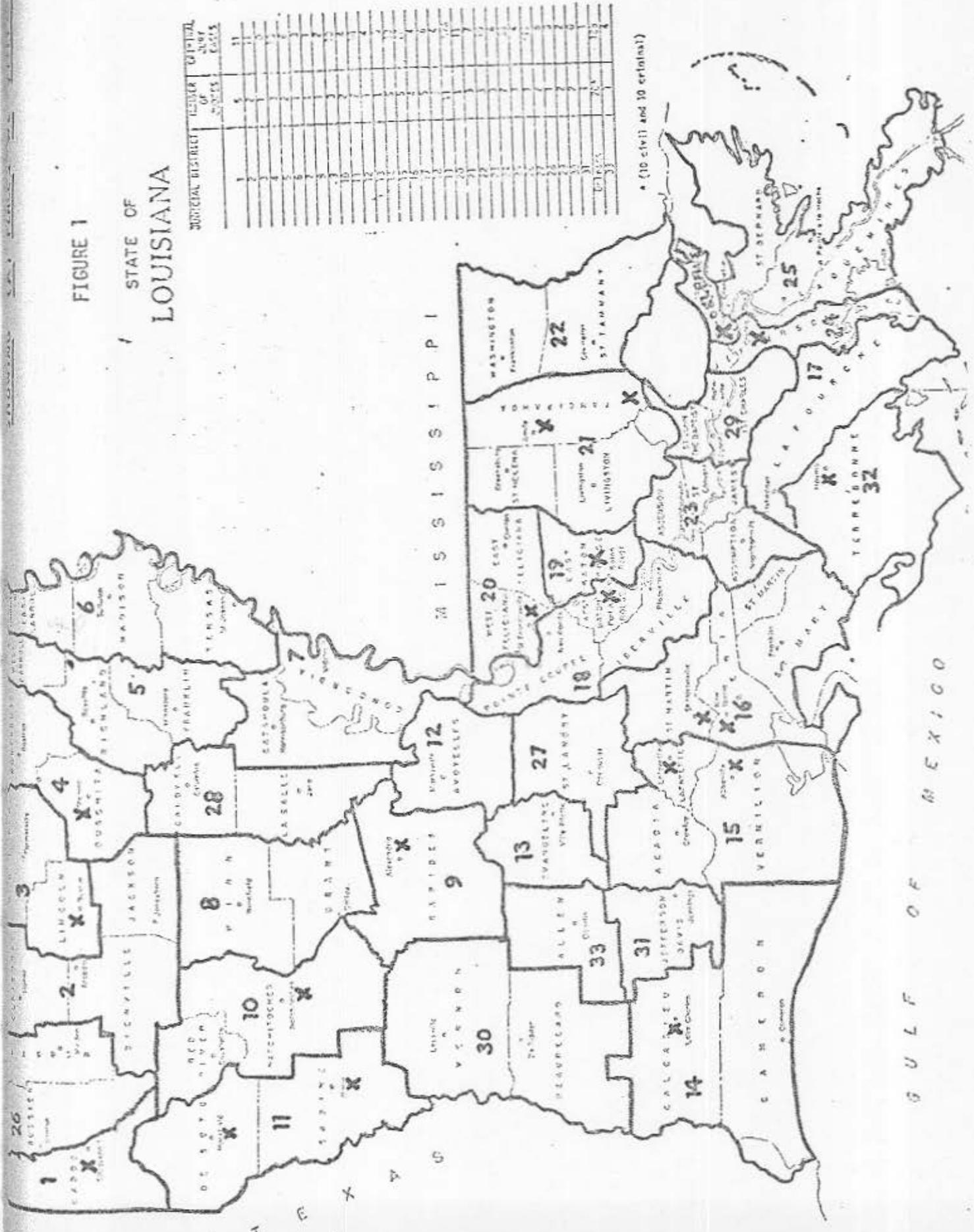
District Judge Guy E. Humphries, Jr.  
Irving Ward-Steinman, Esq., IDB member  
Leonard Furer, Esq., IDB member

APPENDIX C  
Outline of Judicial  
Districts

FIGURE 1  
STATE OF  
LOUISIANA

JUDICIAL DISTRICT	NUMBER OF COUNTIES	CAPITAL CASES
1	5	11
2	5	10
3	5	10
4	5	10
5	5	10
6	5	10
7	5	10
8	5	10
9	5	10
10	5	10
11	5	10
12	5	10
13	5	10
14	5	10
15	5	10
16	5	10
17	5	10
18	5	10
19	5	10
20	5	10
21	5	10
22	5	10
23	5	10
24	5	10
25	5	10
26	5	10
27	5	10
28	5	10
29	5	10
30	5	10
31	5	10
32	5	10
33	5	10
TOTAL	165	175

\* (10 civil and 10 criminal)



APPENDIX C

APPENDIX D

The Louisiana Court Structure

APPENDIX D

THE LOUISIANA COURT STRUCTURE

June 1, 1971

JUDICIAL COUNCIL  
of the  
SUPREME COURT OF LOUISIANA  
301 Loyola Avenue  
New Orleans, Louisiana 70112

## INTRODUCTION

Louisiana's court structure is not complicated. At the appellate level, it consists of a Supreme Court and four Intermediate Appellate Courts; at the trial level, it consists of trial courts of general, special and limited jurisdiction.

The State's highest court, the Supreme Court, devotes most of its time to considering applications for writs to the lower courts, but also functions as the primary criminal appellate court. Most of the State's civil appellate caseload is heard by the four Court of Appeal Circuits, Louisiana's Intermediate Appellate Courts.

At the trial level, the court of general jurisdiction is the District Court, which, with some exceptions, has unrestricted trial court jurisdiction within its geographical limits. (In Orleans Parish, the District Court is divided into Civil and Criminal District Courts, which function separately.) Courts of special jurisdiction include three Juvenile Courts and the Family Court of East Baton Rouge Parish. Where they exist, they have exclusive original jurisdiction over certain types of cases pertaining to juveniles and adoption, and in the Family Court, separation and divorce in addition to juvenile and adoption. The principal trial courts of limited jurisdiction in Louisiana are the City Courts. There are forty City Courts outside Orleans

Parish; their jurisdiction in civil cases, concurrent with that of the District Courts, extends from \$100.00 to \$1,000.00, depending on the population. Their criminal jurisdiction, also concurrent with the District Courts, is limited to misdemeanors, but they have concurrent jurisdiction with the District Court in juvenile cases.

In Orleans Parish the City Courts are divided into separate tribunals similar to the Civil and Criminal District Courts. The First and Second City Courts handle the civil cases and the Municipal Court handles criminal cases, with the exception of traffic violations, which are handled by a separate Traffic Court.

The Parish Court, a new type of limited jurisdiction court, began operation in Jefferson Parish in 1964. In 1966 an additional Parish Court was created. Essentially they are similar in jurisdiction to City Courts outside Orleans Parish. Between them, both Courts bear parish-wide jurisdiction, one on the East Bank of the Mississippi and the other on the West Bank.

Other courts of limited jurisdiction in Louisiana include 461 Justices of the Peace, which have no criminal jurisdiction and civil jurisdiction concurrent with District Courts up to \$100.00. The Constitution also authorizes mayors and other municipal officers to try violations of municipal ordinances, and many small towns and villages in Louisiana have established mayors' courts pursuant to this authority.

In the paragraphs and maps which follow, the jurisdiction of these various levels of the Louisiana judicial system is indicated more precisely.

## THE SUPREME COURT

Membership. The Supreme Court is composed of seven justices elected from the districts throughout Louisiana for fourteen year terms; the senior justice in point of service becomes the Chief Justice.

Supervisory Jurisdiction. The Supreme Court has supervision and control over all lower courts. It considers applications for writs to review individual cases, and, in addition, performs administrative functions through the Office of the Judicial Administrator.

Appellate Jurisdiction. The Court retains appellate jurisdiction over cases contesting the constitutionality or legality of a tax, orders of the Public Service Commission, elections in districts not wholly within a court of appeal circuit, cases in which an ordinance or law has been declared unconstitutional, and criminal cases in which a sentence of death or imprisonment at hard labor might be imposed or a fine exceeding \$300.00 or imprisonment exceeding six months has actually been imposed. La. Const. Art. VII, Section 10.

It can thus be seen that the Supreme Court furnishes the sole appellate review of criminal cases from the District Courts. From District Court misdemeanor cases where the fine is less than \$300.00 or imprisonment is

less than six months, there is no appeal, except in Orleans Parish.

Original Jurisdiction. The Supreme Court has exclusive original jurisdiction over disbarment proceedings, petitions for removal of judges, and fact questions affecting its own appellate jurisdiction.

## COURTS OF APPEAL

Membership. The intermediate appellate court business is divided among four Courts of Appeal, domiciled in Baton Rouge, Shreveport, Lake Charles, and New Orleans. The Fourth Circuit (New Orleans) has nine judges, the First (Baton Rouge) and Third (Lake Charles) Circuits have six each, and the Second Circuit (Shreveport) has five. Judges are elected from districts within their circuits for twelve year terms; the senior judge in point of service becomes presiding judge.

Supervisory Jurisdiction. This supervisory jurisdiction extends to the lower courts from which an appeal would lie to the Court of Appeal, subject to the general supervisory jurisdiction of the Supreme Court. La. Const. Art. VII, Section 29.

Appellate Jurisdiction. The Courts of Appeal have appellate jurisdiction over all cases from lower courts except cases appealable directly to the Supreme Court or to the District Courts. Art. VII, Section 29. As a practical matter this means that the Courts of Appeal hear most civil appeals in Louisiana; in 1970 they handed down over 1200 opinions.

## DISTRICT COURTS

Membership. The District Court is Louisiana's trial court of general jurisdiction. There is a District Court domiciled at the Parish seat of each of the sixty-three Parishes outside of Orleans Parish. For example, in Districts comprised of more than one Parish, each Parish has a separate court with its own clerk and separate docket but served by the judge or judges for that Judicial District. There are thirty-two Judicial Districts in Louisiana, containing from one to three Parishes each, as well as a District comprising Orleans Parish. In the thirty-two Districts outside Orleans, there are eighty-four District Judges elected to six-year terms. In Orleans, the District Court is divided into Civil and Criminal District Courts. The Civil District Court has ten judges and the Criminal District Court has ten judges, each elected to terms of twelve years. About 300,000 cases were filed in the District Courts in 1970.

Original Jurisdiction. In general, District Courts have jurisdiction over all matters within their territorial limits. Exceptions occur in Orleans, the 1st, 19th, and 24th Districts, where Family and Juvenile Courts have exclusive jurisdiction over certain types of cases. Further, in Orleans Parish, civil cases under \$100.00 are tried exclusively in the First and Second City Courts, and violations of municipal ordinances are tried by the Municipal and Traffic Courts. It should be noted that in most districts, courts of limited jurisdiction are empowered to try cases concurrently with the District Court. In civil cases, this concurrent jurisdiction would extend

up to \$100.00 in wards where justices of the peace are in operation, and up to \$1,000.00 in wards where city courts function. City courts also exercise concurrent jurisdiction with the District Courts over misdemeanor and juvenile cases. La. Const. Art. VII, Sections 35, 81, 83.

Appellate Jurisdiction. The District Courts have appellate jurisdiction of all criminal cases tried by city, municipal, traffic, and mayors' courts, except where a fine exceeding \$300.00 or imprisonment exceeding six months has been imposed (in which case the appeal goes to the Supreme Court.) They also have appellate jurisdiction over orders requiring a peace bond issued by justices of the peace. Their appellate jurisdiction in civil matters extends to cases involving less than \$100.00 tried by city or justice of the peace courts. La. Const. Art. VII, Sections 36, 81, 94.

Supervisory Jurisdiction. Orleans Criminal District Court has general supervisory jurisdiction over the Municipal and Traffic Courts. La. Const. Art. VII, Section 94.

## FAMILY AND JUVENILE COURTS

Membership. The Family Court of the Parish of East Baton Rouge and the Juvenile Courts of Orleans, Caddo, and Jefferson Parishes are courts of special jurisdiction having exclusive original jurisdiction over certain types of cases, which in other districts in Louisiana are handled by District Courts or District and City Courts concurrently. La. Const. Art. VII, Section 2. Judges of the Juvenile Courts and Family Court possess the same

qualifications and serve the same term as district judges, except that the judges in Orleans serve for eight years.

Original Jurisdiction. The Juvenile Courts have exclusive original jurisdiction over cases involving neglect and delinquency of children under seventeen except capital crimes and attempted aggravated rape by children over fifteen; crimes by adults against children, unless punishable by death or hard labor; desertion, non-support, and adoption of children under seventeen. La. Const. Art. VII, Sections 52, 96. The Family Court for the Parish of East Baton Rouge has original jurisdiction over all the juvenile cases enumerated above, plus uniform reciprocal enforcement of support, adoption of all minors, marital cases (except for property matters), and habeas corpus. La. Const. Art. VII, Section 53.

## PARISH COURTS

In 1962, the Parish Court for the Parish of Jefferson was created. La. Const. Art. VII, Sec. 51(a), La. R. S. 2561.1. Its territorial jurisdiction is composed of all that territory in the Parish lying east of the Mississippi River. Act 5 of 1966 (La. R. S. 13:2562.1 et seq.) created the Second Parish Court for the Parish of Jefferson, the territorial boundaries of which are composed of all of that territory in the Parish lying west of the Mississippi River.

Their jurisdiction is similar to that of a City Court. They have original jurisdiction concurrent with the District Court over: (a) criminal

offenses except for capital crimes or those punishable by imprisonment at hard labor; and (b) civil cases up to \$1,000.00, except succession and probate matters, divorce and separation, matters involving adoption, emancipation, interdiction, or legitimacy of persons, when the state, parish or other political subdivision is a defendant, where title to real estate is involved, election contests, cases where a state, parish or public official is involved in his official capacity, where a federal or state law or parish or municipal ordinance is sought to be invalidated, or juvenile cases.

A word might be added here concerning appeals from the Parish Courts. In civil cases all matters involving more than \$100.00 would be appealed to the Fourth Circuit Court of Appeal. La. Const. Art. VII, Sec. 29. However, there may be no appeal for civil cases for less than \$100.00 since Article VII, Section 36, providing for appeals to District Courts, was not amended to specifically include Parish Courts. Appeals in criminal cases tried by the Parish Courts would apparently be handled just as appeals from City Courts; convictions involving less than \$300.00 and six months imprisonment going to the Twenty-Fourth Judicial District Court (R. S. 2561.1), and convictions in excess of these limits going to the Supreme Court under La. Const. Art. VII, Section 10.

## CITY COURTS

Membership. The City Courts are Louisiana's principal courts of limited jurisdiction. They may be created in any parish ward containing

the parish seat or 5,000 population. At the present time there are forty City Courts outside of Orleans Parish with forty-two judges, elected, with the exception of Baton Rouge, for six year terms. They have the same qualifications as district judges. In Orleans Parish, the Court is divided into the First and Second City Courts, which exercise the civil jurisdiction, a Municipal Court, which handles criminal cases except for traffic, and the Traffic Court itself. There are four judges on the City Courts, four on the Municipal Court, and four on the Traffic Court.

Original Jurisdiction. Outside Orleans Parish, City Courts have original jurisdiction concurrent with the District Courts over the following: (a) criminal offenses not punishable at hard labor, including violations of parish and city ordinances, peace bonds, preliminary examinations in non-capital cases; (b) juvenile cases, except where there is a separate juvenile or family court; (c) civil cases up to \$100 if population of ward is less than 10,000, up to \$500 if less than 20,000, and up to \$1,000 if over 20,000, excluding suits involving title to real estate, public bodies, injunction. La. Const. Art. VII, Sec. 51, 52, La. R. S. 13:1891, 1894; C. C. P. Arts. 4831-4837.

In Orleans Parish, the City Courts have exclusive original jurisdiction over suits up to \$100, and original jurisdiction concurrent with Orleans Civil District Court from \$100 to \$1,000, except for suits for title to real estate, public office, marital or probate matters, injunctions. La. Const. Art. VII, Sec. 91, 92, C. C. P. Art. 4835, 4837. The Municipal Court has exclusive original jurisdiction over violations of municipal ordinances, ex-

cluding traffic. The Traffic Court has exclusive original jurisdiction over violations of municipal traffic ordinances. La. Const. Art. VII, Sec. 94.

### JUSTICES OF THE PEACE

Membership. Justices of the peace are automatically abolished in wards where City Courts are created. Nevertheless, there are about 461 justices of the peace in Louisiana.

Original Jurisdiction. Justices of the peace have no criminal jurisdiction, except as committing magistrates and for the issuance of peace bonds. They have original civil jurisdiction concurrent with the District Courts up to \$100.00, excluding suits for title to real estate, public office, marital and probate matters, suits against public bodies, and executory process. La. Const. Art. VII, Sec. 48, C. C. P., Art. 4336, 4337.

### MAYORS' COURTS

The legislature may invest in mayors or other municipal officers jurisdiction to try violations of municipal ordinances. La. Const. Art. VII, Sec. 51. La. R. S. 33:441 and 442, provide that except where City Courts are established under Title 13 of the Revised Statutes, mayors' courts are to be established in municipalities under the mayor and board of alderman form of government. According to the Louisiana Municipal Association's Directory of Municipal Officials (October, 1970), there are approximately 240 mayors' courts in operation in towns and villages throughout Louisiana.

MANAGEMENT STUDY  
OF AN  
INDIGENT DEFENDER PROGRAM  
NEW ORLEANS, LOUISIANA

August, 1974

Consultants:  
National Legal Aid and Defender Association:  
Shelvin Singer  
Paul Ligda  
Phil Hubbart

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## I. INTRODUCTION

In 1971 the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice (SPA) funded the Orleans Parish Indigent Defender Program. This program was principally designed to and has as its principle purpose, the moving of cases in the criminal docket and the disposition of those cases through plea negotiation and the entry of guilty pleas.

Although ostensibly designed to provide effective assistance of counsel to indigent defendants, in actual operation the program has fallen far short of this goal.

As a result the present structure of the defender office and its philosophy is not one which is designed to provide representation contemplated by the United States Supreme Court cases of the last decade and the existing national standards of criminal justice.

Accordingly, it will be the recommendation of the team that the present office be completely re-organized and that an entirely new philosophy for providing indigent defense services be developed and instilled into the system. The reasons for the need for a new organization and the form of that organization will be the principal subject matter of this report.

In April, 1973, the Mayor's Criminal Justice Coordinating Council requested that an evaluation of the defender program be performed. In order to determine the scope of the problem and narrow the focus of the proposed study, the Criminal Courts Technical Assistance Project at The

American University requested that Nancy E. Goldberg, Deputy Director of the Defender Division of the National Legal Aid and Defender Association (NLADA), visit New Orleans to meet with officials from the Mayor's Criminal Justice Coordinating Council, the SPA, and the Defender Office.

During Ms. Goldberg's problem definition visit she met with Frank Vaccarella, Director of the Mayor's Criminal Justice Coordinating Council; Rivers Trussell, Courts Specialist for the State Planning Agency; and John Simmons, the Director of the Orleans Indigent Defense Program; and the following problem areas were defined:

1. Given the fact that the LEAA grant for the Orleans Indigent Defender Project would soon expire, what type of services should be provided after its expiration?
2. What should the scope of services provided by the defender office include in addition to in-court representation?
3. What would staffing needs be, specifically,
  - (a) how many lawyers would be needed in accordance with National standards and the caseload in New Orleans,
  - (b) should these lawyers be full or part-time, and
  - (c) was the present method of assigning lawyers to court rooms best, and should attorneys be assigned by case, i.e., to represent a client from the beginning of his prosecution until the disposition of the case?
4. How should funds for these services be provided?

Following Ms. Goldberg's visit, the Criminal Courts Technical Assistance Project authorized NLADA to conduct a management assistance study, focusing

on the problems outlined above.

The National Legal Aid and Defender Association provided a team of three consultants to conduct the field phase of the management assistance study and to prepare a report of their findings. The consultants were: Shelvin Singer, Team Captain, Professor of Law, Illinois Institute of Technology, Chicago-Kent College of Law; Phillip Hubbart, Public Defender of Dade County, Florida; and Paul Ligda, Public Defender of Solano County, California.

During the on-site visit, the team interviewed criminal court judges, the Project Director and his staff, the staff of the Municipal Defender Project, clients of the Defender Project in the city jail and in the state prison at Angola who had recently been convicted, members of the bar familiar with the criminal justice system, staff members of the local Release on Recognizance program, and staff members of the local office of the state planning agency. The team also reviewed records, files, and reports of the Project office and made courtroom observations.

The consultants' findings and recommendations were submitted to the National Legal Aid and Defender Association in early May, 1974.

## II. PROVISION OF CRIMINAL LEGAL ASSISTANCE TO INDIGENTS IN ORLEANS PARISH

### A. History of Indigent Defender Services in Orleans Parish

In 1941, the Legal Aid Bureau, Inc., a privately funded organization, began its criminal division as the first organized defender service in Orleans Parish. However, the office only provided a small part of the total indigent representation. Most indigent representation was undertaken by assigned private counsel who received no compensation for their services. In October, 1969, the Bureau's resources from the United Fund were supplemented by the "Indigent Defender Fund" which comes from a \$3.00 fee attached to criminal cases of all non-indigent defendants who appear in the criminal division of the District Court. The Bureau was appointed to cases by the court at arraignment, principally confined its representation to the trial of cases, and the office did not provide appellate and collateral attack representation. In its last year, 1970, the criminal division consisted of a chief counsel, five assistant counsels, one investigator, a senior clerk typist and a general clerk typist. The chief counsel and three of the associate counsel were employed on a full-time basis, while two attorneys were employed on a part-time basis. All so-called full-time attorneys were permitted a private practice. The salary for the chief counsel was \$10,000 a year, one associate counsel was paid \$8,500 a year, and the remaining two associate counsel received \$6,800 per year. The two part-time attorneys received \$5,000 and \$3,600 a year respectively.

The chief attorney of the Legal Aid Society's criminal division at that time was the present Indigent Defender Program Director, Mr. John Simmons. When the present program was instituted with Law Enforcement Assistance

Administration funds, Mr. Simmons became the Director, and most of the staff of the Legal Aid Defender Division was transferred to the present project beginning in January, 1971. The project operates under its own Board and is separate and distinct from the Legal Aid Society. The present project now undertakes most of the indigent representation for the Orleans Parish.

B. Statutory Provisions for Providing Indigent Defense Services

The Louisiana statute dealing with the provision of defender services to the indigent criminally accused is found in Title 14 Sec. 15:141. In part, that statute provides that each judicial district shall establish an independent Board which has the duty of providing adequate legal representation for the indigent criminally accused. The Board has the responsibility to provide such representation to all criminally accused indigents including alleged misdemeanants and juvenile defendants in juvenile court. In most of the judicial districts in Louisiana, the Board is required to maintain a panel of private attorneys who are to receive appointment. In several of the districts, including Orleans Parish, the Board for these respective parishes are authorized to establish an organized defender office. The indigent defender board is to be composed of 3 to 5 members all of whom are required to be licensed to practice law in Louisiana and be qualified voters in the judicial district in which they are appointed. The Board is selected by the District Court of their respective districts except in Orleans Parish where the Board is selected by the Criminal District Court, a separate division of the trial court of general jurisdiction. Each Board member serves without compensation for a term fixed by the criminal court not to exceed three years.

The statute also provides that for those indigents accused of capital offenses, (i.e., murder, aggravated rape, or aggravated kidnapping) the appointed attorney must have been admitted to the Louisiana Bar for at least five years.

In addition to selection of the defenders, the Board has the responsibility of establishing standards of indigency, the compensation to be received by assigned counsel, and exercises general supervision over the defender program.

C. The Orleans Parish Defender Board

The Defender Board of Orleans Parish consists of five attorney members. The Chairman of that Board is the Chief Attorney, i.e. Chief Prosecutor, for the City of New Orleans. Other members of the Board are the former dean of Loyola Law School of New Orleans, who presently serves as the registrar of voters for Orleans Parish, an attorney in private practice who is a former state representative, and two noted criminal defense lawyers in private practice. The Board, however, meets infrequently (only five times between 1970 and December, 1973), has no written policy, and has not been active in the operation of the defender office.

D. Court Structure in Louisiana and Orleans Parish

/ The trial court of general jurisdiction in Louisiana is the District Court. The District Courts outside of Orleans Parish preside over criminal and civil cases. In Orleans Parish there is a separate criminal branch of the district court exclusively for criminal cases including misdemeanors and felonies. The criminal court of Orleans Parish maintains its own courthouse which is separate and apart from the civil courts of the District. District Court judges,

including the criminal district court judges of Orleans Parish, are elected for 12 year terms and earn \$34,000 per year. In Orleans Parish there are 10 Criminal District Court judges, and one magistrate. The magistrate is a recent addition to the court, and was selected by the judges of the criminal division. In the next general election, the magistrate position will be filled by election. All accused persons are arraigned initially before the magistrate, and he fixes bond and conditions of pretrial release. The magistrate also hears and decides minor misdemeanor cases.

In addition there are the New Orleans Municipal and Traffic Courts, which have jurisdiction in traffic and municipal violation offenses. Judges of these courts are part-time and may practice law, while the judges of the District Court may not.

### III. THE PRESENT INDIGENT DEFENDER PROGRAMS

#### A. The Indigent Defender Program

##### 1. Structure and Organization

The current staff and salary structure of the Indigent Defender Program of Orleans Parish is as follows:

Director	\$18,650	Responsible for overall administration and operations of the office.
Two capital counsel	9,936 ea.	Represent defendants in all capital cases before the criminal District Court of Orleans Parish from the point of arraignment in court. One attorney handles all such cases which fall before sections A-E of the court, and the other attorney handles all such cases which fall before sections F-J of the court.
Ten trial attorneys	9,936 ea.	Represent defendants in all non-capital felony cases before the criminal District Court of Orleans Parish from the point of arraignment in court. Each attorney is assigned to one of the ten sections of the criminal District Court and handles all defender cases assigned to the program in that particular section of court.
One magistrate counsel	9,936	Represents all persons before the Magistrate Court of Orleans Parish.
Two Juvenile Court counsel	6,000 ea.	Represent defendants in all juvenile delinquency cases before the Juvenile Court of Orleans Parish. Each attorney is assigned to two of the four sections of the Juvenile Court for Orleans Parish.
Three Investigators	6,300 ea.	Interview clients assigned to the Indigent Defender Program in the criminal District Court for Orleans Parish.
Executive secretary	7,560	Secretary for the Director.
Three secretaries	5,772 ea.	General secretarial work.

The attorneys in the program all maintain a private civil law practice and have since the inception of the program in 1971, although they are listed as 100% Project employees. The Project Director is not in private practice but is engaged in private business as a sideline. Although subject to some exceptions, basically the attorneys in the program devote their mornings during the work week to defender duties and their afternoons to private civil law practice or to other outside interests. The attorneys usually do not devote any time to defender duties on given work days when they are not required to appear in court. This occurs most frequently with the capital counsel who carry a much lighter caseload than the other legal staff. Also, the Juvenile Court attorneys, who are part-time, usually have one day off each week when they are not required to be in court.

The bulk of attorney work in the office is centered around in-court representation of clients, examination of district attorney's case files in court during the required court appearance days, and talking to clients in court usually on the subject of plea negotiation.

The attorneys conduct very few formal attorney-client interviews prior to court appearances. The defenders' statistics indicate that 12% of the total clients assigned to the program to date were interviewed by attorneys. The bulk of such interviews are conducted by the three investigators in the program. Defenders' statistics further indicate that 16% of the total clients were not given any formal interview by either an attorney or an investigator. The only contact the attorney had with the client in those cases was in court, usually on the subject of

plea negotiation. In Juvenile Court the Project investigator does not conduct interviews with clients, nor does he provide any other services. The attorneys conduct such interviews in juvenile delinquency cases, but at least one of these attorneys conducts most interviews on the telephone, from his private law office. The Project Director stated that he believed the interview statistics were erroneous and that most clients are interviewed prior to court. However, client files examined did not generally contain extensive client statements.

Interviewing clients in jail is extremely difficult. The lawyer and client are separated by a thick metal meshing which prevents papers from being transferred back and forth. There are no chairs available for either lawyer or client. When one of the team members interviewed defendants in jail, he asked for a chair, but this request was refused. The interview quarters are otherwise cramped, uncomfortable, and hot. The attorneys and investigators rarely, if ever, conduct any on-the-street investigation in any case. Crime scenes are not viewed by either investigator or attorney. The principal activity of the investigators appears to be to interview clients, mostly clients free on bond. The team was advised by the investigators that because of their low salaries they would not do street investigations.

The attorney's pretrial preparation is extremely limited. Defender statistics indicate that pretrial motions have been filed in only 15% of the total cases assigned to the program since its inception. Moreover, the motions filed are almost always boilerplate form motions. Legal research is usually not done in the vast majority of cases and very few supporting memoranda of law are filed. In at least one section of the

Juvenile Court, the defender has never filed a written pleading. There is no representation of indigent defendants from arrest to arraignment except for a pro-forma representation in the Magistrate Court. Attorneys or investigators do not conduct any formal interviews of defendants prior to magistrate hearings. There is no discovery or investigation work done during the period between Magistrate Court and arraignment. Even where the Project was appointed in Magistrate Court, representation consists of a brief contact with the client by the defender while the client is standing up handcuffed to other defendants in court.

A very low percentage of total cases assigned to the defender program are actually tried. Defenders' statistics indicate that 6% of their cases are tried non-jury and 2% are tried by a jury. A large number of guilty pleas are entered on the date of arraignment without any pretrial preparation other than the defender examining the district attorney's file in court at the arraignment. Defender statistics further indicate that approximately half of the cases that go to trial result in an acquittal or dismissal.

The administrative structure in the office consists of a director at the highest level and the rest of the office staff on a second level. There are no executive attorneys or other personnel with any supervisory power. No person is in charge in the director's absence.

There is no appellate section in the office. The trial attorneys are required to take their own cases on appeal to the Louisiana Supreme Court. The trial attorneys devote their time almost exclusively to trial work and work on appeals in spare time since the inception of the program. Defender statistics indicate that a total of 40 appeals have been taken and three appeals

have resulted in reversals or reversals and remands, three appeals were withdrawn by the defender, and in two cases the defender program withdrew from the case. The attorney assigned to the Magistrate Court has been given the responsibility of coordinating the appellate work, but has no actual supervisory power to direct the trial attorneys to do anything in any of their appeals.

Each attorney operates independently of the other attorneys. There are no regular staff meetings and no written policy directives. There is no training program for beginning attorneys and no in-service program for attorneys who have been with the program for some time.

The office space assigned to the defender program in the District Court consists of a large room in which the ten trial attorneys and three secretaries under the District Court work. There are private offices for the two capital counsel and the director. There is no library in the Project facilities.

The Juvenile Court attorneys use their private secretaries to set up the files and keep the records in all of their cases, and they rarely come to the Project offices. The defender office has no assigned space in the Juvenile Court, although the district attorney's office does.

## 2. Method of Operation

/ As stated above there are ten Criminal District Court judges, and each judge occupies a separate courtroom. One staff attorney is assigned to each of the judges. The Magistrate also has a separate courtroom, and a lawyer is assigned to that courtroom.

Because capital cases (murder, rape, and kidnapping) can only be assigned to attorneys who have been licensed to practice law for five years, there is a

separate capital division consisting of two attorneys who meet those requirements. These two attorneys are not assigned to a specific court, but provide representation in all assigned capital cases in whatever courtroom they may appear.

The Juvenile Court indigent representation is provided by two attorneys, each of whom is expected to devote 50% of his time to the defender program. The director of the program undertakes little or no representation of clients himself.

When a person is arrested on a "State Charge", he is brought initially to the central lock-up area, which is directly behind the Criminal Court. If the defendant is arrested on a weekday, he is usually brought before the magistrate within the next 24 hours; however, if he is arrested on Friday evening or any other time during the weekend, he is not brought before the court until Monday morning. However, in some instances -- in serious cases -- suspects are kept in jail for extended periods of time. There is a provision in the Louisiana statute which authorized the police to hold the suspect for 72 hours before bringing him before a magistrate or releasing him, which has never been challenged by the Orleans Defender Project.

#### Procedure After the First Court Appearance

After the bond hearing, the defendant is either released on bond or returned to the Parish prison, which is located behind the Criminal Court building. All police complaints along with the police report prior records are thereafter forwarded to the prosecutor's office. The magistrate usually sets the cases for the probable cause hearing on the tenth day after the magistrate's bond hearing.

In Louisiana any criminal prosecution may begin by complaint for both misdemeanors and felonies without a formal grand jury indictment. A formal indictment will be utilized most often in instances where there is much notoriety to the case or the case is one involving a prominent or political person.

If the prosecutor proceeds by his own formal complaint on the matter, the case is set for arraignment and there is no probable cause hearing or grand jury indictment. As a result, in most cases that are prosecuted (misdemeanors and felonies), there is neither a grand jury proceeding nor a probable cause hearing. The prosecutor is given the ten days by the magistrate to decide whether or not he will file a formal charge. If the prosecutor has not filed a formal charge by the tenth day after arrest, the suspect is discharged. However, the prosecutor seldom, if ever, moves to discharge the suspect earlier. As a result of this procedure, the suspect who cannot make bond must stay in jail a minimum of ten days, even if he was arrested for a misdemeanor, is completely innocent, and there were no grounds whatsoever for the arrest.

When a formal complaint is filed in the clerk's office, the clerk makes a random assignment of the case to one of the ten Criminal District Court judges. The judge receives notice of the case and will then set the matter on his calendar. Some judges will arraign the defendant the next day, while others will delay the arraignment several days or a week or more. When the matter is brought to the court for arraignment and the defendant is without an attorney, the court will determine indigency. If the defendant is indigent, the judge will appoint a defender. Several of the judges stated that they will not appoint a defender if the defendant is "free on bond." Two of the judges further stated that if a defendant who is free on bond insists that he cannot retain counsel, the judge will raise the bond to the point where the defendant will have to be returned to the custody of the Parish jail. Then he will be assigned a defender. In some courts many of the cases are disposed of at the

arraignment, particularly where the defendant is charged with a misdemeanor or minor felony. In such situations, the defender, the judge and the prosecutor begin the plea bargaining process before the arraignment on the presumption that all persons in the jail will receive the defender as counsel. Most of the cases that are not disposed of at arraignment will then be set for trial within a thirty day period, and very few continuances are given thereafter. However, in serious cases, such as capital offenses and armed robbery, a delay appears to have developed which has extended, in some instances, over a year from the time of filing of the complaint. The team was advised that this may be attributable to the desire of the prosecutor not to try any serious cases for fear of losing them during his election year. In other instances, the team was advised that the prosecutor will delay a case when his evidence is weak, in hopes of receiving a plea of guilty in the matter, thus avoiding a trial. The prosecutor has control of the calendar after the arraignment, and he sets the case for trial.

The prosecutor also has an attorney assigned to each of the Criminal Court judges and to the magistrate; however, the prosecutor's office has four special sections consisting of a team of attorneys that try only special categories of cases, such as narcotic violations, armed robbery, etc., instead of the one capital section that the defender has. The attorneys in special sections are not assigned to courtrooms, and instead are assigned to cases from the time that the chief of the section makes the decision to prosecute.

### 3. Nature of Representation Provided

Following are several examples of actual representation based upon examination of the Project files, interviews with clients and investigation of court files. Cases were selected at random.

A) One murder case file indicated that the client had been referred to the defender office on October 5, 1973. Nobody interviewed the client until October 24, 1973 - when an investigator took a statement in the parish prison. On November 27, 48 days after the initial referral, the attorney interviewed the client for the first time. At the time of that interview the file contained no police reports, autopsy report or a coroner's report. This case was still open at the time of the visit.

B) One client allegedly shot and killed his girlfriend on May 11, 1972. The arrest register indicated that the client was arrested after he became involved with the victim (common-law wife). She threatened to put him out and he drew a revolver and killed the victim. He was arrested the same day, after he telephoned the police to report the shooting.

The case was received in the defenders office on June 5, 1972, indicating a delay of 26 days between the time of arrest and the time the defender was finally assigned to the case. The first indication of any interview was on July 13, a little over two months after the actual arrest. The defendant's version as it appeared on the case history sheet in the defender file may be summarized as one of an accidental shooting. On August 22, 1972, the client was offered a plea to manslaughter with the judge to sentence as he saw fit. The client responded that he would take 5 years. There was no disposition on that day. On the day of trial a new defender staff lawyer appeared and had the case continued. On August 24, 1972, the client accepted the manslaughter

offering and received an eight year sentence. The defender file contained no evidence that the case was investigated in the two and one-half months that the defender office had it. There was no autopsy report, nothing to indicate that there were powder burns on the victim or any search for witnesses. The client stated that his assigned attorney had never talked to him in private during that period except briefly in court. This is an indication of a case where the defendant may have had a defense but there was no attempt by the defender to determine any of the facts.

C) One 17-year old client was arrested on January 27, 1973, after an incident reported on the arrest register as "Victim and arrested subject got involved in an argument. During argument the arrested subject pulled a knife and stabbed the victim 11 times." The defender file does not indicate when the case was assigned. In fact it contained no statement from the client of the facts surrounding the killing, no interview sheet or autopsy report. The client told the interviewer that he had tried to break up a fight and became involved in the dispute himself. Later the defendant armed himself out of fear of what the victim might do. After his arrest the defendant told the police that he had stabbed the man but that it was self-defense. During his time in the police station he alleged that he was beaten by the police and eventually signed a statement which indicated that it was not self-defense. The defendant told the team member that his attorney advised him at his first meeting after a five minute discussion of the case in court that he could get him ten years for a manslaughter plea.

When he balked, the defendant was told he would be charged with murder and get life if he contested the matter. Under this threat, the client pled guilty to manslaughter. The client claimed that he was never asked about the facts of the case by his attorney. The sentence was eight years in the penitentiary.

D) One client readily told the interviewer that he was guilty of the robbery for which he is doing four years. The offense occurred on January 31, 1973, and he was arrested on February 3. The arrest register indicates "Follow-up investigation revealed that the arrested subject was involved in the above offense -- Subject arrested and booked accordingly." The client said that he denied his guilt to the police initially, the police hit him and broke his tooth; they also showed him the statement of the victim, so he signed the statement that the policeman wrote out for him. The statement was made between 5:05 and 5:35 p.m. on February 4. There were inadequate Miranda advisements according to the police record. The advisors do not know what went on off the record. On February 9, defendant was placed in a line-up, the results of which are not reported. The defender file contains a case history with a five line legal conclusion by the investigator that in the defendant's statement (attached) he admitted the charges against him. In fact the defendant was charged with armed robbery --and the statement denies that it was an armed offense. The difference in penalty is five years as opposed to 99 years. The initial offer was to plead to attempted armed robbery. Defendant refused and the

case was set for trial. On the day of trial, after his lawyer, the district attorney, and the judge had a conference, the defendant was offered four years on a simple robbery. The client felt it was an excellent bargain and accepted. In the two months the defender had the case, there were only two discussions with the client, and those were in court. There was no investigation to attempt to see if there was any evidence to substantiate the defendant's claim that he was unarmed or to challenge the confession or to challenge the line-up.

E.) On March 25, 1972, a man was shot and killed. The defendant was arrested for the offense on March 27. The arrest register indicates "arrested subject positively identified by witness as the Negro male the witness saw running from the scene of a murder." According to the defendant he was "worked over" by the police for a seven hour period but never confessed. Defendant's police statement at 10:10 P.M. on March 27 was without adequate Miranda warnings according to the police report, and included a denial of his guilt. Defendant was not appointed counsel until April 26, about a month after his arrest. Approximately three weeks thereafter according to the client, an investigator interviewed him in the jail. The case history contains a statement that the defendant "did not kill and did not know the victim."

Again there is no evidence of investigation or of obtaining an autopsy report. Subsequently, the murder charge was dismissed and the defendant was re-charged for the offense with a co-defendant, another client of the office. On May 12, 1972, there was a court proceeding in which the district attorney put a material witness on the stand. An attorney from the defender office

represented this witness, while other defender staff members represented each of the co-defendants. During the witness's sworn testimony, she identified the co-defendant as the person who shot the victim. She could not recognize the defendant, although she did implicate two people as responsible for the killing. Nothing appears to have been done to withdraw from this obvious conflict of interest situation. There was no further attorney contact with the defendant until he was brought to trial some nine months later. At that time there was a meeting in court between the attorney, the client, the co-defendant and co-defendant's attorney, as well as the co-defendant's sister. In the 20-25 minute time, he was told that he could fight the case, but that it was a Black willing of a White, and that it made no sense to get life when he could plead the manslaughtering and get ten years. Under this pressure, according to the client, he plead guilty to this charge and to another unrelated charge of theft, to which he also claimed innocence, but was promised a concurrent sentence. He received ten years for manslaughter and one year concurrent for the theft.

B. The Municipal Defender Project

1. Structure and Organization

In September, 1972, an LEAA-funded municipal defender office began its operation. One of the former members of Mr. Simmon's staff, Mr. Norman A. Pattingill, is the Project Director. Its staff and attorney salaries are as follows: The Project Director, \$10,500 per year; two attorneys, approximately \$8,500 per year; and two secretaries. There are no supportive personnel with the project other than the two secretaries.

While the same Board governs both the Municipal and Criminal Court defenders, there is no other connection between the two agencies, and each operates autonomously from the other. However, the offices of the two agencies are only approximately a block apart, and the Municipal, Criminal, and Traffic Courts are immediately to the rear of the Criminal District Court for New Orleans.

The Municipal Court operates in three shifts. One shift begins at 9:00 a.m., the second shift at noon, and the third shift at 3:00 p.m. Municipal Court judges are part-time, and each judge assumes a shift with two courtrooms functioning each shift. Each of the three defenders, including the Director, takes a shift. Although the Project grant provides that each attorney is to devote 100% time to the program, each attorney maintains a private law office for outside practice. One of the attorneys interviewed stated he also accepts private fee Municipal Court criminal cases, but schedules the case for a shift other than the one which he works for the Project. Occasionally a conflict arises between a private case court appearance and the defender work, but these are resolved easily by the attorneys temporarily exchanging shifts. The Director

advised the team that he estimated that his two staff members maintained their private practice only 20% of the time during the day. However, other information available to the team indicated that the two assistants are only at the office or in court during their assigned court shifts. The Director is in and out of the office throughout the day, except when he is covering his shift court call. The time available for private practice for the defender staff members appears to exceed 20% of the time.

The Director filed a suit on behalf of a private client against a member of the LEAA State Planning Agency Commission, which upset the Commission member, who had the impression that defender attorneys could not practice law privately. This has resulted in efforts by the staff of the State Planning Agency to eliminate private practice from both defender projects.

## 2. Assignment to Cases and Representation

Defender attorneys are appointed at arraignment, and the case is set for trial. If the accused is free on bond, the case will be set for trial three or four weeks later. If the accused is in custody, the matter is set for trial in eight or nine days. Defenders reported that they do make motions for bond reductions for their clients in custody, although the ROR program, described earlier, also includes defendants charged with municipal ordinance violations. If the accused is free on bond, he will return to the defender's office to be interviewed by the assigned defender. If the defendant is in custody, he will be interviewed in the court as best as possible. Thereafter, the defense counsel will obtain the complaint from the clerk's office, information regarding his prior record and the police report, which will include any visual observations where the charge is driving while under the influence of alcohol. Thereafter,

the defense counsel will enter into plea-negotiations with the city prosecutor and the judge. No investigation of the case takes place other than the client interview and review of the material described above. ABA Defense Function Standard 4.1 requires investigation in all cases. But there are no investigators assigned to the Project and no resources for investigation. Advisory Commission Standard 13.4 requires that all defender offices have investigative resources:

Approximately 20% of the defender cases are tried by the judge without a jury. Jury trials are not available as a matter of law, in municipal cases. The remaining cases are terminated through plea-negotiations between the prosecutor and the judge.

The judges of the Municipal Court that were interviewed were pleased with the program and satisfied with the work of the defenders.

### 3. Municipal Defender Board

The same Board that governs the Criminal Court defender project governs the municipal defender project. The Chairman of that Board is the city's attorney, who supervises the city prosecutors. The result is that the city attorney has supervisory powers over both the city prosecutors, prosecutorial staff and municipal defenders. This would seemingly create a conflict of interest.

### 4. Recommendation

There seems to be no valid reason why the Municipal Defender Office is a separate agency from the Orleans Defender Project. Merger would facilitate training and supervision. The pooling of resources would be of an advantage to both agencies.

This recommendation, however, is conditioned upon the development of

one viable, adequately financed and supervised defender agency for Orleans Parish, that can and will provide adequate representation.

C. Assigned Private Counsel

In addition to the aforementioned services, judges of the Criminal District Court of Orleans Parish may appoint private counsel. One of these judges customarily appoints private counsel in approximately one half of the indigent criminal cases that appear before him. The other Criminal Court judges appoint private counsel only when it is made absolutely imperative because of conflict of interest. Each of the judges appoints private attorneys at random from either a list that he has or by selecting the name of some attorney who appears frequently in his courtroom. The judge who appoints private counsel in approximately half of the cases before him likes to select attorneys from prominent civil law firms in downtown New Orleans. He assumed the bench only within the last year, and began this appointment practice only recently. Except for that one judge, judges very rarely appoint private counsel.

D. Release on Recognizance Program

Orleans Parish has a release on recognizance program (ROR), also an LEAA-funded project, which reviews arrestee files and conducts interviews and investigations for the purpose of advising the magistrate on bond matters. This program operates independently of the defender project, although their offices are in neighboring facilities.

The ROR Program is approximately two years old. This agency's funding grant is due to expire soon, and its future is in doubt. The ROR Program presently consists of three full-time employees and two part-time employees. All staff persons participate in the interview and evaluation of defendants, although one

also does secretarial work for the staff and is charged with the special duty of notifying the defendant of his day of trial.

The ROR people initially eliminate from their caseload all arrestees who have serious charges, prior convictions, or who do not have local addresses. The remaining arrestees are interviewed and evaluated by the ROR staff, and recommendations for release on recognizance are made to the court in cases they deem appropriate. The ROR Program follows the Point System developed by the Vera Project. All other defendants are represented by a defender at the magistrate hearing, and bond is set by the magistrate.

IV. THE STATE PLANNING AGENCY AND ITS ROLE IN  
PROVIDING DEFENDER SERVICES

The state and local law enforcement planning agencies of the Law Enforcement Assistance Administration share a large part of the responsibility for the sorry state of defender services in New Orleans.

A. Inadequate Planning and Supervision

Poor planning, inadequate funding, unwarranted and appalling interference with client representation can all be attributed to the planning agency. The agency approved a salary schedule that on its face is woefully inadequate, yet requires defenders to work 100% of the time.

Secondly, the agency tolerated private practice by staff attorneys when the grant clearly stated that the services were to be performed 100% of the time. It is apparent from the material that we have reviewed that the state planning agency staff was aware all along that attorneys both in the municipal and criminal court defender program were actively engaged in civil practice including court appearances. Indeed it was hypocrisy to set attorney salary levels so low and then require the attorneys to devote 100% time to the Project.

Thirdly, the agency authorized an administrative structure that does not permit adequate supervision of attorneys.

Lastly, and perhaps the most devastating to the program, the agency, in cooperation with the criminal court judges, imposed an intolerable restriction in dealing with representation of clients. The restriction prevents the defender project from pursuing federal remedies on behalf of their state accused clients. Each of these factors will be discussed separately.

B. The Salary Schedule

From the outset the salaries of defender attorneys was set far too low, at approximately \$9,000 per year for each staff attorney. The attorneys were promised by the funding agency that they would receive raises of at least \$2,000 a year for the next 3 years so that at the present time they should be making \$13,000 a year. Moreover, except for the Director's salary and the part-time attorneys, all attorneys were pegged at the same salary levels, thus not permitting an administrative structure. This salary structure, or more accurately lack of structure, exists despite the fact that capital counsel must be lawyers who have a minimum of five years experience as licensed attorneys in Louisiana. Indeed the grant applications distinguished the capital counsel from the ordinary assistant defender. As unrealistic as the salary levels were from the outset and are at present for inexperienced attorneys it is even more unrealistic to expect that an experienced criminal lawyer, one who has practiced for five years--is required to devote full time to the Project, at a salary of \$9,000 or for the present salary of \$9,936. The salary scale is woefully inadequate. It is designed to nullify any effectiveness the program might have otherwise had.

C. Supervision and Training

The budget does not provide for any supervisory attorney other than the Director, or for any training programs. Because the salaries were set at such a very low level and remained at such a low level it should have been readily apparent that the program could only attract very young and inexperienced practitioners, who need to be closely supervised, and provide them with extensive training programs. It must be remembered that although these young

practitioners may not provide representation in capital cases, they do provide representation in all other felonies including armed robbery where the accused may receive a sentence of 99 years without possibility of parole.

The budget does not even provide for any library for the defender office. The judges' library, while available to defenders, is not adequate. It should be noted that one attorney was given some supervisory authority over appellate cases but did not receive the support of the Director and in reality has not been able to exercise any authority. When the Director is away from the office for any time at all, from a few hours to an extensive period, there is no one who assumes responsibility for the office.

D. Interference with Client Representation

Last, but by no means least, is the interference of the state LEAA planning agency along with the criminal court judges in the representation provided to a specific client by the Defender Project. The interference into the representation of clients manifested itself most vividly when one of the defender attorneys filed a federal habeas corpus action on behalf of one of the defender clients. The issue he raised in the federal petition was that the state failed to provide the client with a probable cause preliminary hearing. In an earlier case the Federal Circuit Court for the 5th Circuit held that such a hearing was required promptly after arrest, as a right guaranteed by the Federal Constitution. See, Pugh v. Rainwater, 483 F2d 778. In Orleans Parish the prosecutor has 10 days from the time of arrest

to file formal charges. Thus, criminal defendants who are unable to post bail linger in jail a full 10 days while the prosecutor considers the case. Only after 10 days of incarceration, even for misdemeanor offenses, if the prosecutor did not act to file formal charges, would the accused be released. If the prosecutor decided to file charges, then the indigent accused would often linger in jail from several more days to several weeks, until he appears in court for arraignment. The question of probable cause is simply never adjudicated by a trial judge or considered by a grand jury. The prosecutor's leisurely exercise of discretion while the suspect lingers in jail was generally accepted procedure until one assistant public defender challenged the procedure. The challenge brought forth the wrath of both the LEAA state agency and the majority of the criminal court judiciary.

After the criminal court judges were notified of the federal suit, they held an en-banc meeting and ordered the Defender Director to discharge the lawyer who had filed the suit. The Defender Director was threatened with contempt of court if he did not comply. The state LEAA planning agency moved quickly and imposed a condition upon the defender project, specifically prohibiting the filing of any federal law suits on behalf of its state clients.

Before the present suit was filed, federal action had been taken in at least five instances, but did not involve an important aspect of Orleans Parish criminal court procedure. The present federal lawsuit was objected to by the court because first it would substantially increase the workload of the court by compelling prompt probable cause hearings and was objectionable

to the prosecutor because it would compel him to submit some of his evidence to a probable cause hearing in which he would have to show that there was reason to hold the defendant in custody or under bond, and he would not thereafter have exclusive charge discretion. Since the filing of the lawsuit, the Defender Director has vacillated between giving the Assistant Defender support in the lawsuit and advising him to withdraw the lawsuit. On two occasions the Director has ordered the Assistant Director to withdraw the lawsuit. On other occasions the Defender Director has told the Assistant not to proceed in the action. After filing the lawsuit, the attorney was transferred from a trial court to the Magistrate's Court where he represents clients in bond hearings and disposes of a few misdemeanors. There was no official explanation for the transfer from a trial court to the misdemeanor court from the Defender Director; however, a prosecutor advised the team interviewer that the Assistant Defender was transferred because of his filing the federal lawsuit.

This interference by the criminal court judges and the LEAA state planning agency and the failure of the Defender Director to take a firm stand in support of the federal action seriously impairs effective representation. It demonstrates that effective representation must give way to the desires of the remainder of the criminal justice system to speedily dispose of cases without regard to fundamental concepts of justice and the guilt or innocence of the defendant. The restriction imposed upon the grant should immediately

be rescinded. Interference by the judges and the LEAA agency in the representation of the client by the defender should not be tolerated. Otherwise the defender office will have no chance to ever be a credible agency. Both ABA and National Advisory Commission Standards stress the importance of professional independence for the lawyers representing indigent clients.

## V. FINDINGS

The existing system has features built into it which make an effective vigorous defender office operation exceedingly difficult if not impossible. The defects illustrated are divided into three categories: (1) Outside interference and planning, (2) the defender office's internal problems, (3) the problems within the criminal justice system in Orleans Parish.

In discussing the problems of the Orleans Defender Project we shall compare the New Orleans practices with two pertinent volumes of American Bar Association Standards, Standards Relating to Defense Function, hereinafter referred to as ABA Defense Function, and Providing Defense Services, hereinafter referred to as ABA Defense Services. The National Advisory Commission on Criminal Justice Standards and Goals, hereinafter referred to as "Advisory Commission" will also be referred to.

### A. Outside Interference and Planning

1. Appointment to the assistant defender attorney positions is to some degree political. Attorneys were open in telling the team that they obtained their positions from judges or from the mayor's office and not from the head of the office, after competitive review. This reduces the potential for control of those attorneys by any head of the office.

The American Bar Association Standards Relating to Providing Defense Services, Standard 3.1 provides that the selection of the defender and staff should be "on the basis of merit and should be free from political, racial, religious, ethnic and other considerations extraneous to professional competence."

The National Advisory Commission on Criminal Justice Standards and Goals, Standard 13.8 directs that a defender be as independent as private counsel. The commentary makes it clear that the defender must be free from political pressure. That is not the situation in the Orleans Defender Project Office. Advisory Commission Standard 13.10 specifically recommended that attorneys be hired and promoted on merit.

ABA Defense Services Standard 1.4 suggests that a board should govern the defender office and should insulate the office from political influence. The Orleans Defender Project does have such a Board. However, it has failed to shield the office from outside influence and there was evidence that the board was itself a source of political influence.

2. There is interference with the individual handling of cases from people outside the office. The worst example the team observed was the Director being ordered by the judges after an en-banc judges' meeting to fire a specific attorney for his actions in filing a suit in the federal court involving a defender client. The LEAA state planning agency has also interfered in this case. The federal suit was an outgrowth of representation in an appointed case in the Orleans Parish criminal court. This will be discussed in more detail later.

The same Standards referred to above (1a) have as their objective ensuring that there will be no interference with the defender lawyer in the pursuit of legitimate remedies and defenses for his client. The commentary to American Bar Association's Defense Services Standards, Standard 1.4, p. 19, provides, "A system which does not guarantee the integrity of the professional relation is fundamentally deficient..." Moreover, when outside forces are permitted interference with the representation the clients, interests are in danger of no longer being paramount; as required by ABA Standards Relating to the Defense Function 1.6.

Advisory Commission Standard 13.9 emphasizes that the defender must be free from outside influences that interfere with his representation.

The example of interference observed by the team represents probably the worst kind of infirmity that an organized defender office can experience.

3. The salary scale is so low that outside practice is a necessity for the legal staff. The team received estimates that up to 35% of individual attorney's time was spent in outside practice. The fact of outside practice reduces the potential for individual loyalty to the office and it also reduces, of necessity, the time which can be spent in the preparation of the defense of criminal cases.

Standard 3.2 of the ABA Defense Services Standards provides that a defender office should be staffed by "full-time personnel," who, "should be prohibited from engaging in the private practice of law." While that

directive is not without exception, the commentary to the standard makes it clear that in an urban area such as New Orleans, the full-time attorney is recommended. Advisory Commission Standard 13.7 is in accord and goes even further by recommending full-time staff without exception.

Moreover, the Orleans Defender grant requires that the defender staff devote full-time to their defender duties, and it appears that the staff is not in compliance. However, the grantor shares a good deal of responsibility for the part-time nature of the employment because of their approval of unrealistic low salaries.

Advisory Commission Standard 13.11 provides that salaries for defender staff attorneys should be comparable to attorneys in private practice, through the first five years. As to the head of the office, the Advisory Commission in its Standard 13.7 recommends that he should receive a salary not less than the presiding judge of the trial court of general jurisdiction.

The ABA Defense Services Standards 3.1 also recommends adequate salaries to attract career personnel, commensurate with experience and skill.

4. The independence of each section of the criminal court with an individual attorney assigned to handle the cases in those courts has developed a feeling that the attorney is a part of the judges' team rather than an independent individual advocate. Judges openly refer to defenders as "my attorney" and the defenders themselves refer to the judges as "my judge". There has been interference by the judges with the head of the office with plans to have attorneys rotated from one section to the other and also there have been requests from the judges to transfer specific attorneys if they handle cases in a manner that apparently displeases the judge.

Advisory Commission Standard 13.9, particularly in its commentary, (p. 271) points out the danger of the defender who is under the control of the judiciary. This danger in New Orleans has unfortunately been vividly demonstrated.

5. The sheriff's visiting schedule for defendants awaiting trial is set at times which generally conflict with times the court is in session. An individual defender cannot, as a practical matter, interview people in jail. When he does find an opportunity, there are no chairs provided for him or the client to sit. He is required talk through a wire mesh. He cannot hand papers back and forth nor can papers be handed back between he and his client except by passing them through a jailer's inspection. And there is a sign in the room which limits visits to 15 minutes although the team was advised this is not always enforced. The team member who visited jail observed that private attorneys were treated rudely by jail personnel. In short, interviewing clients in jail is at best extremely difficult. The difficulty of jail visits is alleviated somewhat by several judges who are cooperative in putting defendants on the court list at the request of the defender when he wishes to talk to them. When the client is on the court list the client is brought into court where the defender can talk to him in a side room or in court. However, thorough jail visits are essential for prompt investigation because a case may not be on a court calendar for many days.

The ABA Defense Function Standard 3.1(c) provides, in pertinent part that,

"To insure the privacy essential for confidential communication between lawyer and client, adequate facilities should be available for private discussions between counsel and accused in jails..."

The commentary deplures the situation where visiting hours are restricted to daytime weekdays during work hours (See p. 202). This has not been done by the defender office.

6. Under the present system of assignment of cases, the attorney begins his representation at arraignment before the assigned criminal court judge, which does not usually take place until 10 days or more after the arrest. Although a defender attorney may have provided bond motion representation before the magistrate, he passes on no information, limits his representation to the bond hearing, and does not really interview the client.

Standard 13.3 of the Advisory Commission makes it clear that the defender attorney should enter the case at the earliest possible time, even before court assignment. In its Defense Function Standard 3.6, the ABA makes it clear that providing representation at the earliest possible time is of the utmost of importance to a successful conclusion of the case.

7. There is no formal discovery which makes it incumbent upon the defender to do large amounts of investigation, and, for this purpose, he is not provided with an adequate investigative staff. The investigative staff, such as it is, seldom does any field investigation. The investigative staff did not demonstrate any investigative skills, nor any sympathy with the plight of the clients.

ABA Defense Function Standard 4.1 is explicit in the requirement of prompt thorough investigation of all cases. The standard provides:

"It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to guilt and degree of guilt or penalty. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate

exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or his stated desire to plead guilty."

The Advisory Commission Standard 13.14 provides that the defender should have all sorts of investigative resources, including active investigators, photographic and recording equipment, and funds for the hiring of particular criminalistic experts in appropriate cases.

It is the common practice of the Orleans Defender to devote little or no investigative time to his cases.

B. The Defender Office's Internal Problems

The second major factor allowing the character of indigent representation structure is the abundance of internal problems of the Orleans Defender Project. The present leadership of the defender office has done little to adopt any means of improving or changing the system.

1. There is nor regular training program which the attorneys attend at which new cases and new developments in the law are discussed, or where the attorneys can swap their individual experiences so that they learn from each other. The result has been that there are differing opinions on such basic things as eligibility standards. One attorney who had been on the job for two weeks advised the team that he was never given any orientation whatsoever; he was merely shown a desk with the cases and told to go handle them. He complained that he thought it would have been nice to at least go around with an experienced attorney for a day or two to see how things are actually done.

2. There is no firm policy from the head of the office to the staff telling them what type of representation is expected of them or how they are to conduct themselves as attorneys.

3. There is no plan for relieving the workload of any individual attorney if he is temporarily overworked. Present workloads are, however, well within workable limits, for full-time defenders. Adequate time is not devoted to clients principally because of private practice.

4. There is no policy of rotating or transferring attorneys from one court to another so as to help break the court's hold over that attorney or to give the staff members better exposure to all aspects of the practice of criminal law in Orleans Parish.

5. The director has done little to acquaint his Board with his problems and get their help, cooperation or direction. Board members, each of whom has a full-time job and other responsibilities, cannot be expected to come around and themselves uncover the problems. The Director must take the responsibility of going to the Board, acquainting them with the problems and asking for their support after taking such steps, which indicates some seizure of control or direction of the office. This just has not been done.

6. There is an opportunity within the office to develop some intermediate supervisory level by appointing the attorneys in capital cases, who are required to have at least five years experience, as supervisors of the remaining staff members, and someone the staff could go to with specific problems in the handling of a case. It should be noted that these attorneys are not required to be in court on a daily basis and should be available to provide this help when it is requested.

7. The office facilities do not permit any degree of privacy or provide a quiet place for the individual attorneys to work. Advisory Commission Standard 13.14 requires that each staff attorney have his own private office to assure client confidentiality and a suitable work atmosphere.

8. The investigative staff seldom conduct investigations. Their principal function is to interview persons who come to the office, such as clients, family of clients, or witnesses who may come to the office.

The principal advantage of an organized defender office is that it facilitates supervision, training, development of specialization and permits the staff attorneys to improve themselves and advance to positions of more responsibility, thus engendering attractive career potential. The end result is that the community provides competent representation for the indigent criminally accused. (See Advisory Commission Standard 13.5 and the Commentary to that standard).

The Orleans Defender Project employs none of these techniques.

Advisory Commission Standard 13.16 specifically provides that the organized defender office have both an orientation program for new attorneys, and an ongoing continuing legal educational program. Yet the Orleans Defender Project, has very little, if any, in-service training.

C. The Problems Within the Criminal Justice System in Orleans Parish

The most discouraging aspect of the criminal justice system in Orleans Parish is the lack of commitment by many of those within the power structure to having a defender office that complies with constitutional and National Criminal Justice standards for providing legal representation to the indigent criminally accused. The highest priority for the defender in the eyes of the system is in moving the calendar by inducing guilty pleas. Discerning actual guilt appears to have the lowest priority. It is a system which in operation defeats the fair administration of criminal justice and promotes crime by letting the guilty "get away with it" (to the extent he can trade what is usually a worthless right to trial for a light sentence, leaving him with an attitude that he beat the system). Far worse, the occasional innocent person who is wrongfully charged with a crime will be greatly pressured into pleading guilty to avoid a harsher sentence should he lose at the trial.

## VI. SUMMARY OF THE PROBLEMS OF THE ORLEANS DEFENDER PROJECT

### A. System Existing has Features which Make an Effective, Vigorous Defender Operation Exceedingly Difficult if not Impossible

1. Appointments to the positions are to some degree political. Attorneys are open in stating that they got their jobs from judges or the mayor--at the head of the office. This reduces the potential for control by any head of the office and violates ABA Defense Services Standard 1.4, and Advisory Commission Standard 13.8 and 13.9.

2. There is interference with individual handling of cases from outside the office, and the defender director has not strongly opposed the interference. Example--Director being told after an en-banc judges' meeting to fire a specific attorney because he had filed a federal habeas corpus suit on behalf of one of his defender clients. This violates ABA Defense Services Standard 1.4, and commentary thereto, and National Advisory Commission Standard 13.7 and 13.8, ABA Defense Function Standard 3.9.

3. Salary scale is so low that outside practice is a necessity. Estimates of up to 35% of the income of attorneys is received from outside practice. The natural tendency is to spend as little time as possible earning the fixed income paid by the defender program so that as much time as possible is free for private practice. Also there are several potential areas of conflict of interest arising where a defender staff attorney also engages in private practice. See Advisory Commission Standard 13.7 and commentary thereto, and ABA defense services Standard 3.2 and commentary thereto.

4. The independence of each section of the criminal court with an individual attorney assigned to each section has developed a feeling that the attorney is a part of the judge's team rather than an independent advocate. Judges refer to the defenders as "my attorney". The defenders refer to judges as "my judge". There has been interference by some of the judges to the extent of having attorneys transferred or preventing transfers. This is violative of ABA Defense Services Standard 1.4 and Advisory Commission Standards 13.8 and 13.9 and ABA Defense Function Standard 3.9.

5. The office facilitates - do not permit privacy or a quiet place to work, also, the project does not have a library. (Advisory Commission Standard 13.14 and ABA Defense Services 3.3.) Moreover, the Advisory Commission Standards require that in urban areas the defender have neighborhood offices in the client community (Advisory Commission Standard 13.13). The Orleans Defender Project has no such neighborhood facilities.

6. The Sheriff's visiting schedule is set at times which conflict with the court's time, thus the defender staff find it very difficult as a practical matter, to interview people in jail. If they would be able to visit the jail, conditions in the jail are not conducive to attorney-client consultation. (See ABA Defense Function Standard 3.1, commentary pp. 202-203.)

7. The defenders seldom engage in formal motion practice. ABA Defense Function Standard 3.6 requires defense attorneys to vigorously pursue all appropriate avenues of pretrial remedies and procedures.

8. Supportive services, such as investigators, social workers, funds for employment of criminalistic experts are woefully inadequate or non-existent. (See Advisory Commission Standard 13.14 and ABA Defense Services Standard 1.5)

B. Present Leadership has done Little to Adopt Effective Means of Improving or Changing that System

1. There are no regular staff meetings or training programs where new cases can be discussed or attorneys can learn by discussing their experiences. One new attorney stated that he was merely given a desk with cases on it. This violates Advisory Commission Standard 13.16.

2. There is no firm policy telling the staff what type of representation is expected or how they are to conduct themselves. (See Advisory Commission Standard 13.16.)

3. There is no policy of transferring attorneys or for rotation of staff to help break the court's hold on attorneys and give staff members better exposure to all aspects of practice. (See Advisory Commission Standards 13.5 and commentary thereto.)

4. There are no supervising attorneys to give direction to the staff attorneys in the program. No one is in charge in the Director's absence. (See Advisory Commission Standard 13.5 and Commentary thereto.)

5. The Director has done little to acquaint the Board members with the project's problems, or to obtain their help, cooperation, or direction. expected that Board members, each of whom has other responsibilities, will take the initiative. The Project must go to them. (See ABA Defense Services Standard 1.4--Commentary pp. 20-22 and Advisory Commission Standard 13.9 and Commentary thereto.)

## VII. RECOMMENDATIONS

1. A full-time director, independent of the court and mayor in matters of hiring and firing and the handling of individual cases, should be established. He should be responsible to a board which sets broad policies, but which cannot interfere with the handling of cases. All interference with representation should cease immediately. (ABA Defense Services Standard 1.4, ABA Defense Function Standard 3.9, Advisory Commission Standard 13.8 and Commentary thereto)

2. Salaries should be increased at once to an acceptable level, and there should be a salary structure which permits incentive increases. This is the only way in which to attract and retain good personnel, and to assure full devotion to defender clients. (ABA Defense Function Standard 3.1 and Advisory Commission Standard 13.7 and 13.11)

3. The private practice of law by defender staff, as provided by the terms of the grant, should be prohibited. (ABA Defense Services Standard 3.2 and Advisory Commission Standard 13.5)

4. There should be intermediate supervisors at the rate of one for every five staff attorneys and also one per five in other personnel including investigators and secretaries. (See Advisory Commission Standard 13.5 and Commentary thereto)

5. A policy that all hiring should be on the basis of merit must be adopted at once. (ABA Defense Services Standard 3.1 and Advisory Commission Standard 13.10)

6. Some caseload standards should be adopted which ensure each attorney time to do a proper and adequate job. (See Advisory Commission Standard 13.12 for guidance)

7. There should be immediately established regular staff meetings and a training program, both for entering and continuing purposes, which makes known

office policy, permits discussion of current cases and gives others the benefit of every attorney's thinking. During staff meetings the staff would be free to ask questions of the administrative personnel as to how the office is being administered and to offer their suggestions. (Advisory Commission Standard 13.16)

8. Both Tulane and Loyola Law Schools should be tapped for paralegal help from the law students. The team was advised that these resources are available. This not only helps the office in the individual handling of the cases, but it helps to introduce the students to the criminal justice system and provides a potential source of eventual recruitment of legal staff.

9. A separate appellate section should be established, composed of attorneys and secretaries. This section should handle all appeals and extraordinary writ practice. As a start, at least three full-time attorneys and one and a half secretaries should be allotted for exclusively appellate and post-conviction efforts. This should be in addition to the increased staff. (See ABA Defense Function Standard 4.2 and Advisory Commission Standard 13.4)

10. Some new facilities or changes in the present structure should be provided for, to cut down the noise level and to permit privacy in which the attorney can work and interview clients and others. (Advisory Commission Standard 13.14 and ABA Defense Services Standard 3.3)

11. Steps should immediately be taken to dictate an office policy on the type of representation that is expected of the staff. Adoption of the American Bar Association Standards Relating to the Defense Function is strongly urged.

12. A regular system of rotating attorneys among the various divisions of court should be established.

13. Attorneys and supportive staff should begin work on cases at least from the time the Defender is appointed at the magistrate level. At the present time,

there is only token representation at the magistrate level and no representation between Magistrate and Criminal Court. Indeed, the Director should work out a system so that cases may be entered before the Magistrate Court appearance. It is essential that representation begin at the earliest possible time and that the defender agency provide police station representation, which it now does not do. (ABA Defense Function Standard 3.6, Advisory Commission Standard 13.3 and ABA Defense Services Standard 5.1)

14. Investigators who are adequately paid, properly motivated and have investigative skills and experience should be added to the staff. Investigators should provide investigative services and not act as clerks and interviewers of clients. Client interviews should be the principle responsibility of the assigned attorney. The present purported investigative staff does not function as investigators. It is also recommended that the ROR program described in this report be incorporated into the defender office. Such a move would enable the defenders to prepare properly for the initial appearance before the magistrate and to present competently prepared motions, supported by evidence and legal precedence, in support of ROR bonds and lower bonds where ROR is not appropriate. Social worker staff should also be added to prepare alternative methods to money bond in the pretrial stage and to develop alternatives to incarceration when a client has been convicted. (Advisory Commission Standard 13.14 and ABA Defense Services Standard 1.5)

15. Some action should be taken so that clients who are in jail awaiting trial can be thoroughly interviewed by the lawyers in private surroundings where the case can be discussed and papers can be passed back and forth. (See ABA Defense Function Standard 3.1 and Commentary pp. 202-203)

16. The Municipal and Criminal Court defenders should merge, so that resources can be shared, and staff attorney development and careerism can be

encouraged. But the merger is recommended only if there is a new and serious commitment to providing defender services.

17. Serious consideration should be given to organizing and financing defender services on a statewide basis. Advisory Commission Standard 13.6 recommends financing defender offices on a statewide basis. In Louisiana consideration should be given to organizing the defender office on a statewide basis rather than on a Parish basis, as well as having the state, rather than local government, finance defense delivery systems to the indigent accused. These arguments are summarized, as follows, in the new proposed National Legal Aid and Defender Association Defender Standards, pp. 16-17:

"In 1967 the President's Commission on Law Enforcement and Administration of Justice recommended that each state should provide defender services on a regular and statewide basis. Early attempts to allocate the responsibility for providing defense services between state and local communities had the option of providing defense services so long as they complied with state standards.

In August of 1971, the Advisory Commission on Intergovernmental Relations recommended that the states assume direct responsibility for financing and administering statewide defender services, because they found that under the patchwork response of the local option plan while in some areas defendants enjoyed excellent representation, in many places indigents were represented by inexperienced and disinterested counsel assigned at random by the court. Thus, the commission concluded, only a statewide organization can assure uniformly high caliber of indigent defense representation.

Moreover, the present trend in providing defender services is through a state defender agency. (See Gerald L. Goodell, "Effective Assistance of Counsel in Criminal Cases: Public Defender or Assigned Counsel," Winter, 1970, Kansas Bar J. 339, 342-3). The present trend is clearly toward providing statewide defender services financed by the state, and in most cases, headed by a single state defender or agency. Florida's unique state financed system has a public defender heading each judicial circuit. Thirteen other states have adopted state financed public defender systems under the direct supervision of a public defender or defender commission.

Alaska has recently adopted a statewide system under the supervision of a state public defender, as has the state of Delaware. Colorado's state public defender was appointed in 1970. Hawaii's public defender system, headed by a state public defender, became effective during 1971. Kentucky passed legislation creating a statewide defender system in April, and will appoint a defender general later this year. In Maryland, a state public defender system headed by a state defender was instituted in 1971. Massachusetts in 1960 created the Massachusetts Defenders Committee which is responsible for directing statewide defender services. Minnesota has a statewide defender system headed by a state public defender. Missouri passed statewide defender legislation in May of 1972, and will soon appoint a state defender. New Jersey has, since 1967, operated a statewide defender system under the direction of a state public defender. Nevada has recently appointed a state public defender. Rhode Island has also appointed a state public defender for its state financed defender services. Vermont's statewide defender legislation became effective July 1, 1972, and the program is being directed by a defender general. In addition, several states have adopted a statewide defender system on the appellate level. In July, 1972 the Illinois legislature created a state appellate defender. Statewide defenders are also provided for appellate matters in Michigan, Oregon and Wisconsin.

Constitutional mandates do not permit local options as to when counsel may be provided, for counsel must be provided uniformly throughout the United States. However, most states have communities that range from the very wealthy to the poverty stricken. To further aggravate the situation, in counties having a low tax base there is likely to be a higher incidence of crime; in those counties, a higher percentage of criminally accused are financially unable to provide counsel. Hence, where the need may be greatest, the financial ability will tend to be the least capable of meeting the need as required. Also, because county officials have greater susceptibility to citizens' insensitivity to the rights of the accused, it is often politically impossible to provide adequate funding for the protection of those rights, on the local level in many areas, where the demand for tax dollars must compete with other, more popular causes."

## VIII. CONCLUSION

The quality of indigent representation in the Orleans Parish criminal courts is largely passive and inadequate. This is due to the poor organizational structure and lack of financial resources in the indigent defender programs. These programs need to be entirely re-organized and re-financed. At present, the indigent defense system in Orleans Parish falls far short of meeting fundamental constitutional requirements for providing effective assistance of counsel.

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STUDY OF THE INDIGENT DEFENDER SYSTEM IN LOUISIANA

Final Report

March 12, 1992

Prepared for:

State of Louisiana  
Supreme Court  
Judicial Council's  
Statewide IDB Committee

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## 1.0 Introduction

In July 1990, the Judiciary "C" Committee of the Louisiana State Senate recommended that a study be conducted to gather more information about the current status of the state's indigent defense system. Shortly thereafter, members from the state's legal and indigent defense communities formed the Ad Hoc Task Force for Improvement in the Indigent Defense System. On behalf of the Ad Hoc group, the chairman of the Indigent Defender Board (IDB) in the 24th judicial district made a request to the American Bar Association's Bar Information Program (BIP) for technical assistance and advice for the newly formed Task Force, which hoped to raise and address concerns over the state of indigent defense services in Louisiana.

Members of The Spangenberg Group first met with the Ad Hoc Task Force in Baton Rouge in September 1990, where representatives of the State Bar Association, indigent defender programs, the Louisiana Criminal Defense Lawyers' Association, and several defender organizations met to discuss the possibility of conducting an extensive study of indigent defense services in Louisiana. The Task Force decided to approach the Supreme Court of Louisiana to inform the Court of its activities, and to seek support for a more in depth study of indigent defense in the state.

In December 1990, the Supreme Court of Louisiana appointed a Statewide IDB Committee of the Supreme Court's Judicial Council to study "all facets of Louisiana's indigent defense system." The chairman of the 24th Judicial District Indigent Defender Board was appointed to chair the statewide committee. It was agreed that before any recommendations could be made to improve Louisiana's indigent defense system, it would be necessary to gain a better understanding of the current system, and The Spangenberg Group agreed to work with the committee to "undertake a study of Louisiana's indigent defense system."

## 2.0 History of Indigent Defense Services in Louisiana

This report is by no means the first statewide study of indigent defense in Louisiana. In 1972, the Institute for Judicial Administration studied the Louisiana courts, and recommended:

A flexible state-funded public defender system should be instituted, which would include a number of full-time regional public defenders who could be moved to temporarily assist any court. Although the greatest demand for such defenders will be in the urban areas, even in predominantly rural areas at least one full-time public defender will be needed on the regional level, supplemented by one or more part-time attorneys as the needs require.<sup>1</sup>

In 1973, the American Judicature Society studied Louisiana's courts of limited jurisdiction and concluded:

Louisiana should establish a statewide system of public defender offices, fully staffed with full-time attorneys, to assure that indigent defendants are afforded their constitutional right to counsel.<sup>2</sup>

In 1974, the Criminal Courts Technical Assistance Project of the American University School of Law completed a study of indigent defense in Louisiana. The study concluded that "in order to guarantee the independence and integrity of the system, there should be created the office of State Public Defender." The study also concluded:

The new Louisiana Constitution provides a right to counsel for every defendant who "is indigent and charged with an offense punishable by imprisonment." There is also a right to appointed counsel at preliminary hearings, for appeals, in juvenile cases, in mental

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<sup>1</sup>IJA, A Study of the Louisiana Court System 114 (1972).

<sup>2</sup>American Judicature Society, Modernizing Louisiana's Courts of Limited Jurisdiction 138 (1973).

health commitment cases, and in some parole and probation revocation cases. Even if the Indigent Defender Boards were substantially funded, they could not meet these demands on a statewide basis.<sup>3</sup>

In 1992, 20 years after completion of the first statewide study, Louisiana's indigent defense system remains unable to meet the demands placed on it by both the United States and Louisiana constitutions. The system is still one of the most underfunded in the country. The U.S. Department of Justice's 1986 study entitled National Criminal Defense Systems Study ranked Louisiana 38th among the 50 states in expenditure per indigent case. The study ranked Louisiana 34th in per capita expenditure, again suggesting that funding for indigent defense falls far behind the national averages. The lack of state involvement in promulgating minimum attorney performance or caseload standards, or regularly collecting uniform data also contributes to the poor quality of indigent defense services in Louisiana.

As specified in LSA-R.S 15:144, Louisiana's current system for providing legal services to indigents accused of crimes is overseen by indigent defender boards (IDB's), which must be established in each of the state's judicial districts. There are currently 40 judicial districts encompassing 64 parishes throughout the state, in addition to the Orleans Parish civil and criminal district courts. As set out under LSA-R.S. 15:145, each IDB is vested with the authority to determine how indigent defense services will be provided in their districts. The three alternative schemes outlined in the statute correspond to the three widely used national models known as public defender programs, contract attorney programs, and assigned counsel programs. Thus, throughout the state, there is a mixture of staff system indigent defender programs, contract attorney programs, and volunteer attorney list

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<sup>3</sup>American University, Criminal Courts Technical Assistance Project, An Evaluation of Indigent Criminal Defense Services in Louisiana and a Proposal for a Statewide Public Defender System.

programs.

The system for funding indigent defense services in Louisiana is unlike any other in the United States. It is the only indigent defense system that operates almost entirely on funds drawn from criminal violation assessments. There is limited additional support available to some attorneys, in some districts, through the criminal court fund set up by L.S.A.-R.S. 15:571:11, which consists of "all fines and forfeitures imposed by district courts." However, access to these funds is extremely variable, sporadic, and limited, and is controlled in most districts by the judges and district attorneys. There is no direct allocation of funds for indigent defense from either state or local (i.e., parish) resources. There is also a small fund created in some districts from contributions of defendants who can afford to pay a portion of their legal cost.

There were two attempts in the 1970's to initiate supplemental measures, but neither fully materialized. The first of these involved a 1973 statutory provision in R.S. 15:147 §146C which dictates that the state of Louisiana would "pay to each district defender board, on the warrant of its chairman, the sum of \$10,000 per annum." Although the provision remains in the statute today, these funds were allocated only in the first year after it was passed, and have not been distributed since. The second attempt to provide a role for the state occurred in 1976, when the Louisiana Indigent Defender Board was created by the legislature to establish and promulgate standards and procedures for the administration of the district IDB's and systems. Although the statewide board was authorized \$450,000, it was only allocated \$100,000. In the following year, the act was repealed altogether, terminating the statewide board.

Today, Louisiana's judicial district indigent defender system continues to be funded almost entirely by assessments charged to defendants in criminal cases. As specified in LSA-R.S. 15:146, each IDB is responsible for administering the indigent defense fund

for its judicial district. Until recently, assessments ranged from \$4.50 to \$17.50 per case.

In 1990, House Bill 592 (The IDB Funding Bill) was introduced in the state legislature in order to increase the level of funding provided for indigent defense services throughout the state. The bill passed, and as of September 8, 1990, the minimum assessment charged for all criminal cases was raised to \$17.50. As specified in the modified L.S.A. 15:146(B), districts are authorized to increase this minimum assessment to not more than \$25 upon resolution by a 2/3 vote of the district board, and the concurrence of the chairman of the board.

There have been several recent efforts which have begun to address the inadequacy of the system. The first of these concern litigation over compensation for court-appointed attorneys. Louisiana's level of compensation and reimbursement for attorneys in the volunteer attorney programs, which many of the judicial districts have opted for, are among the lowest in the country. The rates of compensation are determined in each district at the discretion of the judge, and are often limited by maximums that are remarkably low, particularly in capital cases. In the matter of State of Louisiana v. Higginbotham and Wigley, which is currently awaiting the ruling of the state's Third Circuit Court of Appeals on remand from the state's Supreme Court, court-appointed attorneys from Lake Charles are challenging the system of compensation for appointed counsel. The Supreme Court has ordered reconsideration of the trial court's ruling that the court-appointed defense counsel not be compensated.

In another challenge, brought by an indigent defender in Orleans Parish (State of Louisiana v. Leonard Peart et al.), the trial court ruled that the state must provide increased resources for indigent defense at trial. The indigent defender in the case was appointed to represent Peart in November 1991. From January 1, 1991 through August 1, 1991, this defender represented approximately 418 defendants. These included 162 guilty pleas, 96

felonies awaiting trial, 37 cases concerning rules to revoke probation, 34 cases involving multiple bill hearings, and 89 cases involving the status of a defendant. Each day of the week, except for Monday and Friday, he usually had two felony cases set for trial, and in some instances as many as five felony cases set. His clients generally remain in jail for up to 70 days before consulting with their attorney. While the caseload in Orleans Parish is particularly unmanageable, these conditions reflect the inadequacy of the current funding of indigent defense services in all of Louisiana. The Peart case has brought to light the systemic inadequacy of resources available for indigent defense at the trial level throughout Louisiana.

The other major development that occurred to address the serious problems plaguing Louisiana's indigent defense system was the Supreme Court Judicial Council's creation of the Statewide IDB Committee and its directive to undertake a study of "all facets of Louisiana's indigent defense system." The Committee intends to "present the Judicial Council with recommendations for improvements in Louisiana's indigent defense system." The Chairman and members of the Committee form the nucleus of a strong, dedicated community of knowledgeable individuals representing components of the criminal justice system from districts throughout the state. The findings that follow in this report concerning the deeply rooted problems in Louisiana's indigent defense system is not meant to reflect badly on all of the hard-working attorneys, judges, IDB members and administrators in the system. The truth is that the dedication of those who have given so much to the system over the years is perhaps all that has kept it from total collapse. What follows are results of that study, and the findings and recommendations of The Spangenberg Group.

### 3.0. Methodology

Our role in working with the Committee was to achieve two principle objectives: (1) To present an overview of indigent defense systems throughout the United States, and (2) to present a report on the existing system in Louisiana. The major product of the first objective was a document entitled Review of the Provisions for State Indigent Defense Systems presented to the committee at the January 18, 1992 meeting in New Orleans. The document provided an overview of the various types of indigent defense systems currently operating around the country, and presented examples of both statutory language and practical policy initiatives.

The second objective has been to produce a report which would provide all parties with a better understanding of the current indigent defense system in Louisiana. Before the system could be subjected to any form of analysis, it was crucial to first collect detailed information about the delivery of indigent defense services around the state. However, there exists no statewide process for collecting important program data from each judicial district on an annual basis. In order to gather the important data necessary to proceed with the study, two methods were used: (1) testimony of members of the indigent defense community, and (2) mail surveys. A description of both methods follow.

#### 3.1 Testimony

On several occasions between September 1990 and January 1992, indigent defenders in every judicial district, as well as district attorneys and judges, were invited to testify before the Committee to share their individual perspectives on the status of the system and recommendations for improvement, both in their respective districts and throughout the state. Members of The Spangenberg Group had the opportunity to listen to and take note of hours of

testimony from a wide range of perspectives. There were also a number of opportunities for informal interviews with indigent defense attorneys from all over Louisiana. Many of these interviews were followed up by telephone conversations in what developed into an ongoing dialogue between a number of individuals in Louisiana and members of The Spangenberg Group.

### 3.2 Mail Surveys

The mail surveys were designed to provide both quantifiable data, such as caseload, expenditures and indigency rate, and also descriptive data, such as assessments of the major problems not only in the respective districts, but also throughout the state. It is important to note that responses to these surveys often reflect the respondents' individual perceptions, particularly when they did not have documented data on which to rely. Where secondary data were available from other sources, these have been used to compare and contrast with the survey responses. However, the study methodology did not include efforts to generate primary data, such as docket studies. To do so would have been enormously time-consuming and expensive, with no guarantee that the information being sought would have been readily available in a usable format.

Surveys were mailed to representatives of the Indigent Defender Board in each of the 40 judicial districts. Initially, responses were slow to come in, however, the Supreme Court's Judicial Council was instrumental in ensuring the eventual completion and return of 75% of the surveys.

As mentioned in the Introduction, each district is expected to provide indigent defense services through one of three methods: A staff system indigent defender program, a contract attorney program, or a panel of volunteer attorneys who wish to take court appointed cases. A mail survey was designed for each program type, targeting the particular issues and concerns of the individual type

as well as broader concerns that are common to all three types. All three surveys were sent to each IDB around the state. The appropriate survey was then selected by the representative of the local IDB, completed, and returned to the Chairman of the Statewide IDB Committee.

### 3.3 Organization of the Report

This report presents the findings resulting from these two elements of the study methodology. Both survey results and information acquired through the testimony before the committee are incorporated throughout the report in discussions of the various issues and findings. Section 4 is a discussion of how indigent defense programs are organized throughout the state. Section 5 presents the issue of funding, and provides a comparative analysis between Louisiana and selected states. Section 6 addresses the availability and quality of representation. Section 7 concludes with findings and recommendations, both practical and policy oriented, that would result in a more efficient system throughout the state. Further, the recommendations speak to the need to provide and maintain high quality representation to indigents accused of crimes in Louisiana.

## 4.0 Organization of Indigent Defense Programs in Louisiana

### 4.1 Indigent Defender Boards

As a result of the lack of state-imposed standards and requirements for the delivery of indigent defense services, there is a wide variety of methods, standards, and structures among Louisiana's 40 judicial districts. One uniform aspect, however, is that each judicial district is required by statute (LSA-R.S. 15:144) to have an Indigent Defender Board (IDB) to oversee its

indigent defense operations. The survey revealed that, in compliance with the statute, indigent defender boards do indeed exist in 100% of the state's judicial districts. The IDB's range in size from three to seven members, with an average size of five. Members are generally selected by the district judges, often from nominees suggested by either the local bar association or the existing IDB members. In one district served by a staff system indigent defender program, the chief indigent defender is asked to submit nominees for the Board to the judges. In one volunteer attorney panel district, "all eligible attorneys who can accept [court] appointments [in indigent cases] are automatically members" of the IDB.

Only two respondents indicated that their IDBs do not meet regularly. In most districts, the IDB meets monthly or quarterly, while many meet on an as-needed basis. In one district, the IDB has its own executive board, which holds monthly meetings, while the full IDB only meets on an annual basis.

LSA-R.S. 15:145 states that each district defender board must choose from among three alternative systems to provide indigent defense services in its district. Out of the 31 survey respondents, 15 (48%) were from staff system indigent defender programs, 13 (42%) from contract attorney programs, and three (10%) from volunteer attorney list programs.

The IDB in each of the districts coordinates representation in cases where an attorney has a conflict of interest. According to the survey respondents, in almost all districts with an indigent defender program, counsel is provided in conflict cases by private attorneys. While some conflict programs are more formal than others, in most districts, private attorneys volunteer to be placed on a list kept by the court. They then receive appointments when the local indigent defender office has a conflict in a particular case. In one district, however, where the size of the private bar is extremely small, the District Court employs a non-volunteer attorney rotation for conflicts. Another district reports, "We do

not have a problem with conflicts."

#### 4.2 Staff System Indigent Defender Programs

One of the statutory options for the judicial district indigent defender boards provides that the board "may employ a chief indigent defender and such assistants and supporting personnel as it deems necessary." The staff system indigent defender program districts have varying administrative structures, but generally there is a combination of full and part-time employees--both attorneys and support staff. In five of these programs, the chief indigent defender is a part-time employee. In the larger metropolitan areas, there may be as many as 37 full-time attorneys in the staff system programs. In the more sparsely populated districts, though, it is not unusual to employ only one or two attorneys on a part-time basis.

While the vast majority of districts employ at least some part-time attorneys, it is difficult to generalize between and among the districts because of the varying part-time schedules of these attorneys. Salaries are generally low, but in many districts defender attorneys are permitted to also engage in private practice. In theory, therefore, there is potential for additional income, but in practice a high indigent caseload often precludes significant private practice. Part-time staff attorneys in Orleans Parish, for example, earn a starting salary of \$15,000 but they are de facto full-time because of unmanageable caseloads.

The assignment of cases in the indigent defender programs also varies and there is no set systematic assignment method according to caseload or caseweighting in any of the districts. That is, there seems to be no formal manner in which cases are assigned to take into account a particular attorney's current caseload or the seriousness of the case. In nearly half of the districts with staff defender systems (47%), attorneys are assigned to a particular courtroom and thus responsible for the cases in that

court. In two districts, attorneys are assigned a particular day or session in a given court. In three programs, assignment is on the basis of experience and expertise. In the remaining four programs, assignment is on either a rotation basis, or by availability of the attorney. In instances when a defender attorney has a conflict with a case, private counsel is appointed. Generally, private counsel volunteers are placed on a list for conflict cases although in one instance, cases are assigned on a proscription/rotation basis.

Training, other than "on the job," is almost non-existent. None of the 13 districts have any formal in-house training and only three programs have funds allocated for CLE-type legal training seminars.

#### 4.3 Contract Attorney Programs

Thirteen districts provide indigent defense services by way of a contract attorney program. Each of these contracts is between the individual IDB and a private attorney or group of attorneys. Generally these contract systems are lacking in terms of support services--only two employ full-time administrators; only one employs an investigator. During the course of our study, we found substantial confusion between staff systems and contract attorney programs. In some of the smaller districts, the terms seem to be interchangeable. For purposes of this study, however, every effort was made to assign each of the districts to one of the three systems.

There is a wide variety of approaches and procedures utilized in the contract programs throughout the state. The following excerpts from survey responses illustrate the diversity of methods by which contracts are awarded around the state:

"There is no bidding process. The Board and Chief Defender budget positions and the Chief Defender, Board and Staff have input into the hiring process. Chief Defender generally is allowed to make the final decision,

but is always subject to the Board."

"Applicants are interviewed by the Board. All contracts are fixed at \$2,000 per month..."

"By application"

Contracts that remunerate attorneys at an agreed-upon dollar amount for handling an agreed-upon number of cases can offer program administrators considerable control over monitoring the costs of providing indigent defense services. Cost containment should not be pursued, however, at the expense of providing quality representation. The American Bar Association's Standards for Criminal Justice (Chapter 5-3.1) specify a series of standards for contract defense systems. Included among them are the following:

"[C]ontracts should ensure quality legal representation. The contracting authority should not award a contract primarily on the basis of cost."

"Contracts for services should include, but not be limited to...allowable workloads for individual attorneys, and measures to address excessive workloads" and "limitations on the practice of law outside the contract by the contractor."

All 13 of the respondents from contract attorney programs report that contracts are set for a fixed dollar amount, however, none of them report that their contracts set a predetermined number of cases to be handled for that dollar amount. Only one respondent reports that the level of the caseload or workload per contract attorney is monitored at all. None of them reports that any limitations exist on the amount of time attorneys spend on their private practices.

In the 13 contract programs responding, cases are assigned in a variety of ways. In one district there is an attorney designated as Chief Public Defender who administers the contracts and the rotation of assignments, but does not generally provide direct representation. In another district, one of the contract attorneys

is designated as managing attorney, and administers the rotation of assignments. In two districts, there is only one attorney on contract to represent all indigents in the district. The other 10 districts employ various rotations. In three of them, the judge makes the appointments, and in four of them, appointments are given out largely by division of court.

The ABA Standards also specify that contracts should all include provisions to ensure that serious cases, particularly capital cases, are assigned to attorneys with "minimum levels of experience" (5-3.3); however, five of the responding contract programs report that their programs have no such provisions.

Contracts do not generally provide any funds for attorney training programs. According to survey respondents, only three of the 13 districts with contract defense systems provide either funds for training or formal training sessions.

#### 4.4 Volunteer Attorney Programs

Three respondents report that their districts provide indigent defense services through a volunteer attorney program. In all three districts, indigent defendants are represented by attorneys appointed to cases by a judge from a list of attorneys in the area. "Volunteer" attorney program is a misnomer in one district, where all private attorneys in the area are automatically included on the appointment list. Only one of the three districts specifies that attorneys meet minimum qualification standards in order to be included on the appointment list.

Appointments in all three districts are made in a methodical rotation from the list. In two of the three, procedures exist for selecting certain attorneys for more complex, serious or special cases, such as capital felonies. None of the three provide any training programs or funds to allow the attorneys to participate in outside seminars or training programs. All three of the programs report that they have no mechanism for monitoring the

quality of representation provided by volunteer attorneys or for removing attorneys from the list.

Compensation for the attorneys in two of the three districts is paid at an hourly rate. In one district, the rate is \$30 per hour, both in and out of court. In a second district, the rates are \$35 per hour out of court and \$50 in court. In the third volunteer attorney list program, however, attorneys are paid quarterly, "on a pro-rated basis calculated from gross time spent on IDB work by the attorney during the quarter." This method traditionally has frustrated attorneys, as the level of compensation works out to an extremely low hourly rate. In one of the districts, there are strict maximums of \$1,000 for a misdemeanor and \$3,000 for a felony; there are no provisions for the waiver of these maximums. Vouchers are reviewed in two districts by the IDB and in one by the executive committee of the IDB. When asked how often they are paid less than the amounts they request in their vouchers, two of the three respondents replied, "always."

## 5.0 Funding

### 5.1 State Indigent Defense System Comparisons

Part of the design of the methodology for this study was to compare Louisiana with a number of other states in terms of indigent defense spending and caseload. The most recent data we were able to obtain was for FY 1990. Table 1 compares data for population, total indigent defense expenditures, total indigent defense caseload, cost per case and per capita cost. The table is made up of Louisiana and 18 other states. We selected all states which fall within 1.5 million of Louisiana's estimated 4,219,973 residents (1990 U.S. Census). In addition, we incorporated data collected from other states for use in a study conducted in Tennessee in 1991. Altogether, the 18 states reflect a regional

balance, and include several southern states as well as states from around the country.

Table 1  
INDIGENT DEFENSE IN STATES WITH SIMILAR-SIZED POPULATIONS  
FY 1990

<u>State</u>	<u>Population</u>	<u>Total Indigent Defense Expenditure</u>	<u>Total Indigent Defense Caseload</u>	<u>Cost Per Case</u>	<u>Per Capita Cost</u>
Colorado	3,294,394	\$16,323,518	58,823	\$277.50	\$5.65
Connecticut	3,287,116	\$12,650,144	110,189	\$114.80	\$4.07
Georgia	6,478,216	For all 163 counties, approx. \$15-\$16 million	64,515 <sup>4</sup>	\$240.25	\$2.84 (est.)
Iowa	2,776,755	\$16,586,502	36,515	\$454.23	\$5.97
Louisiana	4,219,973	\$10,000,000	99,975	\$100.03	\$2.37
Maryland	4,781,468	\$28,332,110	139,969	\$170.52	\$6.72
Massachusetts	6,016,425	\$45,345,439	198,871	\$228.01	\$7.90
Minnesota	4,375,099	\$32,379,000	121,726 (estimate)	\$277.06 for PD cases	\$7.94
Missouri	5,117,073	\$12,035,438	49,627	\$242.50	\$2.45
New Hampshire	1,109,252	\$7,274,125	17,421	\$417.55	\$7.00
New Jersey	7,730,188	\$47,895,813	95,124	\$503.50	\$6.50
N. Carolina	6,628,637	\$21,117,103	85,029	\$248.20	\$3.59
Oregon	2,842,321	\$30,000,000	95,599	\$313.81	\$11.39
Rhode Island	1,003,464	\$3,617,830	7,200	\$502.48	\$3.82

(continued)

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<sup>4</sup>Figures are for the 119 counties that received state funds.

Table 1, continued

<u>State</u>	<u>Population</u>	<u>Total Indigent Defense Expenditure</u>	<u>Total Indigent Defense Caseload</u>	<u>Cost Per Case</u>	<u>Per Capita Cost</u>
Tennessee (Davidson Co. info. is from 1989)	4,877,185	\$17,433,454	99,991	\$174.30	\$3.80
Vermont	562,758	\$4,241,508	12,568	\$337.48	\$8.30
Virginia	6,187,358	\$21,101,668	133,422	\$158.00	\$3.95
Washington	4,866,692	\$43,294,932	218,200	\$198.41	\$10.48
Wisconsin	4,891,769	\$36,386,608	104,200	\$349.19	\$7.73

An analysis of Table 1 shows that the median cost per case among the 19 states is \$277.06. Louisiana ranks 19th at \$100.03. The median per capita cost is \$6.50. Louisiana ranks 19th at \$2.37. Even more appalling is the fact that Louisiana's per capita cost has actually dropped from the Criminal Defense for the Poor, 1986 study when the per capita cost was recorded at \$2.41. Furthermore, the cost per case has dropped from \$158 in 1986 to \$100.03 in 1990. The 1990 figure would have placed Louisiana 50th in the nation as of 1986, only one place ahead of Arkansas.

Expenditure data for indigent defense in 1990 has fallen some \$842,000 since the 1986 study.

Table 2 compares the total increase in expenditures and caseload for 19 states from 1982 to 1986.

Table 2  
COMPARISON OF EXPENDITURES AND CASELOAD FOR INDIGENT DEFENSE

<u>State</u>	<u>Total Indigent Expenditures 1986</u>	<u>Total Indigent Expenditures 1990</u>	<u>Percent Increase/ Decrease</u>	<u>Total Caseload 1986</u>	<u>Total Caseload 1990</u>	<u>Percent Increase/ Decrease</u>
Colorado	\$12,126,270	\$16,323,518	+34.6%	53,000	58,823	+11.0%
Connecticut	\$9,251,316	\$12,650,144	+36.7%	67,000	110,189	+64.5%
Georgia	\$8,318,500	\$15,500,000	+86.3%	60,000	64,515	+7.5%
Iowa	\$11,536,008	\$16,586,502	+43.8%	42,000	36,515	-13.1%
Louisiana	\$10,842,017	\$10,000,000	-7.8%	69,000	99,975	+44.9%
Maryland	\$20,042,024	\$28,332,110	+41.4%	102,000	139,969	+37.2%
Massachu- setts	\$20,761,822	\$45,345,439	+118.4%	145,000	198,871	+37.2%
Minnesota	\$14,165,242	\$32,379,000	+128.6%	54,000	121,726	+125.4%
Missouri	\$6,746,272	\$12,035,438	+78.4%	37,000	49,627	+34.1%
New Hampshire	\$4,329,960	\$7,274,125	+68.0%	11,000	17,421	+58.4%
New Jersey	\$31,025,000	\$47,895,813	+54.4%	57,000	95,124	+66.9%
N. Carolina	\$16,480,870	\$21,117,103	+28.1%	70,000	85,029	+21.5%
Oregon	\$22,432,300	\$30,000,000	+33.7%	141,000	95,599	-32.2%
Rhode Island	\$2,083,091	\$3,617,830	+73.7%	8,000	7,200	-10.0%
Tennessee	\$7,792,823	\$17,433,454	+123.7%	38,000	99,991	+163.1%
Vermont	\$2,777,798	\$4,241,508	+52.7%	16,000	12,568	-21.5%
Virginia	\$10,122,671	\$21,101,668	+108.5%	87,000	133,422	+53.4%
Washington	\$21,190,420	\$43,294,932	+104.3%	101,000	218,200	+116.0%
Wisconsin	\$20,061,508	\$36,386,608	+81.4%	77,000	104,200	+35.3%

An examination of Table 2 reveals that only Louisiana suffered a reduction in total indigent defense expenditures from 1986 to 1990. The range of increase among the 19 states was 28.1% in North Carolina to 128.6% in Minnesota. The median increase was 73.7%. At the same time, the total caseload in a number of the sample states levelled off, and in five states actually diminished. Louisiana, on the other hand, had a 45% increase in caseload from

1986 to 1990, and yet experienced an actual decrease in total expenditures.

There are many further comparisons that we could make among the 19 states, the bottom line, however, is that these data confirm that Louisiana's indigent defense system has hit the bottom by all measures. Only the dedication of many indigent defenders has, in our judgment, prevented a total collapse of the system.

#### 5.1.1 Indigent Defense Caseload

There are simply no reliable data from any source in Louisiana which provide accurate caseload numbers for the court-appointed cases assigned in the various districts around the state. The fact is that there is no unified system for collecting, maintaining and reporting caseload data for indigent defense from judicial district to judicial district, from court to court, or from one indigent defender program to another. As early as 1974, in the report done by the Criminal Court's Technical Assistance Project previously discussed, the authors made it clear that they were not able to provide any caseload figures for the indigent defender system throughout the state. They then went on to project a target staffing level for the entire state, by districts, that was based on what they described as a, "deliberately underestimated number of defender personnel we believe will be needed." For almost 20 years then, it has been well-documented that Louisiana lacks accurate statistical information about its indigent defense system.

The problem is further complicated by the fact that the indigent defender programs that do collect data on cases assigned, dispositions, etc. do not collect it in a uniform manner. For example, we discovered that some district programs count charges as cases; others count defendants as cases; and others count single or multiple incidents as cases. Thus, despite our best efforts to obtain caseload data by type of case for closed cases in 1990 from the 41 district questionnaires, we were unable to obtain reliable

data across districts. This is because in many instances, they were reported as estimates and also because the data were reported in varying manners, such as by defendant or by charge or by incident.

The Judicial Council of the Supreme Court of Louisiana does not routinely collect data on indigent defense, appointments, or dispositions. Its 1990 annual report provides caseload data for the Louisiana District Courts broken out by juvenile, civil, criminal, traffic and total. The criminal data in the district court include both felonies and misdemeanors. These data are not, however, broken out by type of case. The traffic column in the report is assumed to be traffic misdemeanors and the juvenile column is assumed to encompass all sorts of juvenile cases. A second table in the same document reports cases processed for the Louisiana City and Parish Courts. The columns here are civil, criminal, traffic and juvenile as they are for the table on district court caseloads. In each of these tables, the cases listed are aggregate criminal cases, with no distinction provided by the Judicial Council of the Supreme Court of Louisiana between indigent and non-indigent cases.

An effort was made to collect caseload data throughout the districts in Louisiana by members of The Spangenberg Group while at Abt Associates in the early 1980's. The document, National Criminal Defense System Study, published by the United States Department of Justice, Bureau of Justice Statistics provides estimated caseload data for indigent defense by state for calendar year 1982. The caseload data for Louisiana for indigent defense in 1982 was reported to be 54,134 cases, including both criminal and juvenile. These data were obtained from a sample of 16 parishes scientifically selected around the state, including the largest parishes in Louisiana as well as a random sample of all other parishes. The 54,134 case figure was obtained through the survey of these parishes and extensive telephone follow-up. The sample data were then translated into statewide data for purposes

of the study. We believe that these data were the most accurate account of indigent defense caseload obtained up to 1982 in Louisiana.

In 1986, again under contract with the Department of Justice, Bureau of Justice Statistics, The Spangenberg Group conducted an update of the 1982 study which attempted to obtain expenditure and caseload data for the calendar year 1986. The same sample of parishes was used in the 1986 study as in 1982 and in the document published by BJS entitled Criminal Defense for the Poor in 1986, we reported an estimate of 69,000 indigent defense cases for Louisiana in 1986. These data were the last, to our knowledge, collected with any reliability in Louisiana since 1986.

Thus, our task has been to try to develop as reasonable and accurate caseload data as we can for Louisiana for 1990, which by necessity involves estimates. However, having done caseload projections for similar studies in many other states over the last 15 years that, like Louisiana, do not collect data on indigent defense, we feel confident with the estimate that we will report for this study.

We relied on several assumptions in developing our projected and estimated indigent defense caseload figures for 1990 in Louisiana. First, we assumed that since district, parishes and city courts report their criminal data in different ways, as described earlier in this section, we assume that for every case reported in both juvenile and criminal court, there were an average of two charges. We then added the total number of juvenile, criminal and traffic cases reported by the Judicial Council in 1990. After dividing these numbers by two, we applied indigency rates to the juvenile, criminal and traffic offenses statewide. We also divided the criminal case category at all court levels between felonies and misdemeanors. This was done by actually examining the caseload data reported by indigent defender boards in the districts that we have surveyed. An examination of these data showed that under the criminal category, approximately 1/3 of

the cases were felonies and 2/3 were misdemeanors, either traffic or non-traffic. Thus, we applied a 33% figure to the total felony caseload statewide and a 2/3 figure to the total misdemeanor figure statewide to arrive at our next set of figures. The resulting projections were statewide, 18,500 individual juvenile defendants, 29,543 individual felony defendants, 122,390 misdemeanor defendants and 302,406 individual traffic defendants.

We then assumed, based upon the data obtained in the surveys relative to indigency determination, that court appointments are made in approximately 85% of all juvenile cases. We further assumed that felony appointments to individual defendants are made in approximately 80% of all the criminal cases filed statewide. From our observations, interview data, questionnaire data and discussions with numerous people in Louisiana, we concluded that indigent appointments are made in misdemeanor cases in only about 25% of all the cases. This is due to many factors, including disposition of cases at an early stage before the entry of counsel as well as some disposition without the appointment of counsel, either because counsel is simply not available, or because the court is more interested in moving its docket. The 25% rate is based upon a similar formula that we have utilized in many other states for these kinds of cases.

Finally, we assumed, based upon the interview data, the testimony, and the questionnaires, plus discussions with several people in the criminal defense system in Louisiana, that only a small number of traffic misdemeanors result in the appointment of counsel for indigent defense. This, again, is due to all of the factors mentioned above for non-traffic misdemeanors as well as the fact that a large number of these traffic misdemeanors are infractions heard in city or parish courts and disposed of in large number without counsel. Again, using the best estimate that we could determine, we assumed that 10% of all the traffic misdemeanor cases in Louisiana involve the appointment of counsel for indigent defendants. Thus, for purposes of this study, we have assumed that

in 1990 there were court appointments for indigent defendants throughout the entire state of Louisiana as follows:

Juvenile	15,625
Felonies	23,512
Non-Traffic Misdemeanors	30,597
Traffic Misdemeanors	<u>30,241</u>
	99,975

The above described estimates are as accurate as can be produced given the limitations at hand. Based upon our prior experience in gathering court data, and particularly indigent defense data, we are satisfied that this estimate is reasonably reliable. The estimated caseload is in part validated by 1986 data which showed that Louisiana had approximately 69,000 indigent defense cases during 1986. Assuming an increase in the indigent defense caseload at a rate of 10% per year from 1986 to 1990, it would result in a total of 101,000 cases which is within 130 cases of our estimate. The 10% increase is consistent with such data in other southern states and in fact is lower than many states of the country, particularly since the period 1986 to 1990 marked a dramatic increase in the number of drug cases. We have assumed a conservative approach in our methodology and are overall satisfied with our estimates.

## 5.2 The Criminal Violation Assessment System

One reason for the funding crisis in Louisiana is that it is the only state in the country in which indigent defense operates solely on funds drawn from assessments levied on all criminal violations, including traffic, misdemeanor and felony charges. By statute, district IDB's (other than the few exceptions mentioned in the statute), are currently authorized to set the assessments at anywhere from \$17.50 to \$25.00. In testimony, the

District Attorney of a heavily populated district in Southeastern Louisiana told the committee that it was clear that the IDB assessments were "not providing enough funding for the indigent defense programs," and that they do "need additional funding from the state." A judge from a judicial district in northwest Louisiana concurred, telling the committee that, "we need to explore funding on a large scale."

Another factor which contributes to the inadequacy of funding is the alarming fact that many IDB's, even in large metropolitan areas with high caseloads, are not collecting the maximum amount allowed by statute, which is \$25.00. Survey responses indicate that only three districts are charging the statutory maximum of \$25.00 in all of their courts. There are nine districts, including the cities of East Baton Rouge (\$17.50) and New Orleans (\$20.00), which do not charge the maximum in any of their courts.

The 19th Judicial District, which includes the city of East Baton Rouge, and has one of the highest criminal caseload totals in the state, charges only \$17.50 on its assessment in all of its courts. With its reported 1990 caseload of 5,582, the 19th Judicial District could generate an additional \$41,865--which is almost four percent of its 1990 budget--simply by raising its assessment to the current legal maximum of \$25.00. In Orleans Parish, another metropolitan area with one of the state's largest indigent caseloads, the IDB only charges \$20.00 per assessment in all of its courts. Based on its reported 1990 caseload, Orleans Parish could raise an additional \$65,350--five percent of its 1990 budget--simply by raising its assessments to \$25.00 in all courts. While these increases will not begin to solve the complex problems in Louisiana's indigent defense system, they would represent an acknowledgment by the local boards and judges that the current funding situation is not satisfactory.

An even more alarming problem is that in at least two districts, the IDB assessment being charged is below the statutory minimum of \$17.50. One northern district charges only \$10.00 on

all criminal violations in city courts other than DWI cases, while in its district court, misdemeanors only bring a \$10.00 assessment. Another district charges only \$10.50 in city court. The statute allows for certain jurisdictions, including those with particularly low populations, to charge lower amounts for their IDB assessments. However, the courts which are charging \$10.00 to \$10.50 do not appear to qualify for the statutory exception. This infraction is particularly alarming given that survey respondents from the two districts both cited "inadequate funding" as one of the three major problems confronting their programs. One of the districts reports a deficit in its indigent defense program in the years 1988, 1989 and 1990, yet continues to charge below the statutory minimum in city court, and below the maximum in all of its other courts.

Beyond the simple question of inadequate income generated, there are a number of problems inherent in dependence on criminal violation assessments. For example, an indigent defender from a major metropolitan area told the committee that his program's income is subject to the seasonal fluctuation of the frequency with which traffic citations are issued. This particular indigent defender program's budget is traditionally strained in January simply because police give out far fewer traffic tickets during the holiday season. In the 19th district, which includes the city of East Baton Rouge, the city ran out of pre-printed traffic tickets for several months in the first half of 1990. Consequently, the indigent defender program's sole source of income was suspended while more tickets were being printed.

The committee was told that in another district, when the local district attorney halted a program designed to pay off-duty State Troopers overtime to increase traffic tickets, the local indigent defense program's monthly budget ~~dropped immediately~~ by \$6,000. Half of the staff system program's attorneys had to be laid off, and the district was forced to appoint private attorneys, including civil attorneys, to take the cases without compensation. An attorney from that district, who had previously served on the

local defender board, described how his civil practice, consisting of 250 open civil cases, was "devastated" while he was forced to take 26 court appointments between January and August of 1990.

## 6.0 Availability and Quality of Representation

### 6.1 Determination of Indigency

"Indigency rate" is the percentage of criminal defendants in a given jurisdiction who are provided with an indigent defender or a court-appointed lawyer. Based on our best estimates from survey responses, interviews, and court data, the indigency rate in Louisiana is 80% for all criminal cases statewide, but varies by type of case.

According to survey respondents, the districts do not have adequate resources to aggressively pursue verification of the actual financial status of indigents who apply for a court appointed lawyer. Practices to screen for indigency vary widely throughout the state. Nineteen respondents report that there are no written eligibility criteria in place in their districts for obtaining a court-appointed lawyer. Seventeen respondents indicate that the information needed to make the determination of indigency is obtained through an oral interview, two respondents report the use of a written form, and eight report that both methods are utilized. In terms of who actually screens for indigency, 13 respondents report that the judge gathers the information, four report that it is a representative of the indigent defender program, and 10 report that both the judge and the indigent defender program are involved in the process. In short, there is a general lack of formal procedure for screening applicants:

More than two-thirds of respondents report that they are not satisfied with the quality of indigency determination efforts in their districts. Some examples of their criticisms:

"There is no system used other than to rely on

truthfulness of indigents at interview. Most have a hard time telling the truth when they know a lie will beat the system."

"The 'oral interview' consists of one question: 'Can you afford an attorney?' which is almost universally answered in the negative."

"When a Judge wants to move the docket, there is no time to argue about whether the client can afford private counsel"

"Because of the tremendous caseload, it is impossible to get independent verification of a defendant's claimed indigency."

"The Court...likes to have counsel present, and so judges are reluctant to deny appointed counsel when requested."

## 6.2 Cost Recovery

Based on testimony, interviews, and survey responses, it is apparent that Louisiana's courts do not do an adequate job of recovering costs from clients who are determined to be partially indigent, as they are authorized to do under LSA-R.S. 15:148 of the statute. As we began to discuss in Section 6.1, a more careful and consistent screening process, conducted by an independent screening agency rather than the court, could help reduce heavy indigent defense caseload. In addition, a more thorough screening process would provide an opportunity to identify defendants who, though unable to afford to retain private counsel, are able to pay some portion of the costs of their representation as expressed in the statute. Increasing the thoroughness and efficiency of this process could have several advantages:

- o Funds from partially indigent clients provide an additional revenue source at no cost to the taxpayer or general fund. (although the revenues generated should not be expected to offset a major part of the state's indigent defense costs, they can be expected to cover more than the administrative cost of pursuing them);
- o It enhances the general credibility of the indigent defense system when defendants who are able to pay are not perceived to be "getting a free ride" at the

taxpayers' expense; and

- o It may have a positive impact on the defendant's attitude towards working with his or her attorney on the case, once he/she realizes that the service is not to be taken for granted.

Any effort to improve the cost recovery element of Louisiana's indigent defense system should give serious consideration to the ABA Standards for Criminal Justice, Chapter 5,5-7.2 "Eligibility; Ability to Pay Partial Costs," which states: "contribution should not be imposed unless satisfactory procedural safeguards are provided."

### 6.3 Appointment of Counsel

Following a determination of indigency, the indigent defendant is assigned an attorney. Assignment is accomplished either on a rotation basis or at the discretion of the particular division of court. There is wide variation throughout the state as to the stage of the criminal proceeding at which an attorney is appointed and the timing of the appointment.

Early representation protects not only certain constitutional guarantees as embodied in the Fifth and Sixth Amendments but can also affect significantly, the efficiency of a criminal justice system--cases are adjudicated more timely, jails are not overcrowded with defendants who are candidates for release on bail or, who have been arrested on unfounded probable case.

#### 6.3.1 Felony Cases

Not surprisingly, two of the state's largest metropolitan centers, Baton Rouge and New Orleans, also have two of the state's largest indigent defendant caseloads. Both cities are in districts in which respondents reported that counsel is not appointed in felony cases until "prior to/at arraignment" and in New Orleans,

70 to 75 days may pass before an incarcerated indigent is assigned an attorney.

Only two respondents from the mail survey reported that counsel was appointed within 24 hours of arrest. For the remaining districts the time of appointment ranged from one to two days after arrest (9); three to five days after arrest (13); 16 to 30 days following arrest (2); and more than 30 days (1).

### 6.3.2 Misdemeanor Cases

Only three respondents indicate that counsel is appointed in misdemeanor cases within 24 hours of arrest. This contrasts with delays of more than 16 days in at least nine districts--four districts indicate that the period between arrest and appointment is 16 to 30 days and five districts report that 30 or more days lapse before counsel is assigned. Once again, New Orleans reports the longest delay in appointing counsel to indigents, suggesting a relationship between the strain on the resources of a particular program, and the quality of representation provided.

### 6.3.3 Juvenile Cases

While 21 respondents indicate that counsel is appointed prior to or at initial appearance and nine others report appointment occurs prior to or at arraignment, only four respondents indicate that counsel is appointed to indigent juveniles within 24 hours. Eleven respondents report that counsel is appointed between one and two days after arrest, and six report that the lapse is from three to five days. Eight respondents indicate that counsel is appointed six to ten days following arrest, including two that report the interim at 16 to 30 days, and four programs in which 30 or more days go by between the arrest of an indigent juvenile and the day that counsel is appointed.

#### 6.3.4 De-Criminalization

In Louisiana, indigent caseloads for felonies and serious misdemeanors are large enough to greatly strain the resources of the system. A number of states, including Washington State and New Hampshire, have begun to de-criminalize certain misdemeanors on the premise that the state only has to provide representation to indigents in cases where there is the possibility of a jail sentence. By de-criminalizing certain offenses, including peace and quiet violations, littering, state park rule violations, and some traffic offenses, the state of Washington no longer has to provide indigents accused of these crimes with court-appointed counsel. From the caseload data, it would appear that Louisiana might be able to reduce the strain on its indigent defense system by de-criminalizing certain misdemeanors.

#### 6.4 Services Available

As a Judicial Administrator from a major metropolitan district told the committee, "we need to give defense attorneys full discovery." Apparently, the current system is not fulfilling that need. The lack of essential defense services was an overwhelming concern for the majority of respondents.

- o 46% report that investigators were not available to them.
- o 62% report that expert witnesses were not available to them.
- o 23% report that transcripts were not available to them.
- o 85% report that social services (e.g., substance abuse counseling) were not available to them.
- o 23% report that medical/psychiatric exams were not available to them.
- o 62% report that forensic/lab tests were not available to them.
- o 62% report that interpreters were not available to them.
- o 69% report that polygraph tests were not available to them.

- o 62% report that travel was not available to them.

While this lack of access to services is a major problem in districts throughout the state, it is particularly acute in districts served by volunteer attorney list programs. Respondents from all three such districts report they are not provided with any funds for investigators, expert witnesses, social services (e.g. substance abuse counseling), medical/psychiatric exams, forensic/lab tests, polygraph tests or travel. In the one program of the three which reports to have been allowed some services, it is reported that none of the above listed items are available; only interpreters and transcripts. The respondent indicates that these two services are authorized "rarely" and are paid for not out of indigent defender funds, but out of the criminal court fund, which can only be accessed by permission of the presiding judge or trial judge. Survey respondents in all three districts report that it is common for volunteer attorneys to "pay out-of-pocket expenditures" for which they are not reimbursed in order to provide some of the services necessary for the representation of their clients. As one respondent put it, "The attorneys do it themselves."

While limited funding provides a partial explanation for the lack of available services, the organizational structure of the district defender system may be to blame as well. Less than a third of the staff system programs have authority to pay for the above listed services out of their own operating budgets. Prior to services being provided to a particular district defender system more than half the respondents (54%) reported having to get approval for these expenditures from their IDB. Forty six percent must appeal to the court for the funds, which are drawn from the criminal court fund, and in one program, funding for these essential defense services is at the permission of the district attorney.

Another indigent defender testified to the committee that on a monthly basis he had to "go to the Judge and the District Attorney to ask for more money" from the criminal court fund, in order to finance the most basic services for the representation of his clients.

#### 6.5 Capital Representation

National news reports document in graphic detail that the quality of representation for indigents in capital cases in Louisiana is particularly poor. A National Law Journal study of a random sample of capital trial records in Louisiana from 1978 to 1987 found the average length of a capital trial to be three days, with the average length of the penalty phase being 2.9 hours. Attorneys in capital cases in Louisiana reportedly earn \$25 per hour out of court and \$35 per hour in court, up to a \$1,000 maximum. Despite the statutory guideline that attorneys appointed to capital cases must have five years of experience, one attorney told the committee in Shreveport, that he got his first capital case after he had been practicing "for seven months." In Louisiana today, there are simply not adequate standards or resources to provide indigents with the kind of representation demanded by the complex nature of capital litigation. A former Chief Justice of the Louisiana Supreme Court told the National Law Journal, "If I were indigent, I would be getting less than the best. Is it good enough, in terms of what the constitution guarantees? I Don't think so, especially where the penalty is death."

In the past several years, in a number of districts in Louisiana, attorneys have been forced to provide representation in capital cases without compensation. One such attorney told the committee that his capital case took up "25% of my time for a year." In another district, when the caseload of the local indigent defense program grew completely unmanageable, judges pressured members of the local bar to take the overload cases

without compensation, until "all of the attorneys did free cases, including capital cases."

The case of State of Louisiana v. Higginbotham and Wigley, which is currently awaiting the ruling of the state's Third Circuit Court of Appeals, on remand from the state Supreme Court, has brought some attention to the state of representation for indigents in capital cases in Louisiana. The case arose from circumstances where a district defender board was not able to compensate attorneys in its district who had been appointed to a capital murder case. Several expert witnesses testified at length about the poor quality of the system of representing Louisiana's indigent defendants in capital cases, bringing to light the severity of the problem. Experts said that the quality of representation indigents get in capital cases around the state is "woefully inadequate" and that "the fact that the attorneys are not compensated is one reason why it's the case." Given that the lawyers who take these cases have to earn a living through the practice of law, experts said that the lack of adequate compensation creates an inherent violation of Rule 1.6 of the Louisiana Rules of Professional Conduct, which states that a lawyer is expected to provide diligent, competent representation without any material conflict.

The President of one of Louisiana's most prominent attorneys associations stressed to the Statewide IDB Committee that capital cases are a "whole different breed," and must be separated out from the programs in the localities. A juvenile judge also told the committee that capital defense needs to be dealt with "separately and differently," yet survey respondents do not indicate that is the case. For instance, respondents indicate that very little effort is made in the district programs to distinguish between capital cases and other cases. Very few districts report that specially qualified attorneys are selected to handle the more complex cases, especially capital felonies. One volunteer attorney respondent indicated that in his district there is no such provision whatsoever. Section 6.3 of this report describes the

inadequacy of services available to indigent defense attorneys. According to survey respondents, basic services such as investigators, expert witnesses, forensic or lab tests are very often not available to attorneys, even in death penalty cases.

The U.S. Supreme Court has acknowledged that "death is different," but Louisiana's indigent defense system shows little indication of acknowledging the critical nature of capital cases. The local indigent defense programs do not have adequate resources or reliable access to a sufficient number of qualified attorneys to bear the entire burden of representing all indigents accused of capital crimes in Louisiana.

## 6.6 Independence

Based on survey responses, interviews and the testimony of the various hearings and meetings of the committee, there appears to be a significant problem of a lack of independence of the indigent defense system from the judiciary. In a number of areas, the system for the delivery of indigent defense in Louisiana is in direct violation of the American Bar Association's Standards for Criminal Justice, Chapter 5: Providing Defense Services:

### 5-1.3 Professional Independence

(a) The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-services programs.

(b) An effective means of securing professional independence for defender organizations is to place responsibility for governance in a board of trustees. Assigned-counsel and contract-for-service components of defender systems should be governed by such a board.

Provisions for size and manner of selection of boards of trustees should assure their independence. Boards of trustees should not include prosecutors or judges. The primary function of boards of trustees is to support and protect the independence of the defense services program. Boards of trustees should have the power to establish general policy for the operation of defender, assigned-counsel and contract-for-service programs consistent with these standards and in keeping with the standards of professional conduct. Boards of trustees should be precluded from interfering in the conduct of particular cases. A majority of the trustees on boards should be members of the bar admitted to practice in the jurisdiction.

The Standards go on to state that the purpose for the establishment of a body such as an indigent defender board is to protect the above described independence. Respondents indicate that the current IDB's are not performing that role. Nine respondents indicate that counsel is appointed by a judge in their district. Although all three survey respondents from volunteer attorney programs report that their vouchers are reviewed by their IDBs, respondents also indicate that IDB members in nine of the districts are chosen exclusively by a vote of the district judges, thereby undermining the independence of the IDB itself. One respondent from a staff system indigent defender program reported that the process is, "very political. The Bar submits names to the judges who pick the members. The four senior members [of the IDB] are appointed directly by the judges."

The three volunteer attorney districts report that the judges in their districts determine which attorneys will be included on the list. Only one of the three districts reports that any specific standards are followed by the judges in assembling the list. Judges also determine the hourly rates at which the attorneys will be paid.

At the meeting of the Statewide IDB Committee in New Orleans in January, one judge testified that many judges view the indigent defenders in their courtrooms as "their own employees," and that as a result, there is an "erosion of the adversarial process." The

Judge expressed that some indigent defenders may feel that in order to succeed "they need to be sure that they keep their judge happy." Other testimony before the committee indicated that many judges want "attorneys who are willing to plead and expedite their indigent cases."

#### 6.7 Major Problems and Recommendations According to Survey Respondents

We asked survey respondents to specify what they feel are the major problems in their respective districts, and then in the state as a whole. Almost all respondents indicate that they need more funds and resources in order to do their jobs properly. There is a clear sense of urgency to their descriptions, and an acknowledgement that the current state of indigent defense services is woefully inadequate:

"Underpaid, understaffed, overworked indigent defenders due to lack of funding."

"Inadequate funds for investigation and experts as well as basic representation."

"Funding too low!"

"Recurring shortfalls in funding and assessments for indigent defense."

"A defense, like a prosecution, can only be made with proper investigation, discovery and trial preparation, and until provisions are made for this to happen, it is hypocrisy to believe on claim that indigents are being represented. Until resources for defense are placed on some par with those for prosecution [it] is foolishness to believe that indigents are being provided with legal representation!"

Many respondents identify structural, administrative and policy problems among the most major problems they face:

"Trial judges do not understand the role of indigent defense; they think it exists for the convenience of the docket!"

"The system whereby a "board" supervises a staff is inefficient."

"[Our biggest problems are] bigotry, scorn, and cynicism of indigent defense in the criminal area and a district attorney who refuses payment of indigent defense from the criminal court fund."

"No system to determine and verify indigency."

"Local politics are ruining the quality of representation."

"Judicial control over Indigent Defender Office."

"Need independence from judicial control of purse strings."

We then asked for the respondents' recommendations to improve the system. A majority of respondents (16) explicitly call for an increased state role in the indigent defense system, while many others make recommendations such as "uniformity among districts" and "consistent organizational framework" which also suggest the need for standards and guidelines that would be promulgated from an authority higher than the IDB's themselves. Some examples of the appeals for state involvement:

"Indigent Defender Board appointed by Supreme Court; funded set by state law."

"Substantial allocations from the state level."

"Make indigent defender offices statewide, and not subject to any local controls."

"More state funding to supplement income received from court costs."

"State funding equivalent to district attorneys."

"Statewide support services."

"Impose by statute an hourly rate of compensation."

Some even recommend the establishment of state offices for capital and appellate indigent defense litigation:

"Statewide section for capital defense in all capital cases with attorneys with the expertise and the time to do it right."

"State Appellate and Capital Divisions"

"Statewide entity needed to control standards, statewide appellate office, statewide capital and postconviction office."

While the majority of respondents call for state funding, all of the respondents call for increased funding of some kind, whether it be from increased assessments on criminal violations, police juries, court funds or other alternative sources. Interestingly, only one respondent explicitly opposed the state funding option. He said, "I'd rather answer to local judges than to someone from the state." Other recommendations included increasing defender salaries to reduce high turnover rates, tightening indigency determination standards, creating an independent agency to conduct indigency determination, and limiting judicial interference.

## 7.0 Findings and Recommendations

### 7.1 Findings

The system of indigent defense in Louisiana is beyond crisis stage; it is on the verge of collapse. The following findings document the need for immediate action.

1. The indigent defense system in Louisiana is hopelessly underfunded in virtually every judicial district in the state.
2. Reliance on assessments on criminal violations as the sole source of funds for indigent defense is unpredictable at best and wholly insufficient to ensure quality representation.

3. Most indigent defenders around the state are suffering from overwhelming caseloads that are two or three times the acceptable national standards.
4. Indigent defenders around the state are suffering from extremely low salaries, which are uniformly below those available in district attorney offices.
5. Virtually without exception, indigent defender programs throughout the state have insufficient staff, at both the attorney and support level.
6. There is extremely limited training available for indigent defender staff throughout the state.
7. The representation of capital defendants at trial is particularly gross due to the lack of training, experience, availability of expert witnesses and the time necessary to devote to the cases. There is also a general lack of knowledge and competence by court-appointed counsel in the sentencing phase of trial.
8. Most indigent defenders are substantially out-matched when compared to the resources made available to the various district attorney offices.
9. There are no uniform standards or guidelines for the operation of the programs among the various districts throughout the state. These include:
  - a. No written eligibility standards for defendants to determine whether or not they are indigent.

- b. No effective implementation of cost recovery or recoupment programs to ensure that only those indigent defendants who are truly indigent receive free counsel.
- c. No caseload limitation standards.
- d. No specific funds to support the employment of investigators and expert witnesses.
- e. No plan for early representation of clients.
- f. No consistent policy for determining when conflict of interest cases exist.
- g. No qualification standards for the appointment, term renewal or removal of chief indigent defenders.
- h. No standards for the qualification and compensation of court-appointed counsel.
- i. No standards regarding specific responsibilities of local indigent defender boards.
- j. No standards or guidelines for contract defense throughout the state that will assure proper and quality representation.
- k. There is no system for gathering data on indigent defense statewide and thus no reliable source or method to justify the need for additional resources.
- l. No standards to assure that all indigent defenders and court-appointed counsel are free from political influence and judicial supervision.
- m. No system to assure that part-time indigent defenders are required to bear first allegiance to their indigent defendants and that there is no conflict of interest resulting from their private law practice.

We have found the above enumerated problems to exist in many parts of the state, and further learned that many indigent defender programs have no written policies addressing any of these areas. Not only are there no statewide standards, but neither are there any local program standards from district to district.

Nevertheless, we were highly impressed with the dedication, commitment and effort undertaken by indigent defenders throughout the state. Without them, the system would now be in total collapse. Unfortunately, their success has far too often resulted from their ability to act and think on their feet, and not due to the necessary resources that any good lawyer in private practice would routinely demand. Members of the Bar in private practice in Louisiana could not continue to retain private clients if they were forced to battle without the "tools of the trade." The indigent defenders of the state have for too long remained the step-children of the legal profession in Louisiana; lost, forgotten, seldom appreciated and made to feel like second-class citizens in the profession that they have sworn to uphold.

## 7.2 Recommendations .

Based upon a full review of the results of our study, as stated in the previous section on Findings, it is our professional judgment that an immediate and major overhaul of the indigent defense system in Louisiana is required.

The cornerstone for the overhaul of the system lies with two primary recommendations. The first is the creation of a state-level board or commission to ensure oversight, accountability and quality representation statewide, while maintaining the advantages of local legal services delivery.

The second major recommendation is to substantially increase funds for indigent defense services statewide immediately through a coordinated revenue package.

Without implementation of the primary recommendations, there can be little hope of any significant improvement short of judicial intervention.

1. *A statewide indigent defender board should be created in Louisiana to plan, oversee and coordinate the delivery of*

*indigent defender services throughout the state.*

We are convinced that without such a body, improvement in the quality of indigent defense services will not be achieved in Louisiana. The Board should be created to assure that the quality of representation is as uniform as possible. The Board would be responsible for general planning and oversight, as well as development of standards and guidelines. It would not interfere with the daily operation of local programs, nor would it interfere in any way with the attorney-client relationship. In addition to its primary function listed above, the Board would become the state-level advocate for the indigent defender program in dealing with all branches of government. A particular emphasis would be placed on securing adequate funds from year to year. Presently, nearly half the states nationwide, including a number of southern states, either have statewide boards or are contemplating such a structure.

Finally, the Board would assure fiscal accountability to the Executive and Legislative branches for funds allocated to the program by instituting requirements that each IDB submit uniform reports and statistics on expenditure, caseload, etc. This would provide the accountability required to transfer the current ad hoc system into a more uniform approach and at the same time preserve local program responsibility and control over the attorney-client relationship.

a. *The statewide Board should consist of seven to nine members appointed by the Louisiana Supreme Court for one renewable term of three years. No member should serve concurrently as a judge, prosecutor or law enforcement official. The statute creating the Board should assure that all appointees be committed to the principle of providing defense services free from unwarranted judicial or political influence.*

The methods of appointing Board members for state indigent defense commissions throughout the country vary from state to

state. (See The Spangenberg Group report, Review of Provisions for State Indigent Defense Systems, Section 2.)

However, it is our recommendation, based upon working with and observing these other systems, that the responsibility for appointing members to the Board rest with the head of the Judicial Department in Louisiana, the Chief Justice of the Supreme Court. This will assure judicial responsibility and accountability without violating required standards of independence between the judiciary and defense attorneys.

We further recommend that, once the Chief Justice appoints the Board members, the judiciary should have no further direct involvement in the indigent defense system until it becomes necessary to fill a vacancy on the Board. We also believe that Board members should be removed for cause only and not at will.

*b. The Chairperson of the Board should be selected by a majority of its members and serve one renewable two-year term.*

In order to assure proper checks and balances from the judicial branch, we believe that the Chairperson of the Board should be selected by its Board members.

*c. Board members, including the Chairperson, should not be salaried, but should be reimbursed for actual expenses incurred in conducting the Board's business.*

This recommendation is consistent with our view that Board members should plan, oversee, coordinate and develop policy for the system statewide. The day-to-day operation of the program should be the responsibility of a full-time salaried state public defender, or in effect its chief operating officer. The Board should make overall policy to be implemented by full-time staff.

*d. The State Indigent Defender Board should, by statute, be given responsibility for establishing uniform standards and guidelines for indigent defender program operation around the*

**state.**

These uniform standards and guidelines should include, but not be limited to:

1. eligibility standards for indigent defendants to qualify for representation under the program;
2. standards by which to screen defendants for eligibility and to verify accuracy of information provided;
3. standards for cost recovery and recoupment to assure that those indigent defendants who have the current ability to contribute to their legal defense be required to do so;
4. standards for the qualifications and compensation of court-appointed counsel;
5. standards for early representation;
6. standards for providing representation in conflict of interest cases;
7. standards for contracting with private attorneys for indigent defense services;
8. standards for caseload limitations for indigent defender programs;
9. standards for availability of resources and funds for expert witnesses, investigators and other services necessary to provide a quality defense; and
10. standards for minimally adequate supervisory staff, clerical assistance, appropriate office space and law library.
11. establishment of a policy that will ensure adequate and regular training for all staff attorneys of the indigent defender offices throughout the system.
12. establishment and enforcement of minimum levels of training for private attorneys taking court-appointed indigent cases.

These and other standards should be developed utilizing the ABA Standards for Criminal Justice, Chapter 5.

Some state statutes creating similar boards have written into their statutes narrowly defined language setting out in detail what is required regarding a particular standard. Others have, by statute, vested the responsibility for developing the specific requirements of the standards in the Board. We recommend the latter approach, given the enormous number of the tasks that lie ahead. The Board will be best able to determine what can be achieved in both the short and long-term, taking into account the resources available. We would expect the Board to revise and expand upon its standards over time consistent with changes in criminal law and procedure in Louisiana, and the availability of additional funds. By recommending this approach, we rely heavily on the commitment of Board members toward fulfillment of the ABA Standards.

2. *The Board should appoint a Chief State Public Defender to carry out the policies of the Board. The Chief State Public Defender should be hired for a renewable term of four years and should be removed only for cause. Selection of the Chief State Public Defender should be based solely upon merit. He/she should be an attorney with substantial prior experience in criminal practice.*

It is important to establish minimum standards for appointment of the Chief Public Defender in the statute. In addition, the recruitment and hiring process of the Chief State Public Defender should comply with affirmative action requirements.

- a. *The Chief State Public Defender may appoint such staff as he/she feels are necessary to properly administer the program, subject to the availability of funds. In addition, the Board should make a special effort to assure that its chief operating officer be provided with sufficient resources and staff to properly*

*implement the policies it sets forth.*

In order to assure accountability to the Executive and Legislative branches, and to the indigent defender program's clients throughout the state, the Board must provide sufficient staff and resources for the Chief State Public Defender to perform all of his/her required tasks. In our work with various indigent defense systems and their efforts for improvement, we often hear concern about creating, "another bloated bureaucracy." This is a valid concern, however, accountability for state oversight must necessarily involve limited trained and professional staff. Thus, while guarding against an over-expansion of state employees, equal attention must consider that a program managing over \$10 million be properly managed and controlled.

3. *The State Board shall be responsible for the development of indigent defender regions throughout the state. The goal would be to develop 10-12 such regions throughout the state. These so-called indigent defender regions should be designed using criteria such as demographics, criminal caseload, population, judicial districts and other reasonable criteria. Once these regional lines are drawn, all indigent defender services should concentrate on legal representation to indigent defendants within each region.*

In our view, the best method for delivering indigent defense services in Louisiana is on a regional basis. We would leave to the state Board the responsibility for determining what specific regional plan would best meet the needs of the new program in Louisiana. The justification for the regional approach is that it would better meet the needs for balanced funding around the state and the requirements of implementing the overall standards and guidelines promulgated by the Board. It is also consistent with our strong preference in Louisiana for a combination of state oversight and policy with the delivery of day-to-day legal services at the regional and local level.

a. Once the regions have been established, the State Board will appoint a Chief Regional Public Defender for each region. Said individual should have an initial term of two years, with renewable terms of four years. A Chief Regional Public Defender should be removed only for good cause shown. Chief Regional Public Defenders will be responsible for the supervision and operation of indigent defender programs in their regions.

Oversight by Chief Regional Public Defenders will further fortify the structure of the new indigent defense system in Louisiana. These individuals will be responsible for management and operation of their regions on a daily basis, once their regional plans are approved by the State Board.

b. Each Chief Regional Public Defender would be required every two years to present a plan to the Chief State Public Defender and the Board delineating the operation of the indigent defender program in his/her district. This plan would include detail on how the region will provide indigent defender services to juvenile and criminal defendants in each court within the region. It would also include a request for funds based upon the necessary personnel and other costs that the Chief Regional Public Defender feels is necessary to provide quality representation in that region.

The plan would be required to be developed in accordance with all of the standards and guidelines previously adopted by the State Board.

The Board and the Chief State Public Defender would negotiate the plan with each Chief Regional Public Defender, and following negotiations, adopt a specific plan for each region for the following two years.

Implementation of this recommendation will ensure proper state oversight to assure uniform fiscal accountability and quality of representation. It will also ensure that each region is funded and

staffed in accordance with its own particular local needs, commensurate with the uniform standards and guidelines developed by the State Board. We believe this is a key measure for attaining the balance of state oversight and local delivery of legal services. It is obvious that the negotiations regarding each regional plan must take into account the overall resources available to the State Board for delivery of indigent defense services in Louisiana.

4. *The State Board should create a division within the statewide indigent defender program to be responsible for the representation of indigent defendants on direct appeal and state post-conviction. The program should be staffed by full-time assistant public defenders who report to the Chief State Public Defender. Caseload standards would be developed by the Board to assure that the full-time public defenders are able to provide quality representation for cases on direct appeal. The State Board should also provide a program wherein private court-appointed counsel provide representation for indigent defendants on direct appeal and state post-conviction. These cases should be reserved for co-defendants and situations where the full-time public defender division has reached maximum caseload levels.*

The separate division would provide representation in a large number of indigent criminal appeals. However, the private bar would have a substantial role to play in handling cases either involving co-defendants or other conflicts or cases for which the appellate division is not able to provide representation. We would also recommend that the same division provide representation for all indigent defendants who desire to bring appropriate state post-conviction procedures. This representation should be provided in all cases in which a request is made by the indigent defender and should include the responsibility of assisting the indigent defendant in developing the state post-conviction petition.

5. *The State Board, in conjunction with the Death Penalty Resource Center of Louisiana (DPRC), should develop a model and implementation plan for a state funded and administered division which would provide both direct and consultation services in capital cases at the trial and direct appeal levels. The responsibility of the DPRC should be to provide back-up legal services and direct representation in state post-conviction and federal habeas corpus capital cases. Adequate state funds should be provided for this purpose.*

Given the complexity, time and resources required for the defense of capital cases, these matters are best handled by lawyers with capital expertise.

6. *The Board of the state indigent defense program should be appointed by the Chief Justice of the Supreme Court of Louisiana immediately upon adoption of this legislation. The State Board should in turn hire, as soon as possible, the Chief State Public Defender and sufficient support staff to assist in the planning and development of the program statewide. Because of the enormous amount of work required to implement the statute on a statewide basis, the Board and the Chief State Public Defender should seek to first implement the appellate and capital divisions on July 1, 1992. The trial division operating out of the various regions should be incorporated into the state program by January 1, 1993.*

Given the nature of the current ad hoc system for providing indigent defense in Louisiana, it is critical that the new State Board have sufficient time to develop the standards and guidelines for indigent defender trial operation and to plan for the development of the various regional offices. In our judgment, a period of no less than six months is necessary to begin the regional trial operation. In terms of the transition from the current ad hoc program to a regional program, we would recommend

that all indigent defender districts with chief indigent defenders be grandfathered into the new regional trial level program for a period of one year, unless their current written term of office exceeds that period. Once the regional plan is in operation, the Chief Regional Public Defender would be responsible for hiring the attorney staff for each of the offices in his/her region. This would be in conformance with the guidelines for recoupment and qualification to be developed by the State Board. Thus, responsibility for administration at the regional level would be placed in the Chief Regional Public Defender, who in turn reports to the Chief State Public Defender and the Board. Once again, this is consistent with the policy incorporating statewide oversight and standards with local control.

#### 7.2.1 Funding Recommendations

We have had substantial experience designing and developing cost estimates for indigent defense systems throughout the country over the last decade. Such estimates are normally based on caseload and personnel funding formulas. When we applied these funding formulas to Louisiana, the figures exceeded \$30 million. Such an increase in funding would appear virtually impossible to achieve in the immediate future. Even if such an increase was accomplished, Louisiana would still rank at approximately the median point on a cost per case basis for the 50 states using the data from our 1986 nationwide study. Assuming only a small increase in caseload, we recommend that this \$30 million figure be a target for Louisiana to attain by 1996.

In the meantime, there is a desperate need to double the budget for indigent defense in Louisiana during the next two years. This would result in a total figure of \$20 million. To achieve this figure it is absolutely necessary to develop alternative funding sources in Louisiana. Relying solely on criminal violation assessments to finance indigent defense is an unstable and

unpredictable approach. To simply increase the amount assessed per violation to \$30 or some other amount would also prove futile. What is needed is a funding package which would, within two years, double the present expenditures. A major portion of this funding package must come from the state's general fund. We strongly recommend that the initial general fund appropriation cover one third of the required additional \$10 million. The remaining two thirds might then be collected through a significant increase in the IDB criminal violation assessments, the development of a new revenue enhancement source such as an add-on to court costs or filing fees and a strict, but fair cost recovery program.

In summary, therefore, we make the following recommendations for funding:

1. That a new revenue package be developed which would provide approximately \$10 million of new funds within the next two years bringing total funds allocated to a level of \$20 million.
2. That a target figure of \$30 million be established as a funding level by 1996.
3. That the two-year \$10 million revenue package be derived as follows:
  - o 1/3 from the state's general revenue fund
  - o 2/3 from some combination of a new revenue enhancement; an increase in the IDB assessment; and cost recovery obtained from those indigent defendants who have the means to reimburse the state for a portion of their legal expenses.

### 7.2.2 Other Recommendations

1. The State Indigent Defender Board should establish rates of compensation for private attorneys who provide counsel in indigent cases at a presumptive state rate which takes into account the average hourly overhead of a private attorney in Louisiana.
  
2. Employees of staff system indigent defender programs should not engage in the private practice of law, unless the Board determines that the indigent defense caseload in a particular district is so low as to require only part-time employment by the district indigent defense program. In all cases, however, employees of indigent defender programs should be precluded from private practice of criminal law, in the district and courts in which they customarily appear in their capacities as employees of the indigent defender program.

**T H E        S P A N G E N B E R G        G R O U P**

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**A STUDY OF THE OPERATION OF THE INDIGENT DEFENSE SYSTEM IN  
THE 19TH JUDICIAL DISTRICT  
EAST BATON ROUGE PARISH, LOUISIANA**

October 29, 1992

Prepared for:

The Indigent Defender Board  
of the 19th Judicial District  
East Baton Rouge Parish, Louisiana

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On behalf of the American  
Bar Association  
Bar Information Program

This report has not been approved by the ABA House of Delegates or Board of Governors and does not constitute the policy of the American Bar Association.

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## 1. Introduction

In March, 1992, the American Bar Association's Bar Information Program (BIP) received a request for technical assistance from the Indigent Defender Board of the 19th Judicial District in East Baton Rouge Parish, Louisiana. The Board requested assistance in conducting a general review of the district's Office of the Public Defender (OPD), with a focus on "management and efficiency," and the "operation" of the program.

The Bar Information Program of the American Bar Association was created to provide expert technical assistance to state and local jurisdictions interested in improving their indigent defense system. For the past seven years, The Spangenberg Group of West Newton, Massachusetts has been the principal provider of technical assistance under the Bar Information Program. On April 28, 1992, the Spangenberg Group of West Newton, Massachusetts was told that the request had been approved and to begin the study.

The Spangenberg Group has extensive experience with current indigent defense issues in Louisiana, having completed a statewide study for the Louisiana Supreme Court's Judicial Council in March 1992. The statewide study conducted in 1991-1992 found that indigent defense throughout the state was underfunded, and lacked adequate standards and guidelines needed to ensure quality representation throughout the state. The study's principal recommendations, all of which were approved by the Judicial Council, called for greater state oversight of the delivery of services statewide, as well as increased funding from the state and existing revenue sources. In conducting this study, members of the Spangenberg Group are fully aware of the statewide conditions in which the Baton Rouge office is functioning and the systemic problems which are to some degree beyond local control. However, this report is intended to focus on local issues in the Baton Rouge program and to assist in improving the operation of the office.

At the present time, there is no state appropriation for indigent defense in Louisiana. There are also no statewide

standards, guidelines or suggested procedures for operating an indigent defense program, beyond the very basic mandate that a public defender program or private bar program be established in each district.

The Office of the Public Defender (OPD) is the principal provider of representation to indigents accused of crimes in the 19th Judicial District, which is East Baton Rouge Parish. The office first opened in 1976. The current Director, Alton Moran, first took office in 1976, and then returned as Director after serving for three years as a federal magistrate. As the criminal caseload in the parish has risen substantially over the past several years, the expansion of the OPD has not kept pace with the increased demand for indigent defense services. There has also been little constructive change in the structure or funding of indigent defense programs in Baton Rouge or in the state of Louisiana over the past several years, while there has been dramatic growth and change in cities and states all over the country.

In conducting this study, we did not attempt to evaluate the quality of representation given in individual cases. Our focus is on the operation and management of the various components of the program such as the budget, compensation and supervision, training, allocation of staff time and resources and other major functions of management in a public defender program. However, the operation and management of the office has a major impact on the quality of representation the program is able to provide. Therefore the study seeks to identify aspects of the operation and management that have impact on both the efficiency and the general quality of services provided by the program.

## 2. The Site Visit

From June 22 to June 24, 1992, members of The Spangenberg Group and authors of this report conducted a site visit in Baton Rouge. While we were in Baton Rouge, we spent time in the office

and in the various courts in the district. Over the course of our visit and follow-up telephone calls, we interviewed a large number of public defender staff members, including the office manager, eight staff attorneys, three investigators and three members of the support staff. We also spoke with three judges in district court, two judges in city court and the one judge in juvenile court, as well as five members of the IDB, two assistant district attorneys and attorneys on the conflict appointment list. We also spent time observing the operation of several of the criminal sections in district court.

Our site visit began and concluded with extensive private interviews with the Director of the OPD, Alton Moran. During the first interview, he gave us a comprehensive overview of the program, and a preview of some of the current issues which we might hear about over the course of our three days in Baton Rouge. At the conclusion of the visit, we returned, in part to hear more of the Director's perspective, but also to provide him with a frank overview of what we learned. We offered some preliminary findings and suggestions, some of which the Director found helpful, and others of which he did not support.

In addition to our many interviews, we reviewed a number of statutes and documents which were given to us by the Office of the Public Defender to further our understanding of the program and the office environment. These included personnel and budget data, capital case assignment information, office policy and procedures, and other materials. In addition, we were given several administrative documents by various staff members, to further our understanding of the operation. We also reviewed data supplied by the office of the court administrator, on caseload and filings in each section of district court.

What follows is a summary of what we learned, both on-site and during follow-up telephone interviews. Without exception, we were welcomed by everyone we met and were told that many of the attorneys in the Office of the Public Defender provide high quality

representation. However, there are clear and common themes which we found to be prevalent throughout the legal community with regard to the weaknesses of the indigent defense program. We were given the impression that in the past the IDB played a passive role, relying almost exclusively on the reports of the Director. We were also given the impression that the current board intends to provide closer oversight, policy-making and direction to the program.

3. How the Court System is Organized in East Baton Rouge Parish

In the 19th Judicial District, there are three distinct courts: District Court, Juvenile Court and City Court.

3.1 District Court

The jurisdiction for the District Court for the 19th J.D.C., located in Baton Rouge, covers all of East Baton Rouge Parish. The court has six civil sections and six criminal sections. The criminal sections handle both felonies and misdemeanors. The judges are elected by popular vote and serve a term of six years. Each serves in one section of criminal court; they do not rotate between civil and criminal dockets, nor among the sections of criminal court.

3.2 Juvenile Court

There is only one section of juvenile court. It is served by one judge, who is elected and serves a six year term. It is in a separate building outside of the downtown area, and is independent and isolated from the activity of the District Court.

3.3 City Court

There are three city courts in the 19th Judicial District, located in Baker, Zachary, and Baton Rouge. The City Court in Baton Rouge is divided into eight sections: four civil and four criminal. Eight elected judges serve terms of six years and rotate between civil and criminal courtrooms on a weekly basis. City

Court handles all traffic violations in the jurisdiction, as well as misdemeanors which are violations of city ordinances.

The City Courts of Baker and Zachary have lower caseload volume, as they serve considerably smaller communities. They handle traffic violations and misdemeanors which are violations of city ordinances in their respective jurisdictions.

#### 4. How Indigent Defense is Funded

With regard to the funding of indigent defense, the State of Louisiana is unique in this country. While nationwide there are examples of poorly funded systems and unpredictable funding sources, there is none which creates the level of confusion found in the judicial district programs in Louisiana. The precarious nature of the funding sources was a major premise of the recent push toward a state supported system. It is also the most commonly cited explanation for the current state of affairs in the OPD in Baton Rouge. While the Director and others are not to blame for the inherent difficulties created by the statutory funding scheme, there remains significant room for improving the program within the confines of the current funding scheme. The following discussion attempts to explain some of the issues raised by the current funding process.

##### 4.1 The Indigent Defender Fund

As is the case in each of the state's judicial districts, the Indigent Defender Fund is the primary source of funds for indigent defense in the 19th Judicial District. The fund, which was established by statute, mandates every criminal court of original jurisdiction with the exception of some less populated cities and towns, to remit special costs to the individual district's indigent defender fund (La.Rev.Stat. Ann. §146 B.(1)). The remitted costs are from assessments in cases resulting in criminal convictions, and in bond forfeiture cases.

The statute sets a minimum \$17.50 cost for each offense, except parking violations, however, the minimum may be increased to not more than \$25.00 upon recommendation of the district board and a majority of the judges in the district. Both Baton Rouge and the City of Baker have adopted the statutory minimum cost of \$17.50 but the City of Zachary reportedly assesses only \$7.50--ten dollars below the proscribed statutory minimum. There is no reason that all courts in the 19th Judicial District, which has one of the highest caseloads in the state, are not charging the statutory maximum of \$25.00 on court costs assessments earmarked for indigent defense.

The Indigent Defender Fund is the primary source of funding for the OPD, providing the major portion of the overall budget for the office. The remainder of the public defender's budget is comprised from various other funds detailed below.

#### 4.2 City-Parish Budget

The City-Parish budget traditionally includes a small line item amount of \$15,000. This comes in the form of a monthly contribution of \$1,250 toward the office's rent, which the city-parish pays directly to the landlord. The balance of the rent comes out of the other revenue sources which are detailed in this section.

#### 4.3 Discretionary Funding Sources

##### 4.3.1 Fines and Forfeitures

By statute, all fines and forfeitures imposed by district courts and district attorneys' conviction fees must be paid into the parish treasury and then deposited into a special "Criminal Court Fund" account. (La.Rev.Stat. Ann. §571.11 A(1)(a)). In turn, the funds in this account may be used to defray certain criminal court expenses including transcription costs, indigent defense costs, grand and petit jury and witness fees. The funds are paid out upon motion of the district attorney and approval of the

district judge. While some of the funds have been designated to defray indigent defense costs, and allocated to the public defender, there is concern about the propriety of the manner in which these funds are allocated. This issue is addressed in detail in Section 4.5.

#### 4.3.2 Probation, Restitution, Fees

The Louisiana Code of Criminal Procedure governs the payment of restitution and other fees in probation cases. In addition, to the required payment of restitution the court may order a defendant placed on probation to make additional payments. These payments may be directed to any of a number of criminal justice agencies including the indigent defender program, the criminal court fund, the sheriff, the clerk of court, law enforcement offices and crime prevention programs. (La.Code Crim.Proc. Ann. art 895.1(B)). It is difficult to determine exactly what monies are directed to the indigent defender program via this source. Theoretically, funds may be directed from two sources--the payment orders directly to the indigent defender program and payment orders to the criminal court fund, a portion of which may, in turn, be directed to the OPD. It is difficult to know how much revenue is generated by this source because when agencies that provide probation services are ordered to collect money for the OPD under this statute, the judge will often also ask them to collect and deliver the money owed to the OPD under the cost recovery statute. The result is that the OPD receives a "lump" sum which does not detail the statutory source of the money.

#### 4.3.3 Cost Recovery

In some instances, the court may determine that a defendant is able to contribute to the cost of representation. By statute, if the court orders a defendant to make such payments, the amount paid is directed to the indigent defender fund of the district. (La.Rev.Stat. Ann. §148) When a judge orders partial payment under

this statute, the money can be collected any of several different ways, which creates a great deal of confusion for the OPD, which does not know how much has been ordered or collected. Depending on the judge's practice, the defendant can be ordered to pay a cost recovery contribution to the OPD directly, or to pay it through the court. Some judges will order the amount paid through the Sheriff's office, or through the agency providing the defendant's probation officer. When the various agencies send a monthly check to the OPD, included along with cost recovery money is funds they were ordered to collect for the OPD under the other statutes as well (court costs assessments, probation, fines and forfeitures). The result is that it is impossible for the OPD to know how much of its monthly income is attributable to cost recovery.

In recent times, in large part because of the state of the economy, the percentage of defendants who are truly indigent has risen. Cost recovery is an important component of any cost containment program, and should be maintained in the Baton Rouge office. However, given the manner in which the money is collected and the small percentage of total income which it represents, even if uniformly enforced, it is likely to provide only a small portion of the OPD's budget in the future.

#### 4.3.4 Judicial Expense Fund

A special judicial expense fund was established by statute for each judicial district. The fund is a collection of filing fees from civil cases, and additional costs assessments from criminal convictions and bond forfeiture cases. (La.Rev.Stat. Ann. §991) The judiciary has total discretion as to the disbursement of these funds and generally they are used to defray general court administration expenses. However, the fund is also used to pay expert witness fees and expenses for the defense of serious cases, upon request of the appointed counsel and the approval of the judge.

#### 4.4 Budgeting Problems

The major funding sources for the operation of the indigent defense system in the 19th Judicial District, and throughout the state of Louisiana, are unpredictable and unreliable. In addition, and perhaps the most important point on the funding issue, the amount of funds made available to the program does not bear any direct relationship to the program's caseload/workload and the staffing needed to provide quality representation to its clients. In fact, for 1992, which is now almost over, the program, which spends over \$1 million annually, does not even have an approved budget.

The OPD's most recent budget, the budget for the year ending December 31, 1991, lists several line items under "Revenues" which are actually composites of several revenue sources, as a result of the confusion in collecting revenues which is detailed in the previous sections. We were told that the line item "Sheriff" represents revenues from the \$17.50 court costs assessments for indigent defense from district court as well as the portion of indigent defense cost recovery money which judges ordered the Sheriff to collect and deliver. Also under "Revenues" is a line-item called "City-Parish," which represents the combination of \$17.50 court costs assessments for indigent defense in city court as well as the portion of cost recovery money collected and delivered by city court judges. The same kind of ambiguity exists for line items called "Probation," "Non-Support," "Court Ordered," and others. The end result is that the OPD does not know how much of its income comes from each source, and cannot rely on estimates, because the power to assess the fees that generate the funds lies in the day to day discretion of the judges.

We were told that in some months there is a surplus of several thousand dollars over expenses and in other months the income falls short of meeting expenses by thousands of dollars. Given that the OPD operates on limited resource levels which can vary monthly and are difficult to project, it is important that the office establish

priorities. For example, the Board and Director could agree that any surplus over a given period will be invested in salary increases rather than on new equipment. There is currently not enough direction from the IDB as to how funds should be spent during a period of surplus.

One instance where budget priorities would have been useful occurred in the Spring of 1992 when there was apparently a surplus for several consecutive months. The Director chose to reduce the longstanding backlog on payment to conflict panel attorneys from 12 months to two months over a short period of time. While these payments should certainly be more prompt, it may not have been in the best interests of the program to expend a large portion of the period's surplus without investing any of it in improving the infrastructure (salaries, equipment, staff) of the program. Given the uncertainty of the revenue from month to month, we believe that the board should establish, with the input of the Director, priorities for distributing funds both in times of surplus and deficit.

#### 4.5 Problems of Independence

The fact that the operating funds for the public defender's budget are to some extent left to the discretion of the judiciary is of substantial concern. Reportedly, contributions to several of these funds at times carry explicit conditions, i.e., the hiring of certain individuals and/or salary increases for existing OPD staff). It is thought throughout the legal community that the Director does not effectively handle the participation of judges in the funding process. One experienced staff attorney said that most of the time, a judge is just displaying "normal fortitude," but to Mr. Moran, that kind of involvement is perceived as pressure too strong to resist. In fact, some judges make use of the discretionary funding privilege to provide the OPD with funds earmarked for training or salary increases because they know that these advantages are ultimately a benefit to the entire process.

They also realize that for most OPD staff, these benefits would not be otherwise available. However, there is agreement in the community that certain judges take advantage of the Director's willingness to comply.

The American Bar Association's Standards for Criminal Justice address the importance of defender services being independent from its funding source in Chapter 5-1.6. The section on funding includes the following passage:

The level of government that funds defender organizations, assigned counsel programs or contracts for services depends on which level will best insure the provision of independent, quality legal representation. Under no circumstances should the funding power interfere with or retaliate against professional judgments made in the proper performance of defense services.

It may be the case that stronger leadership is necessary to ensure that these funding sources serve only the best interests of the OPD and its clients. Nevertheless, any leverage that the judiciary has over decisions of the Director of the OPD raises serious concerns about the system itself and the independence of the defender services program.

## 5. The Provision of Representation

### 5.1 The Indigent Defender Board (IDB)

As mandated by statute (R.S. 14-144) the 19th Judicial District (East Baton Rouge Parish) is served by an Indigent Defender Board (IDB) which is composed of seven members of the legal community selected by a vote of the District Court judges from a list of nominees provided by the local bar association. The board meets quarterly and sees as its role to provide general policy guidance to the Director and the indigent defense program. It does not, however, interfere with the conduct of individual cases.

Historically, the board has been passive in its oversight of the program. This inactivity may help to explain the lack of strong administrative and managerial structure in the OPD. However, the IDB appears to be growing more aware of its responsibility over the Office of the Public Defender. While in the past, some board members have had minimal backgrounds in criminal law and indigent defense, the trend in appointments appears to be in a new direction. The most recent appointees have more experience in these areas, and appear from our contact with them, to have a genuine interest in taking a more active role in the oversight of the program. In addition, some of those members who have been on the board for a long time appear newly energized to confront the challenge of improving the program.

Even in this new age of awareness and analysis, board members appear to be uncertain of their role in the process of oversight of the provision of defense services. For example, the board has still not approved a budget for the current year, which is now almost over. As a result, any budgeting or forecasting that may have been done was never approved by anyone outside of the OPD.

One example of the repercussions of not having a budget, or even budget priorities, is documented in Section 4.4. Given the monthly fluctuation of the program's income, it is crucial that the board establish specific budget priorities which ensure that whenever possible, they are investing in the future of the OPD.

The ABA Standards address the role of boards of trustees in Chapter 5-1.3, entitled "Professional Independence." Section 5-1.3(b) begins:

An effective means of securing professional independence for defender organizations is to place responsibility for governance in a board of trustees.

The Standards continue:

The primary function of boards of trustees is to support and protect the independence of the defense services program. Boards of trustees should have the power to establish general policy for the operation of the

defender, assigned counsel and contract for services programs consistent with these standards and in keeping with the standards of professional conduct.

Specific examples of areas of policy the IDB of Baton Rouge might work on are described in the recommendations which conclude this report. In addition, the study provides some examples of how selected programs in other jurisdictions have approached some of these policy problems.

### 5.2 The Office of the Public Defender (OPD)

Districts around the state have one of three kinds of indigent defense systems: contracts with private firms, volunteer attorney panels, and public defender programs. In the 19th Judicial District, the IDB has exercised its statutory option to "employ[s] a chief indigent defender and such assistants and supporting personnel as it deems necessary." Known as the Office of the Public Defender (OPD), the program established by the IDB is the primary provider of representation to indigents accused of crimes in the district court and city courts of the 19th Judicial District.

The current director of the OPD, Alton Moran, serves mainly as an administrator, and does not handle a caseload of his own. The Assistant Director, who is also a Section Chief in District Court, has been assigned few administrative responsibilities. She expressed to us a willingness to take on more specific leadership and administrative responsibilities.

There are 17 staff attorneys, eight staff investigators (including a Chief Investigator), six secretaries and one bookkeeper. Each secretary is responsible for all support work for three or four attorneys in the office, with the exception of the Director's secretary, who provides support services to the Director, and oversees the entire support staff.

There is a nucleus of very strong legal staff in the OPD. Several Judges commented that some of the OPD attorneys are among

the best in the area. Further evidence of this is that many private criminal attorneys and conflict attorneys come to the OPD to seek advice from some of the staff lawyers. We were also told that there are some OPD attorney staff who do not have the same intensity about their positions as public defenders. One IDB member commented that as some of the dedicated staff are moving on to other jobs, they are being replaced by people "just looking for a job; any job." While a nucleus of the staff takes its "full-time" status seriously, we were told that a portion of the staff spends at least half of their time working on their private practices. This issue will be discussed in greater detail in Section 7.3. One of the most difficult tasks we faced in studying the management of the OPD was making accurate quantitative determinations of the caseloads of individual attorneys. The OPD's data collection on caseload is not adequate for the purpose of effectively monitoring the distribution of workload. It is also not compatible with the system used by the court administrator's office. Most attorneys told us, however, that their caseloads were extremely high, and did not allow them to spend much time with their clients.

#### 5.2.1 Representation in District Court

Two staff attorneys and one investigator are assigned to each section of District Court. The senior of the two attorneys in each section serves as Section Chief. In several of the sections, the two assistant public defenders have arranged their schedules so that they share the total workload by alternating weeks or days in court. The attorneys and investigators are assigned to their respective sections on a non-rotating basis.

Some of the staff attorneys in district court are thought of by the legal community as truly exceptional. However, to a great extent, the impact of the talent and dedication of individual attorneys is in many cases muted by the excessive caseloads and the structural and administrative weaknesses of the program.

Several staff attorneys in district court told us that their heavy caseloads cause them to be concerned about the quality of representation they can provide. One senior attorney told us that he estimates that his open caseload includes 100 to 150 felonies and 50 to 75 misdemeanors. He also said that at the current level, he "simply can't give the time necessary to a defendant." Caseloads per attorney in district court appear to be above the levels recommended by national standards. This finding is particularly troubling in the Baton Rouge District Court, because so many of the public defenders are carrying these high caseloads while only working on what is really a part-time basis.

The system by which staff attorneys are assigned on a permanent basis to a particular section of district court is particularly a problem in Baton Rouge because individual judges are in positions of power with regard to the funding of the OPD. Some judges in district court who we spoke to were quite praiseworthy in their comments about 'their' public defenders--"I have been blessed because they've given me two of the finest attorneys in the parish." These judges may oppose the rotation method because they fear that the next public defender in their court would not work out as well.

Both public defenders and judges acknowledge, however, the potential and in some instances, real problem, of the public defender accommodating the judge rather than zealously advocating for each client. This accommodation is often quite subtle and public defenders are usually not even aware of the extent to which their advocacy is constrained.

This is not to say that the representation provided by the public defenders assigned to specific sections of court is inherently undermined, but the potential dangers of this method of case assignment should be addressed. There are alternative methods of assigning cases. It is also possible to operate a rotation. When presented with this as a possible option, Mr. Moran resisted the suggestion on the basis that such scheduling was impossible and

out of fear that it would upset the judges to change the present system. In fact, many public defenders around the country operate on a rotation, recognizing the advantage to their clients as well as to the independence of their programs as a whole.

In the public defender programs in Philadelphia and Oklahoma City, for example, staff attorneys are rotated every week. In Louisville, Kentucky, the staff attorneys are assigned to a division (adult, juvenile, appellate, major litigation) and are assigned cases in various courtrooms within their division on a rotating basis. In Nashville, public defender staff attorneys are rotated between three courts on an annual basis. *Will not wk.*

### 5.2.2 Representation in Juvenile Court

According to the OPD's personnel records, two full-time attorneys are assigned to Juvenile Court. The reality, however, is that there are two part-time staff attorneys assigned there who make up the full-time equivalent of one attorney. Because the two attorneys' salaries are significantly lower than any other attorney's in the office (\$16,000), they must maintain active private practices. As a result, each one only devotes two to three days a week to his juvenile cases. The two have worked out a schedule so that during court hours, the court is always covered by one of them. In alternate weeks, one attorney works three days, and the other works two days. During the time that they are not "on" at juvenile court, they do a great deal of their own investigation, and work on their private practices.

According to the staff attorney and Juvenile Court judge we spoke to, juvenile court is inundated with cases. Often, said the judge and the attorney, the lawyer and client do not meet until they are "standing in front of the judge."

In 1991, the OPD had the equivalent of one full-time attorney appointed to 981 cases in Juvenile Court. In the first six months of 1992, the OPD was appointed to 524 cases, indicating that the caseload is rising. With only two part-time attorneys to provide

representation in all of these cases, there is a serious risk that the quality of representation is being compromised. These findings are especially disturbing with regard to the OPD's response to the situation. The Director has extremely limited contact with his staff attorneys in juvenile court, and less with the juvenile judge, a former OPD staff attorney herself. The attorneys have no meaningful supervision and the only office space available to the juvenile attorneys is a "cubby hole" at the juvenile court building.

The two part-time attorney rotation is detrimental to the quality of representation provided to clients; however, this is not entirely the fault of the attorneys themselves. The genesis of the problem is a combination of inadequate resources, and the absence of administrative or structural guidelines in the office. Their alternating work schedules institutionalize the already common problem of lack of adequate contact between client and attorney.

### 5.2.3 Representation in City Court

In Baton Rouge City Court, representation for indigent defendants is also provided by staff attorneys of the Office of the Public Defender. Two attorneys devote all of their public defender time to appointments in City Court, while a third staff attorney handles a smaller caseload in addition to doing non-support cases in District and Juvenile Court.

For the City Courts in Baker and Zachary, the IDB has contracted with a non-staff attorney to provide representation to all indigent persons accused of crimes.

In Baton Rouge City Court, the OPD caseload is enormously high. In 1991, the OPD was appointed to 2,093 cases there, which means the two full time OPD attorneys handled over 800 cases each, and the half-time attorney over 400, in addition to his caseload of non-support cases in district court. These caseload estimates greatly exceed national standards, and raise the serious possibility that the quality of representation is being

compromised. There needs to be more attorney time allocated to representation in City Court.

### 5.3 Representation in Appeals

At the time of our visit, all indigent appeals for the 19th District were handled by one attorney in the OPD. That single appellate attorney was also responsible for providing representation in all misdemeanor cases in one section of district court. She painfully concedes that due to the high caseload and their limited staff resources, the OPD is not able to provide the highest quality representation to appellate clients. At the time of our visit, she had an active caseload of 76 appeals including two capital cases and one second degree murder case. The office filed over 200 appellate briefs in 1991.

In 1991, the appellate attorney also provided representation in all misdemeanors to which the OPD was appointed in one section of district court. This included almost 300 misdemeanor appointments. The large misdemeanor caseload required her to be in district court almost all day, five days a week, requiring that the appellate work be done at night and on the week-ends. The appellate attorney, who is widely reported to be a dedicated and talented public defender, readily admits that the quality of representation she was able to provide under those conditions was limited by her caseload.

An additional complication in the appellate section comes from a high volume of "excessive sentence appeals" by former OPD clients. The Louisiana legislature codified a ban on filing an appeal on the basis of excessive sentencing if the sentence in question was agreed to by the defendant. However, as of June 1992, the appellate section had 19 excessive sentencing appeals in its caseload, all of which were filed on behalf of clients of OPD attorneys.

Excessive sentence appeals in cases where the sentence was agreed upon as a result of a plea bargain, are troubling on a

number of levels. Not only do they take the appellate court's strained resources away from meritorious cases, but also, filing these meritless appeals risks the plea being overturned because of a patent error, thus hurting the client. In addition, such appeals raise questions about the circumstances under which the client accepted the plea bargain in the first place.

On our final day in Baton Rouge, the Director told us he had decided to relieve the appellate attorney of her misdemeanor caseload, to allow her more time to devote to appeals. While this is a much needed management decision, and represents a step in the right direction, the appellate caseload is still excessively high for one attorney.

#### 5.4 Representation in Conflict of Interest Cases

In cases where the public defender has a conflict of interest, counsel is appointed by the judge from a list of volunteer attorneys kept by the IDB as mandated by statute (R.S. 15:145). There are no explicit minimum qualifications for an attorney to be put on the panel. To be eligible for court-appointed cases, an attorney has only to contact the office of the Director of the OPD and request to be added to the list.

Panel attorneys are paid at an hourly rate of \$35 in-court and \$25 out-of-court, up to a maximum of \$1,000; however, their vouchers are subject to review by the Director of the OPD. It is not uncommon, we were told, for the vouchers to be cut.

The current system for appointing counsel in cases where the OPD has a conflict of interest raises several concerns. We were told that there is no procedure for removal from the list if an attorney proves to be unqualified, or no longer interested in accepting court-appointed cases. According to the Director, all an attorney has to do is call him and request to be put on the list. We were also told that despite the provisions of the statute, the distribution of assignments from the list is not done according to any system. The American Bar Association's Standards

for Criminal Justice state:

5-2.1. Systematic Assignment

[P]articipation [of private attorneys] should include a systematic and publicized method of distributing assignments. Except where there is a need for an immediate assignment for temporary representation, assignments should not be made to lawyers merely because they happen to be present in court at the time the assignment is made.

In Section 5-2.3, the standards elaborate on the need for a regulated distribution of assignments:

As nearly as possible, assignments should be made in an orderly way to avoid patronage and its appearance, and to assure fair distribution of assignments among all whose names appear on the roster of eligible lawyers.

In district court in Baton Rouge, we are told that there is no such system. However, a published system of distributing assignments is of limited value without eligibility standards:

5-2.2 Eligibility to Serve

Each jurisdiction should adopt specific qualification standards for attorney eligibility, and the private bar should be encouraged to become qualified pursuant to such standards.

The standards also specify that "The roster of lawyers should periodically be revised to remove those who have not provided quality legal representation or who have refused to accept appointments on enough occasions to evidence lack of interest. Specific criteria for removal should be adopted in conjunction with qualification standards."

The standards also address the issue of compensation. The ABA Standards say that "assigned counsel should be compensated for time and services performed."

We were not told of any procedure available to the panel

attorneys to appeal the Director's review of their vouchers. Another area of concern is the timeliness of payment. In the Spring of 1992, voucher payments were backlogged by over a year. By June, surplus revenues allowed the OPD to bring payments to the point where they are only one to two months behind. While it is important that the delay in payment be reduced, it is also important that procedure be established for how to avoid the backlog from recurring, and how best to catch up if they fall behind. As indicated earlier, since there is no budget approved for 1992, it is difficult to analyze the OPD's expenditures for the year; however, it is possible that the surplus could have been better spent by investing it across several other budget items rather than by expending it all to erase the backlog.

All of the guidelines and measures discussed in these excerpts are examples of the kind of policy that should be set by the IDB. In order for the conflicts program to function according to guidelines once such guidelines are created, the ABA Standards say, "[a]dministration of the assigned-counsel program should be by a competent staff able to advise and assist the private attorneys who provide defense services."

### 5.5 Attorney Training

The staff attorneys we met with report that there is no formal training program offered within the OPD. In some sections, the senior attorney has made an effort to work closely with the newer attorneys to offer mentoring and supervision; however, such training is offered only through the initiative of the individual section chiefs, and is neither expected nor encouraged as a matter of office policy. One attorney, who is now a section chief, and makes some effort to supervise his second attorney, reported that the first case he handled in the office was one with four counts of first degree murder. He handled the case with no training or supervision from anyone else in the office. A few attorneys are selected to travel to occasional seminars around the country, but

the trips are generally reserved as perquisites for the more experienced lawyers.

Training for attorneys is one of the most fundamental components which management must build into any public defender program. National standards universally recognize training as a core program for any public defender office. The National Legal Aid and Defender Association's National Study Commission Standards state that, "the training of defenders should be systematic and comprehensive and at least equal in scope to that received by prosecutors...Intensive entry-level training should be provided." It also says that "In-service training programs for defender attorneys should be provided...so that all attorneys are kept abreast of developments in criminal law, criminal procedure and the forensic sciences."

The ABA Standards on Criminal Justice state that the program should simply, "provide for the effective training of defenders and assigned counsel."

The National Advisory Commission Standards say that "In service training and continuing legal education should be established on a systematic basis."

The many public defender programs around the country handle training in a wide variety of ways. Many do send attorneys to national conferences, and that practice should be encouraged, as long as the trips are handed out in a systematic manner, and not as a perk to selected attorneys.

In-house training is, in most cases, an integral part of the program, not only for entry-level attorneys, but also on a continuing basis. In the public defender program in Oklahoma City, before a new attorney can try a felony case, he/she must sit in on 10 felony cases with an experienced lawyer. The Chief Public Defender tries to sit in on a new attorney's first trial, and provide first hand help, and an evaluation. Other programs put on periodic seminars on specific issues, such as how to handle drug cases or how best to make use of expert witnesses. Often the

"teachers" at these seminars are senior attorneys in the program or board members, all of whose services can be provided at no cost to the program.

#### 5.6 Investigation

There are eight staff investigators, including one chief investigator, in the OPD. One is assigned to each section of district court, one is assigned to city court, and one to juvenile court. Their responsibilities in a case begin at jail call-out, which is the first appearance for the defendant. There the investigator accepts the appointments for the OPD, and interviews the clients prior to arraignment. In addition, they provide general investigative support to the attorneys in their section, as needed on individual cases. The responsibilities of the individual investigators vary widely depending on which attorneys they work for, as well as their own individual approaches to the job.

One of the eight investigators is the chief investigator, who is presumably expected to supervise the others and be a liaison to the Director. The position does not, however, involve any specific responsibilities for meeting with the Director, supervising the staff investigators, training newly hired staff, or coordinating any kind of formal communication between the investigators. This hands-off policy is not a reflection of the level of prior experience of the staff; at least two of those we met had no experience in the field prior to taking their position at the OPD.

None of the investigators we spoke to, including the chief investigator, can recall any in-house or local training programs either for newly hired investigators, or for the continuing education of the existing staff. Occasionally one or two of them will be allowed to travel to a seminar out of state, but again, the trips are more of a perquisite to selected investigators than a standard staff training experience.

Both public defender attorneys and investigators told us that there is not adequate funding available for the kind of investigation that requires expert witnesses and other litigation services. Another resource that would make their job as the defense team more efficient would be direct access to "rap sheets," which list their clients' prior records. Currently, they have to wait for the district attorney's office to give them copies. By the time the investigator has the rap sheet for a given client, the first client interview has already been conducted, without the benefit of knowing the client's prior history. Earlier access to this information would allow the investigator and attorney to corroborate the defendant's answers to important questions at the time of the initial contact.

According to staff attorneys and investigators, as well as members of the legal community outside of the OPD, the level of commitment and quality of investigation in the OPD is uneven. While there are some investigators who spend a great deal of time at incarceration centers interviewing clients, there are reportedly others who spend little or none. While we are not evaluating the performance of investigators in individual cases, this is crucial to mention because of its effect on the operation of the entire program. The problem could be eliminated by a concerted effort to increase the supervision and ongoing evaluation of the investigators.

#### 5.7 Support Services

In order to get funding for services beyond basic investigation, such as expert witnesses, forensic and other laboratory support, indigent defense attorneys can appeal to the Director of the OPD, or can petition the judge for funds from the judicial expense fund. OPD staff attorneys report that the Director usually tells them to ask the judge for funds, and that the OPD has no money. Attorneys also say that neither source is reliable enough, although some judges told us that they are

sometimes surprised when an OPD staff attorney does not request funding for an expert witness. When we presented that comment to some OPD staff attorneys, they said that sometimes they do not ask the judge for funds because they do not expect the funds to be authorized.

It is clear from our interviews that the Director and the judges need to confer about what the procedure should be for attorneys, and under what circumstances each will or will not disperse funds for these purposes. Perhaps the IDB could facilitate a meeting to discuss the issue. The OPD should have a line item in its budget for expert witnesses, which it should use if the attorneys prefer not to reveal their strategy to the court and prosecution. Overall, however, the importance is that funds be available for these services when they are needed.

The NAC Standards list "[f]unds for the employment of experts and specialists, such as psychiatrists, forensic pathologists, and other scientific experts " among the essential components of a public defender program. The standards say that these services should be available "in all cases in which they may be of assistance to the defense."

In the Trial Court judgement in the case of State of Louisiana v. Peart, Judge Johnson ordered that as a long-term remedy, that in the office of the Orleans Parish public defender, "a fund must be created and specifically earmarked for expert witnesses, which can only be tapped after a demonstration of need by the public defender." There is clearly also the need for such a fund in the Baton Rouge program.

#### 6. Capital Case Representation

There is no provision in the OPD to provide caseload relief to a staff attorney who is assigned a capital case. The unique nature of capital case litigation is well documented and understood. The amount of time a staff public defender has to devote to a capital case has an impact on the attorney's ability



The ABA's Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases say that "[a]ttorneys accepting appointments...should provide each client with quality representation in accordance with constitutional and professional standards. Capital counsel should not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations." Some staff attorneys at OPD have two capital cases in addition to their normal caseloads. While we were in Baton Rouge, the appellate attorney had two capital case appeals, in addition to the rest of the appellate caseload and all misdemeanors in one section of district court.

Many public defender programs in other death penalty states have created ways of allowing attorneys to focus extra time on capital cases without compromising the quality of representation they provide in other cases. In Nashville, a capital case team receives training and caseload relief. In Baltimore, two attorneys are assigned to a capital case and caseload relief is provided. In Dekalb County, Georgia, by policy, staff attorneys are never assigned more than one capital case at a time.

Another trend among public defender programs is to create a capital case unit, or major felony unit, which is composed of experienced attorneys and investigators with a selected caseload.

## 7. Administration of the OPD Office

### 7.1 Communication

There is a strong support network among some of the attorneys and investigators in the office which seems to help keep those attorneys and investigators focused in a general atmosphere that can best be described as strained. While we were warned by the Director that we would find some restlessness, we were told that it was more indicative of individual situations and personalities than of an office-wide, systemic problem. However, what we found

was the contrary. Low morale, dissatisfaction, and frustration with what they call a lack of leadership are characteristic of many staff. Based on what we were told by members of the legal community outside the OPD, as well as by staff in every department of the OPD, there are layers of communication problems. These problems exist not only within each staff group (support staff, attorneys, investigators) but also between each of the staffs and the leadership of the office.

The level of concern and discontent varies among staff members in the office, however, no one that we spoke to failed to share some part of the concerns. There is consensus throughout the office and across the various groups that the office suffers from a general lack of leadership. This void manifests itself in nearly every phase of operation of the administrative, management and policy areas of the program, and contributes to the morale problem. Policies are ambiguous and selectively enforced; staff attorneys do not feel they are supported adequately by the Director in difficult cases; there is no reliable forum for the airing or settlement of internal disputes and disagreements; there has not been an office meeting in years; there is no medium through which attorneys could share experiences in certain types of cases, or contribute to each other's growth and development as professionals.

## 7.2 Evaluation and Compensation of Employees

One of the strongest potential forces to undermine the smooth running of any office is a lack of a published, predictable system for evaluating performance and providing salary increases to employees on the basis of merit. In the OPD, we were told there has not been a formal evaluation of staff performance in several years. As a result, any increases in salary appear to the staff and to outsiders to have been at best arbitrary and at worst, motivated by personal or political agendas.

The OPD's document, "Employment Policies and Procedures," indicates that the office's compensation policy is that "the

beginning salary of any employee shall be in accordance with the budget of the office, the experience and capabilities of the employee, and salaries paid to others who perform similar jobs." In reality, the Director told us that he sets a new employee's salary at "whatever I can get them for."

The Public Defender Personnel Management Report, which is a document of public record listing the salary, hiring date, and basis (full-time or part-time) of employment, reveals several inconsistencies in what one would expect to be a correlation between salary and experience. One example, which has caused a divisive rift in the OPD, is the compensation of the investigators. There does not appear to be any correlation between experience and salary.

Keeping a large staff content with the scale of compensation is arguably the hardest task of a manager and administrator of any program, especially one with limited and unpredictable funding sources. However, it is readily apparent that the Director needs to make a greater coordinated effort to make clear to the staff how the compensation system works.

The Director explains that he cannot do regular evaluations, because people would expect a raise following a successful evaluation; and given the sparse and unpredictable nature of the OPD's funding source, they would not be able to deliver the raises. We are aware that one underlying issue which makes this area of office management difficult is the unpredictable nature of the funding source. While the funding source is arguably one of the most significant problems facing the indigent defense system in Baton Rouge, its lack of reliability does not preclude the utility of conducting regular staff evaluations.

The National Study Commission Standards say that "the professional performance of defender staff attorneys should be subject to systematic supervision and evaluation based upon publicized criteria. Supervision and evaluation efforts should be individualized, and should include monitoring of time and caseload

records, review and inspection of files and transcripts, in-court observation and periodic conferences.

A major part of the process is often informal, but regular contact between senior and junior attorneys is critical. Some programs have a weekly working lunch meeting which is required for all attorneys, and is devoted to discussing cases. In other programs, the director or assistant director has monthly or otherwise regularly scheduled meetings with attorneys whether on an individual basis or by section.

A growing number of programs, including the public defender in Louisville, Kentucky, conduct formal annual or semi-annual evaluations, based on published procedures. In Louisville, attorneys' performance is monitored by division chiefs as well as the Chief Public Defender. Attorney evaluations include review of videotapes of their performance in court, as well as the review of four randomly selected, unannounced cases per year.

In many programs, the assistant director has extensive supervisory responsibilities. In Dekalb County, Georgia, the Chief Assistant Public Defender carries a reduced caseload to allow her to conduct training sessions for the less experienced assistant public defenders, and monitor their workload.

A large number of public defender programs compensate their attorneys according to a published pay scale which separates lawyers into "levels" based on their experience. Of course, such a system must be operated in conjunction with a program of supervision and evaluation, so that attorneys are rewarded not only for longevity, but also for performance. In Nashville, Tennessee public defenders are compensated according to a "Pay Plan" which has five increments for assistants, and six increments for senior assistants. Senior positions require management responsibilities.

In Dekalb County, Georgia, there are three levels of staff attorney, beginning with "Assistant I" and going to "Assistant III." The three levels are separated by 5% increases in compensation. Decisions for promotions are made by the Chief

Public Defender, with input from an ad hoc committee composed of the Chief Assistant and two other staff attorneys.

The Baltimore City Public Defender in Maryland also follows a published system of grades and steps in compensating its staff attorneys. In Baltimore, each attorney is assigned a "grade" based on experience, upon entering the office. Within each grade, an attorney can move up six salary "steps" based on their supervisor's annual evaluation and semi-annual review. In order to move up a "grade" however, an attorney must take on new responsibilities, such as training or supervising newer attorneys.

While some of these systems are somewhat elaborate, they are designed to reduce or eliminate the kind of confusion and concerns that currently exists in the OPD in Baton Rouge.

### 7.3 The Private Practice Issue

Despite several attempts by the indigent defender board and the Director, there continues to be a lack of clarity with regard to the program's policy on OPD staff attorneys engaging in private practice. Neither of the office's two principal personnel policy documents, the *Personnel Management Report* and the *Employment Policies and Procedures* makes any mention of this issue. We were told by the Director and the OPD staff, that by current policy, attorneys are free to engage in civil practice, as well as criminal practice in City Court, but they are not to engage in private practice in District Court. If their private practice cases require them to appear in court, thus taking up time "during hours" at the OPD, they are expected to expend vacation time for the time they miss at the OPD.

Further confusing the issue is the classification on the Personnel Management Report of all employees as "full-time." However, attorney salaries vary from \$16,000 for juvenile attorneys to \$24,000 for District Court attorneys with comparable levels of experience. Clearly, there is an implied suggestion that the juvenile attorneys should expect to rely more heavily on their

income from private practice. Accordingly, the two juvenile attorneys have arranged a schedule to allow each to maintain an extensive private practice. As "full-time" employees with demanding caseloads which far exceed national standards, one would expect that they would need to work more than two or three days a week.

Another example of the inconsistency of the private practice policy is that despite what again is the universal classification of all staff as "full-time," many of the staff attorneys are on alternate week schedules with their section partners. Other attorneys, aware of the demands of their caseload, work full-time on their OPD cases. The financial impact on the attorneys whose caseload will not allow them to have a private practice is clearly unfair; however, the real problem is the effect on the clients and the quality of representation.

There is clearly a financial incentive for staff attorneys to spend as little time as possible on their public defender caseload. Their performance is never monitored or evaluated, and salary increases are not given on the basis of merit, so some of the staff attorneys spend the minimum amount of time necessary on their OPD cases, we were told.

The IDB made an attempt to limit the private practice of staff attorneys in city court, only to reverse its own resolution. It is clear that the current situation is detrimental to the morale of the staff and the quality of representation. Whatever they decide, it is essential that as soon as possible, the Indigent Defender Board and the Director agree on a policy, publicize it and explain it to the staff, and then enforce it uniformly. However, we recognize the difficulty of enforcement of too strict a policy without increasing the current salary levels.

The national standards are all in agreement that a defender program should be staffed by full-time attorneys. The National Study Commission standards say, "Defender Directors and staff attorneys should be full-time employees prohibited from engaging

in the private practice of law. The ABA Standards read: "Defense Organizations should be staffed with full time attorneys. All such attorneys should be prohibited from engaging in the private practice of law." The NAC Standards say that the "office of the office of public defender should be a full time occupation."

#### 7.4 Support Staff

The support staff is overworked and underpaid. Each secretary is assigned to three or four attorneys. Several of them report that they are doing the work of three secretaries. They receive only nominal supervision, and have not had more than one group meeting a year in the past 10 years. There is no regular format or forum to exchange ideas and solutions to common problems, discuss office policies, or air grievances. We are told there has been one performance evaluation in the last ten years.

The commitment of most of the support staff is encouraging. Clearly overloaded with work and responsibility, they are also extremely underpaid. One secretary, with more than five years' of experience at the OPD, who earns less than \$14,000 per year, told us, "It's not too much about the pay; it's caring about what you do."

### 8. Assessment of the Performance of the Director

We had two extended opportunities to hear the Director describe his role in the OPD and the community, and to explain his leadership philosophy. The following are the highlights of what he told us in the two interviews, as well as what we found to be a consensus, not only within the OPD, but throughout the legal community.

#### 8.1 The Director's Role in the OPD

Mr. Moran told us his responsibilities in the OPD are largely administrative and that his job is to "run the office." He sets office policy on various issues, as are detailed in the document



### 8.2 The Director's Relationship with the Courts

We told Mr. Moran that our interviews revealed that judges do not fully understand what his responsibilities are. They report universally that Mr. Moran rarely appears at any of the courthouses in the district, whether to represent a client, speak to judges, or observe his staff in action. He does not even come over during particularly difficult trials, one judge said, citing a particular capital case in 1991, or in other instances when his support would be not only desired by the staff attorney, but beneficial to a client. Several district court and city court judges said that they would appreciate it if Mr. Moran would come over to say 'hello' even just once in a while, and that it would generally be beneficial to the whole process to have regular communication. When we told this to Mr. Moran, he responded that he does not want to "waste any of the judges' time" because he knows they are "very busy and under a great deal of pressure with their regular duties."

Another judge told us that in five years Mr. Moran has come to see him no more than two times a year, and his visits are only when the OPD is about to have a budget crisis. The same judge said that the OPD is not as aggressive as it could be or should be, and that it clearly reflects the Director.

### 8.3 The Director's Relationship with the OPD's Funding Sources

Judges in both district court and city court told us that if Mr. Moran contacted them with a request to increase the court costs assessment which is currently set by the judges at \$17.50, his request would be put on the agenda for the next judges' meeting. None of the judges we spoke to recalled Mr. Moran approaching them recently to discuss this issue. Mr. Moran told us he planned to do so in the near future, but he was "waiting for the computer" to give him the statistics he would need.

The Director has also failed to address the fact that in the City of Zachary, the current IDB assessment is below the statutory minimum. The Director told us that he "might make a call about it, but if you really wanted to do anything about it it would require a lawsuit."

The Director said that the judges prefer to give the OPD additional revenue through the discretionary funding sources, which are discussed in detail in this report. He does not appear to recognize the loss of independence which occurs when the OPD complies with a judges' hiring request in order to get additional revenue. Mr. Moran told us he tries to "satisfy judges' demands wherever possible," and that he thinks of it as "public relations."

#### 8.4 The Director's Relationship With the IDB

The Director's relationship with the IDB appears to be evolving. While the IDB has historically allowed the Director essentially free reign to run the program, they appear recently to have begun to identify problem areas, and approach them with a new understanding. Various board members mention areas of concern they have raised with him, including that he should be a more high profile advocate for the program, and that he should enforce the policy of limiting private practice. Others say that the OPD needs to be run more like a business, with all of the components of management policy and accountability that a business has to have. We could not agree more strongly.

Several board members also report that they have urged Mr. Moran to approach the judges about raising the assessments paid into the indigent defender fund to \$25.00. More than one board member is frustrated by Mr. Moran's inactivity on this matter. It should not be overlooked, however, that it is the responsibility of the board to actively support the Director in an undertaking as important as seeking additional revenue for the program.

### 8.5 The Director's Leadership

At the conclusion of our visit, we met with Mr. Moran, and reported to him the themes most commonly brought up in our interviews. We told him that not only judges and private attorneys, but also his own staff do not have a clear sense of what he does for the program. In response, Mr. Moran told us about his other duties, which include arranging for the staff attorneys' "parking passes" at the courthouse, paying the rent, and monitoring the suggestion box he has placed at the prison. In addition, he said, he does things which he said "no one knows about," including appearing on week-end radio talk shows "sometimes at 7 a.m. on a Sunday," and appearing before various organizations and "giving speeches."

While the new drug unit which is funded by federal grant money and is expected to open soon is certainly impressive, and the voucher approval process is time intensive if it is done carefully, it is important that the Director spend more time in a leadership role either within the OPD or as its advocate in the community. For such a large agency to run efficiently, it is clear that there needs to be substantially more active management and supervision, as well as enforced standards of performance for all staff.

In the coming months and years, the IDB will have to make some major policy decisions, and create clear policies in several structural and procedural areas in order to improve the operation of the OPD. There is also a critical need for a complete re-evaluation of the leadership philosophy, attitude and approach of the current director, in order that he may contribute to the process of improving the program.

### 9. Findings and Recommendations

This chapter contains our findings and recommendations from our study of the management of the operation of the indigent defense system in Baton Rouge, Louisiana. It is important to point

out that some of these recommendations may be difficult to implement until additional funds are obtained. We are aware of how difficult the problem of resources is in Louisiana, having recently spent over a year studying the state's indigent defense system for the Louisiana Supreme Court's Judicial Council.

We also recognize the fact that considerable time and effort will be required to address a number of the core issues identified in this study. However, we feel strongly that the time has come for the IDB and the Director to accept the fact that the program has major problems that must be addressed.

The following section sets out our findings and recommendations. These findings are the result of an extensive three-day visit and a large number of telephone interviews. The findings are a consensus of the views of a significant number of individuals on the OPD staff as well as a large number of individuals in the legal community of East Baton Rouge Parish who are familiar with the operation of the OPD.

#### Finding 1 - Funding:

The indigent defense system for the 19th Judicial District is not adequately funded to ensure that all defendants are provided with competent representation. None of the program's major funding sources is reliable enough to allow the program to make meaningful projections or budgets for the many services it needs to provide to staff and clients.

A great deal of improvement can be made to the OPD and indigent defense system in Baton Rouge without additional funding. However, additional funds are badly needed to keep up with the caseload to improve salaries and to provide additional personnel.

Unfortunately, the reality is that even effective leadership and management, coupled with maximizing the existing revenue sources, will not generate enough funds to provide the kind of modern public defender program described in the standards.

1  
The program must seek additional and alternative revenue sources. It is encouraging that the Director is pursuing federal funds, through a grant under the federal Anti-Drug Abuse Act.

*Done*  
Recommendation 1a:

The court costs assessments for indigent defense should be immediately raised to the statutory maximum of \$25 in all courts in the district.

Recommendation 1b:

The IDB, the Director and the Judges should create a uniform method of collecting and transferring funds collected under the various statutes in such a manner that the OPD can monitor its income from each source on a monthly basis.

Recommendation 1c:

It should be the joint responsibility of the IDB and Director to actively seek additional and alternative sources of revenue for the program, including federal funds.

Recommendation 1d:

The IDB and Director should actively support the addition of state funding for indigent defense.

Finding 2 - Independence:

Because of the organizational structure through which representation is provided, and the discretionary nature of several of the funding sources, the independence of the OPD in Baton Rouge could be significantly compromised. The result could have a negative effect on the clients of the program.

Recommendation 2a:

The Director should not accept funds from judges under the fines and forfeitures statute or any other source if the funds are

conditional on the placement or hiring of any attorney or non-attorney employee of the OPD or on any other condition affecting the management of the program or representation of clients.

Recommendation 2b:

OPD staff attorneys should be rotated between sections of district court on at least an annual basis.

Finding 3 - The Role of the IDB:

The IDB has historically played an extremely limited role in policy and budgetary issues in the operation of the OPD. In order for the program to improve in a meaningful way, the IDB will have to maintain an active interest in oversight of the OPD.

Recommendation 3a:

The IDB should meet more regularly, perhaps on a monthly basis. It should also meet with the judges of each of the courts in the district at least once a year.

Recommendation 3b:

The IDB should establish specific short and long term goals and objectives for improving the quality of management and representation. It should then take the steps necessary to meet those goals.

Recommendation 3c:

The IDB should review and approve all personnel policies and procedures which affect the management of the office. Where appropriate procedures do not exist, they should be established. The Director should then be required to implement all procedures in a uniform and fair manner.

The IDB should also approve formal job descriptions and a fixed salary schedule for attorneys and non-attorneys on the OPD staff.

Recommendation 3d:

The IDB should play a more active role in the oversight of the financial management of the OPD, including establishing a budget every year with specific line item projections for income and expenditures; and establish procedures and priorities for periods of income fluctuation.

Finding 4 - The Role of the Director:

The responsibilities of the position of Director are not clearly defined or understood, and as a result, there is a lack of accountability for every aspect of the administrative, managerial function of the office.

In most public defender programs around the country, the administrative duties and responsibilities of the director are clearly spelled out to include things like training, supervision, budgeting, administration, fund-raising, performance review, interaction with other criminal justice agencies, etc. It is essential that all of these and/or other responsibilities be detailed for purposes of both accountability and clarity among staff of the program and the community outside the office.

Recommendation 4a:

The Director's job description should be clearly defined and expanded to include the coordination of all specific administrative responsibilities.

Finding 5 - Leadership and Communication:

The OPD in Baton Rouge is currently suffering from low morale, some dissention, and a serious lack of communication among many staff and between many staff and the Director.

The level of disruption and discontent has reached much of the outside legal community including a number of judges. Most of these individuals, outside the office, question the leadership of

the current Director, but maintain the position that there are a number of truly outstanding lawyers and non-lawyers performing admirably in the office. Without substantial change in the Director's leadership and the active and continuous oversight and responsibility of the IDB, it is likely that there will be further deterioration in the office and its respect in the legal and non-legal community.

Recommendation 5a:

The IDB and the Director should meet together in the very near future to discuss the contents of this report. The Director should inform the board as to whether or not he agrees with the basic tenor and facts set out in the report and will pledge to devote all of his energies, with the oversight and cooperation of the board, to address all of the major problems that exist in the program. The board should then assess, in their own judgment, whether the Director can, in fact, undertake the new responsibilities and leadership role. If they determine that he can, he should be provided with all of the encouragement, support and hard work that each IDB member can provide.

Recommendation 5b:

Whatever determination is made by the IDB regarding the future of the Director, it is essential that they prepare both short term and long term goals for improving communication and the general atmosphere in the OPD.

Finding 6 -- Compensation:

The salary scale for all employees in the OPD are extremely low and do not compare favorably with virtually any other public defender program in the country.

While the lawyer positions are designated full-time, few public defenders are, in fact, working full-time, in large measure because of the extremely low salaries. The office also operates

without a clear, written salary pay scale which tends to confirm the views of many that salary increases are not based primarily upon performance and experience.

Recommendation 6a:

The IDB should adopt a formal salary schedule for all personnel in the office and publish it. They should also approve a written plan for performance review which should occur no less than annually.

Recommendation 6b:

The IDB and the Director should make one of their highest priorities to increase the salaries of all staff, with an emphasis on those who, by reason of seniority, tenure, experience and performance, demonstrate outstanding work. Every effort should be made to increase the salary of attorneys to a level that would permit the board to make all such positions full-time and to prohibit the outside practice of law for a fee.

Recommendation 6c: The IDB should assess the disparity between salaries of comparable staff at the Office of the District Attorney and the staff of the OPD. The IDB should express to the City-Parish and the appropriate members of state government, the need for parity between the two agencies, especially given that the district attorneys were recently given a significant salary increase by the state.

Finding 7 - Private Practice:

It is unclear to us and to most of the public defenders, IDB members and judges that we interviewed as to what the current OPD policy is regarding full-time status and the privilege of maintaining a private practice.

We received several quite different explanations of current policy from several attorneys. The matter needs to be resolved as

soon as possible to avoid continued confusion and the view that the policy, whatever it may be, is not enforced.

Concerns were repeatedly presented to us both inside and outside the office that some public defenders were abusing whatever policy exists by giving priority to their private practice at the expense of their public defender clients.

Recommendation 7a:

Because of the extremely low salaries currently paid to public defenders at OPD, we do not recommend that they be prohibited from maintaining a private practice at this time. With improved salaries, however, the IDB should work toward this goal.

Recommendation 7b:

Public defenders employed as staff attorneys at OPD should not be allowed to represent privately retained clients in any criminal matter pending in East Baton Rouge Parish. They should also not be permitted to work on their private cases or request the services of any other staff member to work on their private cases while physically present in the Office of the Public Defender. No support staff member should be permitted to work on a private case for a staff public defender while in the office or during the normal working day. All public defenders should maintain contact with the OPD office during regular office hours so that they may be available to each of their public defender clients.

Finding 8 - Conflict of Interest Cases:

There are currently no standards or guidelines for the appointment of private attorneys in cases in which the OPD has a conflict of interest.

It was reported to us that the level of competence of lawyers on the list ranges from excellent to abysmal. The Director controls the list in every way from enrollment to approval for payment. The entire system needs to be eliminated and a new system

instituted.

Recommendation 8a:

A new system should be developed for the appointment and payment of private attorneys in cases where the OPD has a conflict of interest. Experience and qualification standards are essential, as well as training, support services, systematic rotation and specialized lists for complex cases. Special attention should be given to appointing counsel in death penalty cases.

Recommendation 8b:

Reasonable compensation should be established for conflict attorneys, taking into account the budgetary considerations of OPD and the average hourly overhead of attorneys on the list. Attorney's bills should not be cut arbitrarily and any substantial cuts should be accompanied by a written explanation. A policy should be established for removal of attorneys from the list who fail to perform adequately.

Finding 9 - Appeals:

The attorney who handles all appeals in the district is extremely overworked and cannot provide proper representation when overwhelmed with cases.

Recommendation 9a:

A method should be developed as soon as possible to relieve the appellate attorney of some of her caseload. This should be accomplished either by shifting some appeals to other public defender attorneys or appointing qualified members of the private bar.

Finding 10 - Juvenile Cases:

The amount of OPD resources provided to cases in Juvenile Court is particularly insufficient. It appears that, in part

because the Juvenile Court is located outside the downtown area and removed from the mainstream of OPD activity, the priority for services is low. There is clearly a need for more staff resources.

Recommendation 10a:

The IDB and the Director should give more priority to representation in the Juvenile Court. This should be one of the highest priorities in the fundraising area.

Finding 11 - Training:

In the Baton Rouge OPD, there is no in-house training provided to personnel at any level. The only training opportunities provided are allowances to attend out of town conferences. It is widely reported that these opportunities are given out in a highly politicized manner, and that the trips are thought more of as perks than real training opportunities.

Recommendation 11a:

A line item in the budget should be established to fund training programs, both in-house and at regional and national conferences. They should be established for entry level and more experienced personnel, both lawyer and non-lawyer.

Recommendation 11b:

Minimum annual training requirements should be established and enforced for all staff. A procedure for the fair distribution of out of town training opportunities should be established, publicized, and enforced.

Recommendation 11c:

IDB members and knowledgeable legal professionals within the OPD and in the Baton Rouge legal community should be actively recruited to assist in providing regular training seminars at reduced costs.

Finding 12 - Supervision and Evaluation:

Supervision and evaluation are clearly not a priority for the current director of the OPD. No staff member reports regular contact with the Director, and we are told there has not been a staff evaluation for several years.

Many other programs, particularly those like Baton Rouge, which have a director who does not carry a caseload, devote a major portion of their administrative focus to supervision and evaluation.

Recommendation 12a:

A procedure and structure for the ongoing supervision and periodic review of all staff should be established, publicized and implemented. The IDB, Director and office leadership may want to review the policies and procedures used in other jurisdictions around the country.

Recommendation 12b:

There should be regular staff meetings of the entire office, as well as frequent regular meetings of lawyer and non-lawyer staff within the office.

Finding 13 - Capital Cases/Caseload Relief:

There is no procedure for ensuring that OPD attorneys are granted caseload relief when they are assigned a capital case. In addition, several attorneys are assigned multiple capital cases simultaneously, without relief from their regular caseload.

Recommendation 13a:

A system should be created, publicized and implemented to provide caseload relief to an attorney who is near trial in a capital case. Attorneys should not be appointed to two capital cases at the same time.

Recommendation 13b:

The OPD should establish a special unit to handle capital cases or serious felony cases which are particularly complex and time consuming.

Finding 14 - Support Services/Expert Witnesses:

There is inadequate provision for public defender staff attorneys to have access to expert witnesses and other services necessary for providing representation in serious cases. There is confusion among attorneys and judges as to whether the OPD or the Judicial Expense Fund is intended to be the primary source of funds for these services.

Recommendation 14a:

Funds for expert witnesses should be a line item in the OPD's budget. Staff attorneys should be granted funds by the Director upon establishing need. The judicial expense fund should be used in particularly costly situations which might jeopardize the OPD's budget.

Finding 15 - Cost Recovery:

The cost recovery program is in disarray; monies are collected by any one of four or five sources, and are not separate because they are mixed in with other revenues. In addition, the public defenders themselves are often asked to collect the money, which is inconsistent with their obligation to represent the client in court.

Recommendation 15a:

The program needs to inform the judges of the accounting problems that are caused by their irregular practices with regard to collecting partial costs from clients of the OPD. A single uniform procedure should be set up and maintained. Public defender

clients who can afford to pay all or a portion of their legal services should be required to do so.

#### 10. Conclusion

In the Office of the Public Defender in Baton Rouge, there is a nucleus of excellent attorneys who are dedicated to providing quality representation to their clients in an efficient and professional manner. Among those on the non-attorney staff are also some people who provide a high level of commitment and professionalism to the office. Among the members of the Indigent Defender Board, there is an emerging awareness of the importance of building on the strengths of the OPD, and addressing the identified weaknesses. The underlying issue of inadequate and unreliable funding is a serious one, which has a major impact on the process of improving the system; however, under strong leadership, there is a great deal that can be accomplished to improve the program within the existing funding structure. The board and the director must commit to improving the system within existing financial parameters while simultaneously seeking additional resources from the parish, the state, and alternative sources.

In the operation of a public defender program, effective management is essential to the provision of quality representation. There are talented and dedicated attorney and non-attorney personnel on the OPD staff. However, the impact that they could have is somewhat muted by the excessive caseloads and lack of adequate support they receive in current conditions. Without a sound administrative component, supported by well allocated resources, the mission of the program is inescapably compromised. In the indigent defense system in East Baton Rouge Parish, a wide range of these kinds of problems must be addressed as soon as possible, to avoid further deterioration of the quality of the services provided by the program.

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**THE LOUISIANA INDIGENT DEFENDER BOARD**

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**Staff Director**  
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**New Orleans, LA 70112**

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## **LOUISIANA INDIGENT DEFENDER BOARD**

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# DEVELOPMENT OF THE LOUISIANA INDIGENT DEFENDER BOARD

## A. Introduction

The Louisiana Indigent Defender Board is actively engaged in the serious study of criminal justice issues affecting the rights and obligations of indigents accused of crimes in this state. Evident in this study is that the provision of counsel and other necessary defense services to the poor has a long and rich history in English and American law. More particularly, Louisiana's contribution to this history--through its legislatures, courts, and bar--has been significant and fruitful. Still, no one would suggest that the mechanism affecting the provision of defense services to the poor is settled or even beyond improvement.

In order to limit government authority and secure a number of "unalienable Rights," the states ratified, as part of our Constitution, the Sixth Amendment.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Likewise, in the Constitution of the State of Louisiana (1974), these rights are confirmed in Article I, Section 13:

When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

Over two centuries of experience, however, has taught us that the delicate balance between the rights of the individual and the just powers of the government is no easier to strike today as it was then.

The Louisiana Indigent Defender Board has been forced to maneuver this difficult terrain with the realization that notions of fairness and decency toward people are ever evolving, that resources are limited in every area of the criminal justice system, that criminal dockets are growing at an unprecedented rate, and that the abatement of crime is nowhere in sight. The rights of all individuals accused of crimes and presumed innocent are imperiled by a system which does not exercise self-reflection and continue the search for answers to systemic problems: ours is not to disrupt the balance between individual rights and the common weal but to seek a new balance founded upon solutions to real and serious problems facing the criminal process.

Created by Supreme Court Rule on July 1, 1994, the Louisiana Indigent Defender Board has worked diligently to accomplish the mandates of the Rule. The Board studies, analyzes and addresses an array of problems

inherent in the provision of criminal defense services to the poor. In its first year of existence, the Board moved forward on many fronts, including: the promulgation of eight chapters of the *Louisiana Standards on Indigent Defense*, development of capital and non-capital certification programs, development of rules and guidelines affecting the use of expert witnesses and specialized tests, provision of supplemental funding for felony defense (particularly services involved in the defense of those charged with capital crimes), defraying of expenses for expert witnesses and specialized scientific testing, and technical assistance.

Detection and prosecution of crime is becoming more sophisticated and effective; criminal defense practices are becoming more specialized, complex, and--particularly in the area of capital defense--more volatile. The interplay of these factors has resulted generally in declining sources of funding for indigent defense and increased indigent defendants. In the latest study completed (Fiscal Year 1990), approximately 74 billion dollars was spent in this country on criminal justice. Only 2.3% of this amount was expended on providing assistance to indigent defendants, while 7.4% was provided for prosecution, 12.5% on courts, 33.6% on corrections, and 42.8% on police protection.

In addition to lack of funding and soaring caseloads, indigent defense systems have witnessed a nation-wide move toward longer and often mandatory sentences, enactment of more crimes, decrease in plea bargains, attempts by the judiciary to control increasing dockets resulting in less preparation time for attorneys, inattention to screening eligibility for defendants, and increase in death penalty cases. Longer and mandatory sentences and a general decrease in plea bargains have resulted in more jury trials; more crimes means more defendants, many of them requiring the services of public defenders; efforts by courts to control their dockets add pressures to already understaffed and under-supported public defender offices; lack of proper screening and recoupment procedures burden the system and add to caseload and funding problems; and the increase in death penalty cases, which are by nature complex, time consuming, and expensive, drain resources from other cases. The problems attendant the indigent defense system in this country have caused at least one fundamental shift in the way in which attorneys are called upon to provide effective assistance of counsel. Rather than attack specific acts of counsel in the representation of a defendant, attorneys have begun to attack the system through which representation is provided. Attorneys in various states have begun to challenge the appointment process as unduly burdensome. Despite these attacks on the system, states recognize their obligation to provide indigent criminal defense services and the push is on to redefine the state's responsibility in shouldering this burden.

#### ***B. The Establishment of Indigent Defender Boards***

As mandated by the newly adopted constitution, the legislature, in 1974 began its wholesale revision of the indigent defender system in Louisiana.<sup>1</sup> In that year, the legislature provided for indigent defender boards in the

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<sup>1</sup> See 1974 La.Const. Art. I, §13.

respective judicial districts and passed legislation to allow some of the criminal court funding to defray the expenses of indigent defense.<sup>2</sup> Two years later, in 1976, the legislature provided for an interim state board (which was to last until January 1, 1978) to assist in the organization of the local indigent boards and, importantly, funded the local boards to some extent.<sup>3</sup> In this same act, the legislature set up the present form of funding for the local boards.<sup>4</sup> Since the inception of the present system for providing indigent defense several legislative acts have affected its funding circumstances: state funding, in the form of \$10,000 warrants to each board, has not been forthcoming since the initial disbursement; recent changes in the law have removed responsibility from the local government for expenses directly relating to an indigent client's defense; the legislature has provided local funding revenues from bond forfeitures and licensing fees for bonding companies; and supplemental funding through the Louisiana Indigent Defender Board has been provided.<sup>5</sup>

### *C. Study of the Indigent Defense System*

In December of 1990, aware of the problems with the provision of indigent defense services in the state, the Louisiana Supreme Court appointed a seventeen-member statewide Indigent Defender Board Committee of the state's Judicial Council and asked that it study and recommend changes to Louisiana's indigent defense system. The Committee met throughout 1991, and retained the Spangenberg Group, a nationally known firm expert in indigent defense systems, to prepare a report on the state of indigent defense in Louisiana. The report of the Spangenberg Group and the committee's research confirmed the dire situation in Louisiana. Among other troubling revelations, a comparison of Louisiana's indigent defense system with eighteen other similarly situated states demonstrated that Louisiana ranked last in expenditures per case and second-to-last in expenditures *per capita* on indigent defense. The median cost per case among the nineteen states studied was \$280.48; Louisiana spent \$100.03 per case. The median *per capita* expenditure for the states was \$5.46; Louisiana again ranked near the bottom, spending \$2.37

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Section 13. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

<sup>2</sup> See 1974 La.Acts No. 401, §2; 1974 La.Acts No. 238, §1.

<sup>3</sup> See 1976 La.Acts No. 653, §1.

<sup>4</sup> *Id.*

<sup>5</sup> See La. R.S. 15:146; R.S. 22:1065.1.

*per capita*. The study also showed that, despite a 45% increase in caseload during the period from 1986 to 1990, expenditures actually dropped during this period.

***D. The Task Force and Its Recommendations***

The committee's work gave way to the establishment of the Task Force on Indigent Defense, created by Executive Order in early 1994. The Task Force, a collaborative effort among all three branches of government, concluded that serious problems faced the indigent defense system in Louisiana and that immediate action was necessary. Among the recommendations of the Task Force were that the Supreme Court should establish a statewide indigent defender board to address the most pressing problems facing the system. It was recommended that the legislature provide no less than \$10 million, which would be available to the district indigent defender boards through the state board as supplemental funding. The Task Force also recommended that the legislature should begin work to develop an indigent defense system which could adequately provide supplemental funding and assistance to the state's district indigent defender boards. In keeping with the recommendations of the Task Force, the Louisiana Supreme Court promulgated La.S.Ct. Rule XXXI, establishing the Louisiana Indigent Defender Board. The legislature provided \$5 million in funding for the Board's initial fiscal year and \$7.5 million in funding for its second fiscal year.

In the creation of the Louisiana Indigent Defender Board, the Louisiana Supreme Court has attempted to address some of the specific issues discussed above and, generally, address the systemic situation of the present indigent defender programs. The Board is composed of no less than seven and no more than 15 persons, appointed by the Chief Justice with the concurrence of a majority of the Associate Justices. In addition to the necessary and usual powers of the Board, the Supreme Court Rule charges the Board with certain responsibilities toward improving the administration of criminal justice in the arena of indigent defense. The Supreme Court has provided, as the purpose of the Rule, the following: The intent of this Rule is to supplement the existing system of indigent defense within the state to the extent permitted by legislative appropriations.

## REVIEW OF ONGOING LIDB PROGRAMS

### A. *The Capital Program*

The Capital Fund Program was designed to address specific problems encountered by district boards in defending the rights of indigents charged with capital crimes. The Board allocated \$1,959,092 to this Fund to cover the costs of counsel, overhead, out-of-pocket expenses and investigative fees in capital cases. The Fund directly supplemented qualifying district boards and was used to defray expenses in 134 capital cases. In conjunction with this Program, the Board developed practice standards for defense counsel and a certification program by which attorneys wishing to represent indigent clients charged with capital crimes must be approved by the Board.

In an effort to keep costs down while maintaining quality defense services, the LIDB expanded its capital fund to allow for direct technical assistance from attorneys and trained professionals to supplement and assist counsel of record in capital cases. Rather than funding an entire capital case, the program is able to give precision assistance in those areas of a case which require special services. In over 20 cases, defense attorneys were able to take advantage of specialized assistance on a limited basis in preparing cases for trial. Such assistance has alleviated, in some instances, the need for continuances and allowed for stronger defenses at trial.

The LIDB provides counsel in capital cases at the request of the district court or the district indigent defender board in jurisdictions which do not have certified counsel or conflict-free certified counsel. To districts handling numerous capital trial court cases, the LIDB provides additional funding through Capital Program contracts and grants.

In fiscal year 1995-1996, the Board directly funded seventy cases in whole or in part. In some circumstances, the Board provided funds for investigation only; in others, the Board provided funds for lead counsel, associate counsel and investigation or costs of associate counsel only. The LIDB funded an additional fifty-five trial court cases and nine capital appeals through Capital Program grants and contracts made directly with qualifying district indigent defender boards, for a total of one hundred thirty-four capital cases handled outside the district indigent defender board system.

Even with accurate caseload statistics, it is still difficult to assess a reliable figure for cost of counsel in a trial-level capital case. Notwithstanding this *caveat*, the LIDB is presently able to budget approximately \$65,000 for a serious capital case. At its continuing budget level, the LIDB budgets approximately \$25,000 for a capital appeal, depending on the length and complexity of the case.

Review of the district indigent defender board caseload statistics reflects jurisdictions in which capital cases are indicted with higher frequency. Caddo (the First Judicial District), Calcasieu (the Fourteenth Judicial District), Lafayette (the Fifteenth Judicial District), East Baton Rouge (the Nineteenth Judicial District), Jefferson (the Twenty-Fourth Judicial District), and Orleans carry large numbers of capital cases. Less populous multi-parish jurisdictions constantly carry capital cases. These include DeSoto/Sabine (the Eleventh Judicial District); Livingston

and Tangipahoa (two parishes in the Twenty-First Judicial District), Ouachita and Morehouse (the Fourth Judicial District), and St. Tammany and Washington (the Twenty-Second Judicial District).

Additionally, several judicial districts carry at least one capital case at all times: Lincoln and Union Parishes (the Third Judicial District), East Carroll, Madison and Tensas (the Sixth Judicial District); Grant (the Thirty-Fifth Judicial District); St. John the Baptist (the Fortieth Judicial District). Rapides Parish, the Ninth Judicial District, experienced a significant rise in the number of capital cases in calendar year 1995, due to an increase in gang-related homicides.

The district indigent defender boards and the LIDB are charged with the duty to provide effective assistance of counsel. The experience of the Board has indicated that early notice and attorney intervention in capital offenses frequently result in reduction of the charge. Reduction of a first-degree murder charge results in substantial savings to the district indigent defender boards and the LIDB in particular, and the criminal justice system and the state, in general.

Changes in criminal law affect the number and types of cases in which the death penalty is sought. The 1995 amendment to Louisiana Revised Statute 14:42--imposing the death penalty for aggravated rape when the victim is under 12 years of age--has resulted in a marked increase of capital indictments, as many as twenty statewide by September, 1996.

When the LIDB is asked to provide counsel for an indigent defendant charged with first-degree murder, the staff gathers public record details of the offense and the procedural posture of the case. If appropriate, staff contacts available certified counsel. In jurisdictions that carry constant numbers of capital trial court cases, the LIDB recommends that the district indigent defender board retain contract conflict counsel. Caddo, Calcasieu, DeSoto/Sabine, East Baton Rouge, and Orleans Parishes have panels of contract conflict counsel in place. When district indigent defender boards have shown that caseload and financial data warrant assistance, the LIDB has provided financial assistance for these conflict panels.

Contract conflict panels afford district indigent defender boards quality and financial control. The district board selects the attorneys who will provide counsel to indigent defendants accused of first-degree murder and sets contract wages. The LIDB, by way of contrast, pays a presumptive overhead rate of \$40.00 an hour and attorney's fees of \$17.65 an hour.

Attorneys on contract conflict panels are able to handle more capital cases at significantly lower cost than are those attorneys appointed on a case-per-case basis billing at \$57.65 an hour.

### ***B. The Louisiana Appellate Program***

The Project officially began with a grant agreement in March 1996 between the Louisiana Indigent Defender Board and The Louisiana Appellate Project, which received its non-profit corporation status in late March. James H. Looney, Esq., formerly a public defender in the Twenty-Second Judicial District, was hired in May as the Executive Director of the Project.

The Project was designed with the following goals in mind: (1) To offer to all district indigent defender board non-capital felony appellate services at a minimum of cost; (2) Lowering caseloads of individual attorneys in the districts; (3) Controlling more closely caseloads of appellate attorneys; (4) Reducing costs to the district boards for the provision of these services; (5) Create and maintain a solid and informed core group of attorneys versed in the delivery of appellate services to indigent clients; (6) Facilitate communication among the attorneys in the various appellate court circuits; (7) Provide for education to all interested attorneys and support staff in appellate and writ practice; and (8) Maintain a professional and enlightened appellate practice in the State of Louisiana.

Contracts were drafted for districts wanting to participate in the Project in accordance with La. R.S. 15:150. This legislation allows the creation of Regional Defense Service Centers, whereby numerous district indigent defender boards may contract to provide defense services in particular fields of practice, including non-capital felony appeals. District boards were offered an opportunity to participate, effectively transferring all non-capital felony appeals to the project.

At this time twenty district boards have opted to participate in the program, eight are in the process of reviewing the contract for participation, and twelve have selected to study the system longer before making a decision. The Orleans Indigent Defender Program, due to the volume of appeals coming from that office, will be brought into the project at a later date.

The Project is designed to have Supervising Attorneys and Contract Attorneys in each of the appellate court districts, with some overlap in the Fourth and Fifth Appellate Court Circuits. Because three judicial districts belong to more than one appellate circuit, the Project is targeting forty-three regional contracts as its goal. Every eligible district in the State has been contacted by mail, through the chief defender if one was listed and through the board chairperson where necessary. Additional contact has been made with some districts by telephone and in person.

As of September, the Project was handling an estimated ninety percent of the new indigent appellate work in the First Circuit. The remaining circuit programs are being phased in at a rapid pace.

The Project's staff has developed the appropriate forms for receipt of appeals from participating districts, with an emphasis on the particular rules of the appellate and trial courts. The forms have been sent to all participating districts and have been shared with other districts and persons who have expressed an interest.

Specifically, the Project has developed steps to convey a new case to the Project, including instructions to the trial attorney to file and conduct any necessary hearings on post-trial motions, such as motion for new trial, motion for post verdict judgment of acquittal, motion to reconsider sentence and the motion for appeal.

The first report of a new appeal is sent to the supervisor of that appellate circuit as soon as the case is lost in order that the supervisor or assigned attorney can have the trial attorney's impressions of the case while it is fresh on the attorney's mind. The second report comes after sentencing. At this point the case officially belongs to the Project. The supervisor assigns the case to an attorney, either himself/herself or a contract attorney. The

supervisor then notifies the local clerk of the assigned attorney (so that the proper name is placed on the record), the local indigent defender office (so the staff knows to whom inquiries are to be referred) and the Court of Appeal.

The assigned attorney then promptly communicates by letter to the new client informing the client of the attorney's name and address. A fact sheet is enclosed, which describes the appellate process and answers some of the most commonly asked questions. The letterhead used by the appellate attorneys includes the name and address of the specific attorney, the supervisor (if not the writer of the letter) and the director. In this manner, it is hoped that any complaints will be sent by the client or his family to the supervisor or the director so they may be handled in an expeditious manner.

In an effort to improve the work in the trial offices around the state, the Project is designing a method of providing memoranda on recent cases and problems noted in transcripts to any district office requesting such information. Thus far, twenty-seven districts have expressed an interest in receiving these legal updates.

The Project is expected to use a total of twenty contract attorneys, including the Executive Director, to handle the work. Efforts to recruit the staff are proceeding. Contracts were drawn for both supervisors and appellate attorneys. All attorneys involved in the Project, including the Executive Director, Supervisors, and Contract Staff, will carry a caseload. The staff is complete in the First, Fourth and Fifth Circuits. Supervisors and some contract staff attorneys have been secured for the Second and Third Circuits. (A complete listing of the staff appears below.) It was decided that the Fourth and Fifth Circuits would be combined under one supervisor, rather than two, to allow better use of the staffing in light of the projected workload and the close geographical proximity of these areas.

The attorneys selected for the Project in the First Circuit have an average of fourteen years experience in the practice of law. They range from five to twenty-five years of experience. In the Fourth and Fifth Circuits, the average is also fourteen years experience, with a range of ten to seventeen years. The supervisors, including the Executive Director, average almost seventeen years experience with a range of fourteen to nineteen years.

In addition to James H. Looney (Covington) as Executive Director, the following attorneys have been retained on a contract basis to handle non-capital felony appeals:

First Circuit: Edward R. Greenlee (Supervisor, Baton Rouge); Margaret Smith Sollars (Thibodaux); Frederick Kroenke (Baton Rouge); Lloyd S. Sibley (Holden); Frank Sloan (Covington); and Bertha M. Hillman (Thibodaux).

Second Circuit: J. Wilson Rambo (Supervisor, Monroe); Peggy Sullivan (Monroe); Geary S. Aycock (Monroe); Amy C. Ellender (Mer Rouge); and Richard J. Gallot, Jr. (Ruston).

Third Circuit: Paula C. Marx (Supervisor, Lafayette); Edward K. Bauman (Lake Charles); Lawrence C. Billeaud (Lafayette); and Phyllis E. Mann (Alexandria).

Fourth & Fifth Circuits (Excluding Orleans): William R. Campbell, Jr. (Supervisor, New Orleans); Laurie A. White (New Orleans); Bruce G. Whittaker (New Orleans); and Linda Davis-Short (Gretna).

The following districts are presently participating in the Louisiana Appellate Project: The First JDC (Caddo Parish); The Second JDC (Bienville, Claiborne, and Jackson Parishes); The Fourth JDC (Morehouse and Ouachita Parishes); The Sixth JDC (East Carroll, Madison, and Tensas Parishes); The Eighth JDC (Winn Parish); The Eleventh JDC (Desoto and Sabine Parishes); The Fourteenth JDC (Calcasieu Parish); The Fifteenth JDC (Acadia, Lafayette, and Vermilion Parish); The Seventeenth JDC (Lafourche Parish); The Nineteenth JDC (East Baton Rouge Parish); The Twenty-First JDC (Livingston, St. Helena, and Tangipahoa Parishes); The Twenty-Second JDC (St. Tammany and Washington Parishes); The Twenty-Fourth JDC (Jefferson Parish); The Twenty-Fifth JDC (Plaquemines Parish); The Twenty-Eighth JDC (LaSalle Parish); The Thirty-Second JDC (Terrebonne Parish); The Thirty-Fourth JDC (Plaquemines Parish); The Thirty-Fifth JDC (Grant Parish); and, The Thirty-Seventh JDC (Caldwell Parish).

### ***C. The District Assistance Fund Program***

The District Assistance Fund was established to directly supplement the locally-generated funds of the district indigent defender boards; the program also allows for the state-wide collection of data relating to the delivery of defense services. Of the \$7.5 million total budget, the Board allocated \$4,000,000 to this fund, which were disbursed quarterly through the year. The funds were provided to thirty-two eligible district boards based on their caseload and annual revenue.

District boards in the following six judicial districts are eligible to participate in the DAF, but have not applied: the Fifth (West Carroll, Richland and Franklin Parishes); Tenth (Natchitoches Parish); Twentieth (East and West Feliciana Parishes); Thirty-First (Jefferson Davis Parish); Thirty-Sixth (Beauregard Parish); and Thirty-Seventh (Caldwell Parish). Only the Sixteenth (Iberia, St. Martin and St. Mary Parishes) and the Twenty-Third (Ascension, Assumption and St. James Parishes) Judicial Districts do not impose at least \$25.00 in court costs. As such they are the only two judicial districts which are ineligible to apply for DAF monies and the Expert Witness/Testing Fund.

Through the District Assistance Fund Program, the Board gathered preliminary data on indigent caseloads throughout the state as well as compiled the first comprehensive directory of attorneys providing defense services to indigent clients. Responses to the DAF applications in 1994 indicated that data was neither routinely nor uniformly collected or maintained. While the Data Dictionary (in the District Assistance Fund rule and application form printed in its entirety under the Reference Section of the Annual Report) helps assure uniformity in caseload reporting, uniform case counting remains a system-wide problem within the criminal justice system. With the proposed acquisition of a uniform case counting database, currently in use by district attorneys throughout the country, including one district attorney in Louisiana, the LIDB intends to resolve the case counting problem for indigent defenders. Uniform and verifiable data is the most reliable basis for determining cost-effectiveness and assuring accountability for the use of public funds in indigent defense.

The following caseload statistics were compiled from DAF applications and CMIS, the Court Management Information System. Generally, these statistics include cases in which the court appoints conflict counsel. The apparent drop in indigent defender cases is due not to a decrease in actual caseloads but in a statistical adjustment which was made possible through more accurate reporting. District indigent defender boards are now able to break out specific classes of cases--such as "Traffic Trial Court Cases"--and report the actual number of these cases which are handled by public defenders. The statistics demonstrate, however, that there has been a rise in the number of capital, felony, and misdemeanor cases handled by the public defense bar. Drops in the numbers of appeals, both felony and capital, are due in part to the handling of these cases through the LIDB's Capital and Non-Capital Appellate Programs.

<b>Defender Caseload</b>	<b>1994</b>	<b>1995</b>
Capital Trial Court Cases	196	214
Non-Capital Felony Trial Court Cases	39,690	41,958
Misdemeanor Trial Court Cases	42,862	43,318
Traffic Trial Court Cases <sup>6</sup>	39,833	13,209
Juvenile Trial Court Cases	15,515	12,501
Other Trial Court Cases	5,179	3,629
Capital Appeals	50	13
Felony Appeals	673	454
Other Appeals	59	24
Miscellaneous Cases <sup>7</sup>	30,041	23,268
<b>Total Defender Caseload</b>	<b>174,098</b>	<b>138,588</b>

Information provided in the 1995 District Assistance Fund Expenditure questionnaire reflects an increase in the number of counsel. Reporting districts indicate that an additional twenty-eight attorneys were hired with supplemental funds from the DAF. By adding lawyers the caseload, per attorney, is reduced in compliance with the caseload standards set by the LIDB. For example, the First Judicial District hired four attorneys. With a reported felony caseload of 3,783, the addition of four felony attorneys to the fourteen felony defenders on staff and contract reduced the overall per-attorney felony caseload from 270 cases to 210 cases. While higher than the LIDB standard of 150-200 felonies per attorney, the expansion of staff shows the district's significant progress toward compliance with the Standards.

The following district indigent defender boards retained additional counsel and attorney unit support as indicated: the Fourth Judicial District, two lawyers, one investigator and one secretary; the Ninth Judicial District,

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<sup>6</sup>Where district boards indicated they did not handle traffic matters, the traffic statistics were removed from their total caseload.

<sup>7</sup>Districts reporting total caseload frequently did not provide statistics broken out into categories.

one lawyer; the Eleventh Judicial District, one lawyer; the Fifteenth Judicial District, seven lawyers and five investigators; the Nineteenth Judicial District, four lawyers; the Twenty-First Judicial District, one lawyer; the Twenty-Second Judicial District, two lawyers, one paralegal and one investigator; the Twenty-Fourth Judicial District, four lawyers; the Twenty-Eighth Judicial District, one lawyer; the Thirty-Second Judicial District, two lawyers and one investigator.

Adding attorneys to a stable caseload reduces the per attorney caseload. The addition of attorney unit support, reduces workload. Hiring investigators, paralegals and clerical workers reduces the amount of attorney time spent investigating cases, performing legal research, typing and filing motions, opening and closing cases and maintaining accurate data.

The reduction of attorney caseloads and workload ensures more time for each case. By providing more time and attorney unit support, defendants are assured effective assistance of counsel. By providing effective assistance of counsel, district indigent defender boards reduce the number of cases which will be reversed and retried. Lowering the reversal and retrial rates reduces costs for the entire criminal justice system. Reducing caseload and workload are two effective cost containment methods over which district boards have control.

#### ***D. Expert Witness/Testing Program***

The Expert Witness/Testing Fund Program accomplished two goals: The program provided access for district indigent defender boards to funds to defray in whole or in part the costs associated with court-ordered defense experts and specialized scientific testing; the program also resulted in the promulgation of guidelines on the use of experts and tests and a schedule of reasonable fees one would expect to spend on many of the most common areas of specialization. The Board supplied \$405,848 to district boards to defray costs in 70 cases where experts were ordered by the district court.

The LIDB also serves as a informal repository of names and companies for attorneys seeking specialize assistance in capital or serious felony cases. In order to keep costs to a minimum, the LIDB requires a judicial finding that an expert or test is constitutionally required before the funds are expended. As such, the LIDB avoids usurping judicial authority or defraying expenses for these services which the constitution does not require.

#### ***E. Pro Bono Program***

The Louisiana Indigent Defender Board has worked closely with *pro bono* legal and community organizations around the state in an effort to encourage experts, lawyers, and support personnel to handle cases free of charge or at a reduced cost to the system. Several attorneys and other professionals have agreed to handle or consult on capital and serious felony cases without reimbursement from the indigent defense system. Individual attorneys and law firms have been generous in lending technical support, services, and even office space for attorneys with indigent clients.

The Board also in engaged in active dialogue with several regional non-profit legal providers to assist in the efficient flow of cases and the transfer of clients. The Rules Advisory Committee is studying the possibility of

providing practice guidelines for attorneys electing to provide *pro bono* services to indigents accused of crimes. Staff have also participated in various programs through local law schools to educate and encourage participation of attorneys and law students at no cost to the state.

#### ***F. Criminal Justice Standards Program***

Through the Rules Advisory Committee, the Board has developed and promulgated eight chapters of the *Louisiana Standards on Indigent Defense*. Those chapters completed include the following:

**Chapter 1.** Standards Relating to the Performance of District Indigent Defense Systems. This standards relate to the structure and mechanics of indigent defense systems on the district level, including staff, contract, and appointive roster systems.

**Chapter 3.** Standards Relating to the Determination and Verification of Indigency of Persons in Need of Defense Services. Aimed at getting indigent defender boards more actively involved in the trial court's determination of indigency, this chapter works within the present law to take full advantage of the indigency hearing.

**Chapter 6.** Standards Relating to the Performance of Counsel Providing Representation to Indigents. These standards cover the general practice of law involving indigent clients charged with any crime.

**Chapter 7.** Standards Relating to the Provision of Counsel to Indigents Accused of Capital Crimes. In conjunction with the Board's certification procedure, these standards are aimed at the specialized defense work involved when representing an indigent client charged with a capital crime on both the trial and appellate levels.

**Chapter 8.** Standards Relating to the Provision of Counsel to Indigents in Non-Capital Cases on Appeal. These standards articulate good practice guidelines for counsel involved in non-capital appellate work.

**Chapter 9.** Standards Relating to Conflicts of Interests in the Representation of Indigents. These standards address a number of areas which present actual or potential conflicts of interests and set good practice standards in such circumstances.

**Chapter 11.** Standards Relating to the Qualification and Compensation of Staff, Contract, and Appointed Counsel Involved in Indigent Defense. Based on the compensation rates of assistant district attorneys, these standards set recommended minimum levels of remuneration of similarly-situated defense counsel for both general felony practice and those involved in capital defense.

**Chapter 12.** Standards Relating to Workload and Support Services for Counsel Providing Representation to Indigents. These standards provide recommended case load levels for defense counsel and articulate good practice methods for the use of support services.

#### ***G. Attorney Certification Program***

The Board's Certification Review Committee reviews each application for certification to ensure that the applicant meets the minimum guidelines promulgated by the Board. The list of certified attorneys are supplied to district court judges, the Louisiana Supreme Court, the Louisiana State Bar Association, and all certified attorneys.

Thus far, the LIDB has certified 185 attorneys in the areas of trial and appellate work. These attorneys are required to attend continuing legal education classes in their areas of expertise and stay current on developments in the law.

#### ***H. Technical Assistance Program***

An *ad hoc* committee of the Board is actively engaged in reviewing both the overall parameters of a case-tracking system and specific computer software designed to assist attorneys in preparing for and tracking indigent defense cases. The committee has developed standardized guidelines for systems which would allow state-wide accounting of each case, including the name, race, and gender of the accused, as well as charges, dispositions, sentences, and attorney time. In the next phase of this project, the Board will assist district indigent defender offices in the purchase of systems designed to improve the efficiency of defense services and provide a basis for realistic budgetary projections.

An *ad hoc* committee of the Board has worked on issues regarding the determination of indigency and partial indigence. The focus of this committee's work has been to address problems surrounding the determination of indigence. Louisiana law, particularly LSA-R.S. 15:148, deals with the less common situation of providing reimbursement to the indigent defender for services rendered on behalf of a defendant initially declared indigent and who subsequently hires retained counsel. The more common problem facing indigent defendants, defenders and trial judges, and not addressed in LSA-R.S. 15:140, involves retained counsel who subsequently seeks to have the client declared indigent and requests attorney or expert witness fees.

The Louisiana Indigent Defender Board is also actively involved in gathering data on the delivery of defense services. The Board must have accurate first degree murder arrest statistics for at least two purposes: to provide a framework for a realistic, sound budget and to establish the number of certified counsel needed for capital defense.

Prior to the establishment of the LIDB, there was no central repository for caseload statistics. As a prerequisite to participation in the District Assistance Fund and the Expert/Witness Testing Fund, La. S.Ct. Rule XXXI requires caseload statistics, including capital case data. The LIDB based its budgetary needs in fiscal year 1994-1995 on an estimated 100-150 capital cases at the trial and appellate levels. Data collected showed a capital caseload of double that estimate--approximately three hundred cases.

Through the Technical Assistance Program, the Board has been able to defray the direct costs of investigations in numerous felonies around the state. Through direct grants to several district indigent defender boards, offices have been able to hire full-time investigators to carry out needed work, saving those districts and the state thousands of dollars which would have been paid through the courts on an hourly and case-by-case basis. The Board has also provided technical and computer services to regions of the state handling large numbers of capital cases. Through computerization and technical support, these offices have managed to maintain an ever-increasing caseload without the need for countless delays in the judicial process.

The Orleans Indigent Defender Program:  
An Overview  
DRAFT - February 1997

Prepared for:  
The Orleans Indigent Defender Program

Prepared by:  
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## 1.0 Introduction

In September 1997, Numa V. Bertel, Jr., Director of the Orleans Indigent Defender Program, and the Orleans Indigent Defender Board entered into a contract with The Spangenberg Group to conduct a review of the operation of the Orleans Indigent Defender Program. The Spangenberg Group, located in West Newton, Massachusetts, is a private consulting firm formed in 1985. The Spangenberg Group conducts research and provides technical assistance to indigent defense programs around the country, and is the nationally-recognized expert in the area of indigent criminal defense services.

The Spangenberg Group brings to this study both an expertise in indigent defense systems nationwide and in-depth knowledge of Louisiana's indigent defense system. In 1992, following a comprehensive statewide study, The Spangenberg Group released a report, *Study of the Indigent Defender Program in Louisiana*. This study was conducted at the request of the Louisiana Supreme Court Judicial Council's Statewide Indigent Defender Board Committee. Later that year, at the request of the Indigent Defender Board of the 19th Judicial District in East Baton Rouge Parish and on behalf of the American Bar Association Bar Information Program, members of The Spangenberg Group travelled to Baton Rouge, where they reviewed that parish's indigent defense program and produced a report entitled *A Study of the Operation of the Indigent Defense System in the 19th Judicial District East Baton Rouge, Louisiana*. In 1994, when the statewide Louisiana Indigent Defender Board (LIDB) was set up as a result of Louisiana Supreme Court Rule 31, Robert Spangenberg, President of The Spangenberg Group, served as an advisor to the LIDB. In 1995 and 1996, The Spangenberg Group performed additional work for the LIDB, focusing on indigency determination, partial indigency and cost recovery.

While the LIDB has been in existence for only four years, its effect on indigent defense programs around the state, and in Orleans Parish in particular, has already been significant. Through its District Assistance and Expert Witness funds, the funding it provides for Orleans' Conflict and Appellate Panels, LIDB's *Louisiana Standards on Indigent Defense*, and technical assistance expertise, the LIDB has contributed to a substantial improvement in the state's indigent defense programs in recent years. In New Orleans, most recently, in October 1997, LIDB awarded the Orleans Indigent Defender Program a \$250,000 emergency grant for FY 96-97, following a sharp decline in the traffic violation revenues which provide most of the

program's funding.

While LIDB's resources have had significant impact on the operation of the Orleans Indigent Defender Program, many of the problems present in 1991,<sup>1</sup> when Rick Tessier filed his motion requesting that the Orleans Criminal District Court find him ineffective pre-trial, persist. Criminal District Court public defenders estimated that their open caseloads are at or above the level Mr. Tessier was carrying in 1991; because their caseloads are so high, public defenders still do not have "the ability to investigate fact or law;" and despite a modest increase in investigative and secretarial staff, public defenders still lack sufficient support to adequately prepare.

The day to day operations of the Orleans Indigent Defender Program (OIDP) are overseen by Numa V. Bertel, Jr. Mr. Bertel has been the OIDP Director since 1975. Mr. Bertel is assisted by Tilden Greenbaum, the OIDP Chief of Trials, who has been with the program since 1972, but was only recently appointed to fill this new position.

While the operation and management of the OIDP are inextricably linked to the quality of representation the program is able to provide, in conducting this study, The Spangenberg Group focused on the OIDP's operation and management by examining the following areas: budget; compensation; supervision/evaluation of attorney and support staff; training; allocation of attorney and support staff time and resources; role of the Orleans Indigent Defender Board (OIDB); caseload; capital case data; juvenile case data; and office policies and procedures.

## 2.0 The Site Visit

Robert Spangenberg, President of The Spangenberg Group, and Senior Research Associate Catherine L. Schaefer spent the week of October 20th, 1997 at the Orleans Indigent Defender Program. During the course of the week, we spoke to public defenders, support staff, judges and others familiar with the OIDP. Our interviews with over 50 people gave us valuable insight into the operation of the OIDP.

We spent significant time with Mr. Bertel and Mr. Greenbaum, who provided us with an

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<sup>1</sup> See *State of Louisiana v. Leonard Peart et. al.*, Criminal District Court, Parish of Orleans, No. 346-331 (February 11, 1992).

introduction to and overview of the OIDP's operation, and detailed for us the unique characteristics of New Orleans' criminal justice system. Mr. Bertel provided OIDP funding and caseload information, answering our questions and tracking down additional data as requested. At the conclusion of the week, we shared with Mr. Bertel our preliminary findings and recommendations, which are detailed in Section 7.0.

With the exception of a full day at the juvenile court, we spent most of the week in the main OIDP office, interviewing staff attorneys, investigators and support personnel. We interviewed nearly two-thirds of OIDP staff, including administrative and support personnel, investigative staff, and attorneys from each division: capital, criminal court, juvenile court, magistrate's court, traffic/municipal court and appeals.

Our interviews were supplemented by documents and reports, which were given to us over the course of the week. In addition to budget and caseload information, we were also provided materials relating to the operation of the OIDP's juvenile program, capital case assignment information, LIDB's *Louisiana Standards on Indigent Defense*, caselaw, procedural forms, OIDP's Office Policy & Procedure Manual, and other materials.

We conducted court observations and interviewed a number of judges, including Chief Juvenile Court Judge Ernestine Gray and Chief District Court Judge Frank Marullo. These interviews focused on how members of the judiciary view the role and effectiveness of the OIDP. We also met with other members of New Orleans' criminal defense bar to learn from them how the OIDP is perceived in the larger legal community. Virtually everyone we spoke to confirmed that the OIDP is staffed with a number of first-rate, committed attorneys who work hard under conditions which are often significantly below the standards of almost all of the public defender programs across the country we have visited in the past five years.

Finally, we had an opportunity to meet with the Orleans Indigent Defender Board and share with them some of our preliminary thoughts and impressions. As with Mr. Bertel, we found the Board members to be most helpful and open to our suggestions and ideas. We were encouraged by Board members' genuine interest in working to improve the OIDP.

### 3.0 Orleans Parish Court System

Orleans Parish, which encompasses the city of New Orleans, has five courts: District Court, Magistrate Court, Juvenile Court, Municipal Court and Traffic Court. They are described below.

#### 3.1 District Court

The Orleans District Court has expanded in recent years and now has 14 civil sections and 12 criminal sections. The criminal sections have jurisdiction over both felony and misdemeanor cases. In Louisiana, District Court judges are elected by popular vote to serve a six-year term in a specific civil or criminal section. They do not rotate between the civil and criminal divisions, nor do they rotate between sections of the criminal or civil division.

#### 3.2 Magistrate Court

The Orleans Magistrate Court handles misdemeanor cases and has jurisdiction over bond setting and preliminary hearings in felony cases. Magistrate's Court runs every day of the week. From Monday through Friday, one section begins at 10:00 a.m. and the other section begins at 4:00 p.m. On Saturdays and Sundays, the court only sets bonds in sessions which also begin at 10:00 and 4:00 each weekend day. Orleans' Magistrate's Court is served by one elected District Court judge who, like other District Court Judges, serves a six-year term, and by four commissioners who are appointed by the en banc criminal district court judges.

#### 3.3 Juvenile Court

Orleans Parish's Juvenile Court has six sections. Each is staffed with one elected judge who serves a six-year term. Additionally, there is one Non-Support Commissioner who has jurisdiction over cases involving failure to pay child support. The juvenile court is in a separate location from the District Court and other Orleans Parish courts.

#### 3.4 Municipal Court

Orleans Parish's Municipal Court is housed with the Traffic Court, adjacent to the District

and Municipal Courts. The four elected Municipal Court judges (also for a term of six years) hear cases regarding municipal ordinance violations, which are all misdemeanors.

### 3.5 Traffic Court

Finally, Traffic Court is staffed with four judges who are elected for six-year terms. Traffic Court has jurisdiction over all state and municipal traffic violations.

### 4.0 Funding for the Orleans Indigent Defender Program

The OIDP has at least four funding sources available, but unlike virtually every program outside of Louisiana, none of these sources is sufficiently predictable to permit budgeting for the upcoming year. These funding sources include: court costs assessed pursuant to the Indigent Defender Fund; up-front fees in District and Traffic Courts; fees assessed as a "condition of probation;" and assistance from the LIDB.

#### 4.1 Indigent Defender Fund

The Indigent Defender Fund is the OIDP's primary source of funds, accounting for approximately 60% of the program's monies. The fund, which was established by La. Rev. Stat. Ann. § 146 B(1), requires every court of original jurisdiction throughout the state, with the exception of certain less populated cities and towns, to remit special costs to the individual district's indigent defender fund. These special costs are assessments which are made in cases resulting in criminal convictions, and in bond forfeiture cases.

While the statute establishes a minimum \$17.50 cost assessment for each offense except parking violations, in Orleans Parish, until January 1998, all judges assessed at least \$25.00 per offense and some judges assessed \$30.00 per offense. As of January 1998, by vote of the Orleans Parish judges, all assessments are now \$30.00. According to Mr. Bertel, this across-the-board assessment increase will generate for the OIDP an additional \$250,000 annually.

One of the most serious drawbacks to the OIDP's reliance upon the Indigent Defender Fund is that it is directly tied to the number of traffic tickets written. Since these offenses are far and away the most common, they generate the most income for the Indigent Defense Fund. In

fact, the \$250,000 emergency grant the OIDP recently received from the LIDB was necessitated by a sharp decline in traffic court revenues. We were told this decline resulted in part from the New Orleans Police Department's redoubled efforts to reduce the city's serious crime rate, leaving them fewer staff to pursue traffic offenders.

#### 4.2 Up-Front Fees

While not uniformly enforced, certain of the District Court and Traffic Court judges assess up-front fees at the time OIDP is assigned to represent a defendant. In District Court, these fees are typically \$100 for misdemeanor cases and \$150 for felony cases. In Traffic Court, the up-front fees range from \$100 to \$150 per case. The revenues from this funding source are minimal at best. In the first nine months of 1997, less than \$8,000 was deposited into OIDP's revenue funds.

The OIDP has made a formal request that up-front fees of \$200 and \$100 be assessed in all felony and misdemeanor cases, respectively, but no decision has yet been made on this request.

#### 4.3 "Condition of Probation" Fees

Producing even more modest revenues for the OIDP are fees assessed as a "condition of probation" pursuant to C.Cr.P. Art. 895.1(B)(1). The fees, which vary from defendant to defendant and from judge to judge, are generally in the range of \$150 and by statute are to be deposited into the indigent defender fund, discussed above. This fee is assessed along with other costs and fees which are directed to the Judicial Expense Fund, the Indigent Transcript Fund, the Probation Fund, etc. Payment is made to the criminal court's collection department. Because OIDP fees which are assessed at the end of a case compete with numerous other court costs, the conditions of probation fees provide minimal funds for OIDP.

#### 4.4 Louisiana Indigent Defender Board Funds

The state-funded LIDB has become an important source of funding for the OIDP. When it was created in 1994, the LIDB was under the judicial branch of government. On January 1,

1998, it became an independent agency of the executive branch. In FY 1997, the LIDB was appropriated \$7.5 million in state funds to distribute to indigent defense programs throughout the state. In addition to the emergency grant of \$250,000 the LIDB recently awarded the OIDP, it also awards other monies and offers additional assistance to the OIDP (and to other district public defender programs throughout the state) through its District Assistance Fund and its Expert Witness/Testing Fund. The LIDB also funds OIDP's capital conflict panel and oversees the statewide Louisiana Appellate Project, which has assumed responsibility for direct appeal work on behalf of indigent defendants convicted of felony offenses.

The LIDB's District Assistance Fund program provides supplemental financial assistance for felony case representation to the OIDP and other district indigent defender boards which comply with standards established by the LIDB. The purpose of the LIDB District Assistance monies is to assist qualified district boards in improving the quality of indigent defense in felony cases. The LIDB's aspirational standards are designed to address the following goals:

1. Lowering attorney caseloads to levels consistent with LIDB and national caseload standards;
2. Increasing the pool of qualified attorney under the LIDB's capital and appellate program;
3. Providing more effective support services for attorneys, including investigators, secretaries, and other forms of office support; and
4. Improving attorneys' knowledge of substantive criminal law and their practical skills through training, continuing legal education and supervision.

The amount of funding the district defender boards receive is directly tied to caseload. In FY 96-97, the OIDP received approximately \$530,000 in District Assistance Funds from the LIDB. (This amount does not include the \$250,000 emergency appropriation the OIDP received in September 1997.) In FY 97-98, that amount will be approximately \$680,000.

The LIDB's Expert Witness/Testing Fund is another important funding source for the OIDP. Under Louisiana Supreme Court Rule 31(G), LIDB funds are used for expert witness fees and specialized testing as may be required by a judge for the proper defense of indigents in all felony cases. By LIDB practice, a signed order from the trial court judge suffices to demonstrate

the need for expert or other services.

Additionally, the LIDB recently established a statewide Louisiana Appellate Project (the Appellate Project) which has assumed responsibility for direct appeal work on behalf of indigent defendants convicted of felony offenses. The Appellate Project handles all felony appeals in which the notice of appeal was filed on or after April 12, 1997. The Appellate Project has divisions throughout the state; the Fourth District office, which encompasses Orleans Parish and two smaller parishes, employs seven attorneys to handle up to 40 appeals per attorney per year. Approximately 90% of the Fourth District Office's caseload is comprised of appeals which originated in Orleans Parish. These attorneys are also able to maintain a private practice.

Finally, in 1995, to help defray the costs associated with capital cases which OI DP is unable to handle because of a conflict of interest, OI DP entered into separate agreements with the LIDB and the Orleans Indigent Defender Capital Conflict Panel, which represents capital trial defendants whom OI DP is unable to represent because of conflict of interest or overload. Under the agreements, LIDB provides LIDB with conflict counsel funds, all of which are passed through to the Conflict Panel. Beginning in FY 97-98, the LIDB will contract directly with the Capital Conflict Panel, eliminating the OI DP pass-through.

#### 4.5 Budgeting Problems

While the LIDB has helped indigent defense programs throughout Louisiana make great strides since 1994, the major funding sources for the operation of the OI DP, and for other indigent defense programs in Louisiana, remain unpredictable and unreliable. Moreover, as we wrote in our 1992 report on the East Baton Rouge indigent defense system, "[P]erhaps the most important point on the funding issue [is that, with the exception of the LIDB monies now available,] the amount of funds made available to a program does not bear any direct relationship to the program's caseload/workload and staffing needed to provide quality representation to its clients." Monies deposited to the indigent defender fund and up-front assessments have in the past been viewed as too unpredictable and unreliable to allow for the planning necessary to provide quality representation to New Orleans' indigent defendants.

While the OI DP prepares working budgets to provide some framework for determining

which expenditures are feasible, without an annual appropriation on which ODP administrators can rely, the process is seriously flawed. The fact remains that ODP managers believe the program is largely at the mercy of court assessments (mainly a function of traffic tickets), which are in turn a function of police arrest and citation rates.

With such uncertain funding, the Director and the ODP Board of Directors set aside substantial monies which could better be used to address some of the program's most pressing problems, particularly problems relating to the program's "infrastructure" such as salaries, benefits, computers and other equipment. Historically in Louisiana, indigent defender boards have created reserve accounts for the months in which traffic ticket revenue is substantially reduced. It our understanding that the reserve fund balance is maintained based upon recommendations from the Director to the OIDB. At the time of our site visit, we were not able to determine the current fund balance, which caused us some concern. However, we did conclude that a fund balance of two months personnel costs should be adequate, particularly given the LIDB's one-time allocation of \$250,000.

During the summer and fall of 1997, the ODP's reserve funds were drawn upon, reducing the reserve by half, when the number of traffic citations written over a six month period dipped by 30 to 40%. While recent reports indicate that the New Orleans Police Department has been able to re-shift its focus to once again devote more attention to revenue-generating traffic offenses, the system itself is entirely unsatisfactory. If, as it should, the ODP is to operate in a fiscally responsible manner, respectfully drawing from the public fisc, it must be funded in a way that permits long-term planning rather than day-to-day crisis management.

Standard 5-1.6 of the American Bar Association Criminal Justice Standards, Defense Function, provides that following valuable instruction on funding defender organizations:

The level of government that funds defender organizations, assigned counsel or contracts for services depends on which level will best insure the provision of independent, quality legal representation.

#### 5.0 The Provision of Representation in Orleans Parish

Louisiana Revised Statutes 15:144-149 sets up the framework for the Parish of Orleans' indigent defense system. Pursuant to the statute, the District Court has named a seven-member

Orleans Indigent Defender Board of Directors. Under the statute, each of Louisiana's parishes is required to provide indigent defense services by: contracts with private firms, volunteer attorney panels and/or public defender programs. The Board of Directors has opted to create a public defender office, the Orleans Indigent Defender Program.

#### 5.1 OIDP Board of Directors

By statute, the OIDP Board of Directors is comprised of seven members who are appointed by a vote of the District Court judges from a list of nominees provided by the local bar association. Board members serve without compensation. The Board of Directors is responsible for establishing the policies by which the OIDP operates. The Board appoints the OIDP's Director, who is responsible for carrying out these policies.

In recent months, three new members have been appointed to the Board of Directors, and as a result, the Board of Directors has begun to play a more active role in the OIDP. This increased involvement was particularly important during this summer's budget crisis, which resulted from the sharp decline in traffic ticket revenues. To address these and other problems facing the OIDP, the Board of Directors has been meeting on a weekly basis. As the Board members become more familiar with the operation of the program, we are confident they will be able to continue to work for substantial improvements in the program's operation. Their direct involvement over the next year is critical.

#### 5.2 The Orleans Indigent Defender Program

As mentioned above, the Orleans Indigent Defender Board has opted to create a public defender office as the primary provider of indigent defense services in Orleans Parish. The Orleans Indigent Defender Program represents indigent defendants charged with criminal and quasi-criminal offenses in District Court, Magistrate's Court, Municipal Court and Traffic Court. In Juvenile Court matters, the OIDP also represents juveniles charged with delinquency offenses, juveniles involved in abuse and neglect cases, and parents charged with failure to pay child support.

Pursuant to Louisiana Revised Statutes 15:144-149, the Board may "employ a chief

indigent defender and such assistants as it deems necessary." Since 1975, the Board has employed Numa V. Bertel as OIDP's full-time Director. Mr. Bertel serves mainly as an administrator. The Board recently named Tilden Greenbaum to the newly created, part-time position of Chief of Trials. While Mr. Greenbaum has only been in this position since March 1997, he has been with the OIDP since 1972. Prior to assuming the position of Chief of Trials, Mr. Greenbaum was assigned to the Criminal Division of the District Court. His responsibilities as Chief of Trials include assisting Mr. Bertel in the daily administration of the office and covering the courtrooms of public defenders who are ill or on vacation. Mr. Greenbaum also organizes CLE training classes, takes care of miscellaneous administrative matters, and serves in Mr. Bertel's absence when necessary.

Excluding Mr. Bertel and Mr. Greenbaum, the OIDP has 46 part-time staff attorneys, six full-time investigators, seven full-time administrative support staff, two full-time accounting clerks, and one accounting consultant who is on salary with the OIDP.

During the course of our sitework we were able to interview over two-thirds of the OIDP's staff, including attorneys who work in each section. Overall, we were impressed with many of the OIDP staff's dedication and commitment.

#### 5.2.1 OIDP Main Office

The OIDP's main office, located in the District Court Building at Tulane and Broad, houses a total of 43 OIDP employees: 29 part-time attorneys from the program's criminal district court division, the capital division, the appeals division and the magistrate's court division, and 14 full-time employees, including the accounting department staff, most of the investigative and secretarial staff, and the Director. The office is divided into seven main areas: the Director's office, the finance office, the library, the kitchen, the file and conference room, a bathroom, and a large, open area where all of the staff attorneys, clerical staff and secretarial staff work.

Because of the severely limited space ( the entire office measures approximately 3,000 square feet, and the large open area accounts for approximately two-thirds of the total space), attorneys must share cubicles, which causes logistical problems and makes it impossible to use the office for private interviews. Photographs of the office appear below.

The office is messy and disorganized, with boxes and old office equipment piled high.

Again because of problems relating to inadequate space, the library is little more than a broom closet. The office does not have Westlaw or Lexis, or Louisiana statutes or caselaw available on CD-Rom. Additionally, the library's limited collection of resource materials is physically difficult to access, and many of the books have either old or outdated pocket parts.

Adjacent to the library is the file and conference room, which is another dirty, disorganized space in desperate need of cleaning, a fresh coat of paint and reorganization. Things are even worse in the kitchen and bathroom, neither of which looks as though it has been cleaned in years. We were told that a rat had recently been seen in the kitchen. We were also told that because the OI DP office is located next to the coroner's office, on occasions when the morgue is filled to capacity, bodies are sometimes stored in the coroner's office, and the smell of the corpses often wafts into the public defender's office. Both reports raise serious health concerns. In a word, the office is a disgrace, and creates a disincentive for orderly work. Equally important is the fact that to clients, the space cannot appear as a law office; this reflects

negatively on ODP's role in the criminal justice system in New Orleans.

#### 5.2.2 District Court, Criminal Division Public Defenders

Eighteen part-time public defenders cover the 12 criminal courtrooms in District Court. Each courtroom is assigned one public defender, and a second public defender is assigned to "swing" between two courtrooms, picking up approximately one-third of the cases from each. We were told that prior to the recent budget crisis, each courtroom was staffed with two public defenders. Funding problems caused the ODP to scale back on staffing criminal division courtrooms (mainly through attrition). This development has caused confusion and frustration on the part of both criminal court public defenders and judges.

In September 1997, Orleans Parish opened a drug court which handles the cases of defendants eligible for diversion programs. However, we were told that unlike the courts and the district attorney's office, the ODP received no funding to staff this new courtroom. As a result, the public defender's office only sporadically staffs the drug court.

Five of the full-time investigators work out of the ODP main office at the District Court building and are available on an as-needed basis to assist attorneys in all divisions. Most of the criminal court attorneys whom we interviewed indicated that they rarely, if ever, make use of the investigators for criminal investigations.

There are no paralegals on staff, and while the office's secretarial/support staff is available, they are also stretched thin. The lack of secretarial support is exacerbated by the fact that there are no ODP computers for staff attorneys. Thus, when an attorney needs to file a motion or prepare correspondence, he must either use his private computer or borrow a secretary's terminal.

The ODP's staffing in criminal court stands in stark contrast to that of the District Attorney, which typically has two full-time assistant DAs and one full-time investigator assigned to each courtroom, and often has a law clerk and additional staff available as well.

While it was not possible to obtain accurate caseload counts, many of the attorneys whom we interviewed estimated that their open caseload ranged from 60 to 90 open cases. These numbers are dramatically high, especially for a program that is in name and in practice part-time.

### 5.2.3 Capital Division Public Defenders

Five part-time capital public defenders, including one supervisor, handle all death penalty cases in the criminal courts. As with the other criminal division attorneys, these attorneys carry extraordinarily high caseloads, particularly given the very serious consequences of their work. We interviewed all of the attorneys in the capital division, and learned that each attorney is assigned approximately 11 cases as lead counsel. In addition, each attorney has recently been assigned as second chair, responsible for the mitigation phase of the proceedings, in approximately nine cases. Thus, in total, each attorney in the capital division is assigned approximately 20 capital trial cases per year on a part-time basis.

The number of murder cases charged as death penalty is extremely high compared to other jurisdictions of similar population throughout the country. This is due in part to Louisiana's uniquely broad definition of death penalty eligible offenses, which allows aggravated rape cases to be charged as death penalty cases. We were told repeatedly that the District Attorney overcharges in the death penalty area.

None of the five investigators who work out of the main office on Tulane and Broad is specifically assigned to the capital division, and our interviews indicated that the investigators are substantially under-utilized by the capital trial attorneys. However, a number of the attorneys mentioned that they frequently call upon Ms. Maone, who handles a wide range of administrative duties, to collect medical, school and other records for use at sentencing.

Similarly, very few of the attorneys in the capital division regularly use psychiatric, forensic, DNA or other experts in defending a capital case. It is unclear whether this is because the attorneys do not appreciate the value of calling upon experts or they are concerned about the cost of using experts (which appears to be unwarranted, given the availability of LIDB Expert Witness/Expert Testing funds).

### 5.2.4 Magistrate's Court Public Defenders

The magistrate section is staffed with three attorneys who handle first appearances, preliminary hearings, trials (in misdemeanor cases), and bail reduction motions. One attorney covers the morning session, which runs from 10:00 a.m. to approximately 12:00 p.m., Monday

through Friday. The other two attorneys share responsibility for the evening (4:00 p.m. to 7:00 p.m.) and night (beginning at 9:00 p.m.) sessions, which are also held Monday through Friday. Sessions run on the weekends as well. A few times each year the criminal court attorneys rotate to cover these sessions.

Precise caseload records for magistrate's court public defenders were not available, but the three attorneys in the magistrate section volunteered to maintain accurate case records for the month of November 1997. During this month, the section reported handling 1,200 first appearances and 152 preliminary hearings. The attorneys in this section also reported 48 magistrate trials during November. It is not clear whether these figures reflect defendants or charges. On an annualized basis, this translates into a caseload of approximately 4,800 first appearances, 600 preliminary hearings and 190 magistrate trials per attorney per year. These caseload numbers, if accurate, are astounding and beyond any public defender office we have ever visited, particularly in light of the part-time nature of the magistrate public defenders' work.

#### 5.2.5 Municipal Court/Traffic Court Public Defenders

Through traffic fines, the eight public defenders (including one supervisor) and one secretary who work in municipal and traffic court help generate the vast majority of OIDP's funding. One part-time public defender is assigned to each of the four traffic court sections, and to three of the four municipal court sections. (Because of a vacancy, the fourth section was covered by substitute attorneys at the time of our site work.)

The municipal and traffic courts are located at the 727 Broad Street facility. While we were unable to visit the office, from all reports, it is in even worse condition than the main office. We were told that the office is far too small for all of the attorneys who must share the space (measuring approximately 12 feet by 10 feet), and offers no privacy for client interviews. The pictures below depict two views of the office space at 727 Broad Street.

Additionally, we were told that there is no law library of any kind; the office does not even have the Louisiana Code of Criminal Procedure or the New Orleans Municipal Code. Nor is there a photocopier in the office, which is staffed with one secretary who must do all of her work on an electric typewriter, as no computer is available.

The municipal court division handles Orleans Parish municipal violations, including many domestic violence cases, while the traffic court division handles state and municipal traffic offenses, mainly those booked under state law. In 1996, on average the traffic court division disposed of 425 cases per month. No caseload figures were available for municipal court.

While we were told that indigency screening procedures vary from judge to judge, it is clear that indigency screening problems are most acute in the municipal and traffic courts, which process the highest volume of cases in the Orleans criminal court system.

#### 5.2.6 Juvenile Court Public Defenders

The juvenile court is located in the civil district court building, far removed from the main office. In fact, the juvenile unit staff has almost no contact with the majority of the divisions which work out of the main courthouse at Tulane and Broad. The juvenile section has six delinquency sections and a non-support section, which is presided over by a commissioner. At the time of our visit, the juvenile section had seven part-time attorneys, including one supervisor, one attorney to cover the non-support section, and five attorneys to cover five of the

six sections. There was one vacancy which was filled during the time of our visit. Additionally, the juvenile division has one investigator, who was only recently hired. The division has no secretarial, social worker or paralegal staff.

As with the investigator position, the supervisor position was created recently. Since the new supervisor, Victor Papai, arrived, a number of substantial improvements have been made to the juvenile section. Importantly, the division persuaded the juvenile judges to allot a small office for the juvenile defenders. Previously, juvenile public defenders had no office. While the office is far too small (measuring approximately 12 feet by five feet) and offers virtually no privacy, it is better than no office at all. The photograph below depicts the juvenile public defender's office.

Also, for the first time, each attorney has been given a drawer of a filing cabinet in which to place case files, and supplies to create case files. We were told that previously, case files were rarely used by most attorneys. Other notable improvements include, for the first time, two separate phone lines which run to the juvenile public defender's office, and the addition of an investigator to the juvenile division staff.

We spent a full day in juvenile court and interviewed five of the seven juvenile attorneys, along with the investigator. As with the attorneys in the other divisions, we were unable to obtain accurate caseload information. However, from what we observed and were told, it is clear

that these attorneys carry caseloads so high as to jeopardize their ability to provide effective representation.

#### 5.2.7 Appellate Public Defenders

With the creation of the LIDB's statewide Louisiana Appeals Project, which handles all felony appeals filed after April 12, 1997, the OIDP appeals unit scaled back from three to two attorneys in the spring of 1997.

Because the majority of the OIDP's cases are now diverted to the appellate panel, unlike public defenders in OIDP's other divisions, the two attorneys remaining in the appellate unit do not appear to be overwhelmed with their caseloads. This is a significant improvement over pre-appellate panel days, when, according to the division's director, the three part-time appellate public defenders used to file between 160 and 250 appellate briefs a year. This attorney reported that he now has a backlog of 15 appeals, and indicated that because of delays in producing the trial transcript, some non-capital appeals filed before April 21 are still trickling in.

The appellate public defenders' offices are located in the main criminal courthouse facility. Like the other attorneys, the appellate public defenders do not have their own computers. One of the stenographers is assigned to assist the appellate division with correspondence, telephone calls and brief assembly. However, she does not type any briefs, so the appellate attorneys must use someone else from the pool of secretaries for typing assistance or a secretary in their private office.

#### 5.2.8 Investigators

The OIDP has a total of six full-time investigators on staff. Five investigators work out of the criminal court main office at Tulane and Broad and are available to assist attorneys in the criminal district court, capital, appellate, magistrate, municipal and traffic divisions. One additional investigator was recently hired and works at the juvenile facility exclusively.

The OIDP's investigators are asked by attorneys to perform the following tasks: track down and occasionally interview potential witnesses; obtain medical, educational and other records; interview clients; and obtain prior criminal history information. The investigators all

carry beepers and must use their own automobiles, as neither the state nor the parish provides cars for the OIDP.

#### 5.2.9 Administrative Support Staff

With the exception of one stenographer who works in the municipal and traffic division, the five other administrative support personnel are all located in the main OIDP office, in the District Courthouse. The juvenile division has no secretarial or administrative staff. All administrative support staff positions are full-time.

The OIDP's main office had five support positions. The administrative assistant assists Mr. Bertel and Mr. Greenbaum with their duties, maintains staff attendance records, sends out accounts payable checks, assists with walk-in and telephone inquiries, and acts as the recording secretary. The central telephone operator is also responsible for opening and closing all case files (using OIDP's recently-installed case-tracking system), compiling weekly and monthly statistical reports, and maintaining the court calendar. As mentioned above, one of the stenographers is assigned to assist the appellate division attorneys. Another stenographer, who would be better classified as a paralegal, given the breadth of her responsibilities, works primarily with the criminal court and capital divisions, though she also types briefs for the appellate attorneys. The final stenographer shares many of the same job responsibilities.

#### 5.2.10 Accounting Staff

OIDP's accounting department consists of a full-time senior accounting clerk and a full-time accounting clerk, along with a part-time consultant who formerly ran the department on a full-time basis, but has been in semi-retirement for the past few years. The two clerks prepare periodic budget and financial reports for the board of directors; maintain accounts payable and accounts receivable; track and reconcile all reports from OIDP's various funding sources; and handle all banking transactions, payroll and health and other insurance policies.

### 5.3 Conflict Cases

Chapter 9 of the LIDB Standards on Indigent Defense, Standards Relating to Conflicts of

Interest in the Representation of Indigents, addresses when and how counsel should determine that a conflict of interest exists. The chapter addresses imputed disqualification, multiple representation, former representation and employment by the prosecution.

In practice, we were told that attorneys often wait as long as possible to declare a conflict and frequently represent co-defendants during many stages of the criminal proceedings.

For non-capital felony cases, when a district court judge determines that a conflict of interest exists, he or she typically appoints either the Loyola law clinic or the Tulane law clinic, or private counsel. When private counsel is appointed, no compensation is provided.

For capital felony cases in which the court determines a conflict of interest exists, an attorney from the Capital Conflict Panel, which is funded by the LIDB, is appointed. OI DP has no formal written policies pertaining to conflict of interest cases.

## 6.0 OI DP Administration

### 6.1 Staff Oversight

Each of the OI DP's various divisions operates virtually autonomously, with little or no day-to-day oversight from the Director. This is especially true for the Juvenile and Municipal/Traffic Divisions, which are located apart from the main office at Tulane and Broad. These divisions in particular are left to their own devices, and in some ways appear not to have the full support of the OI DP leadership.

Additionally, most division supervisors limit their supervisory duties to scheduling matters, and spend very little time mentoring, monitoring attorney performance or discussing cases with the attorneys within their division in part because they carry their own overwhelming caseload and are part-time. Thus, even within their divisions, OI DP public defenders are subject to minimal oversight.

This lack of oversight creates scheduling and accountability problems. It also exacerbates the problems inherent in a part-time system where some attorneys may already be subject to divided loyalties between their public defender and private clients. With little supervision and no formal accountability requirements, many OI DP public defenders come and

go as they please once their court day is over. This practice is particularly troublesome because it creates difficulties for clients and their families who wish to contact their public defender.

### 6.2 Performance Evaluations

The information provided to us during the course of our sitework indicated that annual or semi-annual performance evaluations are not conducted, for either public defenders or support staff, despite a provision in the OIDP Office Policy and Procedure Manual which states: "All employees will be evaluated on an annual basis, conducted by the Director and submitted to the Board of Directors."

### 6.3 Staff Meetings

Similarly, we were informed that program-wide staff meetings do not occur. Again, staff meetings are vital to fostering a cohesive program. They also provide the ideal forum for addressing changes in Orleans Parish's court system, changes in the law, changes in benefits policies, etc.

### 6.4 CLE and Training Opportunities

Both the ABA Criminal Justice Standards and the LIDB Standards on Indigent Defense place a high value on training and professional development. LIDB Standards 1-1.4 states: "All district defender boards should require and assist the attorneys under their control to fulfill the continuing legal education requirements set by the Louisiana Indigent Defender Board and to avail themselves of other training and professional development services sponsored by the Louisiana Indigent Defender Board and other entities." While the OIDP has recently placed a new emphasis on CLE opportunities, in the past, training and legal education have been given a low priority. We applaud this new attitude and hope that it continues. We also urge the OIDP to investigate program membership in the Louisiana Association of Criminal Defense Lawyers, as this organization offers many valuable CLE opportunities as well as the chance for the OIDP to cultivate a closer relationship with the private defense bar.

## 6.5 Benefits

By office policy, each employee is entitled to 18 vacation days and 24 sick days per year. While vacation time may accumulate up to 30 days, there is no limit on the number of sick days an employee may accumulate. OIDP also pays for malpractice insurance for OIDP attorneys while they are acting in the course and scope of their employment. Additionally, the OIDP participates in a group health insurance plan to which it contributes \$170.00 per month per employee. In the alternative, the OIDP will pay \$170.00 per month towards the premium of any other health insurance program which an employee may obtain.

OIDP does not offer short-term or long-term disability insurance; nor does it offer its employees any type of pension plan.

## 6.6 Part-Time Employment Status for Attorneys

With the exception of the Director, all other OIDP attorney positions are part-time. The OIDP Office Policy and Procedure Manual provides:

An attorney employed by the Orleans Indigent Defender Board may engage in the private practice of law, to the extent that such practice does not interfere with his responsibilities to the program. Any practice must be conducted through the employee's private office. None of the staff, facilities or resources of the Indigent Defender Program may be utilized in the private practice of law.

Staff attorneys who are assigned to a section of court on a daily basis are *prohibited* from representing any private client in the court in which they are assigned. (Emphasis in original.)

Both the ABA Criminal Justice Standards and the LIDB Standards on Indigent Defense indicate that a full-time program is preferable to a part-time program, particularly in urban areas with high caseloads such as Orleans Parish. Chapter 5-4.2 of the *ABA Standards for Criminal Justice, Providing Defense Services* (3rd ed.) (1992) provides: "Defense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of law." Louisiana Indigent Defender Board Standard 1-4.2 takes a more flexible approach, stating: "Defense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of criminal law in the jurisdiction in which the attorney serves as a staff attorney. An attorney may be permitted by the

district indigent defender board to have a private civil law practice, provided that such practice does not conflict with or otherwise adversely affect the duties owed by the attorney to his or her indigent clients."

#### 7.0 Findings and Recommendations

In our professional opinion, the Orleans Indigent Defender Program has suffered from serious neglect over a long period of time. While many of the support and attorney staff are experienced and competent, they must work within a program that lacks sufficient resources to provide the basic tools of the attorney's trade. The office lacks both leadership and planning, and as a result, suffers from a sense of malaise.

For too long, the OIDP has placed a primary emphasis on maintaining a huge reserve fund in anticipation of the day that the police stop writing traffic tickets, thereby cutting off the office's funding source. Development of yearly budgets is almost entirely driven by the fear that the program will run out of money, not on providing sufficient resources to improve representation to current clients. The responsibility for this policy lies jointly with the Director and the Board, who should recognize that Orleans Parish has both a constitutional and a statutory obligation to provide representation to indigent defendants, regardless of whether traffic revenues are up or down. Ideas for possible improvements to the office over the past few years have been repeatedly defeated by the attitude that "It can't be done because we have no money." This excuse has become a self-fulfilling prophecy.

The practice of law in the office has been built primarily upon the premise that experience alone will get the client a positive result. The program's record in this regard is mixed. Many attorneys, although very experienced, told us that they could be substantially more effective with the availability of computers; training; investigators who have the skill and motivation to conduct criminal investigations in serious cases; computerized legal research; fewer cases; better supervision; better wages and fringe benefits; more professional office space; adequate support staff; access to expert witnesses, etc. We agree.

We strongly encourage the OIDP to begin to shift from a part-time to full-time attorney staff, as part-time positions do not provide the time necessary to do an adequate job. The OIDP

culture condones some attorneys' devoting the minimum amount of time to fulfilling their public defender duties, and much of this is attributable to public defenders' part-time status. Some attorneys told us that their workload and time devoted to public defender work is driven primarily by the judge in their section, stating that they come in when the judge does, and leave when court is finished for the day. Given the magnitude of ODP public defenders' caseloads and the seriousness of the cases ODP attorneys handle, we believe that the attorney staff should be full-time. While 15 to 20 years ago, part-time public defenders might well have been able to provide competent representation in Orleans Parish, in our professional judgment, this is no longer the case.

We also found that an underlying philosophy among the staff is that satisfying the judges is extremely important. We believe too much time and effort is devoted to placating the judges. In our judgment, there is a distinction between defense counsel's recognizing and respecting the responsibilities of judges to be effective and efficient in their handling of criminal cases, and defense counsel's obligation to be vigilant in protecting the rights of each client. For some lawyers, the balance has shifted inappropriately toward the judge and the court.

The following section contains our findings and recommendations, which are organized into five broad areas: overall leadership; fiscal matters; office conditions; terms of employment; and improving quality of representation. Our recommendations appear in bold print.

### Overall Leadership

1. ODP Director: Mr. Bertel, who has been director of the ODP for over 23 years, indicated to us that he has the following responsibilities: handling fiscal matters; monitoring attorney scheduling; fielding calls and complaints from clients and their families; and maintaining a good working relationship with the parish's judges. Additionally, Mr. Bertel reported that he carries a caseload of one capital case. During the course of our time at the program, however, we found Mr. Bertel to be underutilized. The program's supervision of attorneys is minimal, at best, and after many years of struggling with budget uncertainties, Mr. Bertel in many ways has resigned himself, and the program, to the status quo. As a result, new opportunities (e.g., taking advantage of

the LIDB's expert witness fund) are often passed over, to the detriment of the program's clients. Mr. Bertel has been a long-time, dedicated leader of the OIDP. **If Mr. Bertel were able to adopt a more active approach to running the OIDP, we believe that the interests of indigent defendants, and Orleans Parish's criminal justice system, would be somewhat improved.**

On a related note, we observed that, with a few exceptions, the attitude from Director down is to placate and please the judges, even when this approach might harm the client. This attitude must be changed, from the top down, to emphasize that the primary role of the OIDP is to provide high quality representation to clients.

2. Chief of Trial Services: **The role and responsibilities of Tilden Greenbaum, who was recently named to this new position, need to be better defined and expanded.** Mr. Greenbaum oversees the staffing of the courtrooms, substituting for attorneys who are on vacation or out sick; organizes CLE classes for OIDP public defenders; and substitutes for Mr. Bertel at various meetings as necessary. He also has additional administrative duties.
3. OIDP Board of Directors: The OIDP Board of Directors has recently begun taking a more active role in the program's operation, which we applaud. **We urge the Board to continue in this direction in the next two to three years.**

#### Fiscal Matters

4. OIDP Budget: The funding structure for OIDP poses a serious challenge for the Director and Board, as its revenues are unreliable. Despite this challenge, the program for too long has acted conservatively and failed to recognize opportunities available to improve the program. There are no written controls which govern expenditures, nor is there a long-term plan for how budget expenditures should be made. As a result, funds are sometimes expended in a haphazard fashion. **The OIDP must begin to operate as a private business would, and the board must begin to operate as a corporation's board of directors, assuming responsibility for monitoring finances and managing the program's resources in an efficient and timely manner. Both the Director and**

**the Board must also make a major effort to obtain outside funding for the program.** Possible sources include the LIDB, the state legislature, the U.S. Department of Justice, through Edward Byrne Memorial Grant Funds and the Juvenile Accountability Incentive Block Grant. **Additionally, larger private law firms and universities in New Orleans should be solicited to see if they would be willing to donate computers, or perhaps pledge to cover the cost of updating one or more publications in the law library.**

5. Current Alternative Revenue Sources: The "conditions of probation" fees and up-front fees of \$100 and \$150 sporadically assessed in misdemeanor and felony cases, respectively, compete with many other court assessments and generate very little money. **The "conditions of probation" fees and up-front fees should be reconsidered as a revenue source.**
6. ODP Fund Balance: With an annual budget of approximately \$1.9 million, the ODP's budget reserve fluctuates in value depending on how it is defined. However, with the \$250,000 emergency grant the ODP received from the LIDB in September 1997, it is certainly in excess of \$500,000. Despite our best efforts, and the help of Mr. Bertel, we were unable to determine the exact amount of the fund balance at the time of our visit. We were particularly concerned when we learned that the ODP Board of Directors did not have the figure either. Mr. Bertel's conservative fiscal approach is understandable, considering the unreliable nature of the program's funding. However, given the condition of the program, it is more important to use these funds to address some of the program's more serious and pressing problems: low attorney and support staff salaries, inadequate legal research facilities, lack of a retirement or pension plan, lack of computers, and general office conditions.

**We recommend that the ODP reduce its budget reserve to \$250,000, which will cover payroll for at least two months, should another budget crisis arise. The balance of the budget reserve funds should be used to address the problems mentioned above, with the Board setting priorities for how the monies are to be used.** For too long, ODP has taken far too conservative an approach to the fund balance, and has used this conservative approach as an excuse not to move the program forward

**Mr. Bertel and the Board of Directors should consult with an accounting firm to design appropriate controls for all line items in the budget.** At the present time, the year-end audit is unable to provide appropriate opinions in part because of this lack of fiscal controls. **Finally, a written accounting manual should be developed as soon as possible.**

7. **OIDP Resources vs. District Attorney Resources:** In section 5.2, we compared the staff resources of the District Attorney with those of the OIDP in the District Court, Criminal Division, but this is the tip of the iceberg for a true comparison. The Orleans Parish District Attorney's office operates on a full-time basis. The office receives funding for various sources, including the City of New Orleans, the state and the federal government. In addition, they receive funds from the "bad check" account and from the "diversionary program." Most significantly, the District Attorney has access to all police departments operating in New Orleans and at the state level for investigatory services, the state crime lab and other state experts. In addition to receiving federal funds for state prosecution, the Orleans District Attorney also has ready access to

8. DEA and FBI agents, as well as the federal crime lab. None of these significant resources is included in the District Attorney's annual budget; however, it is certain that the OIDP does not have any comparable resources. **Efforts should be made to provide adequate and balanced funding to the OIDP, the District Attorney and other components of the Orleans Parish criminal justice system.**
9. Indigency Screening: By statute, the trial court judge determines who is eligible for the services of the OIDP. Virtually every attorney we interviewed indicated that indigency screening in Orleans Parish is virtually non-existent, and as a result, the OIDP is often appointed to represent defendants who could afford their own counsel. **We recommend that the Board and Mr. Bertel meet with the Orleans Parish judges to impress upon them the importance of strictly adhering to indigency determination guidelines.**
10. Accounting Staff: The accounting department's two clerks appear to be doing a good job of managing OIDP's somewhat precarious funds. We found their records to be in good order, and they were able to provide swift and comprehensive responses to our questions. One impediment to their job is that ordering of office supplies and other office equipment is done without their consultation, which sometimes results in inefficient expenditures. **There are, however, insufficient financial controls for all accounts; this problem must be addressed as soon as possible.**
11. Accountant Consultant: While the accounting consultant has made many valuable contributions to the OIDP over the course of his long tenure with the program, the current value of his services as part-time consultant rather than full-time accounting clerk is not apparent. Additionally, the cost of his time is significant. **Given the OIDP's serious budget constraints, the monies expended on the accountant consultant should be directed towards other areas.**

#### Office Conditions

12. Office Conditions in the Criminal Court Building: The public defender's main office, which houses the program's central administrative staff, most of the secretarial staff, most of the investigative staff, and attorneys from the appellate division, the district court

division, the capital division and the magistrate's court division, is totally unacceptable. The space itself is far too small, requiring most attorneys to share a cubicle. Moreover, because the offices are created with dividers rather than floor-to-ceiling walls, there is no privacy for client interviews or conversations. The space itself is dirty and crowded, and not at all conducive to work. The file/conference room, leading to the dark and filthy bathroom and kitchen, is particularly depressing. The office would benefit greatly from a purge of the unnecessary odds and ends that are strewn about, particularly in the file/conference room, a real cleaning, and a fresh coat of paint. Even if each of these problems is addressed, the fact remains that the space is far too small. **We recommend that adequate office space, close to but not in the courthouse, be secured as soon as possible.** We are aware of the fact that the main office includes free rent and utilities, but this should not be used as an excuse to avoid pursuing outside space.

13. Criminal Court Building Office's Law Library: The public defender's law library is also entirely inadequate. It is located off of the office's back room, in a space not much bigger than a broom closet. There is barely enough room for statutory and caselaw books, and the office does not have access to Westlaw, Lexis or Louisiana caselaw and statutes on CD-Rom. Additionally, many of the books are missing pocket parts, so attorneys are unable to research recent changes in the law. **We recommend that the OIDP place a high priority on providing adequate funds to significantly improve the program's legal research facilities.**
14. Juvenile Court Office Conditions and Library: As it now stands, the 12 foot by five foot office space is too small to even hold a staff meeting, let alone meet with clients in privacy. **The juvenile division desperately needs both more office space and a library in order to operate properly. Additionally, the juvenile office needs a law library, secretarial support and access to a computer - basic tools of the attorney's trade - to provide effective representation of counsel.**
15. Municipal Court/Traffic Court Office Conditions and Library: At approximately twice the size of the juvenile public defender's office, the municipal court/traffic court office is slightly better sized, but is nonetheless entirely inadequate. **Efforts should be made to**

**secure adequate office space, furniture and equipment for the Municipal Court and Traffic Court divisions. Additionally, the office should be equipped with enough up-to-date copies of the Louisiana Code of Criminal Procedure and the New Orleans Municipal Code to permit each attorney access to the law when required.**

16. Computers: None of the staff attorneys has their own computer, so they must either use the secretaries' computers (in the main office) or bring in their own, which a few attorneys have done. **While it may not be possible to purchase computers for every ODP public defender, the appellate attorneys, the municipal/traffic court stenographer and the juvenile division most certainly need their own computers, and other staff attorneys should be given computers to share. Serious attempts should be undertaken immediately to obtain donations of computer equipment from large law firms and local universities.**
17. Case Tracking: While the basics of the new computerized case tracking system appear to be in place, it is underutilized. **We recommend that the program obtain a user's guide, which will substantially enhance the system's usefulness, as it should be helpful for generating reports containing more information than those currently produced.** Additionally, the value of the reports depends upon the quality of the information put in to the system. We found that many cases, particularly those handled in the juvenile and magistrate courts, fall between the cracks, going unreported. This under-reporting of cases is especially harmful because it directly affects the funding ODP is able to secure from the LIDB.
18. Accurate Caseload Statistics: Caseload statistics are virtually non-existent, and those statistics that do exist are unreliable. As a result, other than through anecdotal reports by the staff attorneys themselves, it is impossible to accurately assess the average number of open cases for attorneys in a particular division, or annual caseload figures. One way in which a reasonably reliable figure could be determined is to print out a report of all open cases that have been assigned to each attorney. Both the ODP Director and the Board of Directors must place a high priority on collecting accurate caseload figures, particularly given the importance caseload numbers have for securing LIDB funds. **To begin with,**

**OIDP must define a "case" so that all counts are determined in the same manner. We recommend that the OIDP obtain technical assistance from outside the program to address the threshold issue of the definition of a "case."** Without a common definition, the resulting caseload data will not permit a comparison of workload among the OIDP divisions.

19. Staff Morale: OIDP staff morale is better than expected given the many problems facing the program. However, too many staff believe that nothing will bring about significant improvements in the program. This attitude should challenge the Director and the Board of Directors to move swiftly to institute the changes outlined in this report.

#### Terms of Employment

20. Attorney Salaries: Public defender staff attorney salaries are extremely low, especially considering the years of experience many staff attorneys have. This is true notwithstanding the part-time nature of their work. Many attorneys have not had a raise in 10 years. The salaries of the juvenile court public defenders warrant particular mention because they are so low. In fact, despite astronomical caseloads and long working hours, juvenile public defenders are paid 33% less than district court public defenders, whose caseloads and hours are slightly less onerous than those of juvenile public defenders. We were unable to understand or justify the salary increases last year that did not include the juvenile defenders. **The OIDP should place a high priority on significantly improving attorney salaries.**
21. Opportunity for Advancement: One of the OIDP's most pressing structural flaws is the dearth of opportunities for advancement by way of promotion and/or salary increase. This problem affects the entire OIDP staff: attorneys, administrative staff and investigators. Many attorneys in municipal and traffic court have remained at the same salary level for over ten years. **The Board must work to rectify this situation as soon as possible.**
22. Part-time Attorney Status: **We recommend that the Board devise a plan to convert public defender positions from part-time to full-time in the next two to three years.**

Both the American Bar Association and LIDB standards indicate that a full-time program is preferable to a part-time program. The commentary to ABA Criminal Justice Standard 5-4.2 clearly identifies the two most serious problems inherent in a part-time system: first, attorneys' temptation to increase total income by devoting time and effort to private clients, at the expense of non-paying clients; and second, a tendency by those responsible for funding the indigent defense system to maintain low salary structures on the assumption that defenders can supplement their salaries through private practice. This is precisely the situation we encountered at the ODP. We also learned that while many public defenders have active private practice, many do not. For this latter group of attorneys, many of whom work full-time or close to full-time for the ODP, the program's abysmally low salaries are particularly troubling.

**As a starting point, we recommend that the Board of Directors enforce the ODP's established prohibition against public defenders representing clients in the courtroom where they practice, as this creates, if not an actual conflict, the appearance of a conflict between private and public defender clients. We also recommend that part-time public defenders be prohibited from representing private clients in the specific court level at which they provide public defender representation. Eventually, we recommend that all criminal practice in Orleans Parish be prohibited.** The temptation to expedite the cases of non-paying clients to focus on private clients is great. As these policies are being considered and implemented, the Director must monitor the time staff attorneys devote to public defender clients to assure they are adequately representing their public defender clients and salaries must be substantially increased.

23. Lack of Pension Plan: **Another high priority for the Board and Mr. Bertel in the immediate future is to investigate offering a pension plan for ODP staff.** The program's lack of any type of pension plan presents very serious problems for the program's many long-time employees. While the ODP may not now be in a position to contribute substantial funds to the plan, the program's employees would nonetheless benefit from the opportunity to put aside their own monies for retirement through a

program set up by the OI DP.

24. Lack of Short-Term or Long-Term Disability Insurance: **We urge the OI DP to promptly investigate and implement short-term and long-term disability insurance programs for OI DP staff.** Such policies are both low-cost and a standard workplace benefit. If the OI DP were to purchase such insurance, this would provide an easy remedy for situations where long-term employees are stricken with serious illness or injury, resulting in unnecessary cost to OI DP.

#### Improving the Quality of Representation

25. District Court, Criminal Division Courtroom Coverage: The present approach of staffing each of the 12 courtrooms with 1½ part-time attorneys is entirely insufficient. While a budget crisis was the reason the courtroom staffing was cut from 2 to 1½ public defenders, under this arrangement, district court public defenders' caseloads are prohibitively high (particularly given the lack of paralegal and other support), and scheduling and coverage problems are acute for the "floater" public defenders who split their time between two courtrooms. **OI DP should as soon as possible provide at least two part-time attorneys to each courtroom.**
26. Juvenile Court: The new supervisor has taken a number of positive steps towards improving the operation of the juvenile division since his arrival a few months ago. The new office space, filing cabinet and telephone lines are an improvement. However, a number of major roadblocks still exist, and these are beyond the control of even a dedicated supervisor. **First, additional staff must be added to relieve the juvenile public defenders of their excessive caseloads.** Again, accurate numbers were not available, but the attorneys we interviewed estimated that they handle in their part-time capacity approximately 3,000 delinquency or abuse and neglect cases each year. If this estimate is correct, it is the largest number of cases we have heard of in the entire country, even in full-time offices. This number is over ten times greater than the maximum annual caseload limitations the LIDB recommends for full-time attorneys handling juvenile

cases.<sup>2</sup> **Additionally, the juvenile division attorney salaries must be increased to the level of the criminal court attorneys.** Compared to the criminal court attorneys, OIDP's juvenile public defenders handle far more cases, including complex cases, and should be compensated for their efforts. Additionally, most juvenile public defenders appear to work longer hours than most OIDP attorneys (and thus have less time available to develop a private practice), an additional reason to increase their salaries.

27. Capital Division: We were told that far too many cases that would never result in the imposition of the death penalty are indicted as first degree murder cases. The district attorney's practice of overcharging has a ripple effect throughout the entire Orleans Parish criminal justice system, especially on the OIDP's capital division, whose attorneys are assigned far too many cases as both first and second chair. This problem is further aggravated by the fact that assistant district attorneys assigned to the District Court, we were told, have extremely limited authority to negotiate specific pleas. Rather, they must obtain permission before any offer is made.

These high caseloads translate into insufficient preparation and, at times, off-the-cuff representation. Additionally, despite their onerous caseloads, the capital division attorneys do not utilize the program's investigators, perhaps because no one investigator is assigned to the capital division exclusively. Moreover, most of the attorneys in the capital unit rarely, if ever, use expert witnesses, which raises questions of whether these attorneys have received adequate training to represent capital defendants. A couple of attorneys stated that they have never needed to use an expert. **We recommend that the OIDP place a greater importance on delivery of services in capital cases, by providing: specialized training; adequate investigative, mitigation and other support staff; ready access to expert witnesses; and a reduced caseload for attorneys handling capital cases.**

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<sup>2</sup> LIDB Standards 12-2.1, Caseload Limitations states: "Considering the assessment of overall workload in keeping with the criteria above, the caseload of a staff, contract, or appointive counsel representing indigent defendants should not exceed the following ranges:....Juvenile[:] 200 - 250."

28. Traffic and Municipal Courts: In comparison to the other divisions, operations in the traffic and municipal courts appear to be running somewhat more smoothly. **However, the office needs copies of both the Louisiana Code of Criminal Procedure and the New Orleans Municipal Ordinance Code. Additionally, Mr. Bertel and the Board of Directors should focus on expanding the traffic and municipal divisions' office space so that attorneys have available a private location in which to meet with clients.**
29. Caseloads: While no accurate caseload numbers from any of the divisions were available, based on the estimates provided to us, it is clear that public defenders in each of the divisions carry caseloads far in excess of both LIDB and national guidelines. In the juvenile and capital divisions in particular, the level of caseloads, together with the lack of support services, seriously threatens attorneys' ability to provide effective representation to their clients. **We recommend that the OIDP Director and Board of Directors make a concerted effort to reduce the high caseloads of staff attorneys.**
30. Trial Rates: As with caseload information, reliable data regarding trial rates was unavailable. **Our interviews and observations revealed that when trials do occur, attorneys are frequently unprepared; as with the high caseload rate, this problem must be addressed.**
31. Administrative/Support Staff: Each of the OIDP's administrative personnel in the main office has been with the program for many, many years; their dedication is to be commended. Despite the high level of experience each of the stenographers has, we found the majority of the administrative staff to be under-utilized. For example, one stenographer stated that she does not assist the attorneys in typing briefs and/or motions because this is not in her job description, yet her other duties were minimal. **We recommend that the OIDP take steps to assure that support staff are making the greatest contribution possible to the operation of the program. In this regard, the administrative staff needs better training on the capabilities of the computers they recently received.** For example, one secretary told us that she uses WordPerfect 3.0, rather than WordPerfect 6.0, because she has never learned how to use the more advanced program.

32. Investigators: As with the stenographers, the investigator staff is underutilized. Many attorneys told us that they rarely use the investigators, as they prefer to conduct investigations on their own. Other attorneys told us that they only use investigators for very serious cases. Some investigators told us they are underutilized because certain attorneys do not understand what they can accomplish in a given case, or that some attorneys do not use investigators because they would rather do their own work. Whatever the reason(s), this problem must be addressed, for without proper investigation in appropriate cases, clients run the risk of receiving less than competent services. **We recommend that investigators be trained on conducting traditional criminal investigations and that staff attorneys be trained on how to make the best use of criminal investigators.**
33. Limited Supervision: While in name each of the attorney and support staff divisions has a supervisor in place, in practice, the degree to which each division's supervisor provides meaningful supervision varies significantly. For example, the new juvenile supervisor is clearly doing his best to institute many changes in the juvenile public defender program. The juvenile division's monthly meetings/training sessions are one of the most fruitful of these efforts. However, other divisions do not meet regularly to discuss scheduling, developments in the law, changes in office policy, etc. As a result, the attorneys and support personnel in these divisions operate autonomously, with little or no supervision. **We recommend that Mr. Bertel take a more active role in supervising the supervisors by communicating to the division heads the importance of their role. We also recommend that each of the division supervisors focus on their responsibility to manage their respective division's day-to-day operations.**
34. Performance Evaluations: One of the key responsibilities of Mr. Bertel and the division supervisors is to monitor and provide feedback on attorney and support staff performance, an obligation which has long been overlooked by the ODP. **We recommend that the ODP either abide by its established policy which requires the Director to conduct annual evaluations of each ODP employee, or institute a policy requiring the division supervisor to conduct an annual performance evaluation for**

**each of the attorneys or support staff he or she supervises, and the OIDP Director annually evaluate the performance of each of the supervisors.**

35. Staff Meetings: None of the OIDP staff whom we interviewed could recall a staff meeting in recent years. Such meetings are crucial to communicate to OIDP staff matters such as funding, changes in staffing, office procedures, benefits, etc. They are also important to foster a cohesive program, particularly when attorneys and support staff work in different courthouses throughout the parish. **As with performance evaluations, we recommend staff meetings occur regularly.**
36. Conflict Cases: The program often represents co-defendants until the last moment, which poses a serious threat of conflict of interest. In non-capital felony conflict cases, the district criminal court often appoints either the Loyola law student clinic or the Tulane law student clinic, or private attorneys who reportedly receive no compensation. Capital conflict cases are assigned to the LIDB-funded Capital Conflict Panel. **The OIDP should establish and enforce clear, written conflict of interest policies to avoid situations where public defenders are placed in an ethically questionable position when confronted with a potential conflict of interest.**
37. Expert Witnesses: Our interviews revealed that expert witnesses are very rarely used, even in capital cases. This practice is particularly troubling given the accessibility of the LIDB's Expert Witness/Testing Fund, through which the LIDB can defray in whole or in part the costs associated with court-ordered defense experts and specialized scientific testing in felony cases. **The OIDP should provide training on when it is appropriate to use an expert witness and educate staff attorneys on the availability of the Expert Witness/Testing Fund.**
38. Training/CLE Opportunities: The OIDP has recently given training sessions a new priority, and **we urge the program to continue efforts to expand training opportunities. We also urge OIDP leadership to investigate program membership in the Louisiana Association of Criminal Defense Lawyers, as this organization also offers many worthwhile training sessions as well as an opportunity for the program to forge stronger relationships with the private criminal defense bar.**

## 8.0 Conclusion

In conclusion, there may be several ways to read this report. One approach would be to spend unnecessary time assessing who bears the major responsibility for the neglect we found in the program: the Board, the Director, the courts or the local government.

Another approach would be to read the report and conclude that the tasks set out are too overwhelming to consider; or that most of the problems can be addressed only with additional funds and it is unlikely that more monies will be made available; or that the funding is so unpredictable that in balance, the financial risks outweigh the benefit that might result from attempting to institute changes. During our interviews, we were impressed with the fact that the staff had no other programs with which to compare itself, either in Louisiana or counties of comparable size outside Louisiana. Such a comparison, at least with programs outside of Louisiana, would confirm many of the problems we found at OIDP.

We hope, however, that OIDP - its Board, Director and staff - will look at our report as a rare opportunity to improve the delivery of indigent defense services in Orleans Parish. We are impressed with the Board's revitalized interest in OIDP. Many of the staff are experienced, competent and concerned about quality defense services. With this foundation in place, we are convinced that many positive opportunities lie ahead. We are optimistic that renewed vigor and dedication will overcome both malaise and a view that the program cannot move ahead because its funding is precarious.

We conclude with our express gratitude to the OIDP's Director, attorney and support staff, and Board of Directors for their accessibility and open communications during our site visit and to date.

*EMBARGOED UNTIL TUESDAY, JULY 22 10:00 AM CST*

**DEFENDING THE INDIGENT  
IN SOUTHWEST LOUISIANA**

A report prepared by:

**MICHAEL M. KURTH, PhD**

**AND**

**DARYL V. BURCKEL, DBA & CPA**

## EXECUTIVE SUMMARY

This study examines the provision of legal services to indigent persons accused of felony crimes in Southwest Louisiana. It considers the funding, staffing and case load of the Calcasieu Parish Public Defender's Office, the amount of contact public defenders have with their clients, the resources available to the District Attorney's Office vis-à-vis the Public Defender's Office, as well as the process for assigning judges to cases and setting the court docket.

We find that there is a lack of client contact, little investigative and/or legal work performed on cases prior to trial, no use of experts, and minimal assertion of clients' legal rights. We identify two reasons for this: one is a lack of resources to carry out the public defense mission, and the other is a judicial process that tolerates delays. The felony caseload of attorneys in the Calcasieu Parish Public Defender's Office is three times greater than state caseload guidelines recommend, and the average time from arrest to disposition of a felony case in Calcasieu Parish is 501 days, compared to a national average of 214 days. This slow pace of justice more than doubles the number of open felony cases in the parish.

It is our conclusion that the Calcasieu Parish Public Defender's Office needs additional funding, but unless this is accompanied by judicial system reform the cost of bringing the office into compliance with state and national guidelines will be extremely high.

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## I. INTRODUCTION

This study examines the provision of legal services to indigent adults accused of a serious crime in Calcasieu Parish, Louisiana. Work on the study began in the fall of 2001. At that time nearly everyone involved in the judicial process in the parish—judges, the District Attorney’s Office, the Public Defender’s Office, private defense attorneys, the Sheriff’s Department, and those accused of crimes—acknowledged there were serious problems in the parish. The Public Defender’s Office, which represents nearly 90 percent of the approximately 3,000 persons accused of felony crimes in Calcasieu Parish each year, is overburdened. Cases often languish three years or more before they are finally resolved, and then it is almost always by a plea bargain. Thus, innocent people may sit in jail for months awaiting trial if they are unable to make bond, while those who can make bond are forced to live in a prolonged world of uncertainty. This raises serious questions about how well the indigent are being represented in Calcasieu Parish.

Prior to this study, the evidence of these problems was largely anecdotal and everyone had their favorite story to tell. The first task of the study was to gather data and convert it to a form that would lend itself to analysis. To determine the legal experience of indigents we decided to track the cases of all those charged with a felony in March of 1997, 1999 and 2001, a sample of 770 persons. To evaluate the activities of the public defenders we examined a random sample of 182 case files—one out of every 50 they had open—as well as jail visitation records. To evaluate the quality of public defenders compared to private defense attorneys, we surveyed and interviewed local attorneys with an active criminal practice. The results of these surveys are contained in appendices I, II

and III. In addition, we incorporated data from various other studies and from publications put out by the Department of Justice and the Louisiana Supreme Court.

The cooperation we received from all parties was quite remarkable. The Public Defender's Office gave us complete access to their files, as did the District Attorney's Office, which even provided us with on-line access to their files. The Calcasieu Correctional Center was also extremely helpful in providing us their files and visitation records, and the judges were very open and candid in their discussions with us. It is our sincere hope that the findings of this study will provide a foundation upon which these parties can work together to structure a more efficient legal process in Calcasieu Parish.

This study was funded by a grant from the ABA Gideon Initiative, a grant program of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, which was supported by an award the ABA received from the Open Society Institute. The purpose of the study was to examine the provision of legal defense to indigents in Southwest Louisiana and recommend changes. It was done under the direction of Michael M. Kurth, PhD (economics) and Daryl Burckel, CPA & DBA with assistance from Gary Proctor and various interns from the Louisiana Crisis Assistance Center. However, Dr. Kurth and Dr. Burckel are solely responsible for the conclusions and recommendations contained in the study.

## II. BACKGROUND

### A. The Mandate for Indigent Defense

The U.S. Supreme Court, in a series of landmark decisions in the nineteen-sixties and seventies, ruled that the Sixth Amendment to the U.S. Constitution requires free legal counsel be provided to indigent persons charged with a crime that could result in their imprisonment.<sup>1</sup> The states complied in a variety of ways: some established *public defender offices* (hereafter referred to as PDOs) with salaried staff attorneys to represent the indigent; some developed *assigned counsel systems* in which the court appoints private attorneys to represent the indigent; while others awarded contracts to an attorney or group of attorneys to handle indigent cases. Many jurisdictions use a combination of two or all three to meet their obligation.

According to a 1999 Justice Department survey, 82% of all indigent cases in large counties are handled by PDOs, 15% by court-appointed attorneys and 3% by contract attorneys.<sup>2</sup> Less populated counties tend to rely on assigned counsel systems, while contract attorneys are most generally used to handle overflow cases and conflicts of interest (e.g., where there are two defendants charged with the same crime), although in

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<sup>1</sup> In *Gideon v. Wainwright* (1963) the Supreme Court held that states must provide counsel to all indigents accused of a serious crime in their jurisdictions; in *Gault* (1967) it extended this to juveniles facing possible incarceration; and in *Argersinger v. Hamlin* (1972) it ruled this included those charged with petty offenses that carried a possible sentence of incarceration.

<sup>2</sup> *Indigent Defense Services in Large Counties, 1999* (Bulletin, Bureau of Justice Statistics, November 2000)

recent years some jurisdictions have replace their assigned counsel systems with contracting.<sup>3</sup>

**Table 1**

<b>Indigent Defense Delivery Systems Used by Local Jurisdictions, 1992</b>	
Per cent of Prosecutor's Offices Reporting Type of Indigent Defense System, by Jurisdiction	
Public defender program only	28%
Assigned counsel system only	23
Assigned counsel and public defender	23
Contract attorney system only	8
Public defender and contract system	8
Assigned counsel, public defender and contract attorneys	6
Assigned council and contract	3
Other	1

Source: *Indigent Criminal Defense: A National Perspective (A BJS Report)*, Bureau of Justice Statistics, *Alaska Justice Forum*, 13(2), Summer 1996.

The survey also found a great deal of variation within these systems. For example, twenty-eight states had a uniform statewide system; fourteen allowed local jurisdictions to make their own arrangements; and eight used a hybrid system of state and local control. Financing also varied, with twenty-one states relying exclusively on state funds; eleven relying on county funds; and sixteen relying on a combination of state and county funds. Moreover, in recent years there has been a trend towards increased use of filing

<sup>3</sup> *Contracting for Indigent Defense Services: A Special Report* US Department of Justice, Office of Justice Programs, December 2000.

fees, cost recovery, and/or court costs assessments to help meet the demand for free public counsel.<sup>4</sup>

Public defenders appear to be the most cost effective means of providing indigent defense with an average cost per case of \$258 (see Table 2). This is likely due to economies of scale where a large number of similar cases can be handle at a lower cost-per-case by one large office, which would not be applicable in smaller jurisdictions. Contracting, on the other hand, tends to have a higher per-case cost, although there is evidence that a properly structured system of contracting may be cost-effective and deliver high-quality services.<sup>5</sup>

**Table 2**

<b>Expenditures per Case in the 100 Most Populous Counties, 1999</b>		
<b>Public Defender</b>	<b>Assigned Counsel</b>	<b>Contract Attorneys</b>
<b>\$258</b>	<b>\$400</b>	<b>\$490</b>

Source: Bureau of Justice Statistics, *National Survey of Indigent Defense Systems, 1999*

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<sup>4</sup> Spangenberg, Robert L. and Marea, Beeman L., *Indigent Defense Systems in the United States* (Journal of Law and Contemporary Problems, Duke University School of Law, Volume 58 Winter 1995 No. 1)

<sup>5</sup> *Contracting for Indigent Defense Services: A Special Report*, US Department of Justice, Office of Justice Programs, December 2000.

This hodge-podge of programs has led to very different legal experiences, depending upon the jurisdiction in which one is charged, raising questions as to the fairness of the system. It has been said that “the quality of justice that an innocent person receives should not vary unpredictably among neighboring counties. If two people are charged with identical offenses in adjoining jurisdictions, one should not get a public defender with an annual caseload of 700 while the other has 150; one should not get an appointed private lawyer who is paid a quarter of what the other lawyer is paid; one should not be denied resources for a DNA test, or an expert or an investigator, while the other gets them; one should not get a lawyer who is properly trained, experienced and supervised, while the other gets a neophyte.”<sup>6</sup>

But the U.S. Constitution limits the federal courts’ power to impose uniform procedures on state and local courts. In February 2002 the House of Delegates of the American Bar Association adopted a set of ten principles that they believed must be met for a public defense system to “deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”<sup>7</sup> The Ten Principles are equally applicable to every type of indigent defense system, including assigned counsel programs, contract defender programs, or public defender programs. These principles are reprinted on the following two pages.

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<sup>6</sup> Redefining Leadership for Equal Justice: Final Report of the National Symposium on Indigent Defense, 2000. Office of Justice Programs/Bureau of Justice Assistance, U.S. Department of Justice, 2001, p. 14.

<sup>7</sup> The resolution may be accessed at <http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf>

## The ABA'S Ten Principles of a Public Defense Delivery System

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

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

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

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

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

**6. Defense counsel's ability, training, and experience match the complexity of the case.** Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide

ethical, high quality representation.

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

Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

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

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

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

Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.

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

While the obligation to provide free legal counsel to the indigent is not a mandate to provide free public counsel to all who request it, in many jurisdictions the eligibility criteria for receiving public legal services have been continually expanded or even ignored. At the same time, criminal law has become ever more complex, and the cost of retaining private counsel has risen, putting such representation out of reach for many

citizens. Thus, we have reached the point where today it is not uncommon for public defenders to represent up to 90 percent of all felony defendants in a jurisdiction.

Although attorneys have an ethical obligation to not accept additional clients if it will diminish their ability to serve their existing client, many states leave this decision to the PDO. In Louisiana, the chief indigent defender has the authority to request that the court appoint private counsel to represent indigent defendants in the event of inadequate personnel.<sup>8</sup> But self-policing does not always work: some public defenders may feel intense personal and political pressure not to reject cases that have been assigned to them by judges,<sup>9</sup> and often these funds to pay private counsel come from the same indigent defender budget that funds the PDO. Thus, an issue that must be addressed when considering the appropriate funding level for a PDO is the appropriate scope of its services.

## **B. Indigent Defense in Louisiana**

The indigent defense system in Louisiana has been described as fragmented and localized. While the state constitution granted the right of a court-appointed attorney to any indigent person charged with a crime that could result in their imprisonment, it left it to the state legislature to establish “a uniform system for securing and compensating qualified counsel for indigents.” The legislature established district Indigent Defender Boards (IDBs) composed of three to seven members appointed by the district court from nominees submitted by the local bar associations. The IDBs have the task of deciding which system of indigent defense is best suited for their districts. Calcasieu Parish, along

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<sup>8</sup> Louisiana Criminal Procedure, Section 145(B)(2)(b)

<sup>9</sup> Keeping Defender Workloads Manageable, US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2001.

with Orleans Parish, Caddo Parish and East Baton Rouge Parish, chose to establish a Public Defender's Office augmented by contract attorneys who handle case overloads and conflicts of interest, such as when two or more persons are charged with the same crime. Most of the other parishes utilize contract attorneys to represent the indigent.

In 1994 the Louisiana Supreme Court created the Louisiana Indigent Defense Board, later reconstituted by the legislature as the Louisiana Indigent Defense Assistance Board (LIDAB), an umbrella organization with responsibility for establishing and enforcing indigent defense qualification and performance guidelines throughout the state. Thus far, this board has set the following three mandatory statewide standards:<sup>10</sup>

- The trial of capital cases requires two certified attorneys.
- Appeals cases may be handled only by certified attorneys.
- Private attorneys working as full-time staff members on district boards can not practice criminal law in their respective districts, but may practice civil law if it does not conflict with their duties.

Initially LIDAB had little power to enforce the standards it set, but now it is an agency within the Governor's Office and has a budget of approximately \$7.5 million, approximately \$3 million of which is distributed to local indigent defender boards that demonstrate they are making strides toward complying with the LIDAB standards. These funds include district assistance grants based upon population and caseload levels. In 1997, the LIDAB implemented a fully-funded statewide appellate project and began

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<sup>10</sup> *Redefining Leadership for Equal Justice: Final Report of the National Symposium on Indigent Defense 2000* (Office of Justice Programs/Bureau of Justice Assistance, U.S. Department of Justice, 2001), at 16-17.

administering a statewide capital project that oversees a small proportion of the state's capital trial cases.<sup>11</sup>

At the local level, the primary source of funds for indigent defense is court costs and fees, the majority of which are for traffic violations. A pilot program using application fees was recently launched in one judicial district and the Calcasieu Parish Indigent Defense Board has been receiving a portion of the forfeiture fees imposed on bail bonds since 1999, but most observers agree that adherence to national caseload standards will require far more funding than the amount currently available.

### **C. Indigent Defense in Calcasieu Parish**

The Calcasieu Parish IDB consists of seven attorneys appointed by the 14<sup>th</sup> District Court. The board utilizes a Public Defender's Office augmented by contract attorneys, and it is responsible for appointing and supervising the executive director of the PDO as well as setting the salaries of the PDO's attorneys and staff and approving its annual budget. The IDB is also charged with maintaining a list of all attorneys in the district—both volunteers and non-volunteers—who are qualified to represent the indigent. The executive director of the PDO has the obligation to request that the court appoint counsel from this list in the event of a conflict of interest or inadequate personnel to handle their caseload. In addition, the IDB oversees programs to collect child support payments, provide counsel to juveniles accused of crimes, and assist the mentally ill or incompetent with their legal problems.

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<sup>11</sup> *Comparative Analysis of Indigent Defense Expenditures and Caseloads in States with Mixed State and County Funding*, (Spangenberg Group/ABA Bar Information Program Report, February 25, 1998).

The Calcasieu Parish Public Defender's Office serves the 14<sup>th</sup> Judicial District Court of Louisiana. The court assigns approximately 90% of the 2,500 to 3,000 felony charges filed in Calcasieu Parish each year to the PDO, and the PDO has one attorney assigned to represent cases in each of the seven criminal divisions of the court. The main sources of funding for the PDO are court costs assessed on traffic fines and, in the last two years, a portion of the bond forfeitures collected by the court. The annual revenue of the Calcasieu Parish PDO is shown in table 3. In 2000 and 2001 the Calcasieu Parish PDO received grants from the Louisiana Indigent Defense Assistance Board totaling nearly \$100,000 but these funds were for felony cases only.

**Table 3**

<b>Revenues of the Calcasieu Parish PDO, 1997-2001</b>					
	1997	1998	1999	2000	2001
Court costs on fines and forfeitures	\$840,288	\$853,590	\$878,514	\$875,758	\$971,571
Reimbursements to PDO	\$4,991	\$7,791	\$4,019	\$9,595	\$3,445
Intergovernmental Revenue	\$0	\$960	\$0	\$32,631	\$66,928
Interest Income	\$14,783	\$6,834	\$7,677	\$15,044	\$6,120
Other Income	\$410	\$1,548	\$0		
<b>Total</b>	<b>\$860,472</b>	<b>\$870,723</b>	<b>\$890,210</b>	<b>\$933,028</b>	<b>\$1,048,064</b>

### III. Resources of the Calcasieu Parish PDO

#### A. Staff and Salaries

The Calcasieu Parish PDO has a staff of 17 full-time employees consisting of nine staff attorneys (including Executive Director Ron Ware who handles a full case load plus capital cases), an office administrator, two investigators, four secretaries and a receptionist. The PDO also utilizes two contract attorneys--Leah White who handles worthless checks, and Wade Smith who handles child support payments--as well as four conflict attorneys who handle approximately 200 felony cases apiece. Table 4 shows how the staff of the Calcasieu Parish PDO compares to the Calcasieu Parish District Attorney's Office as well as to national averages for District Attorney's Offices encompassing similar populations.

**Table 4**

<b>Comparison of Staffing, Budget, and Caseloads: Calcasieu Parish and National Medians, Normalized for Population, 2001</b>			
	National Median	Calcasieu Parish DA's Office	Calcasieu Parish PDO
Total Staff	82	88	17
Chief Attorney	1	1	1
Staff Attorneys	26	16	7
Supervisory Atty.	4	2	1
Managers	1	1	1
Victims Advocates	4	2	0
Legal Services	2	0	0
Staff Investigators	7	14	2
Support Staff	26	44	5
Other	11	0	0
Budget	\$4,461,345	\$3,700,000	\$1,123,959
Total Caseload	9,837	6,000	5,100
Felony	2,313	3,000	2,550
Conviction rate	83.2%		
Misdemeanor	7,122		
Conviction rate	80.0%		
Felony Jury Verdicts	67	10	8

Source: Prosecutors in State Court, 2001, US Department of Justice, Office of Justice Programs, National Survey of Prosecutors, May 2002.

In addition to too few staff relative to its caseload, the Calcasieu Parish PDO suffers from inadequate salaries and benefits, contributing to a reduced morale and high staff turnover (salaries of attorneys at the PDO range from \$30,000 for new attorneys with no experience to \$75,000 for the Executive Director). Because of this, the PDO believes that in order to attract qualified attorneys it must permit them to have private practices on the side. But this makes it very difficult to determine how much time the staff attorneys spend representing their PDO clients, and how much is spent dealing with their personal clients. There are some who advocate that all the PDO attorneys be full-time with salaries commensurate with their counterparts in the DA's office, while others believe that prohibiting private practice would cost the PDO some of its most competent and experienced attorneys. As long as private practices are permitted, some form of monitoring such as an electronic time sheet program should be implemented so the amount of work being done for the PDO can be measured.

## **B. Caseloads**

Similar issues arise with respect to the caseloads of the staff. Table 5 shows the assignment of cases within the Calcasieu Parish PDO. With just 9 staff attorneys and 4 contract attorneys, the PDO is obviously over-burdened. Two of the staff attorneys--Isaac and Rubin--tend to specialize in misdemeanor cases, leaving the seven other staff attorneys to handle an average of 590 felony cases, including capital cases and appeals, and 150 misdemeanor cases; each of the contract attorneys handles approximately 200 felony cases.

**Table 5**

Open Cases, by Attorney: Calcasieu Parish PDO, 2002							
	Caseload Ratio	Court Division	Judge	Felony	Misdmnr	Juvenile	Uresa*
<u>Staff Attorneys</u>							
R. Ware	2.0	E	Minaldi	372	68	2	
B. Van Dyke	4.3	H	Gray	769	186		
D. Ritchie	3.3	G	Canady	589	173		
M. Henrich	3.7	D	Wyatt	655	195	1	
M. Ned	3.3	F	Carter	588	147	2	
S. Williams	3.7	A	Savoy	649	176	1	10
S. Coward	2.9	B	Painter	506	154		
S. Isaac	2.2			10	660	176	
C. Rubin	3.8			8	1,677		
<u>Contract Attorneys</u>							
W. Smith	2.4				47		568
L. White	2.0			376	52		
<u>Conflict Attorneys</u>							
B. Vouguet				200**			
M. Breaux				200**			
T. Barrett				200**			
J. Burkes				200**			
Total Open Cases:				4,522	3,535	182	578
* Child support cases							
** estimated caseload							

In 1973 the National Advisory Commission on Criminal Justice Standards and Goals set the following guidelines for annual public defender caseloads:

*“The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding 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.”<sup>12</sup>*

<sup>12</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973), p. 186. These standards did not include capital cases.

The Louisiana Indigent Defense Assistance Board has adopted its own caseload standards that are more lenient than those of the National Advisory Commission. The LIDAB recommends that “the caseload of a staff, contract, or appointive counsel representing indigent defendants should not exceed the following ranges:”<sup>13</sup>

Capital Cases	3-5
Cases Carrying Automatic Life	15-25
Non-Capital Felonies	150-200
Misdemeanors	400-450
Traffic	400-450
Juvenile	200-250
Mental Health	200-250
Other Trial Cases	200-250
Capital Appeals	3-5
Non-Capital Felony Appeals	40-50

Not all cases require the same amount of time and resources and capital cases are particularly demanding. As the Louisiana Supreme Court has noted, “[d]eath, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two.”<sup>14</sup> According to records in the Clerk of Court’s office, sixteen capital indictments were filed in Calcasieu Parish in 2002 (see Table 6). Of these, notice of the intent not to seek the death penalty was given in only one case and notice of intent to seek the death penalty was given in four cases. No notice had been given either way in the other eleven cases. Because a defense lawyer must act as if the death penalty will be sought until notified otherwise, there were effectively fifteen new cases in 2002 in which

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<sup>13</sup> Standard 12-2.1, Standards of Indigent Defense for the State of Louisiana, Louisiana Indigent Defense Assistance Board, <http://www.lidab.com/standards.htm>.

<sup>14</sup> *State v. Myles*, 389 So. 2d 12, 30 (La. 1980)

**TABLE 6**

<b>Capital Cases filed in Calcasieu Parish, 2002</b>			
<b>Defendant</b>	<b>Charge</b>	<b>Docket number</b>	<b>Counsel(s)</b>
*John Simon	1st Degree Murder		
*Michael Guillory	1st Degree Murder	23415-02E	<b>Ron Ware</b>
*Adrian S. Citizen	1st Degree Murder	22,815-02H	<b>Judge Gray, Ware</b>
*Mark A. Dittmer	Aggravated Rape	22,798-02H	<b>Judge Gray, Davidson</b>
*Luther Deel	Aggravated Rape	21,323-02B	<b>Judge Gray, Davidson</b>
*Dustin C. Ducote	Aggravated Rape	20,640-02H	<b>Judge Gray, Davidson</b>
*Daniel Holland	Aggravated Rape	20,639-02H	<b>Judge Painter, Coward</b>
*Wilbert Rideau	1st Degree Murder	15,321-01E	<b>Ron Ware (Kendall and Murray)</b>
*Jimmy Dorris <sup>+</sup>	Aggravated Rape	15,111-02H	<b>Judge Gray, Davidson</b>
Jonathan E. Boyer	1st Degree Murder	14,005-02B	<b>Thomas Lorenzi, Stephen Singer</b>
*Zavier Lewis	Aggravated Rape	14,003-02D	<b>Judge Wyatt, Henrich</b>
*Chester L. Mercantel	1st Degree Murder	12,317-02G	<i>Not listed</i>
Ben Tonguis	1st Degree Murder	10,272-02H	<b>Ron Ware, David Ritchie</b>
Eric D. Crawford	1st Degree Murder	10,271-02D	<b>Ron Ware</b>
Ricky J. Langley	1st Degree Murder	10,258-02H	Clive Stafford Smith, Phyllis Mann
*Rock A. Doucet	Aggravated Rape	7,109-02E	<b>Judge Minaldi, Ware</b>
Frazen Chesson	Aggravated Rape	13601-96G	Thomas Lorenzi, LCAC
Charles Winfree	1st Degree Murder	6359-01	Clive Stafford Smith, Charles St. Dizier
Broderick Turner	1st Degree Murder	6359-01	Thomas Lorenzi, Walter Sanchez
Nathaniel Smith	1st Degree Murder	6359-01	Phyllis Mann, Robert Pastor
Reginald Gauthier	1st Degree Murder		James Boren, Glen Vamvoras
Eddie Mitchell	1st Degree Murder	6308-92D	Clive Stafford Smith, Thomas Lorenzi

\* Notice of intent to seek death penalty not yet received

the defendant's life was at stake. Earlier notice by the DA's Office of whether or not a case will be tried as a capital case would allow the PDO to allocate its resources more efficiently.

The Executive Director, Ron Ware, is currently handling four capital cases, including two where notice has been given that the death penalty will be sought (see Table 6). In addition, Mr. Ware has three other cases where capital notice has not been filed. According to LIDAB standards, such a caseload requires the attention of one full-

time attorney, yet Mr. Ware also has 372 felony cases and 68 misdemeanor cases in addition to his duties as Executive Director. In addition, the Calcasieu Parish PDO is currently assigned 30 cases with a mandatory life sentence. The LIDAB standard is that 15 to 20 such cases per attorney should constitute a full caseload.

Thus, the 2002 average caseload in the Calcasieu Parish PDO is more than 3 times the LIDAB standard and more than 4 times the national standard. This heavy caseload does not simply mean that its staff is over-worked and underpaid. We found ample evidence that the clients of the PDO also suffer. As discussed further on in this study, the quality of legal services provided to indigent defendants in Calcasieu Parish is far below national norms and much of this can be traced back to the caseload problem.

In order to meet these standards, either the number of open cases assigned to the Calcasieu Parish PDO must be reduced by two-thirds, or its staff would need to be expanded to 39-46 full-time attorneys: 23-30 attorneys handling felony cases, 10 attorneys handling misdemeanor cases, 3 attorneys to handle capital cases and cases carrying automatic life sentences, one to handle appeals, one to handle juvenile cases, and one to handle Uresa (child support) and “other” cases.

### **C. The Budget of the PDO**

There are various benchmarks that can be used to evaluate the funding levels of PDOs. One is the average expenditure per case handled. According to data published by the U.S. Bureau of Justice Statistics, the average cost per case handled by PDOs in the

nation's 100 most populous counties was \$258 in 1999.<sup>15</sup> This figure is obtained by dividing the total operating expenses of the PDO by the number of cases (felonies, misdemeanors and appeals) handled in a year. When this calculation is made for Calcasieu Parish it shows an average cost per case of \$110. While costs can vary depending upon the number and type of cases a PDO handles, this is significant evidence that the Calcasieu IDB is under-funded relative to its caseload.

Another benchmark is the *per capita* cost of financing indigent defense. This number is obtained by dividing the budget of the PDO by the population of the area it serves. In 1999 the average cost of indigent defense in the 100 largest counties in the US was about \$10 per resident;<sup>16</sup> in Calcasieu Parish it is just \$6.12 per resident. Although some jurisdictions have higher crime rates and/or more poverty than others, this measure also suggests the Calcasieu Parish PDO may be under-funded.

**Table 7**

**Budget of the Calcasieu Parish PDO and Benchmarks**

Basis	Benchmark	Calcasieu Parish	Needed to Meet Benchmark
Per Case	\$258	\$110	\$2,330,514 *
Per Capita	\$10.00	\$6.67	\$1,828,420
Per DA Budget	\$4,267,667	\$1,200,000	\$3,627,517

\* Assumes a reduction of 2,200 backlogged cases

<sup>15</sup> Indigent Defense Services in Large Counties, 1999, US Department of Justice, Bureau of Justice Statistics, November 2000.

<sup>16</sup> Ibid.

Some believe that the most relevant comparison is between the resources of the District Attorney's Office and the Public Defenders Office.<sup>17</sup> In 2002 the Calcasieu Parish District Attorney's Office had a budget of \$3.7 million and a staff of 88 fulltime employees, including 19 attorneys and 14 investigators, as well as access to forensic testing, expert witnesses, and the investigative resources of local law enforcement agencies. The Southwest Regional Criminalistics Laboratory is based in Lake Charles and performs analysis for the prosecution without cost to the District Attorney. The prosecution also draws upon the resources of the police departments in each jurisdiction within the parish, as well as the Calcasieu Parish Sheriff's Office and, less commonly, other state agencies and the Federal Bureau of Investigation. By comparison, the budget of the PDO is \$1.2 million and it has a staff of 9 staff attorneys and just 2 investigators<sup>18</sup>.

Any consideration given to increasing the PDO's budget must focus on identifying specific needs and shortcomings within the PDO; just throwing money at a problem will not solve it. Table 8 provides a breakdown of the PDO's expenditures from 1997-2000 and shows that these funds are principally used for salaries and related benefits (58%), professional service including contract attorneys (23%), and rent (10%). All other expenses, including supplies, travel and utilities, amounted to only

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<sup>17</sup> For example, see "*Parity: The Fail-safe Standard*," by Scott Wallace in Compendium of Standards for Indigent Defense Systems: A Resource Guide for Practitioners and Policymakers, US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2001.

<sup>18</sup> The DA's office has a larger caseload than the PDO because they also prosecute cases where the defendant has a private attorney. Although the DA's office was unable to identify what proportion of their resources were devoted to cases with private attorneys, we suspect it is no more than 25% of their total budget.

**Table 8**

**Calcasieu Parish PDO Expenditures, 1997-2000**

<b>Expenditures:</b>	<b>1997</b>		<b>1998</b>		<b>1999</b>		<b>2000</b>	
Salaries & Benefits	\$ 535,276	59%	\$ 599,065	61%	\$ 676,574	62%	\$ 714,386	58%
Professional Services	\$ 228,303	25%	\$ 236,480	24%	\$ 257,023	24%	\$ 284,747	23%
Litigation Support	\$ 9,701	1%	\$ 2,444	0%	\$ 17,880	2%	\$ 9,863	1%
Library	\$ 3,846	0%	\$ 5,860	1%	\$ 6,726	1%	\$ 5,999	0%
Materials & Supplies	\$ 18,754	2%	\$ 21,179	2%	\$ 17,939	2%	\$ 29,975	2%
Travel	\$ 5,547	1%	\$ 4,852	0%	\$ 3,378	0%	\$ 3,833	0%
Rent	\$ 64,917	7%	\$ 63,858	6%	\$ 64,434	6%	\$ 118,043	10%
Telephone	\$ 9,754	1%	\$ 10,651	1%	\$ 10,595	1%	\$ 12,563	1%
Other Expenses	\$ 23,430	3%	\$ 26,889	3%	\$ 18,909	2%	\$ 41,665	3%
Capital Outlay	\$ 12,425	1%	\$ 12,896	1%	\$ 10,706	1%	\$ 14,458	1%
	\$ 911,953	100%	\$ 984,174	100%	\$1,084,164	100%	\$1,235,532	100%
Change in Fund	\$ 208,277		\$ 85,653		\$ 21,360		\$ (302,504)	

3% of their total budget. It also shows that PDO expenses increased by 35 percent from 1997 to 2000, with half of the increase coming in 2000 when the PDO had an operating deficit of \$327,605 that it covered by drawing down its fund balance. This level of spending cannot be sustained unless the annual revenue of the PDO is increased.

## **D. Resource Deficiencies**

During the course of this study we have made the following observations regarding the resources of the Calcasieu Parish PDO:

**Office Facilities:** The PDO doubled its rent in 2000 when it moved into new facilities. It now occupies a two-floor suite of newly renovated offices in what was formerly the Charleston Hotel, which is located one block from the courthouse. These facilities are very appropriate for PDO and present no obstacle to the PDO carrying out its mission, even on an expanded basis.

**Computers & Equipment:** We found that the Calcasieu Parish PDO has an adequate number of relatively new computers for its current staff, but the staff has not been appropriately trained to use this equipment productively and efficiently. Our experience dealing with both the DA's office and the PDO is that the DA's office is considerably ahead of the PDO in the application of information and computer technology.

**Attorneys:** As discussed in a previous section, *even if the backlog of cases could be eliminated* the PDO would still need additional attorneys to handle the capital and felony cases assigned to them each year and stay within the LIDAB caseload guidelines, plus additional attorneys to handle misdemeanor cases. If the number of attorneys at the PDO is not increased, then compliance with Louisiana caseload standards requires that either a more stringent screening process be put in place so that fewer cases are assigned public counsel, or the excess cases be assigned to contract attorneys or court-appointed attorneys.

**Support Staff:** Perhaps the greatest deficiency in the PDO is the number of trained investigators. The PDO presently has just two investigators for its entire caseload of capital cases and 4,500 open felony cases, not to mention misdemeanors. Likewise, the office requires additional support staff such as secretaries.

**Expert Witnesses:** Legal parity requires that defendants have the same access to experts as the prosecution. The DA's office spends \$200,000 a year just on experts in addition to utilizing the resources of the Southwest Regional Crime Lab. The PDO spends approximately \$250,000 each year on professional services, but nearly all of this is for contract attorneys to handle conflict of interest cases. In our examination of the PDO's files we could only find two instances in the past three years where experts were used in the defense of their clients. This is obviously not a level playing field.

**Professional Development:** It is important that public defenders attend conferences and seminars to keep pace with developments in their field. The PDO spends about \$4,000 per year for travel, but very little of this is for

professional training and there is no program for professional development. In contrast, the DA's office spends approximate \$100,000 a year for its staff to attend seminars and conferences.

According one study by the U. S. Department of Justice, public defender offices that have developed successful caseload programs share a common set of characteristics that include the following:<sup>19</sup>

- A sound management information system based on reliable and empirical data.
- A statistical reporting procedure that has been accepted by the funding source.
- A sound managerial and administrative system.
- The ability to tie caseload standards to budget requests.
- A mechanism (e.g. a statute or court rule) that triggers action once public defender caseloads reach an excessive level.

All of these recommendations should be applied to the Calcasieu Parish PDO. In addition, the application of caseload guidelines should be combined with the establishment of objective criteria for screening applicants for public defender positions because both quality and quantity are elements of the budgeting process.

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<sup>19</sup> Performance Audit Report: Office of the Public Defender, Office of Legislative Audits, Department of Legislative Services, Maryland General Assembly, November 2001, p. 10.

## IV. The Quality of Services of the Calcasieu Parish PDO

### A. Expeditious Resolution of Cases

A basic tenet of American justice is that persons accused of committing a crime are entitled to a speedy trial. In Calcasieu Parish justice is not speedy, and this is the principal reason for the huge backlog of cases. The number of open cases depends not only on the number of cases assigned to the PDO, but also on the *rate* at which cases are resolved.

For example, if the median time-to-disposition is six months, then at any particular time approximately half of the cases assigned during the past twelve months will be open and the other half closed, making the caseload equal to one-half the annually assigned cases. But if the average time-to-disposition is two years, then number of open cases will be twice the number of annually assigned cases.

The felony caseload of the Calcasieu Parish PDO is approximately twice the number of annually assigned cases, which suggests that the average length of time from arrest to disposition in Calcasieu Parish is approximately two years. By comparison, the average time from arrest to disposition for felony cases nationwide is 214 days<sup>20</sup> with 90 percent of all felony cases resolved within one year of the date of arrest.

To verify the time-to-disposition of felony cases we were given access to the computer files of the Calcasieu Parish DA's office to track the case histories of all

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<sup>20</sup> *Felony Sentences in State Courts, 1998*, Bureau of Justice Statistics Bulletin, October 2001

persons booked into the Calcasieu Parish Correctional Facility in March of 1997, 1999 and 2001 (we used the DA's data because the computer files of the PDO were incomplete). We found that it takes an average of 501 days to dispose of a felony case in Calcasieu Parish and that only 20 percent of all felony cases were disposed of within one year of the date of arrest. The average length of time between the different steps in the judicial process is shown in Table 9. Each step reflects a significant delay in the process, with different potential solutions.

**Table 9**

**Length of Time to Resolution of Felony Charges, Calcasieu Parish, 1997**

	Average Number of Days
From Arrest to Bill of Charges	186
From Bill of Charges to Arraignment	129
From Arraignment to Disposition	186
Total Time to Disposition	501

The filing of the *bill of charges* is when the defendant first learns the exact crimes charged by the DA's Office (the term "bill of charges" covers both a "bill of indictment" and a "bill of information"). In Calcasieu Parish this does not occur until an *average* of 186 days -- or 6 months -- after an arrest has been made, which means that in many cases it takes much longer. Nationally, half of the felony charges filed have already been disposed of by this time. To assess precisely how the cases break down, we secured data from the Calcasieu Correction Center (CCC). As of December 31, 2002, there were 679

felons being held pre-trial in the CCC.<sup>21</sup> While some of these prisoners carry multiple felony charges, this reflects at least 27% percent of the 2,550 felonies charged in the year 2002.

This delay is extraordinary. The *maximum* time permitted by law for handing down a bill of charges is set out in the Code of Criminal Procedure, Article 701. For felonies where the defendant is in jail, it is 60 days; where the defendant is out on bond, the maximum is 150 days. If this deadline is not met, the person charged may file a motion for release which “shall result in the release of the defendant if, after contradictory hearing with the district attorney, just cause for the failure is not shown.”<sup>22</sup>

The use of a “bill of indictment” versus a “bill of information” is significant. An indictment is a more complicated procedure than a bill of information, since evidence must be presented to a Grand Jury before an indictment is handed down. In Louisiana only capital offenses and those offenses punishable by life imprisonment require an indictment,<sup>23</sup> yet in Calcasieu Parish the grand jury appears to be used in a substantial number of cases where it is not required and a bill of information could be used, which is simply a document written out by the District Attorney detailing the charges without resort to the Grand Jury.<sup>24</sup>

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<sup>21</sup> Captain Lavergne of the Calcasieu Correctional Center (“CCC”) stated that on January 21, 2003 there were 1,158 people incarcerated at CCC. Of these 679 were pretrial and the remainder (479) were post disposition.

<sup>22</sup> La. C.Cr.P. art. 701(B)(2). If “just cause” is shown, then the court shall “reconsider bail”.

<sup>23</sup> La. C.Cr.P. art. 382(a); La. Const. Art. 1, Sect. 15.

<sup>24</sup> La. C.Cr.P. arts. 384, 463.

The reasons why the District Attorney prefers to use a grand jury go beyond the scope of this study. Suffice it to say that those accused of a crime do have a right to a speedy bill of charges, and their attorneys are not enforcing that right. Our review of the files of the PDO found that the attorneys for those who are incarcerated are not filing “701 motions” which would force the District Attorney to file a timely bill of charges, nor are they demanding their client’s right to a preliminary examination.

The next major step in the process is arraignment, which is when a defendant first stands before a judge and gets to enter a plea of either “guilty” or “not guilty,” and for some indigent defendants it may be the first time they get to meet their attorney. By law, this must take place within 30 days of the bill of charges,<sup>25</sup> but in Calcasieu Parish it takes an average of 129 additional days before this happens.

One reason arraignment is important is that motions such as discovery are not due until at least fifteen days after arraignment. So when the accused does not have a defense lawyer with resources to investigate the case, and where no discovery is forthcoming for the first ten months to a year of the case, the defense is in a poor position to make any judgments about what is in the best interests of the client.

After arraignment, it takes an average of six more months (186 days) before the case is finally resolved, so that the average time from arrest to disposition in Calcasieu Parish is 501 days, nearly *three times* the national experience. Once again, this means that there are a substantial number of defendants whose cases are taking more – or far

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<sup>25</sup> La. C.Cr.P. art. 701.

more – than 500 days to reach completion. The recent experience of Sigmund Van Dyke is illustrative of the extreme end of this spectrum. He was arrested on August 17, 1996, and still had not received a trial (originally scheduled to be capital, but reduced in 2002 to non-capital) by January 16, 2003, when the charges were dismissed for want of a speedy trial. The delay of 2,343 days from arrest to dismissal is difficult to reconcile with the state and federal rights to a speedy trial.

The Supreme Court has noted that justice delayed is justice denied. This is especially true for those who are innocent and unable to make bail, because this delay constitutes punishment without benefit of a trial, legal counsel, or in some cases without even knowing the precise charges against them. The law sets limitations on the maximum time allowed for the trial of particular cases. For most felony cases, this *maximum* time is two years,<sup>26</sup> at which point the State forfeits the right even to try the accused. The *average* time in Calcasieu Parish begins to approach this maximum.

In Calcasieu Parish the District Attorney sets the court's docket and decides which cases will be tried on a given day. The decision is based on many factors such as the seriousness of the charges, when attorneys and witnesses are available to come to court, and public awareness of the case. They maintain that public defenders create these delays by not being prepared for trial; that any time they want faster resolution they can file a motion for a speedy trial and they will get one. As we noted earlier, public defenders do not appear to be pressing to speed up the process. This may be due to a lack of resources, or it may be that they believe that, given the circumstances, delay is in the

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<sup>26</sup> La. C.Cr.P. art. 578(2).

best interest of their clients. For example, we found that the average time-to-disposition for defendants in Calcasieu Parish represented by private attorneys over the three years chosen in our sample was actually longer (547 days) compared to those represented by public defenders (440 days), which suggests that whatever defendants are paying their private attorneys for, it is not speedier justice.<sup>27</sup> Thus, the problem appears to be a system that tolerates delays, and this applies to the DA's Office, the judges, and the PDO.

## **B. Client Contact**

Louisiana law requires that bail be set within 48 hours of the time a person is arrested and accused of a felony crime. If they cannot make bail or if bail is denied, then they must have a right-to-counsel hearing within 72 hours of their continuous imprisonment.<sup>28</sup> It is at this hearing that cases are assigned to the PDO if the defendant states that they are unable to afford a private attorney. Federal laws are even more stringent in this regard: the United States Supreme Court has held that a person arrested without a warrant is entitled to a probable cause determination by a neutral magistrate within 48 hours, excluding weekends and holidays.<sup>29</sup>

The purpose of these laws is to ensure that an arrestee has counsel available to give advice and to take whatever steps necessary to ensure that the rights of the accused are respected. As the Supreme Court noted in *Riverside*, “prolonged detention based on incorrect or unfounded suspicion may unjustly ‘imperil [a] suspect's job, interrupt his

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<sup>27</sup> This may be partially explained by the fact that persons who are able to afford to retain a private attorney are more likely to be able to make bail. If a person is on bail the law allows a period of 150 days (rather than 60 if the defendant is incarcerated) in which the accused must be charged with a felony.

<sup>28</sup> La. C.Cr.P. art. 230.1 (“At this appearance, if a defendant has the right to have the court appoint counsel to defend him, the court shall assign counsel to the defendant.”).

<sup>29</sup> County of Riverside v. McLaughlin 500 U.S. 44 (1991).

source of income, and impair his family relationships.’”<sup>30</sup> Such considerations have broad ramifications both in the justice system and beyond, since without even considering the societal cost of incarceration, the person who loses a job will be unable to pay for counsel, or support a family. Therefore it is critical that the lawyer play the appointed role in the process.

Immediately following the right-to-counsel hearing a representative from the PDO—sometimes an attorney, but usually an investigator—meets with new clients and has them fill out a form with basic background information. This form is taken back to the PDO and the case is temporarily assigned to an attorney. Because attorneys in the PDO are matched with specific judges, the attorney who will actually represent the client if the case goes to trial will not be known until about six months later when the bill of charges is handed down and the case is assigned to a specific judge.

In general, no action is taken on a case while it is assigned to a temporary attorney and there is no contact with the client unless initiated by the client. Once the case has been assigned to a permanent attorney, that attorney is supposed to meet with his/her client, go over the charges and explain their various options to them. But due to the heavy caseload of public defenders, this does not always happen and sometimes a defendant sees his or her attorney for the first time just prior to arraignment.

If a defendant pleads “not guilty” at arraignment, then the case will be placed on a docket and given a motion or trial date. But continuances are common and it appears to

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<sup>30</sup> *Riverside*, 500 U.S. at 52

be the practice in the PDO for attorneys to put off any extensive involvement in a case until they believe it has a significant likelihood of going to trial, which, on average, is one-and-a-half years after the date of arrest.

To determine the extent of contact with clients who are incarcerated we obtained the jail visitation logs for March of 1997, 1999 and 2001. (A detailed summary of the visitation logs is contained in Appendix III). We were able to identify a total of 31 trips made by public defenders to visit their clients, an average of 10 visits per month for the entire office. By comparison, we found 236 trips made by private attorneys to visit their clients in jail. This difference is even more dramatic when one considers that private attorneys only handle 15 percent of the felony cases in Calcasieu Parish. The explanation given by the public defenders for this lack of client contact is that they have excessive caseloads.

### **C. The Filing of Motions**

The filing of motions is often taken as one measure of effective legal representation. Motions come in many forms: The lawyer might seek bail, or a reduction in the amount of bail. An Article 701 motion may be filed to force release if the bill of charges is unduly delayed. A preliminary examination might ensure that the charges have substance, and reveal the strength of the state's case. Without discovery motions, the lawyer is ill-placed to advise the client as to the appropriate disposition of the case and delayed filing of discovery motions may seriously prejudice the client. These steps may all be essential to formulating an effective defense strategy as well as engaging in plea-bargaining with the DA's office.

Broadly speaking, there are two types of motions filed by the PDO, which we identify as “standard” and “case specific.” Standard motions are those filed in almost every case. The most common example is a discovery motion – i.e., the means by which an accused may discover the nature of the charges against him. At the PDO standard motions are typically generated by a secretary with minimal input required by the attorney and therefore do not necessarily constitute evidence of effective representation; case specific motions on the other hand are tailored to the individual client’s circumstances. Examples might be a motion to suppress or a motion to recuse. Due to the complexities of the law, it is necessary for an attorney to draft such motions.

In our tracking-study we obtained data on the number of motions filed by both public defenders and private attorneys. It showed that public defender and private attorneys file approximately the same number of standard motions, but private attorneys filed two to three times as many case specific motions than did public defenders (See Table 10).

**Table 10**

**Number and Type of Motions Filed: PDO and Private Attorneys**

Year	Public Defenders		Private Attorneys	
	Standard Motions per case	Case specific motions per case	Standard Motions per case	Case specific motions per case
1997	.87	0.43	.57	0.76
1999	.86	0.65	.84	1.73
2001	1.15	0.27	1.24	0.63

#### **D. Investigators and Experts**

The period immediately following arrest is critical for developing an effective defense: this is when the crime scene should be investigated, evidence collected and examined, and witnesses interviewed. As noted above, virtually no action is taken on cases in the first six to ten months they are assigned to the PDO. It also appears that the two investigators in the PDO are used more as runners or assistants for the attorneys—bringing case files to court for hearings or conducting the preliminary meeting with clients at the jail to obtain background forms that often contain little about the case—than as true criminal investigators.

The courts have stressed the need for a complete investigation.<sup>31</sup> Indeed, it seems a reasonable proposition that a lawyer cannot make sensible strategic decisions on behalf of the client without knowing the strength and nature of the case. Yet we searched through 172 randomly selected files at the PDO looking for evidence of investigative activity and were able to find only two brief reports.

Our search of the PDO's files also yielded no evidence of the use of experts. The Calcasieu Parish PDO used to be able to apply to LIDAB for funds to hire experts but this was generally done only for capital murder cases and other high profile crimes. Now, due to changes with the LIDAB, that option is no longer available.

In summation, our investigation of the quality of legal services being provided to indigent defendants in Calcasieu Parish revealed that there are delays occurring at every

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<sup>31</sup> "At the heart of effective representation is the independent duty to investigate and prepare." Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir. 1982)

stage of the judicial process, that those accused of a crime have little or no meaningful contact with lawyers outside the courtroom, and that their cases receive very little in the way of meaningful investigation, or expert assistance. In other words, we have justice by attrition rather than litigation.

## V. The Judicial Process in Calcasieu Parish

### A. The Court

The 14<sup>th</sup> Judicial District Court serves Calcasieu Parish. It consists of nine elected judges, two of whom hear family court cases exclusively. The other seven judges divide their time between civil and criminal cases with each judge holding criminal court seven weeks a year and motion hearings seven weeks a year. The activity of the 14<sup>th</sup> Judicial District Court from 1998 to 2001, as reported to the Louisiana Supreme Court<sup>32</sup>, is shown in Table 11.

**Table 11**

	Cases Filed					Jury Trials	
	Juvenile	Civil	Criminal	Traffic	Total	Civil	Criminal
2001	1,150	7,459	6,950	9,666	25,225	22	10
2000	731	7,412	6,192	10,896	25,231	25	14
1999	827	7,641	5,496	13,973	27,937	28	17
1998	1,490	7,413	4,584	10,323	23,810	25	14

While the number of criminal cases filed in Calcasieu Parish increased 51.6% during this period, the number of criminal jury trials actually declined. This suggests that an increasing proportion of cases are being resolved by plea-bargaining. According to analysts for the Bureau of Justice Statistics, “[a]n indirect measure of how well courts keep pace with a growing workload is the percentage of cases disposed by guilty plea.

<sup>32</sup> Annual Report, 2001, The Supreme Court of Louisiana

Because guilty pleas take less time than trials, a rising workload might exert pressure on prosecutors and judges to dispose of more cases by plea rather than trial.”<sup>33</sup>

Table 12 on the following page compares the activity of the 14<sup>th</sup> Judicial District Court with other judicial districts in Louisiana. While the number of criminal charges filed in the 14<sup>th</sup> Judicial District is in line with filings in other districts of similar size, the number of criminal jury trials appears unusually low. In 1996, 5.7% of the felony cases in the nation’s 75 largest counties were decided by a trial, 71% were resolved through plea bargaining and 23% of the charges were dismissed<sup>34</sup>. In Calcasieu Parish, there were only 10 felony trials in 2001 out of 2,550 felony filings, which is a trial rate of approximately 0.25%. Nationwide, districts the size of the 14<sup>th</sup> Judicial District average 67 criminal jury trials per year.<sup>35</sup> As table 12 shows, other judicial districts in Louisiana fall in line with the national average, so this situation appears to be unique to Calcasieu Parish. Moreover, the lack of jury trials appears to apply only to criminal cases: statewide there are three times as many criminal trials as civil jury trials, whereas in the 14<sup>th</sup> Judicial District there are twice as many civil trials as criminal trials.

The judges of the 14th Judicial District recognized the problem of too many continuances and too few trials and in the fall of 2001 they changed the way that continuances are handled. Under the old system if a criminal case were continued it would go back to the assignment pool, where it would likely be given to a different judge.

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<sup>33</sup> State Court Sentencing of Convicted Felons, 1996, US Department of Justice, Bureau of Justice Statistics, February 2000.

<sup>34</sup> Defense Counsel in Criminal Cases, US Department of Justice, Bureau of Justice Statistics, Special Report, November, 2000.

<sup>35</sup> Prosecutors in State Court, 2001, US Department of Justice, Office of Justice Programs, National Survey of Prosecutors, May 2002.

Thus, it had no impact on the docket of the individual judge if a continuance was granted, since the case simply went to another judge. Under the new system, the case remains in one division, and therefore if it is continued it stays with the same judge. An alternative reform suggested by some is to establish a criminal bench with at least two judges who would hear only criminal cases.

**Table 12**

<b>Cases Filed and Jury Trials in Louisiana State Courts, 2001</b>									
Large Judicial Districts	Population	Criminal Charges	Criminal Jury Trials	Civil Jury Trials	Number of Judges	Criminal Charges per 1,000 residents	Criminal Trials per 1,000 Criminal Charges	Criminal Trials per Judge	Ratio of Civil to Criminal Trials
14	182,842	6,080	10	22	9	38	1.44	1.1	2.20
1	250,760	6,735	60	19	14	27	8.91	4.3	0.32
4	177,353	6,778	30	11	9	38	4.43	3.3	0.37
9	126,566	6,653	27	10	7	53	4.06	3.9	0.37
15	303,465	9,087	31	31	14	30	3.41	2.2	1.00
16	175,544	4,970	25	16	9	28	5.03	2.8	0.64
19	409,667	8,930	56	48	25	22	6.27	2.2	0.86
21	208,547	6,363	24	19	8	31	3.77	3.0	0.79
22	241,755	11,400	107	16	10	47	9.39	10.7	0.15
23	124,354	4,316 *	23	14	5	35	5.33	4.6	0.61
24	451,459	6,772	204	36	19	15	30.12	10.7	0.18
26	140,741	7,067	16	8	5	50	2.26	3.2	0.50
32	105,123	3,298 *	41	17	5	31	12.43	8.2	0.41
41	476,492	8,223	364	66	38	17	44.27	9.6	0.18
Large Districts	3,374,668	97,542	1,018	333	177	29	10.44	5.8	0.33
Small Districts	1,067,391	52,072	177	67	69	49	3.40	2.6	0.38
All Districts	4,442,059	149,614	1,195	400	246	34	7.99	4.9	0.33

\* Due to missing data the number of criminal charges filed in these districts had to be estimated

## **B. The Docket**

The District Attorney's Office presently controls the court docket and schedules fifty cases per week for each judge hearing felony cases. They know when they do this that only two or three trials can be held in a week, and that any cases beyond that where the defendant does not plead guilty must be rescheduled for a later date. This rescheduling can occur over and over again for years. Setting an unrealistically large docket has two effects: (1) it maintains the appearance of speedy justice (placing a smaller but more realistic number of cases on the docket would mean pushing back trial dates, revealing an unacceptably long period of time from when one is initially charged with a crime until their case goes to trial), and (2) it keeps the PDO in a state of uncertainty.

Thirty-five of the fifty cases on the docket are designated by the DA's office as priority cases in which witnesses and experts are subpoenaed and must be prepared to testify. This was done at the request of the Sheriff's Department, which does not want to go to the unnecessary expense of delivering subpoenas for witnesses in cases that have no chance of going to trial as scheduled. The PDO typically gets this priority list less than a week ahead of time, which means the PDO--as well as the DA's office--must prepare for thirty-five cases when only one or two (and probably none) will go to trial. Besides wasting resources, the general result is that when a case finally is called, the public defender asks for a continuance on the grounds that they need more time to prepare for trial. The fifteen cases that do not make the priority list are generally window-dressing; ignored by both parties and automatically rescheduled for a later date.

### C. Screening Applicants for Public Counsel

The law in Louisiana requires that when citizens accused of crimes state that they are indigent, they must apply for counsel to the local PDO. It is the responsibility of the PDO to “inquire further into the accused’s economic status,” by looking at earnings, income from public assistance, property owned, outstanding obligations, the number and ages of dependents, employment, job training and level of education, among other matters. The court must then make a determination as to whether or not the person is entitled to free public counsel or they have some ability to pay. Payment may be ordered in installments or in any manner the court deems reasonable and compatible with the person’s financial status<sup>36</sup>.

At the present time systematic screening for indigency is not being done in Calcasieu Parish. We examined randomly selected forms that were filled out by defendants at the 72-hour court whose cases were subsequently assigned to the PDO. We found numerous instances where the defendant was employed, and at least one instance where they had indicated on the form that they did not need public counsel. While employment by itself should not disqualify someone from public counsel, it does suggest that additional investigation is warranted, as required by Louisiana law<sup>37</sup>. We have been told that some members of the bench do some screening on an ad hoc basis, but it appears that for the most part anyone who requests a public defender is granted one with little or no effort to determine their economic status.

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<sup>36</sup> See La.C.Cr.P. Art 517 et seq.

<sup>37</sup> See La.C.Cr.P. Art 513

Screening needs to be done on a systematic basis and according to objective criteria to determine eligibility for public defense, but it is not likely to be a significant source of funds for the PDO. The LIDAB commissioned a study in 1996 by the Spangenberg Group to examine the issue of indigency determination and cost recovery. It concluded that seldom are cost recovery programs in other states cost-effective as generally ten percent or less of the indigent defendants made the assessed payments. One reason for this is that once a determination of indigency has been made, it is neither practical nor constitutional to withhold representation until payment is received.<sup>38</sup>

Presently the PDO does not have the resources properly to screen clients, and even if it did, such a system would place the office in the position of having divided loyalties, required to represent the client zealously in the criminal case, while at the same time litigating against the client for money on the side. Therefore, any cost recovery program would have to be independent of the PDO. Moreover, such a program could not exist in a vacuum. If a person has a job when arrested, he or she is unlikely to maintain it if they are incarcerated. Thus, any such approach must be comprehensive, seeking to ensure the citizen's earning potential by enforcing the right to bail and speedy proceedings.

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<sup>38</sup> *Indigency Determination, "Partial Indigency" and Cost Recovery in Louisiana*, a report by The Spangenberg Group prepared for the Louisiana Indigent Defender Board, 1996.

## **VI. Recommendations and Conclusions**

We believe that the problems of the Calcasieu Parish PDO have two main sources: one is a lack funds, and the other is a judicial process that tolerates delays. In order to improve the quality of indigent defense in Calcasieu Parish both of these issues must be addressed. Below is a list of those problems we believe can be addressed with money, and those problems that must be addressed through judicial system reform.

### **Deficiencies that can be addressed with more money**

- Lack of trained investigators in the PDO.
- Caseloads in excess of state and national standards.
- Lack of client contact.
- No professional development program.
- Inadequate salary and benefits for public defenders.
- Public defenders engaged in private practice.
- Inadequate support staff for the lawyers.
- Inadequate use of information/computer technology.
- Insufficient use of experts.

### **Deficiencies that require judicial system reform**

- Financial screening of applicants for public counsel.
- Immediate and permanent attorney assigned to case from inception.
- Investigators utilized in early stages of the process.
- Discovery as early in the process as possible.
- Bill of charges rendered sooner.
- Timely scheduling of Arraignments.
- Shorter court dockets.

- More days available for felony trials.
- Increased negotiation between DA and PDO prior to arraignment.

There are steps that can be taken to increase the efficiency of the Calcasieu Parish PDO. But we believe that the excessive backlog of felony cases stems as much from the judicial process in Calcasieu Parish as it does from the operations of the PDO, and that attempting to “fix” the PDO without “fixing” the judicial process will be extremely expensive and accomplish little.

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# Appendix I

## Financial Data Provided by Persons in 72 hour court in Calcasieu in July 2002 for Indigency Determination

VS. RC NO. *	Occupation	Last employer	Last date of employment	Do you own property?	Do you own a car?	List money?	Have you tried to hire your own attorney?	Do you have family or friends that could help?	Where you on bond before arrest and if so, how much?
02-2111	N/A	Student	N/A	N/A	N/A	N/A	NO	NO	NO
02-2112	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2113	Housewife	N/A	N/A	None	None	None	NO	NO	NO
02-2114	Car Hire	Burger King	7/8/2002	N/A	N/A	N/A	NO	NO	\$12,500
02-2115	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2116	Sales	K-mart	05/?/02	None	None	None	NO	NO	ROR
02-2117	N/A	N/A	N/A	None	None	None	NO	NO	NO
02-2118	Ranch Hand	South Wind Farm	N/A	None	None	\$450	NO	NO	NO
02-2119	Ruff Neck	N/A	N/A	None	YES	None	NO	NO	NO
02-2120	Carpet Layer	Carpet Master	Current	None	None	None	NO	NO	NO
02-2121	Construction	CIG Construction	06/?/02	N/A	N/A	N/A	NO	NO	NO
02-2122	Musician	Christ Worsh Center	06/?/02	N/A	N/A	N/A	NO	NO	NO
02-2123	CNA	Holly Hill	5/6/2002	N/A	N/A	N/A	NO	NO	NO
02-2124	Labourer	Will Staff	3/7/2002	None	YES	None	NO	NO	NO
02-2125	Self employed	Self	7/2/2002	YES	YES	None	NO	NO	NO
02-2126	Restaurant	Crosby Tug	Current	None	None	None	NO	NO	NO
02-2127	Carpenter	John Bailey Construc	N/A	N/A	N/A	N/A	NO	NO	NO
02-2128	L&A Paint Body	L&A Paint Body	N/A	N/A	N/A	N/A	NO	NO	YES
02-2129	Car Washer	N/A	N/A	None	None	N/A	NO	NO	NO
02-2130	Mower	SW Lawn and Land	5/7/2002	N/A	N/A	N/A	NO	YES	NO
02-2131	N/A	N/A	N/A	N/A	N/A	N/A	YES	YES	NO
02-2132	N/A	N/A	N/A	N/A	YES	N/A	NO	YES	NO
02-2133	Labourer	Craig Vzinial	10/6/2002	None	None	None	NO	NO	YES
02-2134	Plumber	Tery Verrin Plumbing	06/?/02	YES	YES	None	NO	YES	\$25,000
02-2135	Holiday Inn Express	N/A	N/A	None	YES	None	NO	NO	YES
02-2136	Retired	N/A	N/A	YES	YES	\$2,000	NO	YES	NO
02-2137	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2138	Labourer	Will Staff	Current	None	None	None	NO	NO	\$8,000
02-2139	Daquri Shop	Paul Welsh	05/?/02	None	None	None	NO	NO	NO
02-2140	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2141	Labourer	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2142	Labourer	N/A	N/A	N/A	N/A	N/A	NO	NO	\$8,000

Continued on next page

**Financial Data Provided by Persons in 72 hour court in Calcasieu in July 2002  
for Indigency Determination, Continued**

VS. RC NO. *	Occupation	Last employer	Last date of employment	Do you own property?	Do you own a car?	List money?	Have you tried to hire your own attorney?	Do you have family or friends that could help?	Where you on bond before arrest and if so, how much?
02-2143	N/A	N/A	N/A	None	None	None	NO	NO	NO
02-2144	Boilermaker	IMC	1/2/2002	N/A	N/A	N/A	YES	NO	NO
02-2145	Crane Operator	Port of Lake Charles	5/7/2002	N/A	N/A	N/A	NO	NO	\$15,000
02-2146	N/A	N/A	N/A	None	YES	None	NO	NO	NO
02-2147	Labourer	Sorny's Automotive	05/?/02	None	None	None	NO	NO	\$700
02-2148	Unemployed	N/A	N/A	None	None	None	NO	NO	\$5,000
02-2149	Testing Technician	Bayou Testers	N/A	None	YES	None	NO	NO	NO
02-2150	N/A	N/A	N/A	None	None	None	YES	NO	\$3,000
02-2151	Labourer	Will Staff	10/6/2002	N/A	N/A	N/A	NO	NO	\$2,000
02-2152	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2153	Disabled	N/A	N/A	None	None	None	NO	NO	NO
02-2154	Carpenter	Reeves Construction	8/6/2002	None	None	None	NO	NO	\$7,500
02-2155	Truck Driver	N/A	N/A	N/A	N/A	N/A	NO	YES	NO
02-2156	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2157	None	N/A	N/A	None	None	None	NO	YES	NO
02-2158	Welder	N/A	N/A	N/A	N/A	N/A	YES	YES	YES
02-2159	Unemployed	N/A	N/A	None	None	None	YES	NO	NO
02-2160	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2161	N/A	N/A	N/A	N/A	N/A	N/A	NO	YES	NO
02-2162	N/A	N/A	N/A	N/A	YES	N/A	YES	YES	\$36,500
02-2163	N/A	N/A	N/A	N/A	YES	N/A	NO	YES	NO
02-2164	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	\$250,000

\* Names have been withheld to protect confidentiality.

## Appendix II

### Jail Visitation by Attorneys, March 1997, 1999 and 2001

March 1997			March 1999			March 2001		
Attorney	Visits	Clients	Attorney	Visits	Clients	Attorney	Visits	Clients
Alexander	1	1	Austin	2	1	Austin	5	5
Babineaux	2	2	Bergeron	2	2	Barrett	1	1
Bauman	3	2	Bice	1	1	Bouquet	5	5
Beyer	1	1	Bouquet	3	2	Bundy	1	1
Bouquet	2	2	Burks	7	2	Henrich	11	11
Brown	2	2	Chason	1	1	Jones	2	2
Bruce	1	1	Coffman	9	8	Lorenzi	1	1
Burks	4	2	Crochet	2	2	Lyons	6	6
Chessen	1	1	DeRosier	3	1	Melton	1	1
DeWitt	1	1	Filo	1	1	Ned	1	1
Frohn	1	1	Ghia	1	1	Oubre	1	1
Gaharan	3	1	Grayson	1	1	Palay	2	1
Gill	1	1	Ieyoub	1	1	Richard	4	1
Gugliamo	1	1	Johnson	1	1	Ritchie	2	2
Guidry	1	1	Jones	2	1	Salter	1	1
Hildum	1	1	LaVern	4	1	Shelton	1	1
Jones	2	2	Leckband	1	1	Singer	1	1
King	1	1	Leger	2	2	Thibodeau	5	5
LaVern	1	1	Little	1	1	<b>Total</b>	<b>51</b>	<b>47</b>
Lemaire	1	1	McCann	1	1	<b>PDO</b>	<b>14</b>	
Lorenzi	1	1	Newman	2	2	<b>Pvt</b>	<b>37</b>	
Mathews	3	3	Nichols	3	2			
McInnis	1	1	Odel	1	1			
Miller	2	2	Oubre	1	1			
Mitchell	1	1	Palay	7	7			
Newman	2	2	Parkerson	1	1			
Olney	1	1	Perry	2	1			
Palay	1	1	Picciane	3	3			
Parkerson	2	2	Rachal	1	1			
Recer	1	1	Register	1	1			
Ritchie	6	6	Ritchie	8	7			
Roach	1	1	Rosteet	1	1			
Sanchez	2	2	Rozas	1	1			
Sanders	1	1	Shelton	3	2			
Sarietto	1	1	Smith	2	2			
Shelton	3	3	St Dizier	8	7			
Sheets	2	2	Sumpter	10	9			
Smith	1	1	Tibodeaux	6	6			
St. Dizier	4	3	Todd ?	1	1			
Tousant	6	2	Tousant	4	2			
Ware	2	2	Ware	1	1			
Williams	17	10	White ?	4	3			
<b>Total</b>	<b>92</b>	<b>75</b>	Wickels	2	2			
<b>PDO</b>	<b>8</b>		Williams	5	5			
<b>Pvt</b>	<b>84</b>		<b>Total</b>	<b>124</b>	<b>101</b>			
			<b>PDO</b>	<b>9</b>				
			<b>Pvt</b>	<b>115</b>				
			<b>Contract</b>	<b>30?</b>				

## Appendix III

### MEMORANDUM

**To: Dr. Kurth**

**From: Gary Proctor**

**Date: August 14, 2002**

**Re: Data extracted from Calcasieu PDO files on July 9 – 11 and August 1 – 2, 2002**

Methodology:

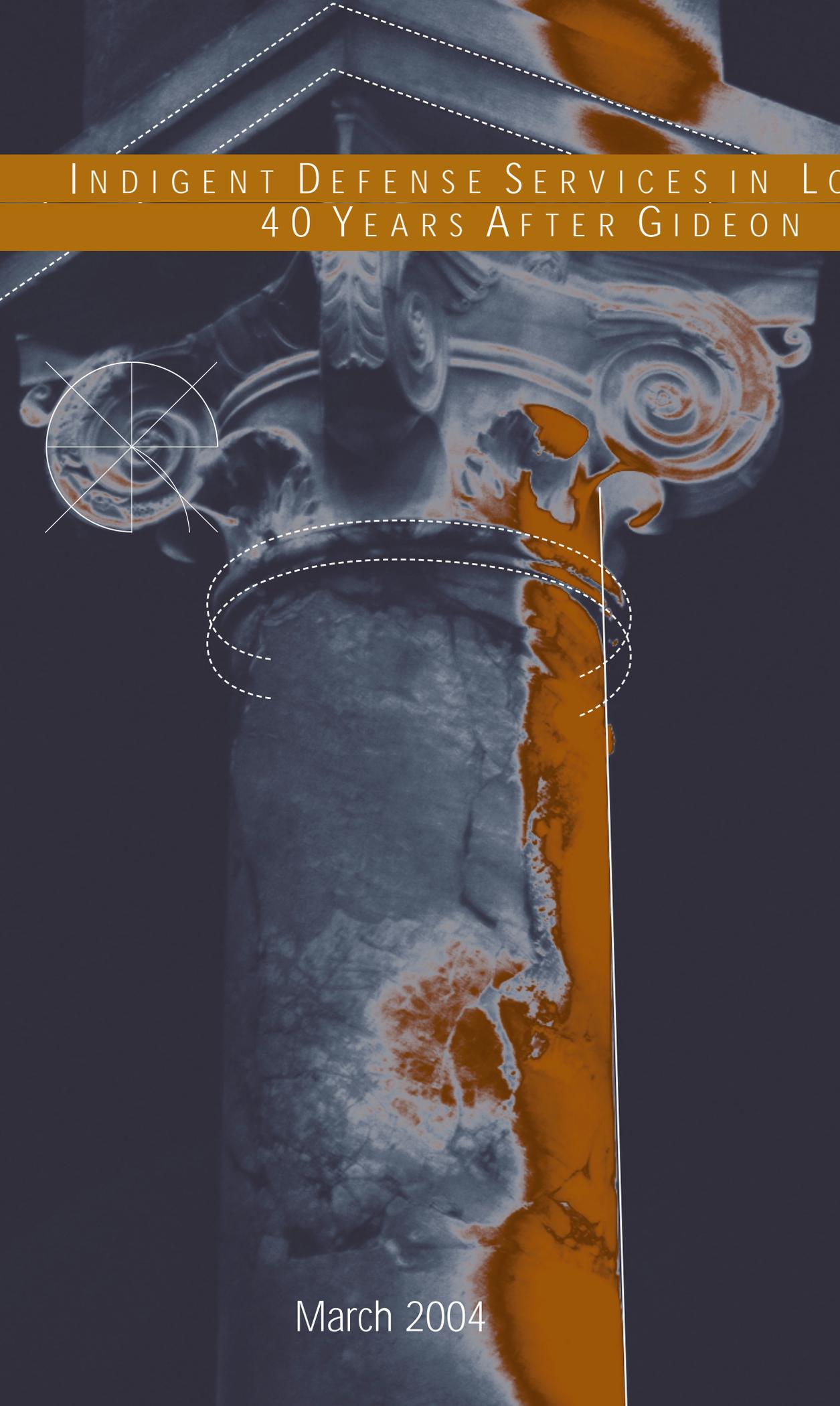
For details concerning the methodology please see the attached files. Hard copies, signed by the persons that carried out the data extraction have been retained.

**Results:**

- The total number of case files examined were 171.
- A total of **233 motions** were filed by the Public Defenders Office (“PDO”) which translates to an average of **1.36 motions** per case. This figure significantly overestimates the amount of work performed by the PDO. According to the PDO there are four “standard” motions that are routinely filed by them in certain types of cases – a Bill of Particulars, Discovery, Preliminary Examination, and Reduction in Bond. These standard motions contain “pro forma” type requests and do not need to be tailored to the client’s individual case-specific circumstances. Such standard motions are typically generated by a secretary, with no more than a very minimal review from the actual Public Defender attorney.
- By contrast a “case specific” motion is one in which the Public Defender makes a filing in court specific to the circumstances of his client’s case. **Forty-five specific to the case motions** were filed (i.e. **a case specific motion was filed in approximately one case in every 4**). **137 cases (80%) contained no case specific motions at all.** In other words the public defender in each of these cases filed no motions other than standard motions that could easily be generated by a secretary. Perhaps most disturbingly – **in 92 cases (54%) no motions (either standard or case specific) were filed.**
- **Not one case out of 171 contained an investigative memorandum of any description.** One case contained a signed release by a client for the PDO to retrieve his records. This is something that can be generated by a secretary – there is no evidence of the PDO’s office actually retrieving and reviewing such records. A further one case saw evidence of a client coming to the PDO and providing their own records from a corresponding civil case.
- **Only 1 case out of 171 employed the use of an expert.** This expert’s utilization in the case in question related solely to a crime scene investigation.

- In only **5 cases** is it documented that the judge ordered the public defender to make a supplemental determination of indigency, i.e. **fill out a financial statement regarding ability to hire counsel**. This statistic does not evince the level of inquiry made by the judge at 72 hour court .
- There were **13 client jail visits** evidenced on file (12 cases). This correlates to only **1 case in every 14 did the attorney meet with a client in jail**. It should be remembered that all of the files examined were cases where the client was charged with a felony.
- There is evidence of some client contact attempted on a further 22 occasions (18 cases). Of these 22 occasions, the following was observed:  
Office Interviews/Visits – 11  
Letters – 2  
Telephone Memoranda – 1  
Unknown (i.e. memoranda does not note type of contact) – 8

**Thus in 93 % of cases there is no evidence of a meeting between the PDO and §his client in jail. In 82% of cases there is no evidence of contact whatsoever.**



INDIGENT DEFENSE SERVICES IN LOUISIANA  
40 YEARS AFTER GIDEON

IN DEFENSE OF  
PUBLIC ACCESS TO JUSTICE

March 2004



# **IN DEFENSE OF PUBLIC ACCESS TO JUSTICE**

## **AN ASSESSMENT OF TRIAL-LEVEL INDIGENT DEFENSE SERVICES IN LOUISIANA 40 YEARS AFTER *GIDEON***

*March 2004*

Researched & Written by:

***The National Legal Aid & Defender Association***

1140 Connecticut Avenue, NW, Suite 900

Washington, DC 20036

Commissioned for:

***The National Association of Criminal Defense Lawyers***

1150 18<sup>th</sup> Street, NW, Suite 950

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Chapter I  
**Introduction**

\*\*\*\*\*

*“The poor quality of indigent defense is largely ignored by the public and by policy-makers. After all, it’s about people accused of crime who are presumed guilty. They’re poor people, often unattractive, inarticulate, with no apparent constituency and no voice in public policy....”*

*“As one maritime lawyer commented to me, even a cargo claim over soggy bags of coffee beans gets a better defense than a person capitally charged in Louisiana....”*

*- Judge Helen “Ginger” Berrigan, United States District Court  
 Eastern District of Louisiana, October 31, 2003<sup>1</sup>*

\*\*\*\*\*

*The Constitutional Right to Counsel in Criminal Cases*

As manifested in the Pledge of Allegiance, a commitment to justice for all is the cornerstone of the American social contract and our democratic system. We entrust our government with the administration of a judicial system that guarantees equal justice before the law -- assuring victims, the accused and the general public that resulting verdicts are fair, correct, swift and final.

In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme Court concluded that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” Declaring it an “obvious truth” that “lawyers in criminal courts are necessities, not luxuries,” the Court ruled that states must provide counsel to indigent defendants in felony cases. That mandate has been consistently extended to any case that may result in a potential loss of liberty.<sup>2</sup>

*The Louisiana Constitution & the Commitment to Equal Justice*

The right to counsel in criminal cases is also enshrined in the Louisiana State Constitution. Section 1 states that there are only three legitimate ends of government: to secure justice for all, to preserve peace, and to protect the rights and promote the happiness and general welfare of the people. In enumerating these rights, Section 13 states that any person who is indigent and has been arrested or detained in connection with the investigation or commission of any offense, has a right to court appointed

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<sup>1</sup> For full text of speech, please see: [www.criminaljustice.org/public.nsf/newsreleases/2003mn032?opendocument](http://www.criminaljustice.org/public.nsf/newsreleases/2003mn032?opendocument).

<sup>2</sup> *Gideon* established the right to counsel for felony trials. Subsequent cases extend that right to: direct appeals - *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation - *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement - *In Re Gault*, 387 U.S. 1 (1967); critical stages of preliminary hearings - *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving possible imprisonment - *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and misdemeanors involving a suspended sentence – *Shelton v. Alabama*, 535 U.S. 654 (2002).

counsel “at each stage of the proceedings.” Accordingly, the legislature is directed to “provide for a uniform system for securing and compensating qualified counsel for indigents.”<sup>3</sup>

*Louisiana’s History of Systemic Deficiencies in the Delivery of the Right to Counsel*

Since the U.S. Supreme Court in *Gideon v. Wainwright* ordered the states to provide indigent defense services, Louisiana has funded the right to counsel primarily through court costs collected on state, local or municipal violations. Research conducted in Louisiana over the past thirty years consistently indicates that such a funding structure threatens the integrity of the state’s system of justice.<sup>4</sup>

In 1993, in *State v. Peart*, 621 So.2d 780 (La. 1993), the Louisiana Supreme Court found that there was a “general pattern...of chronic underfunding of indigent defense programs in most areas of the state.” The Supreme Court called upon the legislature to enact indigent defense reform or the Court “may find it necessary to employ the more intrusive and specific measures it has thus far avoided to ensure that indigent defendants receive reasonably effective assistance of counsel.”<sup>5</sup>

Shortly thereafter, the Supreme Court took action, creating the first statewide indigent defense commission. In 1994, the Louisiana Supreme Court established the Louisiana Indigent Defense Board (LIDB) by court rule. LIDB was responsible for promulgating and enforcing indigent defense qualification and performance guidelines throughout the state. On January 1, 1998, LIDB was transformed into the Louisiana Indigent Defense Assistance Board (LIDAB).<sup>6</sup> Among other responsibilities, LIDAB

<sup>3</sup> Louisiana Constitution, Article 1§13, available at: [www.legis.state.la.us/tsrs/tsrs.asp?lawbody=CONST&title=1&section=13](http://www.legis.state.la.us/tsrs/tsrs.asp?lawbody=CONST&title=1&section=13).

<sup>4</sup> Though research has been conducted by various study groups, some of whom were only studying indigent defense tangentially and some of whom were authorized by governmental agencies to study the right to counsel specifically, and though the research was conducted at various times, all unanimously concluded that the indigent defense funding system fails to uphold the intent of the *Gideon* decision and should be changed. See: The Institute for Judicial Administration, *A Study of the Louisiana Court System*, 1972 (“A flexible state-funded public defender system should be instituted, which would include a number of full-time regional public defenders who could be moved to assist any court.” p. 114); The American Judicature Society, *American Judicature Society, Modernizing Louisiana’s Courts of Limited Jurisdiction*, 1973 (“Louisiana should establish a statewide system of public defender offices...to assure that indigent defendants are afforded their constitutional right to counsel” p. 138); American University Criminal Courts Technical Assistance Project, *An Evaluation of Indigent Criminal Defense Services in Louisiana and a Proposal for a Statewide Public Defender System*, 1974 (“Even if the Indigent Defender Boards were substantially funded, they could not meet the demands (for the right to counsel) on a statewide basis.”); The State of Louisiana Supreme Court Judicial Counsel’s Statewide IDB Commission, *Study of the Indigent Defender System in Louisiana*, 1992, prepared by The Spangenberg Group (“The indigent defense funding in Louisiana is hopelessly under funded in virtually every judicial district in the state” p. 38); The American Bar Association, Juvenile Justice Center, *The Children Left Behind: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings in Louisiana*, 2001 (“Recommendation 1: Increase the resources available to support representation in delinquency proceedings” p. 93); and, The American Bar Association, Juvenile Justice Center, *The Children Left Behind: A Review of the Status of Defense for Louisiana’s Children & Youth in Delinquency Proceedings – Summary Update*, 2002 (“The lack of adequate funding is a pervasive and dire reality of the entire indigent defense system in Louisiana” p. 16).

<sup>5</sup> *State v. Peart*, 621 So.2d 791 (La. 1993). The inadequacy of the available local funding streams to generate enough revenue to ensure competent representation resulted in public defender Rick Tessier of the New Orleans Indigent Defender Program filing a motion in District Court stating that he was unable to provided effective representation to his indigent defense clients due to the combination of a lack of resources and overwhelming caseloads. The hearings on the case showed Mr. Tessier carried caseloads far in excess of national standards, and had little or no funds for experts or investigatory resources, among other things. Based on the overwhelming factual evidence, the district judge found the New Orleans indigent defense system to be unconstitutional.

<sup>6</sup> LIDAB is governed under La. Revised Statutes, Chapter XV § 151.

awards “District Assistance Fund (DAF)” grants to local judicial districts that strive toward complying with the LIDAB standards. Although the immediate attainment of LIDAB standards is not a mandatory requirement for participation in the financial assistance program, there is a requirement that the local indigent defense administration assent to the standards as goals to be immediately worked toward and to be achieved over time.<sup>7</sup>

*Current Opportunities to Address the Continuing Inadequacy of Louisiana’s Indigent Defense Services in the 10<sup>th</sup> Anniversary of State v. Peart*

The year 2003 marked the 10<sup>th</sup> anniversary of the *Peart* decision and the beginning of state involvement in the delivery of indigent defense services.<sup>8</sup> Despite reform efforts, significant challenges remain in protecting the right to counsel for both adults and juveniles.<sup>9</sup>

In 1967, the U. S. Supreme Court held in *In Re Gault* that juveniles have the same right to counsel as adults. The standard of representation outlined in *Gault* has been established over the intervening decades in 19 volumes of Juvenile Justice Standards promulgated by the American Bar Association Institute of Judicial Administration.<sup>10</sup> On February 27, 2003, the U.S. Department of Justice informed then Louisiana Governor M.J. “Mike” Foster, Jr., of its on-going investigation into whether juveniles with cognitive impairments are waiving their right to counsel in delinquency proceedings in violation of the U.S. Constitution and federal laws.<sup>11</sup>

Three months later, the Louisiana State Bar Association passed a resolution in honor of the 40<sup>th</sup> anniversary of the *Gideon* decision that called into question the current adequacy of adult indigent defense services in the state.<sup>12</sup> The resolution proclaimed,

<sup>7</sup> *Louisiana Standard on Indigent Defense*, Chapter 1, Standards Relating to the Performance of Indigent Defense Systems: “Purpose and Scope of Standard – These standards provide recommended and aspirational guidelines for the consideration and use of district indigent defender boards in providing quality services to their indigent clients. The immediate attainment of these standards by a district indigent defender board is not a mandatory requirement for participation in the financial assistance programs of the Louisiana Indigent Defender Board. However, a district indigent defender board’s assent to these standards, as goals to be immediately worked toward and to be achieved over time, is a requirement for such participation.”

<sup>8</sup> The state of Louisiana did make a contribution of \$10,000 to local judicial district indigent defense boards in 1973 pursuant to Louisiana Revised Statute Chapter XV §146(2)c. Though the statute has never been repealed, the state has never again contributed such funding to the local level. Thus, the post-*Peart* LIDB and LIDAB district assistance funds were the beginning of sustained state funding of a small portion of indigent defense services.

<sup>9</sup> In addition to the issues delineated in this section, NLADA notes that there is a significant number of *Peart* petitions being litigated across the state, including: *State v. Donald Ray Clifton*, Criminal Docket No. 265,106, currently pending in the 9th Judicial District Court, Parish of Rapides, State of Louisiana; *State v. Dolores Mechelle Jones*, Criminal Docket No. 265,106, currently pending in the 9th Judicial District Court, Parish of Rapides, State of Louisiana; *State v. Marklin Scalisi*, Criminal Docket No. 270,297, currently pending in the 9th Judicial District Court, Parish of Rapides, State of Louisiana; and, *State v. Adrian Citizen*, Criminal Docket No. 22,815-02, 14th Judicial District Court, Parish of Calcasieu, State of Louisiana.

<sup>10</sup> See key provisions relating to juvenile defense, indexed in the U.S. Department of Justice, *Compendium of Standards for Indigent Defense Systems*, Volume V at [www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/).

<sup>11</sup> The U.S. Department of Justice investigation is being conducted pursuant to the Violent Crime Control & Law Enforcement Act, 42, U.S.C. § 14141.

<sup>12</sup> See Appendix A (page 69) for LSBA resolution.

“State government has created a system in which the loss of one’s liberty may be more dependent on a person’s income level and the jurisdiction in which the crime is alleged to have happened than on the factual merits of the case.” Besides the potential harm to individual defendants, the LSBA resolution also noted that the funding and structure of indigent defense services produces systemic inefficiencies and wastes limited taxpayer resources throughout other components of the criminal justice system.<sup>13</sup> And whereas one of the principle missions of LSBA is to “assure access to and aid in the administration of justice,” the resolution urged all three branches of Louisiana state government to establish a “Blue Ribbon Commission to develop a strategic plan for indigent defense system reform and set a timetable for implementation.”

On the heels of the LSBA resolution, the Louisiana House of Representatives passed a concurrent resolution during the close of the 2003 regular session. Mirroring much of the LSBA resolution, House Resolution 151 calls upon the state to rededicate itself to the “promise of equal justice for all, regardless of income” by establishing a Louisiana Task Force on Indigent Defense Services (Task Force).<sup>14</sup> The Louisiana Senate soon joined the call for reform, offering their own resolution to create a blue ribbon task force to “study the system in Louisiana of providing legal representation to indigent persons who are charged with violations of criminal laws” and present findings and recommendations for legislative change.<sup>15</sup> The composition of the Task Force in Senate Resolution 112 reflects the importance with which the Legislature views the job at hand. Besides having all three branches of state government represented, the Senate resolution includes business leaders, deans of the four law schools, religious leaders, and people from social services and legal services backgrounds.<sup>16</sup> The Task Force is set to convene and begin its work in the early part of 2004.

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<sup>13</sup> “[T]he lack of [indigent defense] resources has effectively barred Public Defenders from providing counsel at the early stages of the prosecution, resulting in overcrowding in local jails due to the large scale detention of accused persons prior to their indictment and creating serious problems for Parish government and local Sheriffs.” *Supra* note 12.

<sup>14</sup> The resolution was introduced by a bipartisan, geographically-diverse group of Representatives: L. Jackson (D – District 2), Alario (D. – District 83), K. Carter (D. – District 93), Cazayoux (D. – District 18), Gallot (D. – District 11), Green (D. District 87), Hunter (D. – District 17), M. Jackson (D. – District 61), LaFleur (D. – District 38), Landrieu (D – District 89), Martiny (R. – District 79), Murray (D. – District 96), Richmond (D. – District 101) and Townsend (D. – District 23). See Appendix B (page 73) for text of HR 151.

<sup>15</sup> Senate Resolution 112 was introduced by Senator C. Jones (D. – District 34). See Appendix C (page 77) for text of SR 112.

<sup>16</sup> The Task Force is composed of 31 members or their designees: The Chief Justice of the Louisiana Supreme Court; the President of the Conference of Court of Appeals Judges; President of the Louisiana District Judges Association; President of the Louisiana Council of Juvenile and Family Court Judges; President of the Louisiana City Court Judges Association; President of the Council for a Better Louisiana; Executive Director of the Louisiana Interchurch Conference; President of the Louisiana AFL-CIO; President of the Louisiana Association of Business and Industry; the Deans of the four Law Centers in Louisiana; the Governor of Louisiana; the Louisiana Commissioner of Administration; President of the Louisiana Public Defender Association; President of the Louisiana Criminal Defense Lawyers Association; President of the Louisiana State Bar Association; Director of the Louisiana State Law Institute; President of the Louisiana Legal Services Corporation; President of the Louisiana Chapter of the Louis A. Martinet Society; President of the Louisiana Association of Women Attorneys; Secretary of the Louisiana Department of Social Services; President of the Louisiana Senate; Speaker of the Louisiana House of Representatives; Chairman of the Louisiana Senate Committee on Finance; Chairman of the Louisiana House Committee on Appropriations; and, Chairmen of the Senate Committee on Judiciary C and the House Committee on Administration of Criminal Justice.

### *The Current Study*

In the summer of 2002, the National Legal Aid & Defender Association (NLADA),<sup>17</sup> the National Association of Criminal Defense Lawyers (NACDL),<sup>18</sup> and the American Bar Association's Standing Committee on Legal Aid & Indigent Defendants (ABA/SCLAID)<sup>19</sup> were all contacted by various constituencies within Louisiana regarding their concerns about the adequacy of indigent defense services in the state. NLADA and NACDL staff subsequently met with and/or held discussions with state legislators, members of the Louisiana Public Defender Association (LPDA),<sup>20</sup> the Louisiana Indigent Defense Assistance Board (LIDAB),<sup>21</sup> the Louisiana Association of Criminal Defense Lawyers (LACDL),<sup>22</sup> and others, to assess the serious Constitutional concerns raised regarding the right to counsel in the state.

In April 2003, staff from all three national organizations testified at the State Capitol before LIDAB to report on their preliminary findings. NLADA staff began the testimony by establishing the organization's recognized leadership in the promulgation of national indigent defense standards and gave an overview of Louisiana's indigent defense system from a national perspective.<sup>23</sup> ABA/SCLAID staff presented the *Ten Principles of*

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<sup>17</sup> The National Legal Aid and Defender Association (NLADA) is a national, non-profit membership association dedicated to quality legal representation for people of insufficient means. Created in 1911, NLADA has been a leader in supporting equal justice for over ninety years. NLADA currently supports a number of initiatives, including the American Council of Chief Defenders (ACCD), a leadership forum that brings together the top defender executives nationwide, and the National Defender Leadership Institute (NDLI), an innovative training project to support current managers and develop future leaders. NLADA is a recognized leader in the promulgation of indigent defense standards and the mechanisms for evaluating a jurisdiction's compliance against them. For more information please see: [www.nlada.org](http://www.nlada.org).

<sup>18</sup> The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. A professional bar association founded in 1958, NACDL's more than 10,000 direct members -- and 79 state and local affiliate organizations with another 28,000 members -- include private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system. For more information please see: [www.nacdl.org](http://www.nacdl.org).

<sup>19</sup> Since 1920, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants has advocated for and assisted in providing legal services to indigent persons. SCLAID is active in improving state systems for providing defense services to indigent persons charged with crime. Moreover, it provides technical assistance on the systemic improvement of indigent defense systems to state and national policy-makers, bar associations and the judiciary. *Overview of ABA Activities, January 2003*. For more information please see: [www.abanet.org](http://www.abanet.org).

<sup>20</sup> David J. Carroll, Director of Research & Evaluations for the Defender Legal Services Division of NLADA attended the LPDA meeting on February 7, 2003 in St. Francisville, Louisiana.

<sup>21</sup> Mr. Carroll met with Mr. Ed Greenlee, Executive Director of LIDAB, Ms. Marsha Oliver, LIDAB Staff Attorney, and Mr. Jim Looney, Director of the Louisiana Appellate Project at the February LPDA meeting. Mr. Greenlee was also present at an LACDL meeting that NACDL and NLADA representatives attended in New Orleans on February 20, 2003. NLADA and NACDL representatives testified at a LIDAB hearing on April 8, 2003.

<sup>22</sup> NLADA, ABA/SCLAID and NACDL staff met with LACDL in New Orleans on February 20, 2003.

<sup>23</sup> Mr. Carroll represented NLADA at the hearing. The following is a list of NLADA indigent defense standards: The Ten Principles of a Public Defense Delivery System (adopted by the ABA, 2002); Defender Training and Development Standards (NLADA, 1997); Performance Guidelines for Criminal Defense Representation (NLADA, 1995); Indigent Defense Caseloads and Common Sense: An Update (NLADA, 1994); Standards for the Administration of Assigned Counsel Systems (NLADA, 1989); Standard for the Appointment and Performance of Counsel in Death Penalty Cases (NLADA, 1988; ABA, 1989); Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services (NLADA, 1984; ABA, 1985); Standards and Evaluation Design for Appellate Defender Offices (NLADA, 1980); Evaluation Design for Public Defender Offices (NLADA, 1977); and Guidelines for Legal Defense Systems in the

a *Public Defense Delivery System (Ten Principles)*, a set of standards which “constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”<sup>24</sup> As presented, the purpose of the *Ten Principles* is to distill the existing voluminous national standards for indigent defense systems down to their most basic elements, in a succinct form that busy officials and policymakers can readily review and apply. The NLADA representative then discussed the state’s substantial noncompliance with the ABA and NLADA standards. The NACDL representative<sup>25</sup> testified that numerous jurisdictions have been sued for failure to provide adequate defense services to the poor, and that Louisiana is vulnerable to similar litigation.<sup>26</sup>

Based on this initial assessment, NACDL and NLADA proposed further investigation and first-hand courtroom observations of indigent defense practices, including conducting interviews with criminal justice representatives and collecting statistical data in a Louisiana Parish prior to the convening of the Task Force.<sup>27</sup>

NLADA developed a work plan for a limited study of indigent defense services in Louisiana. Because previous indigent defense studies have examined more populous jurisdictions in Louisiana,<sup>28</sup> we chose to focus the current study on a rural Parish to understand how public defense services are provided in non-urban jurisdictions. NACDL secured local and national funding<sup>29</sup> to conduct this study. NACDL administered the project while NLADA conducted the fieldwork and wrote the report.

Avoyelles Parish was selected for the site visit based upon background research concerning its population size, economic profile, its status as the sole Parish in the Judicial District, and availability of interviewees. Avoyelles is a rural parish covering

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United States (National Study Commission on Defense Services, U.S. Department of Justice, 1976). Such standards were gathered into the first-ever National Compendium of Standards for Indigent Defense Systems by the U.S. Department of Justice, with NLADA assistance, in 2000. [www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/).

<sup>24</sup> The *Ten Principles of a Public Defense System* is based on a paper by James Neuhard, State Appellate Defender of Michigan and former NLADA President and H. Scott Wallace, NLADA Director of Defender Legal Services, which was published in December 2000 in the *Compendium of Standards for Indigent Defense Systems* ([www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/)). The *Ten Principles* is available at: [www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf](http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf) and is attached as Appendix D (page 81) of this report. Ms. Shubhangi Deoras, Assistant Counsel for ABA/SCLAID presented the *Ten Principles* at the hearing.

<sup>25</sup> Ms. Kathryn Jones, Indigent Defense Counsel participated on behalf of NACDL.

<sup>26</sup> See minutes from the LIDAB meeting, Louisiana Senate Committee Room 1, Baton Rouge, April 8, 2003. <http://www.lidab.com/Minutes/2003/4-8-03.htm>

<sup>27</sup> For a variety of reasons to be detailed in this report, Louisiana has a dearth of objective indigent defense data and statistics.

<sup>28</sup> See: Kurth, Michael M., Ph.D. and Daryl V. Burckel, DBA & CPA, *Defending the Indigent in Southwest Louisiana*, July 2003; The Spangenberg Group, *The Orleans Indigent Defender Program: An Overview*, February 1997; The American Bar Association, Bar Information Program, *A Study of the Operation of the Indigent Defense System in the 19<sup>th</sup> Judicial District, East Baton Rouge, Louisiana*, prepared by The Spangenberg Group, October 1992.

<sup>29</sup> Funding sources include: The American Bar Association’s Gideon Initiative, National Association of Criminal Defense Lawyers, and Louisiana Association of Criminal Defense Lawyers. A grant from the Open Society Institute allows NLADA to conduct field research and evaluations at reduced daily rates.

832 square miles in central Louisiana.<sup>30</sup> Ranked by population, Avoyelles Parish is the 29th most populated of the 64 parishes. People of African descent comprise 29.5% of the population of Avoyelles (total population: 41,458). Median household income in Avoyelles Parish is \$23,851, which is 26.8% lower than the state median (\$32,566) and 43.2% below the national median (\$41,999). The per capita income is \$12,146, and 25.9% of the population lives below the national poverty level (6.3% higher than the state average, which is 7.2% higher than the national average). When poverty levels are this high, our experience has been that the vast majority of defendants in criminal cases qualify for indigent defense services. Additionally, nearly 21% of Avoyelles Parish residents speak a language other than English as their primary tongue and slightly less than 60% of people over 25 years of age finished high school. Such statistics usually indicate that more attorney time is needed to explain, or have an interpreter explain, all information to a defendant so that (s)he can make an informed decision about a criminal case, including any collateral consequences of pleading guilty.

### *Methodology*

Recognizing that effective public policy depends upon the effective implementation and enforcement of said policy, NLADA has played a leadership role in both the development of national standards for public defense systems and processes for evaluating a jurisdiction's compliance with them. The concept of using standards to address quality concerns is not unique to the field of indigent defense. In fact, the strong pressures of favoritism, partisanship, and/or profits on public officials underscore the need for standards to assure the fundamental quality in all facets of government. For instance, realizing that standards are necessary to both compare bids equitably and to assure quality products, policy-makers long ago standardized ceased taking the lowest bid to build a hospital, school or a bridge and required winning contractors to meet minimum quality standards of safety.

With proper evaluation procedures, standards help to assure professionals' compliance with national norms of quality in areas where the government policy-makers themselves may lack expertise. In the field of indigent defense, standards-based assessments have become the recognized norm for guaranteeing the adequacy of criminal defense services provided to the poor.<sup>31</sup> NLADA standards-based assessments utilize a modified version of the Pieczenik Evaluation Design for Public Defender Offices, which has been used since 1976 by NLADA and other organizations, such as the National Defender Institute and the Criminal Courts Technical Assistance Project of the American University Justice Programs Office. The design incorporates reviewing budgetary, caseload and organizational information from a jurisdiction in addition to a site visit.

The current NLADA site assessment methodology employs the national standards as an objective measurement of an individual organization's mechanisms for effectuating key requirements of an indigent defense system including: independence, accountability, training, supervision, effective management, fiscal controls, competent representation,

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<sup>30</sup> The background data on Avoyelles Parish in this paragraph was obtained from the U.S. Census Bureau. For more information please see: [www.census.gov](http://www.census.gov).

<sup>31</sup> For instance, see: NLADA, *Indigent Defense Services in Venango County (Franklin), Pennsylvania*, March 2002; NLADA, *Evaluation of the Public Defender Office: Clark County (Las Vegas), Nevada*, March 2003, available at: [www.nlada.org/Defender/Defender\\_Evaluation](http://www.nlada.org/Defender/Defender_Evaluation); and, NLADA, *A Pilot assessment of the Office of the Public Defender for Santa Clara County, California (San Jose)*, December 2003.

and workload. In developing a standards-based assessment methodology for the Louisiana site visit, NLADA decided to look first at the macro-level – i.e. the general problems facing all Judicial Districts – before exploring the specific problems manifested at the micro-level in the 12<sup>th</sup> Judicial District.

NLADA put together a site-visit team of professional researchers and leading public defense practitioners from the American Council of Chief Defenders to conduct in-court observations and interviews with defense providers and other key players in the local criminal justice system, including a District Judge, the District Attorney, the Sheriff, the local Indigent Defense Board, and others. On-site work was conducted on September 15-17<sup>th</sup>, 2003. The four-person research team consisted of David J. Carroll,<sup>32</sup> Robert Boruchowitz,<sup>33</sup> Fern Laethem<sup>34</sup> and Phyllis Subin.<sup>35</sup>

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<sup>32</sup> David Carroll joined NLADA as Director of Research and Development in January 2002. Since joining NLADA, Mr. Carroll co-authored a report on indigent defense services in Venango County, Pennsylvania, led an on-site assessment of the public defender office in Clark County (Las Vegas), Nevada, provided consultation services for the Maryland State Public Defender, and co-authored a report for the U.S. Department of Justice on the Implementation and Impact of Indigent Defense Standards. For five and a half years, Mr. Carroll worked as a Senior Research Associate & Business Manager for the Spangenberg Group (TSG). TSG is a national and international research and consulting firm specializing in criminal justice reform. Since 1985, TSG has been the research arm of the American Bar Association on indigent defense issues.

Mr. Carroll directed numerous projects on behalf of TSG, including: a jail-planning study for Pierce County (Tacoma) Washington; a study of indigent defense cost recovery efforts in Jefferson and Fayette Counties, Kentucky (Louisville and Lexington); a statewide assessment of West Virginia's Public Defender Services; and principal analysis on a statewide public defender, court and prosecutor case-weighting study in Tennessee. He provided analysis and re-design of the New York Legal Aid Society's Criminal Defense Division and Criminal Appeals Bureau's case management information systems. Mr. Carroll also was chosen to provide on-site technical assistance to statewide Task Forces in Illinois, Nevada, Alabama, and Vermont under the auspices of the American Bar Association and the U.S. Department of Justice, Bureau of Justice Assistance.

<sup>33</sup> Robert Boruchowitz has been the Executive Director of The Defender Association, a private, non-profit public defender agency providing representation to indigent defendants in King County (Seattle), WA since 1978. In that capacity, Mr. Boruchowitz administers an office of approximately 130 staff, including 90 lawyers and a budget of approximately \$9.8 million. He co-counseled the first King County "sexual predator" commitment jury trial (1991), and appeal in state supreme court (1991-1993), and remand to superior court (1993-1994). He also argued the case before the U.S. Supreme Court [*Selig v. Young*, 531 U.S. 250 (2001)]. As President of the Washington Defender Association, Mr. Boruchowitz oversees a statewide membership organization representing more than 700 lawyers and staff representing indigent people accused of crimes. He co-authored NLADA's Model Indigent Defense Contract. In 2003, he was awarded a Soros Fellowship to study the denial of counsel in misdemeanor and juvenile cases in the United States.

<sup>34</sup> Fern Laethem began her legal career as a Deputy District Attorney in Sacramento, California and was later appointed as an Assistant U.S. Attorney for the Eastern District of California. In 1981 she opened a solo criminal defense practice that she maintained until 1989 when California Governor George Deukmejian appointed her as the State Public Defender of California to oversee direct appeals in capital cases statewide. Governor Pete Wilson reappointed her for two more terms. Ms. Laethem retired as State Public Defender in 1999 and accepted a position with Sacramento County as the Executive Director of Sacramento County Conflict Criminal Defenders.

Ms. Laethem has served as a member of the California Committee of Bar Examiners, the California Judicial Council Appellate Standing Advisory Committee and the California Council on Criminal Justice. Ms. Laethem participated as a trainer in NLADA Defender Manager training for many years and is a consultant to contract public defender programs in other jurisdictions. She was recently appointed by the California senate to serve on the California Commission on Special Education.

<sup>35</sup> Phyllis Subin completed two gubernatorial appointment terms as the Chief Public Defender for the State of New Mexico in 2003. In that capacity, she was the leader of New Mexico's largest statewide law firm, the New Mexico Public Defender Department, which had a budget of over \$30 million and which employed 320 staff members (160 attorneys) with over 100 contract attorneys. At the time of her first appointment, Ms. Subin was an Assistant Professor at the University of New Mexico School of Law and the director of the Criminal Defense Clinic. She has a long history in the teaching and training of law students and public defender attorneys. Following years as a trial and appellate public defender, Ms. Subin was the first Director of Training and Recruitment at the Defender Association of Philadelphia (PA), a large county public defender system, where she developed and taught a nationally recognized training program for lawyers and law interns.

*Acknowledgements*

Many individuals contributed to this study. First and foremost, NLADA wishes to thank the members of the Avoyelles Parish community who took time out of their busy schedules to meet with us. We are particularly indebted to District Judge William J. Bennett for allowing us unrestricted access to his courtroom and helping us to secure interviews with other criminal justice practitioners.<sup>36</sup> District Attorney Charles A. Riddle, III, provided on-going insights into courtroom activities as they occurred. The district attorney showed compassion for victims and defendants alike and treated all people in the courtroom with dignity. In separate interviews, the District Attorney told us of his concerns about due process and allowed NLADA to review his database for available indigent defense data. It is rare for a prosecutor to be as candid and reflective on indigent defense issues as Mr. Riddle. The Chair of the 12<sup>th</sup> Judicial District Indigent Defense Board (IDB), Retired Colonel Charles Jones, provided us with contact information, helped schedule interviews, provided us with access to IDB financial records and always responded to our requests for more information in a professional manner.

Other Louisianans provided NLADA with critical data and observations. Mr. Ed Greenlee, Director of LIDAB, shared with us key funding data and walked us through the state funding schematic. Mr. Paul Marx of the Louisiana Public Defenders Association invited NLADA to address an association meeting. This in turn gave NLADA a much broader understanding of the issues defenders face on a daily basis throughout the state and helped us put the Avoyelles Parish findings into a statewide context. Representatives of the Louisiana Association of Criminal Defense Lawyers assisted us with understanding many of the unique aspects of criminal defense practice in the state. Mr. George Steimel, a managing partner of a governmental affairs consulting firm, is especially recognized for helping us collect statewide data from numerous sources and providing a local contact for us with state government representatives.

Finally, NLADA would like to thank Ms. Kathryn Jones and Ms. Catherine Vanchiere Beane, the former and current NACDL indigent defense counsel. Ms. Jones tirelessly conducted the preliminary investigations into the adequacy of indigent defense services in the state, coordinated the meetings of the concerned Louisianans and secured funding for the study. Ms. Beane continued to uphold the high standard set by Ms. Jones and provided NLADA with timely critiques and advice. Though the report's findings are NLADA's alone, the oversight and guidance provided by NACDL proved to be insightful, challenging and beneficial to the final report.

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Ms. Subin served as chair of NLADA's Defender Trainer's Section, was instrumental in writing and developing NLADA's national Training and Development standards and assisted in the creation of NLADA's Defender Advocacy Institute. Ms. Subin has consulted privately for a number of indigent defense programs, including the Kentucky Department of Advocacy.

<sup>36</sup> See Appendix E (page 86) for Judge Bennett's letter to NLADA (August 18, 2003).

Chapter II  
**Indigent Defense Services in Louisiana:  
 State & Local Structure and Funding**

Before evaluating the adequacy of public defense services in Avoyelles Parish, it is important to present an overview of how the indigent defense system in the state is intended to function. Given Louisiana's complex structure of local government, a brief overview of local government is required first.

*Local Government Structure*

Every parish in Louisiana has a locally elected governing board known as a "police jury."<sup>37</sup> With the ratification of the 1974 Louisiana Constitution, parishes were empowered with broad home rule authority reversing the traditional concept of local government as a "creature of the state" possessing only delegated authority.<sup>38</sup> Because of the importance of local control of government, the State Constitution and Louisiana Revised Statutes do not designate how a police jury should organize to discharge its functions.<sup>39</sup> Article IV §5 of the State Constitution allows for the establishment of home rule authority to be adopted through a majority vote in an election. In those parishes with no home rule charter, the Constitution specifically grants the power to the electorate to grant to the police jury whatever legal power necessary to perform any requisite function.<sup>40</sup>

Despite this broad power and authority of local government, police juries have little control over the criminal justice expenditures they administer. State law sets the salaries of sheriffs, clerks of court, and district attorneys at certain minimum levels, though funding of these costs is the responsibility of local government. Therefore, though local control of government is a defining trait of Louisiana, police juries do not exercise as much power over criminal justice matters as their counterparts in many other states.

Moreover, police juries in all parishes have one common characteristic that poses a significant separation of powers issue at the local level, namely:

The police jury system vests both legislative and administrative functions in the same persons. The jury performs the legislative functions of enacting ordinances, establishing programs and setting policy. It also is an administrative body in that it is involved in preparing the budget, hiring and firing personnel, spending funds, negotiating contracts and in general, directing the activities under its supervision.<sup>41</sup>

Serving as both the legislative and administrative function, the police jury form of government does not permit for a strong local chief executive officer, like an administrative

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<sup>37</sup> In this regard, Louisiana is unlike every other state in the nation where the political subdivisions are known as counties. At the time of Louisiana's inclusion in the United States, the state did have 12 counties. The geographic size of these counties proved too difficult to administer effectively and the counties were divided into 19 parishes that mirrored many of the 21 ecclesiastical parishes established in 1762. See: <http://www.lpgov.org/facts.htm>

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> This is the model used in Avoyelles Parish.

<sup>41</sup> *Supra* note 37.

secretary or county manager. The result of this form of local government is that, in most parishes, the Sheriff is the elected official that maintains the most local control over government functions.

*Trial-Level Criminal Court Structure*

Crime is a significant problem for any policy-maker in the nation, whether at the state, federal or local level. Louisiana’s crime rates are among the highest in the country. For example, Louisiana ranks 22<sup>nd</sup> of the 50 states in population. In 2000, Louisiana had a total Crime Index of 5,422.8 reported incidents per 100,000 persons, ranking the state as having the fourth highest total Crime Index of the 50 states. For violent crime, Louisiana had a reported incident rate of 681.1 per 100,000 people. This ranked the state as having the 7th highest occurrence for violent crime among the states. In the same year, Louisiana had 12.5 murders per 100,000 people, ranking the state as having the highest murder rate in the country.<sup>42</sup>

The result is that the Louisiana court system is stretched to its limits simply to process the growing number of people entering the state’s criminal justice system each year.<sup>43</sup> Despite having 41 judicial districts covering the 64 local parishes, the Louisiana court system is not unified. Courts of limited jurisdiction are known alternatively as “City Court,” “Municipal Court,” or “Parish Court,” and have criminal jurisdiction over violations of parish and city ordinances.<sup>44</sup> These courts also have primary jurisdiction over all juvenile and family matters in those jurisdictions where no separate “Family and Juvenile Court” exists. There are two city courts in Avoyelles Parish (in the cities of Marksville and Bunkie). Significantly, there is no Family and Juvenile Court in the 12<sup>th</sup> Judicial District, leaving the two City Courts to perform the critical function of dispensing justice in delinquency proceedings.<sup>45</sup>

“District Courts” comprise the second level of the judiciary. City Court and District Court have concurrent jurisdiction over misdemeanor cases, while District Courts

<sup>42</sup> To complete the picture, Louisiana’s robbery rate was 168.5 ranking the state 8th highest for robbery. The state also had 466.6 aggravated assaults for every 100,000 people, the 6th highest among the states. For crimes against property, the state had a reported incident rate of 4,741.7 per 100,000 people, which ranked as the 5th highest. Louisiana has the 4th highest burglary rate in the nation. Larceny-theft was reported 3,229.9 times per 100,000 people in Louisiana, which is the 7th highest among the states. Vehicle Theft occurred 475.9 times per 100,000 people, the 10th highest among the states. All statistics are for the year 2000. (<http://www.disastercenter.com/crime/lacrime.htm>).

<sup>43</sup> In 2002, there were 531,858 criminal and traffic cases processed in Louisiana’s District Courts, an increase of nearly 10.5% over 1999’s total (481,347). The Supreme Court of Louisiana, *Annual Report 2002 of the Judicial Council of the Supreme Court*, 2003, available at: [www.lasc.org/press\\_room/annual\\_reports/reports/2002stats.pdf](http://www.lasc.org/press_room/annual_reports/reports/2002stats.pdf)

<sup>44</sup> There are also entities known as “Mayor’s Courts” or “Traffic Courts” with no criminal jurisdiction, except that Justices of the Peace serve as committing magistrates and for the issuance of peace bonds (i.e. an affidavit that a person has threatened or is about to commit a specified breach of the peace; if there is a finding of a sufficient threat, a magistrate can issue a summons or warrant).

<sup>45</sup> NLADA focused our research on adult representation, in part because of the extensive research that has already been done on the major problems with juvenile defense throughout the state. Nevertheless, it is not possible to completely separate adult and juvenile representation. In most instances in the state, the attorneys that are asked to represent juveniles in delinquency proceedings are the same ones handling adults in criminal cases. As a result, workload concerns, inadequate training, and other aspects of adult representation directly impact the quality of representation afforded to children. For more information on Louisiana’s juvenile justice system, please visit the American Bar Association, Juvenile Justice Center website ([www.abanet.org/crimjust/juvjus/home.html](http://www.abanet.org/crimjust/juvjus/home.html)) and The Juvenile Justice Project of Louisiana ([www.jjpl.org](http://www.jjpl.org)).

exclusively oversee all felony cases. By statute, the 12<sup>th</sup> Judicial District has two elected District Judges. These judges also hear appeals arising from the lower courts.

### *Local Indigent Defense Structure*

Louisiana Revised Statutes require each judicial district to form an indigent defender board (IDB).<sup>46</sup> Across the state, IDBs vary in size – but must have at least three members and no more than seven. The Avoyelles Parish IDB has four members. IDB members are selected by the district court from nominees provided by each bar association within the judicial district.<sup>47</sup> In the event no nominations are submitted by the bar association, a majority of the district court judges select the entire board. The board must reflect the racial and gender makeup of the judicial district involved.

Each district board is required to select one of the following procedures or any combination thereof for providing counsel for indigent defendants:<sup>48</sup>

1. *Assigned Counsel System* -- Appointment by the court from a list provided by IDB of volunteer attorneys licensed to practice law in the state. In the event of an inadequate number of volunteer attorneys, appointment shall be from a list provided by IDB of non-volunteer attorneys.<sup>49</sup> All appointments are supposed to be on a successive, rotational basis.
2. *Contract System* -- IDB may enter into a contract or contracts, on such terms and conditions as it deems “advisable” with one or more attorneys licensed to practice law in the state and residing in the judicial district to provide counsel for indigent defendants.
3. *Public Defender* -- IDB may employ a chief indigent defender and such assistants and supporting staff, as it deems necessary. The chief indigent defender is to be appointed for a period of three years and may not be a member of the board. IDB sets the salaries of the chief indigent defender, and all assistants and supporting personnel.

Ten parishes have created full-time public defender programs. The majority of the other parishes provide services through contracts with individual attorneys or a consortium of lawyers; at least two parishes use an assigned counsel system.

### *Local Indigent Defense Funding*

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<sup>46</sup> La. Revised Statutes, Title XV § 144.

<sup>47</sup> Elected officials, district attorneys, their employees, including assistant district attorneys, or prosecutors in any court shall not be permitted to serve on the district board. *Supra* note 46.

<sup>48</sup> La. Revised Statutes, Title XV § 145.

<sup>49</sup> Each district board is required to maintain a current panel of volunteer attorneys licensed to practice law in the state and must additionally maintain a current panel of non-volunteer attorneys under the age of fifty-five licensed to practice law in Louisiana and residing in the judicial district. The panel of non-volunteer attorneys shall not include any attorney who has been licensed to practice in Louisiana for thirty or more years. *Supra* note 48.

Each IDB is charged with administering the local indigent defense fund.<sup>50</sup> Though each IDB may accept, receive, and use public or private grants, a review of each judicial district’s financial audit reveals that it is rare that any IDB receives private grants.<sup>51</sup> Instead, funding for each IDB is garnered primarily through court costs and recoupment of costs from indigent defendants collected in the local judicial district.

Every court of original criminal jurisdiction<sup>52</sup> must remit to their local dedicated IDB account the monies collected on all state, local or municipal violations in which a defendant is convicted after a trial, enters a plea of guilty or nolo contendere, or forfeits bond on a monthly basis. The local IDB fee must be at least \$17.50, though it can be increased to \$35.00 by a majority vote of the judges of the courts of original jurisdiction.<sup>53</sup> Commonly referred to as “recoupment,” the court can order a defendant to pay for part of the cost of representation to the extent that a person is able to do so without causing undue financial hardship.<sup>54</sup>

The largest amount of the revenue has been traditionally garnered from assessing fees on traffic violations, under the assumption that those cases deal with offenders who can most afford to pay costs and fees. In Avoyelles Parish, the Office of the Sheriff is empowered as the tax and fee collection authority. In that role, the Sheriff is responsible for both the collection and dissemination of funds to the local IDB. Revenues that are not expended during the course of the year can be kept at the local level. No revenue garnered through court costs or recoupment revert back to a state or local general fund – essentially leaving cash reserves to be expended at some future time. The IDB accounts may accrue interest on unexpended monies, another source of revenue at the local level.

Although Louisiana Revised Statutes, Title XV §304 states that Parishes are responsible for all witness expenses upon approval of the District Court Judge overseeing the case, the statute was amended to make clear that nothing in the section “shall be construed to make parishes or the City of New Orleans responsible for the expenses associated with the costs, expert fees, or attorney fees of a defendant in a criminal

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<sup>50</sup> Indigent Defender Boards are governed under La. Revised Statutes, Title XV § 145.

<sup>51</sup> NLADA requested, received and reviewed the financial audits of every IDB for the years 1999-2002 through the Louisiana Office of the Legislative Auditor. All statewide financial analyses in this report are based on the review of these audits. NLADA also requested and received an electronic copy of the 12<sup>th</sup> Judicial District IDB’s financial bookkeeping system. The IDB in Avoyelles Parish use Intuit “Quickbooks”®. When possible, NLADA crosschecked state financial audits on the local software program. The Avoyelles Parish IDB did not receive any grant funding. Interviews with IDB members revealed that no grants were sought.

<sup>52</sup> Except in the town of Jonesville, in the city of Plaquemine, and in mayors' courts in municipalities having a population of less than five thousand.

<sup>53</sup> To participate in LIDAB’s district assistance program, the fee must be at least \$25. In the 12<sup>th</sup> Judicial District the fee is \$25. It is important to note that much of the criminal justice system receives similar funding from fees. Again the amount and number of agencies receiving criminal court fees varies between Parishes. In Avoyelles Parish the following agencies receive fees: the Sheriff (\$17.50); Clerk of Courts (\$7.50); District Attorney (\$10.00-\$20.00 depending on severity); The Louisiana Commission on Law Enforcement (\$6.00); District Court (\$10.00); CMIS Judicial Administrator (\$2.00); Police Jury (\$2.50); Coroner (\$10.00); Central Louisiana Criminal Detention (\$7.50); The 12<sup>th</sup> Judicial District Juvenile Detention Center (\$2.00); and, the North Louisiana Criminalistics Lab (\$10.00-\$50.00 depending on severity). In total, criminal defendants can be assessed as much as \$135.00 in court fees. List of fees obtained from the Office of Sheriff William O. Belt – 12<sup>th</sup> Judicial Disbursement Schedule (Last revised on April 2, 2001).

<sup>54</sup> The court may order payment in installments, or in any manner that it believes reasonable and compatible with the defendant’s financial ability. In courtroom observations conducted in Avoyelles Parish, defendants were routinely being assessed a flat \$125 fee to cover the cost of their representation.

proceeding.” As a result, police juries are not required to provide *any monetary assistance to their IDB*.

In 2003, the Louisiana Legislature enacted a bill allowing for another source of income at the local level. All defendants seeking the right to counsel must pay a \$40 application fee to be screened to determine indigency. The fee may be waived in cases in which paying the fee would produce undue hardship, though the bill also allows for the fee to be assessed at sentencing, or final disposition of the case, if there is a failure to pay upfront.

### *State Indigent Defense Structure*

The Louisiana Indigent Defense Assistance Board (LIDAB) is an Executive Branch Board of the State of Louisiana charged with: improving the criminal justice system and the quality of criminal defense services provided to individuals through a community-based delivery system; ensuring equal justice for all citizens without regard to race, color, religion, age, sex, national origin, political affiliation or disability; guaranteeing the respect for personal rights of individuals charged with criminal or delinquent acts; and upholding the highest ethical standards of the legal profession.<sup>55</sup>

LIDAB is governed by a nine-member board, all of whom must be attorneys with at least five years experience practicing in the state. No individual may be recommended, appointed, or serve on the board if he is an elected official, or employed by a law enforcement agency, or an office having any prosecutorial authority, or employed full-time by a court. The Governor has three appointments (including the chair), and the President of the Senate and the Speaker of the House each have three appointments. The Louisiana Association of Criminal Defense Lawyers, The Louisiana Public Defender's Association, and The Louisiana Trial Lawyers Association each have one ex-officio appointment.

The mission of LIDAB is to coordinate and improve the indigent defense system through education, specialized training, technical assistance, sound financial and administrative guidelines, case assistance and managed resource allocation. To accomplish this, LIDAB has expanded its services over the years to include the following:

1. *The Louisiana Appellate Project (LAP)* provides appellate services for indigent defendants in all felony appeals arising in those districts in which the indigent defender board has contracted with the LAP to supplement its staff with these services.
2. *The Capital Appeals Project (CAP)* is a separate section of the Louisiana Appellate Project. The attorneys handle only direct capital appeals to the Supreme Court of Louisiana and Writ Applications to the United States Supreme Court.
3. *The Capital Post-Conviction Project of Louisiana (CPCPL)* was created by LIDAB in response to a state statutory mandate to provide post-conviction

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<sup>55</sup> The LIDAB mission is available at [www.lidab.org](http://www.lidab.org). This resource was also used for information on LIDAB's expanded services to follow.

representation for persons sentenced to death. CPCPL provides assistance to those sentenced after the effective date of the legislation (1999), or unrepresented at the time.

4. *Regional Capital Conflict Panels (RCCP)* were created to handle conflict-of-interest cases in those districts that have a staffed public defender office (thereby creating a conflict in multiple-defendant capital cases). RCCP provides attorneys, a fact investigator and a penalty phase investigator in every case they accept.<sup>56</sup> Extraordinary expenses, such as psychiatrists, forensic experts and the like are not provided by LIDAB and must be funded through the local IDB or other sources.
  
5. *Juvenile Justice Project of Louisiana (JJPL)* is the leader in juvenile justice reform in the state. Though LIDAB does not account for JJPL’s entire funding,<sup>57</sup> they do provide money for the representation in juvenile delinquency appeals and modification hearings.

The LIDAB program that most directly impacts indigent defense services at the trial level is the “District Assistance Fund (DAF)” program. Each year, grants are awarded to local judicial districts to offset the cost of the right to counsel in trial level cases in which the right applies. Under rules adopted by LIDAB, participation in the DAF program is dependent on the local IDB’s working toward the implementation of LIDAB promulgated standards.<sup>58</sup> LIDAB standards mirror many of the national NLADA and ABA standards, and include:

1. Standards relating to the performance of the indigent defense system (whether public defender, assigned counsel or contract);
2. Standards relating to the early notification, assignment, and continues representation of indigent clients;
3. Standards relating to the performance of counsel providing representation to indigent defendants;
4. Standards relating to the provision of counsel to indigent persons accused of capital crimes;
5. Standards relating to the provision of counsel to indigent persons accused of non-capital crimes;
6. Standards relating to conflict of interests in the representation of indigent persons;
7. Standards relating to compensation of staff, contract and appointed counsel involved in indigent defense; and,

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<sup>56</sup> RCCP is also appointed in conflict situations in parishes that have contract systems. The reason for this is that many parishes in Louisiana do not have a sufficient number of capital certified attorneys to handle multi-defendant capital cases.

<sup>57</sup> JJPL is supported through monies from the Southern Poverty Law Center.

<sup>58</sup> *Louisiana Standard on Indigent Defense*, Chapter 1, Standards Relating to the Performance of Indigent Defense Systems. *Supra* note 7.

8. Standards relating to workload for counsel providing defense services to indigent defendants.<sup>59</sup>

Despite the requirement to work toward the implementation of standards, LIDAB is not a regulatory commission with powers to compel local jurisdictions to comply with its standards. As such, there is no ombudsperson at LIDAB to verify that progress is being made toward the goal of systemic improvement through the use of standards. Instead, each IDB applying for assistance must provide the following information to LIDAB no later than July 31<sup>st</sup> of each year:

1. A copy of the previous year's audit report or financial statement;
2. The total number of felony cases opened during the prior year;
3. The balance in the IDB account at the start of the prior year;
4. Total revenue collected during the same year;
5. Total expenditures; and,
6. The balance of the IDB account at the close of the year.

Based on this information, LIDAB uses a complex matrix to determine need. Parish IDBs that have more money in their dedicated accounts than they expended on indigent defense services in the previous year are precluded from receiving DAF funds. The available DAF funding is divided among all of the other applying parishes based on the number of reported felony cases, number of reported felony trials, and level of revenue in the IDB bank account at the close of the year – though the single most important factor in the matrix is “reported felony cases.”<sup>60</sup>

### *Statewide Indigent Defense Funding*

Significantly, the expansion of LIDAB responsibilities to include appellate and post-conviction capital programs was not matched with additional state funding. As such, the total dollars available for the DAF assistance to districts has decreased over the past decade. As recently as 1999, \$3.5 million dollars were disseminated to local parishes through the DAF program. In fiscal year 2003, that total had decreased by more than 16% (down to slightly more than \$2.9 million).<sup>61</sup>

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<sup>59</sup> LIDAB standards are available on their website at: [www.lidab.com/standards.htm](http://www.lidab.com/standards.htm).

<sup>60</sup> A more detailed assessment of the LIDAB DAF matrix, including examples to illustrate the required mathematical calculations, is included as Appendix F (page 88).

<sup>61</sup> In fiscal year 2003, 38% of LIDAB's total expenditure was spent on the DAF program (or \$2,935,096 of \$7,692,466). The balance was spent accordingly: LAP (\$975,000, or 13%); CAP (\$400,000, or 5%); RCCP & CPCPL (\$2,718,224, or 35%); and JJPL (\$320,980, or 4%). The remaining \$343,166 (4%) was expended on LIDAB administration, though a portion of this includes resources for interns in other LIDAB supported programs.

*Indigent Defense in the 12<sup>th</sup> Judicial District*

In 2002, the Avoyelles Parish IDB elected to change the structure of their indigent defense delivery system from a public defender system to a contract system.<sup>62</sup> Upon changing structure, three attorneys were contracted to provide services to all of the eligible indigent defense clients assigned to them by the court, on a rotational basis, for a single flat-fee. In July 2003, the IDB entered into a fourth contract. This fourth attorney is now paid to handle all misdemeanor and juvenile cases (including dependency proceedings) assigned to him by the courts, and all arraignment proceedings in felony cases, while the original three attorneys handle those felony cases surviving arraignment. Because of budget concerns, the three original attorneys accepted a pay cut in order to bring on the fourth attorney.

In direct violation of ABA Principle #8 and LIDAB Standard 1-3.2, there are no formal written indigent defense contracts in Avoyelles Parish.<sup>63</sup> All of the attorneys work part-time and are allowed to have private practices, both civil and criminal. Originally paid \$37,000 annually, the three post-arraignment felony attorneys are now each paid \$31,000 per year. The new attorney is compensated at \$19,200 per year. Because of the flat-fee structure, the attorneys must pay for all costs of running a law office out of these low fees, including: rent, computers, telephones, facsimile machines, copier, Internet services, legal research, office supplies, and, administrative support, among others.<sup>64</sup>

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<sup>62</sup> It should not be assumed by the reader that the 12<sup>th</sup> Judicial District ever had a “staffed public defender office” in the traditional sense of having staff attorneys and supervisors in addition to necessary support staff, like investigators, social workers, and professional paralegal workers. In fact, the staffed office functioned much like a contract model although the attorneys did receive some limited benefits. Additionally, the IDB paid for overhead expenses of office space, copiers, Internet services, etc.

<sup>63</sup> To effectuate the requirements of standards regarding indigent defense contracting, the U.S Department of Justice funded the preparation of a Model Contract for Public Defense Services by NLADA and the Criminal Courts Technical Assistance Project, “to help counties and states interested in contracting for indigent defense services identify and address issues regarding cost, accountability, workload, and quality of services” (see Bureau of Justice Assistance Bulletin, <http://www.ncjrs.org/pdffiles1/bja/185780.pdf>, at p. 4). Mr. Boruchowitz, consultant on the 12<sup>th</sup> Judicial District assessment, is one of the model contract’s primary authors. A hard copy is attached as Appendix G (page 90). An electronic version of the model contract is available on-line at: [www.nlada.org/DMS/Documents/1015619283.17/Full%20volume.doc](http://www.nlada.org/DMS/Documents/1015619283.17/Full%20volume.doc).

<sup>64</sup> In *State v. Wigley*, 624 So. 2d 425 (La. 1993), the Louisiana Supreme Court held that, in order to be reasonable and not oppressive, any assignment of counsel to defend an indigent defendant must provide for reimbursement to the assigned attorney of properly incurred and reasonable out-of-pocket expenses and overhead costs. Before appointing counsel to represent an indigent, the district court has the responsibility to determine that funds sufficient to cover the anticipated expenses and overhead are likely to be available to reimburse counsel. If the district court determines funds are not available to reimburse appointed counsel, it should not appoint members of the private bar to represent indigents.

A similar state court decision in Alabama also requires attorneys to be compensated for overhead expenditures and is illustrative to show how Louisiana’s IDBs subvert the *Wigley* decision by entering into flat-fee contracts. In Alabama, compensation rates are set by statute at \$60 per hour for in-court work and \$40 per hour for out of court work. Statutory language entitles attorneys in Alabama to any additional “reasonably incurred” expenses approved by the courts. In *James W. May v. State*, 672 So. 2<sup>nd</sup> 1310 (1995), the Alabama Supreme Court let stand a ruling of the Alabama Court of Criminal Appeals ordering the state to pay indigent defense attorneys’ overhead costs for “reasonably incurred” expenses. Setting the presumptive hourly overhead rate at \$30 an hour, the State of Alabama now pays attorneys \$90 per hour for in-court work.

Therefore, assuming that an indigent defense attorney worked half-time on indigent defense cases in Alabama (or 1,020 hours per year), the presumptive hourly overhead rate in *May* indicates that a half-time indigent defense attorney needs \$30,600 just to cover overhead in Alabama. Financial, cultural and regional similarities between Alabama and Louisiana suggest that attorneys in Louisiana have similar costs to maintain a law office. In contrast to Alabama, the post-arraignment felony contract attorneys are paid approximately \$30/hour (\$31,000/1,020 hours = \$30.39/hour, or the presumptive rate to cover overhead in Alabama). The misdemeanor and juvenile delinquency attorney is paid at a rate that is equivalent to \$18.82/hour (\$19,200/1,020 hours = \$18.82/hour).

Similarly, the attorneys must pay for the cost of litigation support, including: investigation, expert witnesses, and social service assistance.

In 2002, the most recent year for which complete financial data was available, the majority of IDB revenues in Avoyelles Parish came from court costs. In that year, the 12<sup>th</sup> Judicial District IDB received \$100,774 from the district court and two city court assessments, an amount equal to 68% of their total revenue (\$149,018). The state DAF grant accounted for an additional \$45,701, or 31% of their total revenue.<sup>65</sup>

In the same year, indigent defense expenditures for the 12<sup>th</sup> Judicial District totaled \$186,495, creating a deficit of \$37,477 for the year. The deficit was offset by decreasing the IDB dedicated account, from \$113,898 at the start of the year to a final amount of \$76,421 (or approximately 40% of the anticipated need for the ensuing year). It is important to note that the simple existence of *any* money in an IDB bank account at the close of the year is not an indication of the relative health of a local indigent defense system. This is because IDBs are precluded from expending all of their money and operating in the red. As such, there will always be *some* amount in an IDB account at the close of the year. Moreover, because of the unreliability of the primary indigent defense revenue stream (i.e. court costs) IDBs have no accurate way to predict their budgets from month to month, let alone for a full fiscal year. Because IDBs cannot operate on deficit spending and must guard against periods in which the money in their dedicated accounts would be less than their monthly costs, the IDBs often under-project revenue streams and operating budgets. And, because revenue does not flow to an IDB on a predictable basis, a significant year-end bank balance may be nothing more than a significant distribution of court cost revenue late in the year.<sup>66</sup>

As such, the simple existence of significant financial reserves in a judicial district in no way signifies that the district is satisfying its federal constitutional obligations under *Gideon*, only that the reliance on court costs as the primary funding mechanism creates disparity between parishes thereby undercutting the establishment of a uniform system throughout the state as required by the Louisiana Constitution.

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<sup>65</sup> An additional \$2,453 in miscellaneous revenue includes accrued interest on the indigent defense fund.

<sup>66</sup> NLADA does believe that a year-end bank balance that is far in excess of the previous year's total indigent defense expenditure, and far above the norm of other parishes, indicates a systemic disparity of resources between parishes, as will be shown in the next chapter.

Chapter III  
**Primary Findings:**  
**The Inadequate Funding & Lack of Independence  
of Louisiana’s Indigent Defense System**

***OVERALL FINDING:*** *In direct violation of the Louisiana Constitution, government (both state and local) has not created a “uniform system for securing and compensating qualified counsel for indigents” at “each stage of the proceeding.” Instead, Louisiana has constructed a disparate system that fosters systemic ineffective assistance of counsel due primarily to inadequate funding and a lack of independence from undue political interference. These two main systemic deficiencies produce numerous ancillary problems including a lack of oversight, training and supervision of those entrusted with the defense of the poor. When combined with the crushing caseloads public defenders are forced to carry, these factors prevent the state from securing justice for all, protecting the peace, and promoting the general welfare of its people.*

The problems found with the indigent defense system in Louisiana, as demonstrated by our research in Avoyelles Parish, are so severe and pervasive that the balance of this report will serve to detail the evidence to support our one overall finding (above). The indigent defense system in Louisiana is beyond the point of crisis and is so weakened in relation to the other criminal justice system components that it calls into question the ability of the entire criminal court system to dispense justice accurately and fairly. As U.S. Attorney General Janet Reno observed in 1999, “(i)f one leg of the system is weaker than the others, the whole system will ultimately falter.”<sup>67</sup> The failure of the system to secure justice for all should come as no surprise to policy-makers, as Louisiana’s indigent defense system has been studied over and over again and consistently has been found to be deficient in protecting the right to counsel.<sup>68</sup>

This chapter explores the two primary problems (inadequate funding and lack of independence) that produce the systemic ineffective assistance of counsel to be detailed in Chapter IV to follow. Where applicable, references to national and local standards have been cited to demonstrate the significant extent to which the state has failed to protect the rights of people of insufficient means faced with the potential loss of liberty in criminal proceedings. Also, where applicable, materials and observations from our field evaluation are referenced to provide the reader with context to understand how the right to counsel is routinely, consistently and systematically denied in Avoyelles Parish and throughout the state.

NLADA encourages the Louisiana Task Force on Indigent Defense to develop recommendations that will bring the Louisiana indigent defense system into compliance with the ABA *Ten Principles* and its constitutional obligations under *Gideon*. NLADA is prepared to assist the Task Force in accomplishing its mission.

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<sup>67</sup> U.S. Department of Justice, Office of Justice Programs, *Improving Criminal Justice Through Expanded Strategies and Innovative Collaborations: A Report of the National Symposium on Indigent Defense*, NCJ 181344, February 1999.

<sup>68</sup> *Supra*, note 4.

***Finding #1:*** *In direct violation of its constitutional obligations under Gideon and ABA Principle #2, the State of Louisiana fails to adequately fund indigent defense services. This results in a disparate funding system that fosters ineffective assistance of counsel in the parishes.*

In an effort to methodically analyze the Louisiana indigent defense funding structure, NLADA has broken down our first finding into four sub-sections to assist the reader in understanding the extent to which Louisiana stands alone in the nation in terms of the reasons for failing to comply with the state-funding mandate of *Gideon* and ABA Principle #2.

*1.1: Louisiana is the only state in the nation to attempt to fund the majority of its Constitutional obligation to provide indigent defense services through court costs.*

Since the U.S. Supreme Court in *Gideon* ordered the states to provide indigent defense services, 22 states have undertaken to fund indigent defense services entirely at the state level,<sup>69</sup> while another six states now fund at least 75% of all indigent defense costs.<sup>70</sup> Three other states fund at least fifty percent of the cost of defense services.<sup>71</sup> Louisiana and Alabama rely on a combination of state funding and court costs. The rest rely to a large extent on local funding or, in the case of Pennsylvania and Utah, rely on county funding exclusively (See Chart 3-1, page 21). This means that Louisiana and 27 other states are in violation of ABA Principle #2 that states: “Since the responsibility to provide defense services rests with the state, there should be state funding...”

Alabama and Louisiana are the only two states that attempt to fund their indigent defense systems through a combination of state funding and court costs. Though Alabama is categorized with Louisiana for funding overview purposes, there are critical differences between the two states’ indigent defense funding structures that deserve explanation. As in Louisiana, Alabama levies and imposes a fee, or “tax”, in every criminal case in district, juvenile or municipal court.<sup>72</sup> Unlike Louisiana, the revenue from these fees is remitted on a monthly basis to a “Fair Trial Tax ” fund administered by the State Treasury. This pooling of resources at the state level stands in contrast to Louisiana’s insistence on keeping generated revenues in the jurisdiction from which they were collected.<sup>73</sup>

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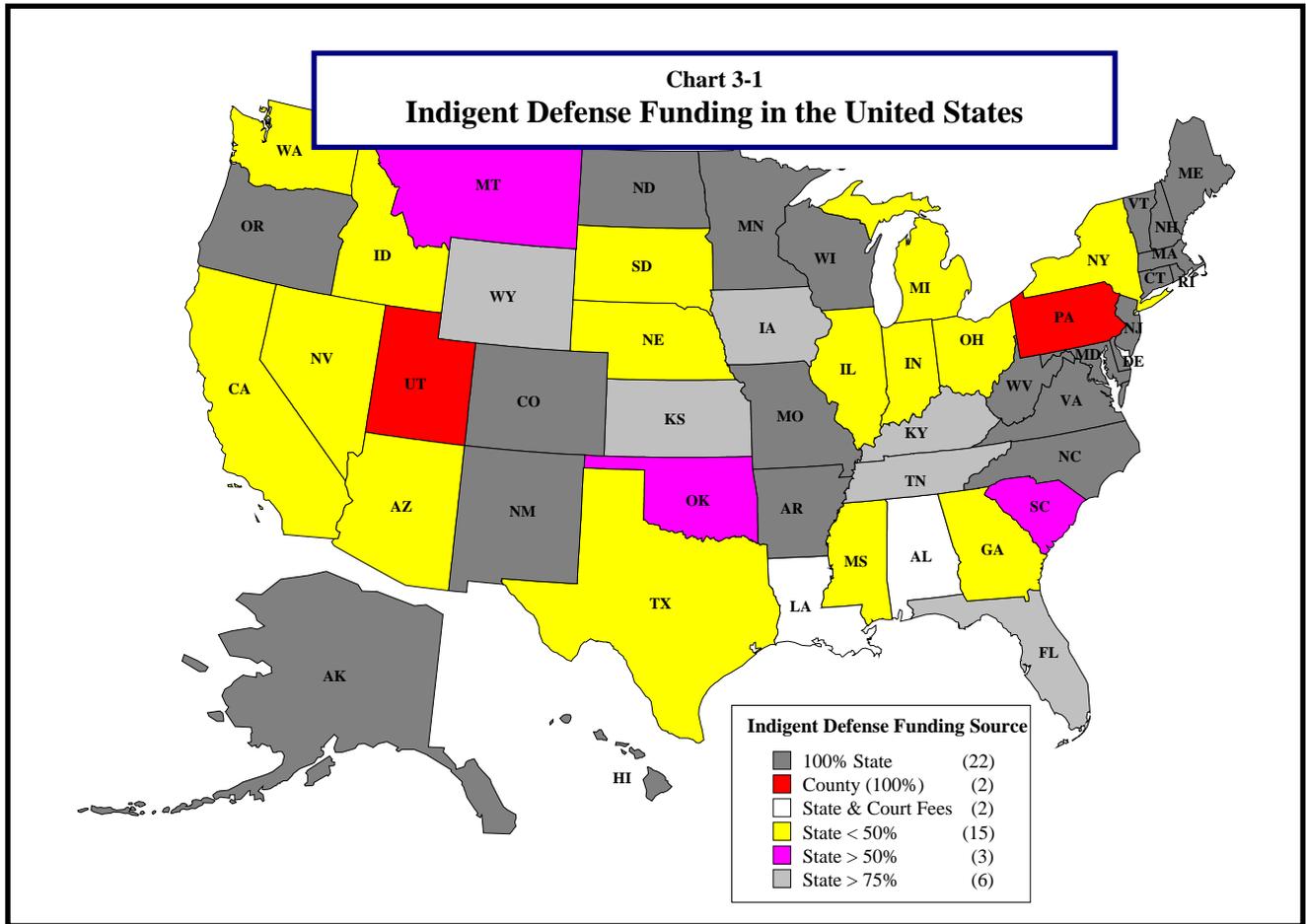
<sup>69</sup> Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

<sup>70</sup> Florida (80.14%), Iowa (96.99%), Kansas (77.64%), Kentucky (94.81%), Tennessee (87.32%), and Wyoming (85%). Percentages provided by The American Bar Association report on indigent defense expenditures (2003) prepared by The Spangenberg Group.

<sup>71</sup> Montana (51%), Oklahoma (66.22%), and South Carolina (67.41%).

<sup>72</sup> In Alabama, the fee is currently set at \$16.

<sup>73</sup> The Fair Trial Tax fund also receives revenue from filing fees in civil cases. In small claim cases, \$13 of the \$30 dollar filing fee goes to the fund. Litigants in civil cases in district court are assessed \$109 dollars of which \$21 goes to the Fair Trial Tax Fund. Circuit filing fees are \$145. The Fair Trial Tax Fund receives \$25 from this revenue source.



Alabama’s fair trial tax was designed to uniformly offset the *entire* county cost of providing indigent defense services at the local level.<sup>74</sup> Thus, to the extent that the fair trial tax fund is not sufficient to cover the entire cost to the counties, the state is required to expend general fund revenues to cover the deficit. Because projections of collections rates never materialized as originally forecasted, the revenue stream from court costs has remained relatively stagnant over time. So, as increased caseloads, rising assigned counsel rates and new science, like DNA evidence, has increased the cost of providing indigent defense services throughout the state, the percentage of indigent defense expenditure paid by the Alabama state government has grown correspondingly. In 2002, the State of Alabama paid for approximately 74.3% of all indigent defense expenditures (or roughly \$28 million of \$37,698,403).

The State of Louisiana does not have a corresponding state general fund contribution to offset the difference between the amount of money that can be raised through court costs and the actual cost of providing adequate public defense services. Overall, Louisiana IDBs expended \$21,080,773 of revenue garnered through court costs and recoupment efforts statewide on indigent defense services in 2002. The State of Louisiana contributed \$2,973,719 in district assistance funds and another \$4.8 million toward LIDAB’s capital, appellate and post-conviction representation programs. In total,

<sup>74</sup> The State Comptroller of Alabama keeps \$50,000 from the fund to offset the costs of administering the fund.

just under \$29 million was expended for indigent defense services statewide. Because state funding accounted for slightly more than a quarter of all statewide expenditures (27%), it can be stated unconditionally that Louisiana is the last and only state to rely predominantly on court cost assessments to fulfill its constitutional obligation to provide legal representation in all cases in which the right to counsel applies.

*1.2: Funding indigent defense through court surcharges has proven to be unreliable because there is no correlation between the ability of a jurisdiction to raise revenues and the resources required to provide adequate defense services to those unable to hire an attorney. Funding indigent defense through court surcharges creates resource disparities between the parishes.*

Indigent defense revenue streams generated by court surcharges can vary greatly due to a wide number of factors. For instance, jurisdictions with high poverty rates generally have a more difficult time collecting revenues from people than would jurisdictions in better economic standing. That is to say, though a high poverty jurisdiction may in fact assess as many (or more) court costs as a neighboring affluent jurisdiction, the fact that the majority of people in the poorer community do not have the ability to meet their financial obligations to the court means that the poorer community will generate fewer actual dollars for the defense of the indigent.<sup>75</sup> The problem is compounded because the same factors that contribute to high poverty are also associated with increased crime. For instance, crime rates tend to increase when there is a high level of unemployment.<sup>76</sup> Thus, at a time when court revenue collections may be down due to high unemployment, the criminal justice system is often expected to *increase* its workload. But because less affluent jurisdictions have a higher percentage of people eligible for public defense services, the need for indigent defense funding is in fact *inversely* correlated with the ability to generate revenues.<sup>77</sup>

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<sup>75</sup> Many jurisdictions across the country assess court costs despite the recognition that people of insufficient means have major difficulties in meeting court-imposed financial obligations. In these jurisdictions, there is a general acceptance that the court may never see much revenue from these assessments, yet the imposition of them serves the goal of holding adjudicated guilty defendants accountable for their actions. At the same time, these jurisdictions do not rely on such court costs as the primary funding stream to ensure the adequate protection of the right to counsel, as is the case in Louisiana.

<sup>76</sup> Amburgey, Bryce. Kentucky Department of Public Advocacy. "Will 9/11 Drive Crime Rates and Defender Workloads Up? The Experts Say Yes." *NLADA Cornerstone*, Winter 2001/2002, Issue 4; Gould, Eric with Bruce Weinberg and David Mustard. "Crime Rates and Local Labor Market Opportunities in the United States: 1979-1997. National Bureau of Economic Research Summer Institute Workshop. Cambridge, MA. July 6, 1998 (Revised October 2000).

<sup>77</sup> Additionally, a more affluent jurisdiction may have more resources to dedicate to the apparatus of collections, again increasing collection rates in comparison to communities with higher poverty.

A closer look at the funding of Louisiana's IDBs in 2002 is illustrative.<sup>78</sup> The 38<sup>th</sup> Judicial District (Cameron) has one of the lowest poverty rates of the 41 judicial districts in the state (12.30%).<sup>79</sup> At the close of the year, the district IDB had \$197,580 in their dedicated account. During 2002, only \$108,331 was expended on indigent defense services. This means that at the start of 2003, the 38<sup>th</sup> Judicial District IDB already had more than 182% of their budget for the ensuing year in the bank. Contrast this with Evangeline Parish (the Parish comprises the entire 13<sup>th</sup> Judicial District and has a poverty rate of 32.20%). There, indigent defense services cost slightly more than \$94,000 while revenues from court costs only brought in \$69,294. Even with the LIDAB DAF grant of \$12,362 (plus miscellaneous funds of slightly more than \$10,000), the 38<sup>th</sup> Judicial IDB ran at a deficit in 2002 and had to tap into their reserve account to make up the difference of \$2,018. At the close of 2002, the Evangeline IDB had only \$14,346 (or 15.3% of their projected need for 2003).

Similarly, Orleans Parish (poverty rate: 27.9%) expended nearly \$365,000 more in 2002 than they were able to bring in through all of their revenue sources (including the LIDAB grant). It cost the Orleans IDB slightly more than \$2.6 million to provide indigent defense services, as against revenues of a little less than \$2.3 million. This left the Parish with only 15.7% of its estimated need in its IDB bank account. In fact in three of the four years studied, Orleans Parish significantly outspent their indigent defense revenue stream.<sup>80</sup> If the same pattern were to continue, and if IDBs were allowed to expend funds based on need rather than on resource availability, the Orleans Parish IDB – the same parish that was the subject of the *Peart* ruling more than a decade ago – would deplete all of its IDB reserves in 2005.

Though the financial health of individual parishes is perhaps the most important factor in determining the effect reliance on court surcharges has on a district's indigent defense delivery system, it is not the sole factor. Complicating the picture is the fact that because so much indigent defense funding is generated through traffic tickets, even parishes with high poverty may be able to generate significant revenue simply because a

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<sup>78</sup> NLADA went to considerable effort to gather and analyze financial records from all 41 judicial district IDB's. We requested and received financial audits of all IDB's from the Office of the Legislative Auditor for the State of Louisiana for the years 1999-2002. With the state requirement that small parishes need only undergo audits every other year, this resulted in NLADA reviewing 161 separate audits. Next, NLADA entered data relating to revenue sources (court costs, DAF grants, and miscellaneous), expenditures and unused monies into a Microsoft Excel<sup>®</sup> database for analysis. Though such an exercise could have been conducted by anyone in the state, to the best of our knowledge, this is the first such complete assessment of indigent defense funding and spending ever conducted in Louisiana. Tables showing the district-by-district financial picture can be found in Appendix H (page 111) of this report. Three audit discrepancies were found by NLADA during the course of this exercise. In 1999, District 37 (Caldwell) reported an ending IDB bank balance of \$11,506. The following year's audit reported a balance of only \$1,098 to start the year, a difference of \$10,408 that is unaccounted for. Similarly, in 2000 the 22<sup>nd</sup> Judicial District (Washington, St. Tammany) reported a year-end balance of \$748,580. The ensuing year's audit reported an opening balance of \$746,870, a difference of \$1,710.00 unaccounted for. Finally, the 26<sup>th</sup> Judicial District (Jefferson) reported \$27,716 more at the start of 2001 than was reported at the close of 2000.

<sup>79</sup> Poverty rates for Louisiana's Parishes for 2000 are available from the U.S. Census Bureau at [www.census.gov](http://www.census.gov). District Poverty rates were calculated by NLADA by applying Parish poverty rates to the specific Parish populations, then adding up the total number of people in poverty for all parishes in a single judicial district. This sum was then divided by the total population of a judicial district.

<sup>80</sup> In 1999, expenditures outpaced revenues by \$280,353. The following year, more than \$175,000 was spent on indigent defense than could be generated through all revenue streams. In 2002, the difference was \$364,833. In one year (2001) revenues did exceed expenditures because 21% of the entire DAF funding went to the one parish (Orleans Parish received \$631,016 from LIDAB that year). This severely crippled other parishes' ability to provide adequate public defense services.

major highway passes through the jurisdiction. Thus, some Judicial Districts like the 20<sup>th</sup> (comprised of East and West Feliciana) have revenue streams that will always outpace indigent defense costs despite their relatively high poverty rate (21.72%).<sup>81</sup> For example, in 2002 nearly \$27,000 more was recouped through court costs than was expended on indigent defense services (revenue: \$100,898; expenditure: \$74,109). The 20<sup>th</sup> Judicial District rolled that nearly \$27,000 into its IDB bank account. At the close of 2002, the 20<sup>th</sup> Judicial District had over \$305,000 in their account, or more than 412% of their expected need.<sup>82</sup>

In 2002, twenty-four of the 41 judicial districts (or 59%) were not able to raise enough revenue to offset the cost of indigent defense services. Combined, they had annual deficits totaling \$1,859,030. The other 17 (or 41% of the judicial districts) added a combined \$640,353 to their IDB accounts. At the close of 2002, as many parishes struggled to provide adequate representation to the poor, over \$9 million of unused indigent defense funding sat in IDB bank accounts across the state.<sup>83</sup>

*1.3: Funding indigent defense through court costs has proven to be additionally unreliable because the policies and practices of other policy-makers can have a deleterious effect on the primary revenue stream for public defense services.*

Because the majority of local indigent defense funding comes from court costs, policymakers who may not fully appreciate the requirements of *Gideon* and subsequent cases expanding the right to counsel may make decisions that directly, and negatively, affect the primary revenue stream for indigent defense. For example, some parishes in Louisiana have attempted to secure stable local revenue streams through gaming – most notably Riverboat Casinos in the western part of the state. The desire to increase traffic to such local sources of revenues may lead to a policy whereby the local police reduce enforcement of speeding laws in order to avoid discouraging gaming visitors. Such a policy may indeed help the economic fortunes of a parish, but it directly and negatively impacts the revenue sources available for indigent defense services.

This example actually did occur in Caddo Parish where local law enforcement reduced enforcement of traffic violations, resulting in a detrimental impact to the local IDB. From 1999 to 2002, indigent defense revenue garnered through court costs in 1<sup>st</sup> Judicial District (Caddo Parish) fell over 5% (from \$1,227,832 to \$1,166,202).<sup>84</sup> As revenue for indigent defense services diminished, the need for services grew. In 1999,

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<sup>81</sup> Louisiana Highway 61 runs from Baton Rouge through the judicial district.

<sup>82</sup> In the four years (1999-2002) that NLADA analyzed IDB audits, the 20<sup>th</sup> Judicial District added significant revenue to their IDB bank account at the close of each fiscal year. In 1999, \$45,228 was added to the IDB bank account. The following year, another \$27,549 was added. The closing of 2001 saw \$34,105 contributed to the IDB account, followed by \$26,789 in 2002. In none of these years did the IDB expenditure exceed \$74,109 (2002). Thus, over the four-year period the IDB bank balance grew by 41%. (from \$217,239 to \$305,593). During the same period indigent defense expenditures in the parish rose only 14% (from \$64,957 to \$74,109).

<sup>83</sup> The insistence of trying to fund indigent defense through court costs was criticized in *State v. Peart*, 621 So.2d 780, 789 (La. 1993). Calling such funding structure “an unstable and unpredictable approach,” the Court gave an especially egregious example of how the system can fail: “when the City of East Baton Rouge ran out of pre-printed traffic tickets in the first half of 1990, the indigent defender program's sole source of income was suspended while more tickets were being printed.” *Id.* At 789 n. 10.

<sup>84</sup> Over this time period, LIDAB assistance to the Caddo Parish IDB decreased by 2.2% (from \$501,401 to \$490,149), resulting in an overall indigent defense funding decrease of 4.2% over the four year period.

Caddo Parish reported 5,886 criminal cases in District Court.<sup>85</sup> Four years later that number had grown to 6,860 (or an increase of 16.6%). Thus, a 16.6% increase in need was met with a 4.2% reduction in resources. The Caddo Parish IDB responded by reducing the balance in its dedicated account. In 1999, the 1<sup>st</sup> Judicial District IDB had \$903,852 in its dedicated account. By 2002, that available funding decreased by 74.4% down to \$231,660 (or only 13.78% of their 2002 expenditure).

In Avoyelles Parish, the practice of the Sheriff also negatively impacts the available resources for indigent defense services. The Sheriff only accepts full payment of a person’s financial court obligations for the reason that accepting partial payments would greatly increase the cost of administering the collections system. The Sheriff’s policy is much different than in many jurisdictions in the country that will accept a payment for as little as \$5.00 at intermittent periods until the balance is paid off. Such a policy means that an indigent person must try to save the entire amount of their obligation to the court and pay it in one lump sum. Though many defendants may never be able to pay off their debt entirely, accepting partial payments would allow more money to flow to the IDB than the current policy does. Moreover, accepting partial payments from all sources (traffic fines, other court costs and recoupment) would make the revenue stream more consistent, allowing an IDB to experience less fluctuations in monthly receipts and allowing for more accurate budget forecasting.

Furthermore, the Sheriff stated that he often brings traffic tickets to the District Attorney to try to get a reduction in fines, adding “if you have a personal friend who has helped you politically, you get it reduced and you pay it for them.” Above and beyond the ethical and legal issues the Sheriff’s comment raise, the reduction of traffic tickets for political gain has a direct negative impact on the Avoyelles Parish indigent defense-funding stream.<sup>86</sup>

*1.4: Funding indigent defense services through recoupment has proven to be unreliable because there is no correlation between the ability of a jurisdiction to raise revenues and the resources required to provide adequate defense services to those unable to hire an attorney.*

The third of the ABA’s *Ten Principles* addresses the obligation of indigent defense systems to provide for prompt financial eligibility screening of defendants, toward the goal of early appointment of counsel.<sup>87</sup> National standards direct that client

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<sup>85</sup> Though NLADA does not believe that current indigent defense caseload statistics in Louisiana are reliable given the lack of a uniform definition of a “case”, the lack of uniform case-tracking systems, and the lack of a statewide governmental body empowered to verify reported indigent defense data, one gauge of need is to look at the number of criminal cases reported on an annual basis to the Louisiana Supreme Court. The reported increase represents both indigent and non-indigent criminal cases. Our experience nationally indicates that indigency rates generally hold steady over time.

<sup>86</sup> This exchange transpired during the NLADA interview of Sheriff William Belt on September 17<sup>th</sup>, 2003 at the local jail. Robert Boruchowitz and David Carroll conducted the interview. In the hopes of understanding how expensive traffic violations can be in Avoyelles Parish, NLADA representatives asked the Sheriff to give a cost estimate of a ticket related to going ten miles per hour over a posted speed limit. In response, the Sheriff took a small stack of tickets from his desk and read off the dollar amounts ranging between \$100 and \$160. When asked why he had a stack of traffic tickets on his desk he offered the information that he was going to try to get the tickets reduced for the reason quoted above.

<sup>87</sup> ABA Principle 3: “Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request, and usually within 24 hours thereafter.” Standardized procedures for client eligibility screening

eligibility determinations should be performed by public defense agencies or a neutral screening agency of the court.<sup>88</sup> In the 12<sup>th</sup> Judicial District, judges are responsible for indigent defense screening. From our interviews and court observations, it is obvious that little, if any, indigency screening is conducted in Avoyelles Parish from the bench.<sup>89</sup>

The failure to conduct financial eligibility screenings has broad implications for the system's attempts to recoup the cost of defense services from clients. From our courtroom observations, Avoyelles Parish routinely assesses recoupment charges to virtually every indigent defense client.<sup>90</sup> It seems that in lieu of specific financial verification, the court assumes a certain ability to pay and assesses recoupment fairly uniformly.<sup>91</sup> National standards do permit cost recovery from indigent-but-able-to-contribute defendants, but only under very limited circumstances. Post-disposition cost recovery, as practiced in Avoyelles Parish, is strictly prohibited under all national standards.

Although various states have tried it over the years, including via statute, civil suit, lien, or court-ordered condition of probation, post-disposition recoupment has been struck down by some courts, and has been a practical failure. Courts have struck down recoupment statutes on equal protection, due process and Sixth Amendment grounds.<sup>92</sup>

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serve the interest of uniformity and equality of treatment of defendants with limited resources. When individual courts and jurisdictions are free to define financial eligibility as they see fit – e.g., ranging from “absolutely destitute” to “inability to obtain adequate representation without substantial hardship,” with factors such as employment or ability to post bond considered disqualifying in some jurisdictions but not in others – then the resulting unequal application of the Sixth Amendment has been suggested, by the National Study Commission on Defense Services, to constitute a violation of both due process and equal protection. *NSC commentary at 72-74.*

<sup>88</sup> *NSC*, Guideline 1.6. *Cf.* *ABA Defense Services*, Standard 5-7.3.

<sup>89</sup> Such a policy is not unusual across the country. In fact, many jurisdictions have no eligibility guidelines and conduct no inquiry, or simply appoint a lawyer for all defendants who claim they cannot afford retained counsel. The reasons for such systems (or non-systems, to be more accurate) vary: poverty rates among the defendant population may have been empirically found to be so high that the cost of eligibility screening would exceed the potential cost-savings; the need to keep court dockets moving may have been determined by the judiciary to be more important than taking the time and effort to conduct eligibility screening; or the reason may be simple inertia on the part of the responsible officials.

But many jurisdictions have determined that important fiscal goals of cost-control and accountability are served by implementing procedures to ensure that no one who can afford counsel is appointed one at public expense. In such jurisdictions, there is often very thorough verification of financial information provided by the defendant – many times by an independent pre-trial services unit and often at substantial costs. For a fuller discussion of eligibility standards employed in the United States, please see Appendix I (page 115).

In Avoyelles Parish, several of the people we interviewed, including at least one defense attorney, were under the impression that a “significant” number of people who would otherwise be able to afford counsel are given a public defender for the sake of expediency in moving the court dockets along. Public Defenders have no control over the number of indigent defense cases in the system -- they must and should accept every case assigned to them by the court. Should it prove true that a “significant” number of people who could otherwise afford counsel are getting free services, it would directly impact the available revenues for those who are truly indigent. Though a more formalized system would surely cost the court some money (both state and local), it again raises the possibility that a policy decision by a body other than an IDB directly impacts the IDB's ability to deliver competent services. In this case, the court's decision to not expend its own resources in an effort to prevent ineligible persons from getting an attorney may be decreasing the amount of funding available for the truly indigent.

<sup>90</sup> A flat fee of \$125 was charged in almost all felony cases. Clients are also routinely charged for the cost of the prosecution.

<sup>91</sup> While many indigent defendants might be able to pay something, we were told that very few can actually go out and hire an attorney. Almost all criminal defense attorneys in Louisiana charge a “fixed fee.” It is exceedingly difficult to hire an attorney to defend any felony for less than \$5,000.00 and to defend any misdemeanor for less than \$750.00.

<sup>92</sup> *James v. Strange*, 407 U.S. 128 (1972) (Kansas recoupment statute; equal protection); *Rinaldi v. Yeager*, 384 U.S. 306 (New Jersey statute requiring repayment of the cost of a transcript on appeal; equal protection); *Giacco v.*

Imposition of recoupment as a condition of probation can additionally lead to the incarceration of indigent people under circumstances that a non-indigent person would not be exposed to, in violation of equal protection.<sup>93</sup>

The practical difficulties are obvious. Imposition of a debt on a marginally indigent person, already convicted of a criminal offense, with the option of incarceration for failure to pay constitutionally barred, yields a likelihood of recovery so low (less than 10%, according to a U.S. Department of Justice Study<sup>94</sup>) that the revenues produced are less than the administrative costs of processing recoupment orders.

In attempting to confirm that recovery levels were low, NLADA questioned the Parish Sheriff as to the collection rate of recoupment costs assessed in the 12<sup>th</sup> Judicial District. The Sheriff stated that he had a 100% collection rate. Asked how that was possible given national experience to the contrary, he stated that he cuts deals with inmates who have not managed to pay off the debts to “stay” an extra 30-60 days in jail and participate in the work release program. This policy exposes the parish to serious financial liability for civil right violations (e.g., under 42 U.S.C. §1983) and further depletes the already limited funding stream for indigent defense services.<sup>95</sup>

***Finding #2:*** *In violation of ABA Principle 1, Louisiana’s indigent defense system lacks independence from undue political interference.*

As stated in the U.S. Department of Justice, Office of Justice Programs report, *Improving Criminal Justice Through Expanded Strategies and Innovative Collaborations: A Report of the National Symposium on Indigent Defense*: “The ethical imperative of providing quality representation to clients should not be compromised by outside interference or political attacks.”<sup>96</sup> Courts should have no greater oversight role over lawyers representing indigent defendants than they do for attorneys representing paying clients. The Courts should also have no greater oversight of indigent defense practitioners than they do over prosecutors. As far back as 1976, the National Study Commission on Defense Services concluded that: “The mediator between two adversaries cannot be permitted to make policy for one of the adversaries.”<sup>97</sup>

*Pennsylvania*, 382 U.S. 399 (1966) (recoupment statute; due process/vagueness); *Olson v. James*, 603 F.2d 150 (10th Cir. 1979) (Oregon recoupment statute; due process); *Fitch v. Belshaw*, 581 F. Supp. 273 (D. Or. 1984) (recoupment statute; due process and Sixth Amendment).

In *Fuller v. Oregon*, 417 U.S. 40 (1974), the U.S Supreme Court found that it is not a Constitutional violation to require indigent defense recoupment from people who are eligible for public counsel at the time of their conviction but who subsequently acquire the means to bear the costs of his legal defense.

<sup>93</sup> *Bearden v. Georgia*, 461 U.S. 660 (1985) (imprisoning an indigent defendant who tried and failed to pay restitution violates equal protection and the fundamental fairness guaranteed by the Fourteenth Amendment).

<sup>94</sup> *Containing the Cost of Indigent Defense Programs: Eligibility Screening and Cost Recovery Procedures* (National Institute of Justice, 1986), at 34-35.

<sup>95</sup> An interview with a local private attorney revealed that the other effect of the Sheriff refusing to accept partial payments of court costs is that defendants are subsequently revoked, without counsel, for failure to timely pay the court costs. This is illegal under Louisiana law, which like the law everywhere holds that you cannot be imprisoned for being poor. But, without a lawyer at the probation revocation hearing there is no one to advocate for the defendant in showing that (s)he was simply unable to pay despite all best efforts.

<sup>96</sup> NCJ 181344, February 1999, at 10.

<sup>97</sup> NSC Report, at 220, citing National Advisory Commission on criminal Justice Standards and Goals (1973), commentary to Standard 13.9.

The first of the ABA's *Ten Principles* addresses the importance of independence in indigent defense representation. The Principle provides that:

*The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.*<sup>98</sup>

By vesting the District Court judiciary with the authority to appoint the members of the local indigent defense boards, Louisiana Revised Statutes, Title 15 §144 is in direct violation of this ABA principle. NLADA has promulgated guidelines to assist jurisdictions in establishing independent oversight boards. NLADA's *Guidelines for Legal Defense Services* (Guideline 2.10) states:

A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented.

Commission members should be selected under the following criteria: The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director.

- a. The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics.
- b. No single branch of government should have a majority of votes on the Commission.
- c. Organizations concerned with the problems of the client community should be represented on the Commission.
- d. A majority of the Commission should consist of practicing attorneys.

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<sup>98</sup> National standards address the need for independence in the context of all three basic models for delivering indigent defense services in the United States. Where private lawyers are assigned, the concern is with unilateral judicial power to select lawyers to be appointed to individual cases, and to reduce or deny the lawyer's compensation. Where contracts with nonprofit public defense organizations or law offices are used, the concern focuses primarily on flat-fee contracts which pay a single lump sum for a block of cases regardless of how much work the attorney does, creating a direct financial conflict of interest with the client, in the sense that work or services beyond the bare minimum effectively reduces the attorney's take-home compensation. Where a public defender system is used, the concern is with vesting the power to hire and fire the chief public defender in a single government official, such as the jurisdiction's chief executive or chief judge, a concern compounded when that official must run for popular election.

- e. The Commission should not include judges, prosecutors, or law enforcement officials.
- f. Members of the Commission should serve staggered terms in order to ensure continuity and avoid upheaval.

Though we do not believe that the majority of District Judges in Louisiana are conscious of even the “appearance” of undue influence in their control of local IDBs, the failure of the state to create checks and balances among all three branches of government in the appointment process has a direct and detrimental effect on the independence of the indigent defense system. For example, the funding crisis in Caddo Parish led the local judiciary to attempt to usurp the power for administration and oversight of the indigent defense system from the IDB. Though the Louisiana Revised Statutes are clear that the local judiciary must appoint from a list submitted by the local bar association, the 1<sup>st</sup> Judicial District Judges rejected several of the nominees and appointed three people who had not been nominated by the Bar Association (and do not practice criminal law). Further overstepping their reach under national standards, the District Court has appointed lawyers who have not been approved by the IDB to cases. In one such case, the judiciary appointed two attorneys to a second-degree murder case – neither of whom practices criminal law. Litigation over this situation recently has been filed in state court.

In Avoyelles Parish, independence issues manifest themselves in other less obvious ways. Over the past five years, the Avoyelles Parish IDB has had a significant number of people appointed to serve on the four-person board. Turnover has been high, resulting in a lack of continuity regarding oversight of the system.<sup>99</sup> At the time of our visit the IDB consisted of three people, none of whom were attorneys or came from backgrounds in criminal justice.<sup>100</sup> While made up of well-meaning people, the IDB as appointed by the court is singularly lacking in anyone with the training, experience, and knowledge to make informed choices about the recruitment, selection, and supervision of contract lawyers.<sup>101</sup> The decision to move from a public defender office to a contract system was made because the IDB sees its role as controlling costs and does not fully appreciate its role in upholding the right to counsel under the State and Federal constitutions. The expansion of the flat-fee contracting model across the state is indicative of similar problems in other jurisdictions in the state.

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<sup>99</sup> During an interview with IDB Chair Charles Jones, NLADA was told that the number of people that have been on the IDB over the past eight years numbered over 20. In a subsequent phone call, Mr. Jones said that the number was high, but not quite that high. On September 25, 2003, NLADA sent an overnight letter to Mr. Jones requesting copies of minutes for IDB meetings for the past two years in an attempt to begin quantifying the number of people on the IDB. NLADA did not receive a response to our request.

<sup>100</sup> The Chair is the Assistant Vice-Principal of the local high school. One IDB member is a real estate developer and nightclub owner. The other does some counseling and is a licensed embalmer. An attorney does technically hold the fourth seat, though the attorney has not attended a meeting in over a year and was not involved in the critical decisions that resulted in the contract model now in place.

<sup>101</sup> This failure to safeguard independence of the indigent defense system stands in contrast to LIDAB Standard 1-1.1.

Chapter IV  
**Ancillary Findings:**  
**The Effect of Inadequate Funding & Lack of Independence**  
**On the Delivery of Indigent Defense Services**

This chapter looks at the deleterious effect that the inadequate funding and lack of independence of the indigent defense system has on the level of services delivered to the poor facing the potential loss of liberty in criminal proceedings.

***Finding #3:*** *In violation of ABA Principle 8, the failure to ensure adequate funding and independence of the indigent defense system has led to the prevalence of flat fee contract systems in those districts with poor revenue streams in an attempt to save money. Flat-fee contracts are universally rejected by all national standards because they create a monetary conflict between the defense provider and the client.*

An IDB in a judicial district in which the need for public defense services is greater than can be afforded through court costs and state assistance grants must look for cost savings to stay afloat. There are only two ways to cut costs related to indigent defense: either reduce the number of cases coming into the system or cut spending on salaries and case-related expenses. Since public defenders do not control their own caseload (it is dictated by the prosecution and courts), IDBs across the state have moved away from full-time staffed public defender offices to low-bid, flat fee contract systems in which an attorney or consortium of attorneys take all of the indigent defense cases in a jurisdiction for a fixed fee in an effort to hold down costs and compensate for the failure of the state to adequately fund the system.

Avoyelles Parish is a good microcosm for studying the dynamics involved in the closing of a public defender office in favor of a flat-fee contract system. Over the four-year period from 1999-2002, the 12<sup>th</sup> Judicial District experienced a 12% increase in indigent defense expenditures (from \$166,006 to \$186,495 annually). The same four-year period saw revenues decrease 7.2% (down from \$160,607 to \$149,018). In 2002, the 12<sup>th</sup> judicial district ran a deficit of \$37,477. The IDB decided to disband the public defender office that was experiencing a normal 3% expenditure increase each year in favor of the flat fee system described in Chapter II of this report. Cost savings came from not having to pay benefits to the attorneys and staff and shifting the responsibility for investigation services to the contracted attorney. At the time of our study, the projected cost of running the flat fee system for a full year was approximately \$146,400,<sup>102</sup> or nearly 22% less than 2002 expenditure level, and approximately 12% lower than 1999 levels.

Such a move to flat fee contracting is oriented solely toward cost reduction, in derogation of ethical and constitutional mandates governing the scope and quality of representation. Fixed annual contract rates for an unlimited number of cases, as practiced in Avoyelles Parish, create a conflict of interest between attorney and client, in violation of well-settled ethical proscriptions compiled in the *Guidelines for Negotiating and*

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<sup>102</sup> Projections were made by taking all of the expenditures recorded on the 12<sup>th</sup> Judicial District IDB's Quickbooks® system through September 15<sup>th</sup> and prorating it for a full twelve months. The single largest expenditure is in contract attorney fees (\$112,200 or 77% of the entire annual expenditure). The balance is mostly related to leasing agreements for copiers from when there was a staffed public defender office, insurance, accounting and auditing services, legal fees, etc. NLADA projected less than \$2,000 will be spent on client related costs (or 1.4% of the entire budget).

*Awarding Governmental Contracts for Criminal Defense Services*,<sup>103</sup> written by NLADA and adopted by the ABA in 1985. Guideline III-13, entitled "Conflicts of Interest," prohibits contracts under which payment of expenses for necessary services such as investigations, expert witnesses, and transcripts would "decrease the Contractor's income or compensation to attorneys or other personnel," because this situation creates a conflict of interest between attorney and client. The same guideline addresses contracts which simply provide low compensation to attorneys, as practiced in Avoyelles Parish, thereby giving attorneys an incentive to minimize the amount of work performed or "to waive a client's rights for reasons not related to the client's best interests."<sup>104</sup>

For these reasons, all national standards, as summarized in the eighth of the ABA's *Ten Principles* direct that: "Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services."

This move to flat-fee contract systems, as experienced in Avoyelles Parish, has retarded the collective statewide indigent defense expenditure rate to levels unmatched by comparison states. Once again, Alabama is illustrative. In 1999, Alabama's Fair Trial Tax generated approximately \$8,787,000 in revenue. To this amount, the state contributed an additional \$12,228,000 (or more than 58% of the total). The following year, the state contribution rose more than 11% (up to \$13,600,000). The 2001 fiscal year saw the Fair Trial Tax revenues again stay relatively stable, but the state costs jumped to approximately \$25 million. In 2002, Alabama counties spent \$37,698,403 on indigent defense, \$28 million of which came from state government (or 74.3%). This means that in four years, the revenue able to be garnered from court costs rose by only slightly more than 10% (from \$8,787,000 to \$9,698,403) at a time when actual indigent defense costs and state contributions rose by nearly 80%.

Contrast this with Louisiana. While Alabama's revenue through court costs rose by only 10% over four years, Louisiana's collective court costs revenue stream was not even that successful – increasing only 5.8% (from \$19,930,297 to \$21,080,773). And, whereas the actual costs for providing constitutionally mandated defender services in Alabama rose by 80%, the combined cost of state and local indigent defense expenditures in Louisiana *only rose by 5.3%* (from \$27,430,297 to \$28,880,773). To meet the rising costs of providing indigent defense services, the State of Alabama increased its assistance to counties by 129% (from \$12,228,000 to \$28 million) whereas in Louisiana the 5.3% increase in costs of providing services *was met with a decrease in state DAF funding of nearly 16%* (from \$3,527,370 down to \$2,973,719).

This is not to suggest that Alabama provides adequate representation to its poor facing criminal proceedings. In fact, Alabama's plan for defender services has been

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<sup>103</sup> [www.nlada.org/Defender/Defender\\_Standards/Negotiating\\_And\\_Awarding\\_ID\\_Contracts](http://www.nlada.org/Defender/Defender_Standards/Negotiating_And_Awarding_ID_Contracts)

<sup>104</sup> The 12<sup>th</sup> Judicial District system is also in violation of *Louisiana Rules of Professional Conduct*, Rule 1.7(b) which states: A lawyer shall not represent a client if the representation of that client may be materially limited...by the lawyer's own interests, unless: (1) The lawyer reasonably believes the representation will not be adversely affected; and (2) The client consents after consultation..." When the IDB enters into flat-fee contracts, they place the attorney in a position of violating the Louisiana Rules of Professional Conduct.

universally criticized for its systemic deficiencies, *including inadequate funding*.<sup>105</sup> Rather, it is more telling that Louisiana's funding *does not even match Alabama's low threshold*.

By comparison, the three states with the closest populations to Alabama and Louisiana (Oregon, Minnesota and Colorado) all have lower poverty and crime rates, but have much higher indigent defense expenditures. Colorado spends \$9.36 per capita (a total expenditure of \$40 million). Minnesota spends \$10.47 per capita (or \$50 million). And, Oregon with a population that is 39.4% smaller than Louisiana (3.3 million) spends \$76 million on indigent defense or 874% more than the State government spends in Louisiana (and 153% more than is spent by both the State and its parishes). The State of Oregon spends \$23.09 per capita on indigent defense services, while the State of Alabama spends only \$6.40. The State of Louisiana spends \$1.70 per person to guarantee that people of insufficient means are afforded the protection of their constitutional right to counsel.

***Finding #4:*** *In violation of ABA Principle 5, the failure to adequately fund and ensure the independence of the indigent defense system results in attorneys handling caseloads far in excess of national standards. The crushing caseloads exist despite the fact that indigent defendants in misdemeanor cases are being denied attorneys without a proper waiver of their right to counsel in violation of the U. S. Supreme Court mandate in Argersinger v. Hamlin, 407 U.S. 25 (1972) and Shelton v. Alabama, 535 U.S. 654 (2002).*

In April 2003, The American Council of Chief Defenders (ACCD)<sup>106</sup> issued an ethics opinion declaring that a chief public defender is ethically prohibited from accepting a number of cases that exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case. When confronted with the prospect of overloading cases or reductions in funding and staffing which will cause the agency to exceed workload capacities, the chief executive of the public defender agency is ethically required to refuse appointment to any and all such cases.<sup>107</sup> The opinion notes that the consequences of noncompliance can include bar disciplinary action against the defender as well as financial liability on behalf of the jurisdiction. The ACCD opinion is based on long-standing, national indigent defense standards for workload, as discussed below.

The flat-fee contract structure has caused a severe caseload issue in Avoyelles Parish, as will be detailed below. Where a contract system is employed the local IDB stands in the stead of a Chief Public Defender. The local IDB is thus the appropriate entity to insist that national workload standards be met and adhered to. But because the IDB members appointed by the court in the 12<sup>th</sup> Judicial District are not lawyers and are

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<sup>105</sup> See for example: Bright, Stephen B., "Neither Equal Nor Just: The Rationing and Denial of Legal Services to the Poor When Life and Liberty are at Stake," New York University School of Law *Annual Survey of American Law*, Volume 1997, page 783 (published in 1999).

<sup>106</sup> The ACCD is a section of NLADA composed of chief executives of indigent defense programs across the country. ACCD is dedicated to supporting leaders of all types of indigent defense systems through the open exchange of information and ideas.

<sup>107</sup> The ACCD opinion is included as Appendix J (page 118) and is available electronically at: [www.nlada.org/DMS/Documents/1050081883.26/Ethics%20op-workload%20final.doc](http://www.nlada.org/DMS/Documents/1050081883.26/Ethics%20op-workload%20final.doc).

not versed in the ethical requirements of national standards, no action to bring caseloads into compliance with national standards has been undertaken.

The fifth of the ABA’s *Ten Principles* provides:

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

Regulating an attorney’s workload is one of the simplest, most common and direct safeguards against overloaded public defense attorneys and deficient defense representation for low-income people facing criminal charges. The National Advisory Commission on Criminal Justice Standards and Goals first set numerical caseload limits in 1973<sup>108</sup> under the auspices of the U.S. Department of Justice, which, with slight modifications in some jurisdictions, have been widely adopted and proven quite durable in the intervening three decades.<sup>109</sup> They have been refined, but not supplanted, by a growing body of methodology and experience in many jurisdictions for assessing “workload” rather than simply the number of cases, by assigning different “weights” to different types of cases, proceedings and dispositions, depending on how much time is required to provide adequate representation.<sup>110</sup> Workload limits have been reinforced by a number of systemic challenges to under-funded indigent defense systems, where courts do not wait for the conclusion of a case, but rule before trial that a defender’s caseloads will inevitably preclude the furnishing of adequate defense representation.<sup>111</sup>

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<sup>108</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (*Contracting*, Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998).

<sup>109</sup> See *Indigent Defense Caseloads and Common Sense: An Update* (NLADA, 1992), surveying state and local replication and adaptation of the NAC caseload limits.

<sup>110</sup> See *Case Weighting Systems: A Handbook for Budget Preparation* (NLADA, 1985); *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001) ([www.ncjrs.org/pdffiles1/bja/185632.pdf](http://www.ncjrs.org/pdffiles1/bja/185632.pdf)).

<sup>111</sup> See, e.g.: *Kennedy v. Carlson*, 544 N.W.2d 1 (Minn. 1996); *State v. Peart*, 621 So.2d 780 (La. 1993); *City of Mount Vernon v. Weston*, 68 Wash. App. 411, 844 P.2d 438 (1993); *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770 (1991); *State v. Lynch*, 796 P.2d 1150 (Okla. 1990); *In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit*, 561 So.2d 1130 (Fla. 1990); *Hatten v. State*, 561 So.2d 562 (Fla. 1990); *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988), *cert den.* 495 U.S. 957 (1989); *State ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987); *People v. Knight*, 194 Cal. App. 337, 239 Cal. Rptr. 413 (1987); *State v. Hanger*, 146 Ariz. 473, 706 P.2d 1240 (1985); *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984); *Corenevsky v. Superior Court*, 36 Cal.3d 307, 682 P.2d 360 (1984); *State v. Robinson*, 123 N.H. 665, 465 A.2d 1214 (1983); *State ex rel. Wolff v. Ruddy*, 617 S.W.2d 64 (Mo. 1981), *cert. den.* 454 U.S. 1142 (1982).

Assessing workload in Louisiana is complicated by the fact that there is no central repository for collecting caseload data. The limited funding of IDBs leave little, if any, funding to secure adequate case-tracking systems or support staff to complete necessary data entry.<sup>112</sup> After extensive review, NLADA was unable to confirm the total number of indigent defense cases that occur in Avoyelles Parish. Interviews with defense providers revealed that the contract defenders do not track the number of cases carried per year and could not estimate their own caseload.<sup>113</sup> The IDB Chairperson indicated that felony indigent defense caseload information was available from the court. Unfortunately, NLADA was only able to get aggregate caseload totals and was unable to get the supporting data to verify those numbers.<sup>114</sup> NLADA also reviewed caseload data on the District Attorney's case-tracking system and determined that data fields exist that would capture important indigent defense data if those fields were maintained consistently and uniformly. Subsequent interviews revealed that such consistency was not maintained.<sup>115</sup> With the lack of access to verifiable data, NLADA's workload analysis is based instead on the number of cases the IDB reported to LIDAB.

The 12<sup>th</sup> Judicial District IDB Chair informed an NLADA site team member that he accepts the court indigent defense caseload numbers, without further verification, when filling out the LIDAB DAF application. Avoyelles Parish reported to LIDAB that 986 felony cases were opened in 1999. The next year, that number dropped to 758. By 2002, the number of felony cases reported to LIDAB fell to 497 felony cases. If these numbers were factually accurate, it would mean that the judicial district's indigency rate (calculated as the number of public defender cases divided by the total number of felony

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<sup>112</sup> Taxpayers in the state should not have to tolerate any state money (even the little amount currently dedicated to indigent defense) being expended without some manner of ensuring that the money is being spent efficiently and the necessary services are actually being provided. Even in those districts that rely solely on local funding, poorly funded and poorly managed indigent defense systems produce wasteful spending in other criminal justice components (corrections, courts, prosecution, etc.) that do spend state money. There is no way to assure that money is being well spent without objective, verifiable data. Once again, LIDAB requests data only of those districts applying for state funds but does not have the capacity or authority to verify those figures.

<sup>113</sup> This is very telling in and of itself. If one cannot track the number of people served, then the caseload must be too excessive to effectively represent clients.

<sup>114</sup> NLADA staff sent a formal request for caseload data to District Judge Bennett on September 25, 2003. The letter indicated that NLADA was willing to pay for reasonable costs associated with having court personnel gather the data and any costs associated with sending the materials to our offices. The letter went unanswered and numerous follow-up calls went unreturned.

<sup>115</sup> In a letter dated September 25, 2003, NLADA staff formerly requested of District Attorney Riddle an electronic copy of the underlying data tables of the CRIMES database used in his office. The letter made it clear that we did not want or need any information the District Attorney consider proprietary (for instance we did not need and were not asking for client names, notes on the case, etc.). Instead, NLADA was interested in the following types of data fields observed on the CRIMES system: Charge Type (felony, misdemeanor, juvenile, etc.); Defense Attorney Name; Arrest Date; Arraignment Date [and any other event dates (pre-trial conference, trial, etc.)]; Disposition Information (i.e., pled guilty, found guilty, mistrial, etc.); and/or, Sentencing Information (jail or prison sentence, probation, etc.). NLADA offered to convert the data for analysis and absorb the cost of producing the information. In lieu of the electronic format, NLADA requested hard copy print outs of the same information.

District Attorney Riddle did respond to our request in a timely manner and put us in touch with Mr. David Baxter, Director of Information Systems for the Louisiana District Attorneys Association. Mr. Baxter and Mr. Riddle were cooperative, but it was ultimately determined that the CRIMES database system had not been running long enough in Avoyelles Parish to produce useful data and that defense attorney names were not being tracked uniformly. In an e-mail dated October 14<sup>th</sup>, 2003, District Attorney Riddle indicated that his office was from that point forward going to track such information regularly.

cases) decreased from a high of 51.9% in 1999 to only 25.1% in 2002.<sup>116</sup> It is not logical to conclude that in a district with such high poverty rates, half to three-quarters of all felony defendants were able to retain private attorneys.<sup>117</sup> District Judge Bennett estimated in our interview that about 90% of felony defendants are given counsel. This estimate is consistent with national indigency rates averages that indicate that 80-90% of all felony defendants are indigent.<sup>118</sup> Thus, NLADA's indigent defense workload assessment is based on felony caseload numbers that are most assuredly lower than what the contract attorneys are actually carrying.

National standards regulating indigent defense caseloads in adult felony cases recommend that an attorney handle no more than 150 cases per year *if that is the only type of case handled by the attorney*. In 2002, the 12<sup>th</sup> Judicial District reported to LIDAB that they were assigned 497 new felony cases (nearly 50% less than the number reported in 1999). Assuming the same number of cases occurred in 2003 and were divided evenly among the three post-arraignment felony contract attorneys, each attorney would have handled 166 felony cases last year (or slightly more than the national workload standard of 150). But the national standards assume that the attorney is working *full-time* on indigent defense cases. In Avoyelles Parish, the attorneys work part-time. The contract attorneys estimated that between a half to two-thirds of their time is spent on indigent defense cases. Thus, using the most conservative estimate that each of the three attorneys work at a 2/3 full-time equivalent capacity, the three part-time attorney's time spent on indigent defense cases equal the work output of two full-time equivalent (FTE) attorneys. Each FTE attorney therefore is assigned 249 felony cases, or, 166% of the national felony caseload standard.<sup>119</sup>

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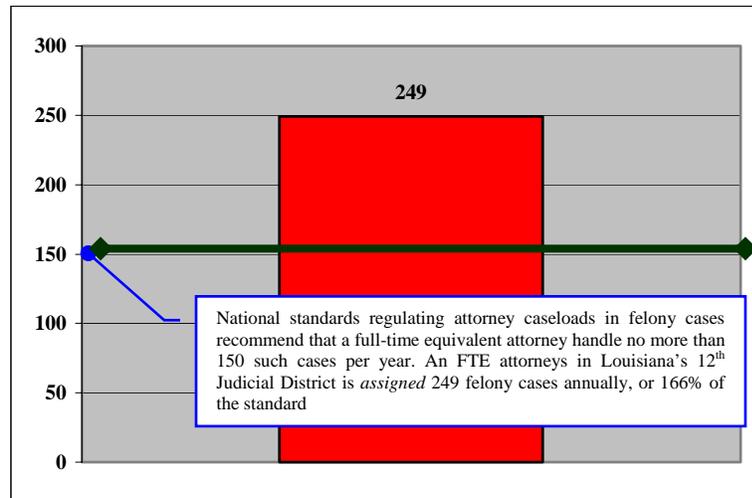
<sup>116</sup> The Supreme Court of Louisiana, *Annual Report 2002 of the Judicial Council of the Supreme Court* (2003), and *Annual Report 1999 of the Judicial Council of the Supreme Court*, (2000), indicates that District Court criminal cases have risen steadily each year in Avoyelles Parish, from 1,900 in 1999 to 1,980 in 2002 (an increase of 4.21%). Based on these totals, the number of indigent defense cases reported to LIDAB produces the extraordinarily low indigency rates.

<sup>117</sup> This is especially true given the opinion of some interviewees that even people who can otherwise afford counsel are given a lawyer at taxpayers expense in Avoyelles Parish.

<sup>118</sup> A 2001 report of the Washington State Office of Public Defense reports that the state's trial-level superior court indigency rate is 85-90%. A comparison of that rate to other states found it to be similar to a number of states, including: Colorado (80%), Arizona (92%), Missouri (90%), Nebraska (90%), Georgia (90%), California (95-99%), North Dakota (80%) and New York (90%). See: Washington State Office of Public Defense, *Criteria & Standards for Determining and Verifying Indigency*, February 9, 2001, page 12. Report is available at: [www.opd.wa.gov/Publications/Other%20Reports/Criteria%20&%20Standards%20for%20Indigency-%202001.pdf](http://www.opd.wa.gov/Publications/Other%20Reports/Criteria%20&%20Standards%20for%20Indigency-%202001.pdf)

<sup>119</sup> Again these numbers are most assuredly underreported. Relying on District Judge Bennett's estimates and national experience, if 80% of the total felony cases prosecuted in the district in 2002 (or 1,584 of 1,980) was used as the starting point for this analysis each FTE felony attorney would handle 792 felony cases per year or *528% of the national felony workload standard*. And, if we assumed that attorneys worked half time instead of two-thirds time, each FTE felony attorney would handle 1,056 cases or *704% of the national felony workload standard*.

Chart 4-1  
Average Annual Felony  
Cases Assigned Per  
FTE Attorney  
(Avoyelles Parish)



The starting point for analyzing workload thus has the indigent defense felony attorneys in Avoyelles Parish already far exceeding national standards. But the national standards are based on work done on *any* felony case handled during the year and not just those opened during the year in question. To the extent that there are any cases that are continued from previous years (which cannot be determined accurately at this point in time) the attorneys' caseloads are even greater than portrayed in Chart 3-2 (above). It is universally true that the number of cases assigned in one year will not be completed until at least the following year. Since we have no way to ascertain that number here, we will use national standards to illustrate how this reality impacts caseloads. Relying on national standards, an attorney was not able to perform all of the ethical requirements to guarantee an adequate defense unless he adhered to the national felony caseload standard. Under such a scenario, an attorney could only work on 150 such cases. Thus, even though an attorney maybe assigned 249 felony cases, only 150 could be disposed of during the year. In the 12<sup>th</sup> Judicial District, that would mean that a full-time equivalent attorney would have an additional 99 cases pending at the start of the next year ( $249 - 150 = 99$ ). If in that ensuing year, the attorney again were assigned another 249 cases, he would have an additional 198 cases pending at the start of the subsequent year. This scenario leads one to conclude that there is either a significant pending felony caseload building in Avoyelles Parish or that the contract attorneys are not performing all of the requisite duties needed to ensure an adequate defense of the poor, or both.<sup>120</sup>

The situation above does not even factor in private caseloads, indigent defense cases handled in other judicial districts or other work handled by the contract attorneys. For instance, one of the three contract felony attorneys also handles indigent defense

<sup>120</sup> The cost implications to the entire criminal justice system of a growing backlog are wide-ranging. If defense attorneys are unprepared to move forward on a case, court time and resources for judges, bailiffs, court reporters, district attorneys, etc. are utilized inefficiently. Additionally, as pending cases grow, attorneys may adopt a triage system in which their attention is turned to whatever is the next court date on their calendar without taking into account the circumstances of all of their other clients. When this occurs, defendants may linger in jail pre-trial or be wrongly incarcerated post-trial, substantially increasing corrections costs. Conversely, an attorney may opt to "cut corners" to keep their caseload manageable, again bringing into question the adequacy of the representation afforded to the poor, and raising the prospect of costly ineffective-assistance-of-counsel claims and wrongful convictions. The loss of trust in the system has tangible impacts on systemic costs and efficiencies in that jurors and witnesses become reluctant to come forward. Moreover, public confidence in the integrity of the system is lost when the community perceives that inadequate representation creates a system that metes out justice differently to the rich and the poor.

cases in neighboring Rapides Parish (the only parish in the 9<sup>th</sup> Judicial District). In that district, the contract attorney certified in a letter to the Rapides Parish Chief Public Defender (dated December 17<sup>th</sup>, 2003) that she was representing 476 felony defendants (4 of which were capital cases) *in that Parish alone*. This is over three times the national felony caseload standard without factoring in the Avoyelles Parish caseload or the time required to adequately defend a person’s life against capital charges.

Though the NAC standards do not establish specific workload standards for death penalty cases, a number of studies have determined that an attorney must put in between 1,200 hours (in a case settled by plea bargain) and 1,900 hours (for a case that goes to trial) to adequately defend a person on capital charges.<sup>121</sup> If one assumes that an attorney works 2,080 hours per year,<sup>122</sup> this means that an attorney handling capital cases *should handle no more than one or two capital cases per year and nothing else*.<sup>123</sup>

Therefore, this one Avoyelles Parish contract attorney handles the workload of 6.3 FTE attorneys while working part-time,<sup>124</sup> plus whatever private cases she has been retained to handle on behalf of paying clients. On top of this, the contract attorney in question teaches part-time at Southern Law School. Assuming a 1,387 hour work year (which is based on two-thirds time dedicated to indigent clients and does not include any time off for holidays, sick days and/or vacation days), clients facing felony charges are afforded, on average, approximately two hours a piece of this attorney’s time *including those charged with capital offenses*.<sup>125</sup> For those readers unfamiliar with criminal defense practices, below is a partial list of duties ethically required of this attorney to complete on the average felony case:

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<sup>121</sup> See: Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost & Quality of Defense Representation*, 1998 (available on-line at: [www.uscourts.gov/dpenalty/4REPORT.htm#a004](http://www.uscourts.gov/dpenalty/4REPORT.htm#a004)). Also see: American Bar Association, *Guidelines for the Appointment & Performance of Defense Counsel in Death Penalty Cases*, Revised Edition February 2003, footnote 114 (available at: [www.abanet.org/deathpenalty/guidelines.pdf](http://www.abanet.org/deathpenalty/guidelines.pdf)).

<sup>122</sup> It is necessary for any workload analysis to establish some baseline for a work year. For non-exempt employees who are compensated for each hour worked, the establishment of a baseline work year is quite simple. If an employee is paid to work a 35-hour workweek, the baseline work year is 1,820 hours (or 35 hours times 52 weeks). For exempt employees who are paid to fulfill the parameters of their job regardless of hours worked, the establishment of a work year is more problematic. An exempt employee may work 35 hours one week, and 55 hours the next. NLADA uses a 40-hour workweek for exempt employees for two reasons. First, a 40-hour work week has become the *maximum* workweek standard used by other national agencies for determining workload capacities of criminal justice exempt employees (See: National Center for State Courts, *Updated Judicial Weighted Caseload Model*, November 1999; The American Prosecutors Research Institute, *Tennessee District Attorneys General Weighted Caseload Study*, April 1999; U.S Department of Justice, Office of Juvenile Justice and Delinquency Programs, *Workload Measurement for Juvenile Justice System Personnel: Practice and Needs*, November 1999; The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*; April 1999.) Second, discussions with Mr. Don Fisk and Mr. Arthur Young of the U.S. Department of Labor, Bureau of Labor Statistics suggest that using a 40-hour work week for measuring workload of other local and state government exempt employees is the best method of approximating staffing needs.

<sup>123</sup> It should be noted that one of the other 12<sup>th</sup> judicial district contract felony attorneys also accepts appointments to capital cases in other parishes.

<sup>124</sup> With 472 felony cases in Rapides Parish and an estimated 166 felony cases in Avoyelles Parish, this attorney’s total indigent defense caseload is 638. Dividing the 638 cases by the national standard of 150 felony cases results in the need for 4.25 FTE attorneys. The four capital cases require two attorneys based on the evidence presented in footnote 107.

<sup>125</sup> On January 22, 2004, a *Peart* motion was filed in Rapides Parish in the capital case of State v. Delores Jones, alleging that the defendant is receiving ineffective assistance of counsel from her IDB attorneys (one of whom is the Avoyelles Parish contract attorney referenced above), because of their excessive caseloads and insufficient support in Rapides Parish.

On cases that are disposed by a plea bargain:<sup>126</sup>

- Meeting and interviewing the client;
- Preparing and filing necessary initial motions (e.g. bail reduction motions; motion for preliminary examination; motion for discovery; motion for bill of particulars; motion for initial investigative report; etc.)
- Receiving and reviewing the state's response to initial motions;
- Conducting any necessary factual investigation, including locating and interviewing witnesses, locating and obtaining documents, locating and examining physical evidence; among others;
- Performing any necessary legal research;
- Preparing and filing case-specific motions (e.g. motions to quash; motions to suppress; etc.)
- Conducting any necessary motion hearings;
- Engaging in plea negotiations with the state;
- Conducting any necessary status conferences with the judge and state;

Additional duties for cases that go to trial:

- Preparing for trial (e.g., conduct jury screening, draft opening and closing statements, etc.)
- Meeting with client to prepare for trial;
- Conducting the trial; and,
- Preparing for sentencing.

As this list makes evident, there is no attorney who can perform adequately with such a workload.

The caseload situation for non-felony cases (misdemeanor and juvenile delinquency) is just as troubling in Avoyelles Parish. NLADA was not able to confirm accurate indigent defense misdemeanor and juvenile delinquency cases for Avoyelles Parish because of the same difficulties associated with tracking felony cases. Additionally, there is no requirement to report misdemeanor or juvenile caseload data to LIDAB. What we can state is that it is not uncommon for jurisdictions in other parts of the country to have a 3:1 ratio of indigent defense misdemeanor cases to felony cases.<sup>127</sup> That is, for every felony prosecuted in a jurisdiction, three misdemeanors are prosecuted. Thus, if 497 felonies were reported to LIDAB in 2002, it is a fair assumption that indigent defense attorneys might be expected to handle nearly 1,500 misdemeanors per year. As reported in the *Louisiana Supreme Court Annual Report, 2002*, Bunkie City Court opened 331 misdemeanor cases while the court in Marksville opened 1,030. This equals 1,361 cases, a proportion roughly in line with the rest of the nation. If we assume, consistent with national experience, that 80% of these were indigent defense cases, the

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<sup>126</sup> The following is just a partial list of ethical duties required under national and state performance guidelines. Performance Guidelines for Criminal Defense Representation (NLADA, 1995) is available on-line at: [www.nlada.org/Defender/Defender\\_standards/Performance\\_Guidelines](http://www.nlada.org/Defender/Defender_standards/Performance_Guidelines). LIDAB's *Standards Relating to the Performance of Counsel Providing Representation to Indigent* is available at: [www.lidab.com/Acrobat%20files/Chapter%206.PDF](http://www.lidab.com/Acrobat%20files/Chapter%206.PDF).

<sup>127</sup> The Spangenberg Group, *Comparative Analysis of Indigent Defense Expenditures & Caseloads in States with Mixed State and County Funding*, February 1998. Prepared for the Georgia Indigent Defense Council on behalf of the American Bar Association, Bar Information Program. The report is available on-line at: [www.abanet.org/legalservices/sclaid/defender/research.html](http://www.abanet.org/legalservices/sclaid/defender/research.html).

12<sup>th</sup> judicial district IDB would have opened 1,088 misdemeanor cases (or a 2:1 ratio of misdemeanors to felonies).

National standards state that an attorney should handle no more than 400 misdemeanor cases in a single year if that is the only type of case being assigned to the attorney. In Avoyelles Parish, the one misdemeanor attorney handles all 1,088 cases, or 272% of the national standard *for a full-time attorney*. This one attorney also handles juvenile delinquency cases. National standards for juvenile delinquency cases state that an attorney should handle no more than 200 cases if juvenile delinquency cases were the only types of cases handled. The 12<sup>th</sup> Judicial District opened 321 juvenile cases in 2002 (Bunkie city court opened 225 and Marksville opened 96). Again, assuming consistent with national experience that 80% of these were indigent defense cases, the IDB contract attorney would have to handle 256 such cases, or 128% of the national juvenile delinquency workload standard.

Again, the national standards are based on an attorney handling only one type of case, and one type of case only, on a full-time basis. In those jurisdictions where attorneys work mixed caseloads (i.e. carrying some combination of various case types like misdemeanors and juvenile delinquency cases as occurs in the 12<sup>th</sup> Judicial District), the national standards need to be prorated. For example, should an attorney divide his work evenly between misdemeanors and juvenile delinquency cases, each of the standards would need to be divided by two and summed up. An attorney under this scenario should handle no more than 300 cases a year (misdemeanor: 200; juvenile delinquency 100). The lone contract attorney in Avoyelles Parish works well beyond this established workload standard (See Chart 4-2, page 40), carrying 448% of the determined mixed caseload standard or the equivalent workload of four and a half full-time attorneys. This of course does not take into account his private cases or pending indigent defense cases. It also does not take into account the fact that he is expected to staff felony arraignment calendars at District Court.<sup>128</sup>

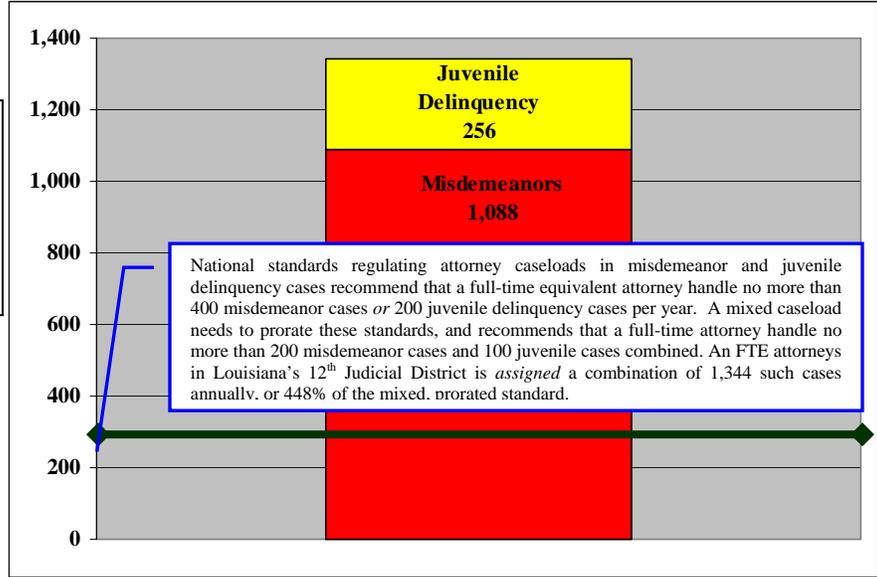
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<sup>128</sup> It is important to note that the role of support staff (investigators, social workers, paralegals, legal secretaries, and office managers) in public defender offices has taken on more importance over time both in terms of quality and cost-effectiveness. Investigators, for example, have specialized experience and training to make them more effective than attorneys at critical case-preparation tasks such as finding and interviewing witnesses, assessing crimes scenes, and gathering and evaluating evidence – tasks that would otherwise have to be conducted, at greater cost, by an attorney. Similarly, social workers have the training and experience to assist attorneys in fulfilling their ethical obligations with respect to sentencing, by assessing the client's deficiencies and needs (e.g., mental illness, substance abuse, domestic problems, educational or job-skills deficits), relating them to available community-based services and resources, and preparing a dispositional plan meeting the requirements and expectations of the court, the prosecutor and the law. Such services have multiple advantages: as with investigators, social workers are not only better trained to perform these tasks than attorneys, but more cost-effective; preparation of an effective community-based sentencing plan reduces reliance on jail, and its attendant costs; defense-based social workers are, by virtue of the relationship of trust engendered by the attorney-client relationship, more likely to obtain candid information upon which to predicate an effective dispositional plan; and the completion of an appropriate community-based sentencing plan can restore the client to a productive life, reduce the risk of future crime, and increase public safety.

Because of this, some states impose further restrictions on their indigent defense caseload standards. For example, public defenders in Indiana that do not maintain state-sponsored attorney to support staff ratios cannot carry more than 300 misdemeanor cases per year (down from the standard of 400 misdemeanors for public defenders with appropriate support staff). The Avoyelles Parish indigent defense system had no support staff whatsoever at the time of our site visit.

Both the ABA and NLADA standards recognize that support services are a vital part of adequate representation. Standard 5-4.1 of the ABA Standards for Criminal Justice, Providing Defense Services, directs that: "The legal representation plan should provide for investigative, expert, and other services necessary to quality legal representation. The Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services direct that "defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office." The Guidelines further prescribe precise numeric ratios of attorneys to non-attorney staff: One full time Legal Assistant for every four FTE attorneys; One full time Social Service Caseworker for every 450 Felony Cases; One full time Social Service

Chart 4-2  
Average Annual  
Misdemeanor &  
Juvenile Delinquency  
Cases Assigned Per  
FTE Attorney in  
Avoyelles Parish



As indicated below, it appears that the contract indigent defense attorney in Avoyelles Parish may not handle the total estimated number of misdemeanor defendants described in the above analysis (though even eliminating *all* of the misdemeanors would still leave the attorney handling cases in excess of national standards) because of our observations that show a number of misdemeanor defendants going entirely without counsel in direct violation of the U.S. Supreme Court mandates in *Argersinger v. Hamlin*, 407 U.S. 25 (1972) and *Shelton v. Alabama*, 535 U.S. 654 (2002).

In 1972, the U.S. Supreme Court extended the right to counsel in *Gideon* to any misdemeanor cases involving the possibility of incarceration.<sup>129</sup> Thirty years later in *Shelton v. Alabama* the Court mandated that governments must provide counsel to not only those indigent defendants who are sentenced to any term of incarceration, but to defendants who received probationary or suspended sentences which may be subsequently converted into incarceration by virtue of a technical violation of the terms of the probation or suspended sentences. Nationally, this is a very significant number of cases; more than four million offenders receive probation or a suspended sentence annually, and of these, 13% (or some 600,000) are subsequently incarcerated for violating their conditions of probation.<sup>130</sup> In making its ruling, the Court noted that 34 states were already in compliance with its ruling by virtue of providing a statutory right to counsel in such cases, including Louisiana.<sup>131</sup> Unfortunately, there is a big difference between the Court's reading of the Louisiana statutes and what actually happens.

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Caseworker for every 600 Juvenile Cases; One full time Social Service Caseworker for every 1200 Misdemeanor Cases; One full time Investigator for every 450 Felony Cases; One full time Investigator for every 600 Juvenile Cases; and, One full time Investigator for every 1200 Misdemeanor Cases.

<sup>129</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

<sup>130</sup> Probation and Parole in the United States, 2001 (Bureau of Justice Statistics, U.S. Department of Justice, www.ojp.usdoj.gov/bjs/abstract/ppus01.htm)

<sup>131</sup> See footnote 8 of majority opinion.

In Avoyelles Parish, NLADA witnessed a few misdemeanor defendants appearing with legal counsel, but many more entered guilty pleas without counsel. The court does not use “waiver of counsel” forms to provide even minimal indicia that the waiver is both voluntary and knowing. In two instances guilty pleas were accepted, and the defendant was given a jail sentence without any discussion or colloquy to waive the right to counsel in complete violation of *Argersinger*.<sup>132</sup>

Similarly, a number of people charged with misdemeanors were given probation and suspended sentences without counsel, and without being provided with information that would allow them to make an informed waiver, in violation of *Shelton*. When asked about the violations, neither the District Court Judge nor the District Attorney was aware of the Supreme Court decision in *Shelton* and requested a citation to the decision from NLADA.

One reason the Supreme Court said it is so important to ensure that defendants are given competent representation at the front end of their case is because there is no representation for probation violation hearings should the defendant be revoked for not meeting the terms of his or her probation. At the end of the District Court docket, NLADA site team members witnessed a defendant that was brought before the Judge in chains. The probation officer was there, but no defense attorney was present.<sup>133</sup> The defendant appeared to suffer from a drug problem. The probation officer read the violation summary: on June 4, 2002, the defendant pled guilty to drug possession and was sentenced to three years suspended and placed on three years probation. The Judge asked the defendant if he had anything to say, and he responded: “I have a bad drug habit and need help.” The Judge imposed the three years that had been suspended, and the defendant was led out of the courtroom. Counsel would have had a real advocacy role in such a case -- possibly referring this case to a social worker for evaluation, assessment, and treatment possibilities that could result in reducing recidivism.

When we asked the judge about counsel appointments for individuals accused of violating probation terms, he responded that he would appoint counsel if the defendant asked for counsel when served with his probation violation papers by the probation officer. NLADA can only speculate about what these officers say and do. What we do know is that a probation officer’s role is law enforcement and (s)/he should not be placed in the position of advocating legal weaknesses in the state’s case on behalf of the defendant.<sup>134</sup>

***Finding #5:*** *In violation of ABA Principle 6, the failure to adequately fund and ensure independence of the indigent defense system results in attorneys being assigned cases which they are not qualified to handle.*

The sixth of the ABA’s *Ten Principles* provides that:

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<sup>132</sup> NLADA notified the District Attorney of this oversight in a subsequent interview and e-mail. One defendant was given a thirty-day sentence with credit for time served; the other was given a 90-day sentence.

<sup>133</sup> No prosecutor was present either.

<sup>134</sup> On a related subject, under the parole statute (La. R.S. Title 15 §574.5), the sheriff, whose parish jail houses sentenced felons for the Department of Corrections, may also determine eligibility for intensive incarceration program administered by the sheriff. The sheriff then also controls parole readiness evaluations for the Parole Board. This is an example of the significant scope of control which sheriffs exercise over defendants, inmates, and post-disposition justice.

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

This requirement derives from all attorneys' ethical obligations to accept only those cases for which they know they have the knowledge and experience to offer zealous and quality representation.<sup>135</sup> This Principle integrates this duty together with various systemic interests – such as efficiency and the avoidance of attorney errors, reversals and retrials, findings of ineffective assistance of counsel, wrongful convictions and/or executions, and attendant malpractice liability – and restates it as an obligation of the indigent defense system within which the attorney is engaged to provide legal representation services.

Typically, this requirement is implemented by dividing attorneys into classifications according to their years and types of experience and training, which correspond to the level of complexity of cases, the severity of charges and potential punishments, and the degree of legal skills generally required. Attorneys can rise from one classification to the next by accumulating experience and training. This is true under all three delivery models: assigned counsel programs commonly maintain various different “lists” from which attorneys are selected according to the classification of the offense; public defender programs place attorneys in different divisions of the office; and contract systems award proposals based on experience level and case complexity.

As noted earlier, Avoyelles Parish recently hired an inexperienced attorney to handle all juvenile and misdemeanor cases, as well as all felony arraignments. The attorney is just out of law school. Although he worked for a year as an appellate clerk, he has no previous trial-level experience. In questioning the IDB on the decision-making process to hire this attorney, the board members stated at various times that a small community like Avoyelles Parish allows them the intimacy to know who is a “good” person. In the case of this attorney, they wanted to help a local community member establish his own private practice by giving him trial experience while he builds his own private clientele. The attorney himself said as much. He does the defender work “to cover bills,” until he can build his own practice and “until I don’t have to do it any longer.”

Though the IDB decision may have been well-meaning, the lives of poor people and juveniles cannot be a “practice” forum for recent law school graduates to learn through the process of “sink or swim.” Moreover, at-risk juveniles, in particular, require special attention from public defenders if there is hope to change behavior and prevent escalating behavioral problems that increase the risk that they will eventually be brought into the adult criminal justice system in later years. These are commonly children who have been neglected by parents and the range of other support structures that normally channel children in appropriate constructive directions. When they are brought to court and given a public defender who has a heavy caseload and no experience other than to dispose of the case as quickly as possible, the message of neglect and valuelessness

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<sup>135</sup> See, e.g., *ABA Model Rules of Professional Conduct*, Rule 1.1; *ABA Defense Function*, Standard 4-1.6(a); *NLADA Performance Guidelines*, 1.3(a).

continues, and the risk of not only recidivism, but of escalation of misconduct, increases.<sup>136</sup> Recognizing this, other public defender systems have elevated the priority of juvenile representation and established special divisions not only to promote assessment and placement of juveniles in appropriate community-based service programs, but also to train and collaborate with others in the system to support the same goals, such as jail officials, judges, prosecutors and policy makers.<sup>137</sup>

Even misdemeanor cases can result in life altering consequences that should be recognized as a reason for requiring trained counsel. Skilled attorneys are necessary to properly advise clients and help them understand the impact a criminal record has on employment, housing, eligibility for health or income-support benefits, or immigration status – all issues that may involve future court actions at public expense.

When questioned about his use of experts for evaluation and for forensic assessment as well as investigators in juvenile cases, the young attorney looked somewhat blank and indicated that he never called upon or used such resources. When asked about the possibility of an alternative dispositional plan he stated “it’s not ever going to happen.”<sup>138</sup> The failure of the state to adequately fund indigent defense services forces IDBs to consider using flat-fee contracts. Because available revenue streams are inadequate, these flat-fee contracts often offer rates so low (\$19,200) that only someone trying to establish a practice right out of law school would consider accepting the agreement for a contracted amount.

***Finding #6:*** *In violation of ABA Principles 3 and 7, the failure to ensure adequate funding and independence of the indigent defense system undermines the timeliness of appointment of attorney and results in a lack of continuity of representation. Both erode clients’ right to a speedy trial.*

Requirements of prompt appointment of counsel are based on the constitutional requirement that the right to counsel attaches at “critical stages” that occur before trial, such as custodial interrogations,<sup>139</sup> lineups,<sup>140</sup> and preliminary hearings.<sup>141</sup> In 1991, the

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<sup>136</sup> On January 12, 2004, the *Daily Advertiser* of Lafayette, Louisiana ran an interview with the current Governor of the state, Ms. Kathleen Blanco. In it, the problem of high juvenile recidivism rates was discussed. In response to the question, “What are you looking at in the area of prison reform?” the then Governor-elect stated: “Juvenile justice. We realize that we have a 70 percent recidivism with our youth. They have been taken into these adult-like prison settings. They have been separated from their families. Particularly for first-time and nonviolent offenders, this is pretty traumatic. I like to believe a very large percentage of these kids could be saved. I am in total agreement with the Juvenile Justice Commission. We need to establish something like the Missouri model, where their recidivism rates are dramatically lower, something like 20 or 25 percent.” The full interview is available on-line at: [www.acadiananow.com/news/html/A9B0E022-4DBD-4FBB-930D-87EF1BC7E5FD.shtml](http://www.acadiananow.com/news/html/A9B0E022-4DBD-4FBB-930D-87EF1BC7E5FD.shtml).

<sup>137</sup> See Juvenile Sentencing Advocacy Project, Miami/Dade County, Florida (proposal for this and other successful federal Byrne grants on-line at [www.nlada.org/Defender/Defender\\_Funding/Successful](http://www.nlada.org/Defender/Defender_Funding/Successful)). See also Youth Advocacy Project, Roxbury, MA ([www.nlada.org/News/NLADA\\_News/1005694565.43](http://www.nlada.org/News/NLADA_News/1005694565.43)).

<sup>138</sup> For their report, *The Children Left Behind: Update* (2002) ABA and JJPL site teams conducted courtroom observations in Avoyelles Parish. In juvenile revocation cases we were told that the juvenile probation officer effectively serves as prosecutor, judge and defense lawyer. The juvenile probation officer obtains waivers of legal counsel, and was observed to conduct in-chambers meetings with the judges without the presence of the defendant. One attorney interviewed said that he had not seen one case in 20 years where the judge did not follow the probation officer’s recommendation. The information in this footnote was obtained in interview with the American Bar Association, Juvenile Justice Center and The Juvenile Justice Project of Louisiana representatives.

<sup>139</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>140</sup> *Kirby v. Illinois*, 406 U.S. 682 (1972).

U.S. Supreme Court ruled that one critical stage – the probable cause determination, often conducted at arraignment – is constitutionally required to be conducted within 48 hours of arrest.<sup>142</sup> Most standards take these requirements beyond the constitutional minimum requirement, to be triggered by detention or request, even though formal charges may not have been filed, in order to encourage early interviews, investigation, and resolution of cases, and avoid discrimination between the outcomes of cases involving indigent and non-indigent defendants.<sup>143</sup>

District Judges in the 12<sup>th</sup> Judicial District hold what is known colloquially as a 230.1 hearing – a hearing to set bail – within 48 hours.<sup>144</sup> Counsel is not appointed at these hearings. Instead, formal appointment of an attorney is handled at the arraignment hearing. By statute, defendants in Louisiana are entitled to a “speedy trial,”<sup>145</sup> and upon filing of a speedy trial motion, the District Attorney must set the matter for arraignment within thirty days, unless just cause for a longer delay is shown.<sup>146</sup> Thus, arraignment and a defendant’s first chance for a probable cause determination can happen as much as a month after arrest -- *if there is a formal motion for a speedy trial*. But since there is no attorney to file such a motion on behalf of an indigent person, even this marginal improvement in delay is denied to indigent defendants.<sup>147</sup> As such, arraignments, and consequently appointment of counsel, can occur several months after arrest in direct violation of the U.S. Supreme Court mandate.<sup>148</sup>

A further caveat to this finding must be mentioned. A motion for a probable cause hearing in Louisiana is only allowable *prior to indictment*. Since almost all felony charges in Avoyelles Parish are initiated by indictment, and since there is no lawyer to file the motion on the defendant’s behalf until after indictment, indigent defendants in Avoyelles Parish virtually never get to have a District Judge make a probable cause determination.

Further eroding a client’s right to a speedy trial in Avoyelles Parish is the practice of appointing different attorneys at arraignment and post-arraignment. The seventh of the ABA’s *Ten Principles* addresses the question of whether an indigent client may be represented by different attorneys at different stages of the proceeding (“stage,” “zone” or

<sup>141</sup> *Coleman v. Alabama*, 399 U.S. 1 (1970).

<sup>142</sup> *County of Riverside v. McGlaughlin*, 500 U.S. 44.

<sup>143</sup> *ABA Defense Services*, commentary to Standard 5-6.1, at 78-79.

<sup>144</sup> This is in accord with Louisiana Code of Criminal Procedure, Article 230.1.

<sup>145</sup> La. Revised Statutes, Title XIV, Art. 701.

<sup>146</sup> These rules require a District Attorney to file an indictment or bill of information within 45 days of arrest for a misdemeanor and within 60 days for a felony, if the defendant is held in custody at the jail. The time period is increased if the defendant is released either on bail or on his own recognizance, to 90 days on a misdemeanor charge and 150 days for a felony. Failure to follow these timelines can result in the release of the defendant, if in custody, or release of bail obligations, if not in custody.

<sup>147</sup> Additionally, in *State v. Vermall* the Second Circuit Court of Appeals held that the State can institute prosecution at any time prior to a speedy trial hearing making the defendant’s motion moot.

<sup>148</sup> NLADA heard from various interviewees that a client might be “lost” in the jail system from time to time without counsel ever being appointed. This occurs because the District Attorney only knows of those cases for which he has received the appropriate documentation from the Sheriff. Should paperwork be misplaced, a client can literally stay in jail for weeks and months at taxpayer expense, without any type of due process.

“horizontal” representation), or should have the same attorney throughout, and provides that an effective public defense system requires that:

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

Standards on this subject note that the reasons usually given for public defense systems to use “horizontal representation” are related to saving money and time. The practice of having an inexperienced lawyer handle felony arraignments before handing off those cases that survive arraignment in the 12<sup>th</sup> Judicial District fits this same pattern. The theory goes that “arraignment only” lawyers need only sit in one place all day long, receiving a stream of clients and files and then passing them on to another lawyer for the next stage, in the manner of an “assembly line.”<sup>149</sup>

But standards uniformly and explicitly reject horizontal representation,<sup>150</sup> for various reasons: it inhibits the establishment of an attorney-client relationship, fosters in attorneys a lack of accountability and responsibility for the outcome of a case, increases the likelihood of omissions of necessary work as the case passes between attorneys, and is both cost-ineffective and demoralizing to clients as they are re-interviewed by a different attorney starting from scratch.<sup>151</sup> In Avoyelles Parish our observation of felony arraignments was that the attorney saw his primary duty as getting acceptable pleas.<sup>152</sup>

Thus, the failure to appoint an attorney that will handle the case from beginning to disposition undermines the intent of early appointment of counsel and erodes any chance of conducting a trial in a reasonable period of time. Under the speedy trial statute, if a motion is granted, trials for a defendant facing a felony charge must occur within 120 days if detained or 180 days if the defendant is not in custody.<sup>153</sup> Since the felony arraignment-only attorney does nothing substantial on the case prior to arraignment and has no responsibility for the case post-arraignment, nothing that would help the client

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<sup>149</sup> NSC at 470.

<sup>150</sup> ABA Defense Services, commentary to Standard 5-6.2, at 83.

<sup>151</sup> NSC at 462-470, citing *Wallace v. Kern* (slip op., E.D.N.Y. May 10, 1973), at 30; *Moore v. U.S.* (432 F.2d 730, 736 (3rd Cir. 1970); and *U.S. ex rel Thomas v. Zelker*, 332 F.Supp. 595, 599 (S.D.N.Y. 1971).

<sup>152</sup> It was apparent that the attorney had not previously met with the vast majority of clients, let alone conducted any investigation or initial interviews. The attorney was seeing the case file for the first time at the hearing without access to complete discovery. Because the arraignment-only attorney routinely does not meet his clients prior to arraignment, he only has a few minutes to consult with his clients, discuss the case with the prosecutor, and appear on the arraignment calendar. While we were told that the day we saw was unusual in that so many people pled guilty at their first appearance, we also were told that many more plead guilty at their second appearance, that generally there is no meeting with the client in between the two court appearances, and that generally no investigation or research is done on the case by the defense lawyer. Not only is there not enough time to determine whether a plea offer is reasonable, there also is not enough time to build a relationship of trust between the client and the lawyer.

In many places in the United States indigent defense attorneys do not meet their clients before felony arraignments or practice horizontal representation, but in these jurisdictions there is a presumption that no plea will be entered into at this early stage because there is recognition that there has been no time to prepare a defense, conduct research or complete an investigation of the facts.

<sup>153</sup> Likewise, a person charged with a misdemeanor must have his trial commence within 30 days (in-custody) or 60 days (out-of-custody).

(investigation, psychiatric exams, drug-treatment placement) occurs until his trial attorney receives the case. In most instances, this will be on the eve of preliminary hearings or pre-trial settlement conferences – several months later. The speedy trial rules have proven ineffective to overcome this dynamic because under Louisiana Statutes, the defense lawyer must stipulate on the record that he or she is prepared to go to trial. Since they are effectively just beginning the case, the lawyer cannot do so and often waives the right to a speedy trial.<sup>154</sup>

The result is that any actual substantive work on a case occurs many months after arrest. During this time, witnesses are lost, memories get cloudy, and crime scenes are disrupted. The ability of a defense attorney to mount a credible defense is severely hampered with such passing of time. More importantly, any opportunity an indigent defendant may have to prove his or her innocence is likewise jeopardized.<sup>155</sup>

***Finding #7:*** *In violation of ABA Principle 9, the failure to ensure adequate funding and independence of the indigent defense system results in a systemic failure to provide comprehensive training.*

The ninth of the ABA’s Ten Principles provides:

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

Standards requiring training are typically cast, like the discussion of attorney qualifications above, in terms of both quality of representation to clients and various systemic interests in maximizing efficiency and avoiding errors. Commentary to the ABA *Standards for Providing Defense Services* views attorney training as a “cost-saving device” because of the “cost of retrials based on trial errors by defense counsel or on counsel’s ineffectiveness.” The Preface to the NLADA *Defender Training and Development Standards* states that quality training makes staff members “more productive, efficient and effective.”<sup>156</sup> In adopting the *Ten Principles* in 2002, the ABA emphasized the particular importance of training with regard to indigent criminal defense

<sup>154</sup> The delay in bringing cases to timely disposition has been raised as a major problem throughout the state. In Calcasieu Parish it takes an *average* of 501 days to dispose of a felony case, and only 20% of all felony cases are disposed of within one year of the date of arrest. The average length of time from arrest to arraignment on a felony charge is *315 days*. By comparison, the U.S. Department of Justice reports in *Felony Sentences in State Courts, 1998, Bureau of Justice Statistics Bulletin*, October 2001, that the average time from arrest to disposition for felony cases nationwide is 214 days, with 90% of all felony cases disposed of within a year. See: Kurth, Michael M and Daryl V. Burkell, *Defending the Indigent in Southwest Louisiana*, July 2003, page 29.

Furthermore, the University of New Orleans Survey Research Center conducted a citizen’s evaluation of the Louisiana Courts in 1998. The research found that “Delay in the courts is an area in which the public gives Louisiana negative evaluations. Only a third of the users and non-users think that court cases are completed in a reasonable amount of time and that waiting time in court is reasonable.” Further: “The vast majority of Louisiana residents believe that there is too much time between arrest and trial.” Survey summary available at: [www.uno.edu/~poli/suprem98.htm](http://www.uno.edu/~poli/suprem98.htm).

<sup>155</sup> The indigent defense system in Avoyelles Parish does not meet LIDAB Standard 5-1.1 that requires that “counsel should be provided to the accused as soon as feasible and, in any event, after custody begins, at appearance before a committing magistrate, or when formal charges are filed, whichever occurs earliest.” The system also fails LIDAB standards for continuity of representation (Standard 5-1.4).

<sup>156</sup> [www.nlada.org/Defender/Defender\\_Standards/Defender\\_Training\\_Standards](http://www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards).

by endorsing, for the first time in any area of legal practice, a requirement of *mandatory* continuing legal education. Standards typically relate indigent defense training to the level of training available to prosecutors in the jurisdiction. As stated in the Attorney General’s Introduction to *Redefining Leadership for Equal Defense: Final Report of National Symposium on Indigent Defense 2000*, “public defenders need access to training resources to the same degree that Federal, State and local prosecutors have the same.”<sup>157</sup>

New-attorney training is essential, and should cover matters such as how to interview a client, the level of investigation, legal research and other preparation necessary for a competent defense, trial tactics, relevant case law, and ethical obligations. Effective training includes a thorough introduction to the workings of the indigent defense system, the district attorney’s office, the court system, and the probation and sheriff’s departments as well as any other corrections components. And it makes use of role playing and other mock exercises, and videotapes to record student work on required skills such as direct and cross-examination, and interviews (or mock interviews) of clients, which are then played back and critiqued by a more experienced attorney or supervisor.

As these standards indicate, training should be a continual facet of a public defender agency. Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields, such as forensics, evolve. Thus, on-going training is always critical, but even more so where, as in Avoyelles Parish, experienced attorneys never received any initial “New Attorney” training and may need to re-learn skills or unlearn bad practices. Without training, attorneys are left to determine on their own what constitutes competent representation and will often fall short of that mark. This is especially true when there are no practice guidelines in place and performance is not monitored on an on-going basis. There simply is no systematic, on-going indigent defense training in Avoyelles Parish or in the rest of the state.

***Finding #8:*** *In violation of ABA Principle 10, the failure to ensure adequate funding and independence of the indigent defense system results in a lack of accountability for attorney performance and systemic ineffective assistance of counsel.*

The tenth of the ABA’s *Ten Principles* frames standards regarding the duties of attorneys in individual cases in terms of the indigent defense system’s obligation to ensure that attorneys are monitored for compliance with such standards:

*Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency [citing the ABA’s Defense Function Standards and NLADA’s Performance Guidelines for Criminal Defense Representation].*

Because the IDB members in Avoyelles Parish do not have the knowledge or training to enable them to oversee any aspect of the delivery of indigent defense services

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<sup>157</sup> Office of Justice Programs, U.S. Department of Justice ([www.ojp.usdoj.gov/indigentdefense/symposium.pdf](http://www.ojp.usdoj.gov/indigentdefense/symposium.pdf)), at viii.

in the Parish, the method of delivery, caseloads, quality of representation, etc., seems to be left to the discretion of the contract public defenders. Left without enforced standards or training the attorneys have little or no understanding of what constitute ethically required standards of practice.

The NLADA site team noticed many troublesome practices of the defense attorneys that fell far from the mark of competent representation. Indeed, basic components of representation that are required by the Constitution, ethical rules that govern attorney conduct and LIDAB standards, were lacking. With one attorney, the representation was so deficient that the accused individual was left to advocate on his own behalf, despite the fact that counsel was in the courtroom. The attorney's practice was to stand 15 feet or so away from the defendant during guilty pleas, including those defendants in chains. The attorney was at times laughing with prosecutors or court staff during the proceeding in which his clients were forced to provide their own representation. In one such case, the defendant told the judge that he was not guilty of one of the burglary charges in the bill of information, and after discussion at the bench, the state moved to dismiss that particular charge – though the original plea in relation to sentencing was kept in tact. The defense attorney did nothing even after the judge admonished the lawyer to pay attention.<sup>158</sup>

In another instance, despite constitutional requirements and the LIDAB standard recognizing the grave consequences of conflicts of interests, NLADA observed a public defender represent two co-defendants that were charged in the same incident with felony theft. According to the evidence presented in court, one defendant allegedly took \$500 from a wallet he found and gave some of the money to the other. They were allegedly both intoxicated and wanted the money for liquor at the time of the incident. There may have been a trial issue as to whether or not the receiving defendant actually knew that the money from his co-conspirator was stolen. There were also questions of competency as one testified to having only an eighth grade education, and the other had a tenth grade education. Despite these potential issues, both pled guilty and received three-year suspended sentences, mandatory requirements to attend theft school, and had to pay substantial fines, costs and fees. When questioned later about the dual representation, the attorney in question indicated that if they had not pled guilty, he would have made sure that each defendant had received separate counsel appointments. Both men were constitutionally entitled to individual counsel, whether they pled or went to trial. The attorney's response evidences "casualness" about the right to one's own attorney and the rights of poor people that is highly problematic and contrary to the attorney's ethical duties, especially where no waiver of a separate right to counsel was entered either on the record or through a written waiver of conflict.<sup>159</sup>

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<sup>158</sup> It is important to mention that LIDAB Standard 6-1.1(B) states: "The basic duty the lawyer for the accused owes to the administration of justice is to serve as the accused's counselor and advocate with courage, devotion and to render effective, quality representation."

<sup>159</sup> LIDAB Standard 9-1.3 states: "The potential for conflict of interest in representing multiple defendants is so grave that ordinarily defense counsel should decline to act for more than one of several codefendants except in unusual situations when, after careful investigation, it is clear either that no conflict is likely to develop at trial, sentencing, or at any other time in the proceeding or that common representation will be advantageous to each of the codefendants represented and, in either case, that: (A) The several defendants give an informed consent to such multiple representation; and (B) The consent of the defendants is made a matter of judicial record. In determining the presence of consent by the defendants, the trial judge should make appropriate inquiries respecting actual or potential conflicts of interest of counsel and whether the defendants fully comprehend the difficulties that defense counsel may encounter in defending multiple clients."

Again contrary to constitutional requirements (to investigate cases), one defense attorney told us that he has no investigation resources for defender cases and that he has not filed a motion for an expert in at least three years because he has not needed one. He noted that there are a “tremendous amount of confessions.” He said he does not investigate cases with multiple witnesses and a confession noting, “why would you investigate what your client told you? There is nothing to investigate.”<sup>160</sup> A different defense attorney could not recall one case in 20 years in which there had been a defender investigation. This same attorney does not meet his indigent clients in his office or at all between arraignment and pre-trial hearings. He sends them a letter asking them to identify who their witnesses are and what they would say, and tells them to meet at court for the pre-trial conference, where another plea offer is made and he reviews the file again. If the client provides a list of witnesses, this particular defense attorney will have his private staff subpoena them for trial. He says the decision on whether he will interview the witnesses “depends on the facts we have.” He noted that in a criminal jury week, there are between five and 20 trials set per IDB attorney.

We witnessed another case where the defense attorney had no idea that the client he had just talked to for a mere 30 seconds, and who was pleading guilty to the equivalent of statutory rape, could not have been found guilty because he was not the requisite number of years older than his girlfriend -- who was in court to support him. The District Court judge recognized the error. When later asked about this case, the lawyer told us that he had asked the client how old he was and if the client did not know or gave a misleading answer the lawyer could not be held accountable. To compound the problem, the lawyer then let his client plead to the unproven crime of trespass (despite the girlfriend’s admission that he had been invited into the premises), as if there was some kind of quid pro quo plea bargain that needed to be maintained after the sex charges were dismissed.<sup>161</sup>

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<sup>160</sup> Among the issues to be investigated are: mental health issues, substance abuse, duress or other codefendant pressures, false confessions, etc.

<sup>161</sup> An interview with the District Attorney after this case revealed that the mother of the young woman would have testified that there was no permission for the defendant to be on her property so the trespass case might have ultimately been provable. In any event, the defense counsel was not aware of this fact and it certainly indicates the lack of preparation and investigation on a serious charge.

One significant problem with this type of casualness to serious charges is that the collateral ramifications are significant. La. R.S. 14:80 defines “Felony Carnal Knowledge of a Juvenile” as consensual sexual intercourse where the defendant is 19 or older and the “victim” is 12 to 16, OR the defendant is 17 or older and the “victim” is 12 to 14. This offense carries up to 10 years in prison or fine of \$5,000 or both.

Felony Carnal Knowledge is a “sex offense” pursuant to La. R.S. 15:541(14.1), because it is a provision of “Subpart A(1) of Part V of Chapter 1 of Title 14.” A conviction of Felony Carnal Knowledge, therefore, subjects the defendant to sex offender reporting requirements throughout the entirety of his sentence, La. R.S. 15:542, and to registration requirements for 10 years following release on parole or probation or from prison, La. R.S. 15:542(C), 15:542.1(H).

The sex offender reporting requirements include: registering as a sex offender with the Sheriff and the Chief of Police where they live; mailing notice of their neighbors of the crime of conviction, name, address, physical description and a photograph; mailing notice to the superintendent of the school district where he lives; mailing notice to the lessor, landlord, or owner of his residence; mailing notice to the superintendent of parks and recreation where he lives; publishing a notice in the newspaper on two separate days, with his photograph; and, giving notice to the Louisiana Bureau of Criminal Identification and Information of any college or technical school where he attends or works.

These requirements pertain every time he moves. Then, for the 10 years after his sentence, he still has to register annually with the Louisiana Bureau of Criminal Identification and Information, which maintains his information in the “State Sex Offender and Child Predator Registry.” He has to continue to register under these laws even if they receive a pardon of their conviction.

If the defendant was placed on probation (or later made parole), he would also have to attend a sex offender treatment program, at his own expense, throughout the probation and/or parole, La. C.Cr.P. art. 895(J), and give blood and saliva samples, La. C.Cr.P. art. 895(E).

All of these incidents occurred on a single day in which the District Judge, the District Attorney and the contract defense attorneys were aware that members of the NLADA site team were in the audience conducting court observations. Two of the attorneys appeared qualified to be handling felony cases under normal circumstances, but the high workload, the lack of training, the lack of oversight and the delay in beginning anything substantive on a case until months after arrest resulted in even these attorneys providing ineffective assistance of counsel.

***Finding #9:*** *In violation of ABA Principle 4, the failure to ensure adequate funding and independence of the indigent defense system results in the continual abridgement of indigent defense clients' right to confidentiality.*

The fourth of the ABA's *Ten Principles* provides that in an effective public defense delivery system –

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

As the Principle itself states, the purpose is “to ensure confidential communications” between attorney and client. This effectuates the individual attorney’s professional ethical obligation to preserve attorney-client confidences,<sup>162</sup> the breach of which is punishable by bar disciplinary action. It also effectuates the responsibility of the jurisdiction and the indigent defense system to provide a structure in which confidentiality can be preserved<sup>163</sup> – perhaps nowhere more important than in indigent criminal defense, where liberty and even life are at stake, and client mistrust of the public defender as a paid agent of the state is high.<sup>164</sup>

Substantive conversations on felony cases between clients and attorneys in Avoyelles Parish were conducted in the open courtroom audible to the courtroom audience, including other defendants, victims, family members, the judge, law enforcement officers, prosecuting attorneys, and others. Initial conversations on DUI misdemeanor cases had apparently been held in some other area of the courthouse, though they clearly were not one-on-one conversations between defendant and attorney but rather involved all of the DUI misdemeanor defendants at once. In some instances,

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Finally, there is almost nowhere that a “sex offender” can live, work, or attend church. The parole board is allowed to make a condition of parole “such other specific conditions as are appropriate.” La. R.S. 15:574.4. A typical sex offender parole requires that the parolee not have unsupervised contact with any person under the age of eighteen (18), and the parole officers and board construe this to apply to church attendance, living with your own children or step-children or siblings, eating at McDonalds, or going anywhere where you might brush up against a child.

<sup>162</sup> ABA *Model Rules of Professional Conduct*, Rule 1.6; *Model Code of Professional Responsibility*, DR 4-101; ABA *Defense Function*, Standard 4-3.1; *NLADA Performance Guidelines*, 2.2.

<sup>163</sup> *NSC*, Guideline 5.10

<sup>164</sup> *Id.*, and commentary at p. 460.

NLADA representatives observed indigent defense clients talking directly to the prosecutor about his or her case without the defense lawyer interceding.<sup>165</sup>

In addition to an apparent lack of physical space set aside for private attorney-conversation, an equally important reason for the confidentiality breaches was that the defense attorneys did not understand the critical importance of “client interviews,” both for investigative purposes, and to fulfill ethical obligations concerning client relations.<sup>166</sup> In discussing ways to improve the possibility of out-of-custody clients coming to interviews, one of the lawyers said he could not be bothered with bringing a calendar to court to set up appointments, or setting aside a regular afternoon to meet clients. His expressed attitude was that it was not his problem and that it did not matter anyway. The majority of the “interviews” we witnessed took no more than 30 seconds. Following one such “interview” the client entered a plea, and was sentenced on the spot to five years at hard labor.

Just as troublesome is the lack of confidentiality of the IDB office. During our site visit, the IDB office was being shared with probation officers. Clients receiving probation were requested to go to the IDB office to meet with officers. There were no IDB staff members available on the premises and a single probation officer was conducting interviews in one semi-private office. Remarkably, client case files were in open boxes and easily perused by clients, probation officers or anyone walking in off of the street.

Finally, the practice of the local Sheriff infringes on attorney-client communication, and thus, confidentiality. The Avoyelles Parish Sheriff is the owner of a communications conglomerate that provides e-mail and Internet communications to a large share of regional clients, including the IDB. One of his subsidiaries owns and operates the phone system in the jails. Several interviewees informed us that the company charges \$5.00 to place a collect call and then charges long distance rates for the entirety of the conversation. This policy has forced the IDB and the contract lawyers to set a policy that no collect calls from the jail be accepted due to financial constraints. Such a policy forces initial interviews to occur at arraignment under the conditions described above.<sup>167</sup>

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<sup>165</sup> Such conversations are in violation of the American Bar Association’s *Criminal Justice Standards*. Standard 3-4.1(b) for the prosecution function, “Availability for Plea Discussions,” states: “[a] prosecutor should not engage in plea discussions directly with an accused who is represented by defense counsel, except with defense counsel’s approval. Where the defendant has properly waived counsel, the prosecuting attorney may engage in plea discussions with the defendant, although, where feasible, a record of such discussions should be made and preserved.” The discussions between defendants and the District Attorney were not conducted before the defendant had properly waived their right to counsel. The ABA standards are available at: [www.abanet.org/crimjust/standards/pfunc\\_toc.html](http://www.abanet.org/crimjust/standards/pfunc_toc.html).

<sup>166</sup> NLADA does believe that one of the contract attorneys has a more client-centered approach than the others, but that workload concerns prevent this attorney from providing adequate representation in all cases.

<sup>167</sup> The jail phone system was the subject of previous litigation. In 1991, Judge Michael Johnson was elected to and assumed the office of Judge of the Twelfth Judicial District Court. Before and after assuming office, Johnson, together with a partner owned and operated Cajun Callers, which provided pay telephone service for all Avoyelles Parish jail inmates. Judge Johnson was responsible for the management of Cajun Callers both before and after he became a judge, and received substantial income for his efforts (\$254,616.44 in 1995). *In re Johnson*, 683 So.2d 1196, 1198 (La. 1996). A conflict was found with the judge owning the phone system since he stood to benefit from having more people in jail.

There currently is no ethical conflict for a Sheriff to own the jail telephone system. But, LIDAB Standard 6-2.1(C) states: “Personnel of jails, prisons, and custodial institutions should be prohibited to any extent from examining or otherwise interfering with any communication or correspondence between client and defense counsel relating to legal action arising from charges, detention, or incarceration.”

***Finding #10:*** *In violation of ABA Principle 8, the failure to ensure adequate funding and independence of the indigent defense system results in the lack of resource parity between the prosecution and defense in Louisiana.*

The number of prosecutions brought in a jurisdiction drives indigent defense workload. And, since prosecution resources (both funding and staffing) significantly effects the number of prosecutions brought, increased prosecution funding directly increases defender workload.<sup>168</sup> Disparity of resources between public defenders and prosecutors exacerbates the inability of public defenders to keep up with workload increases and causes delay in dispensing justice to victims, witnesses and defendants.<sup>169</sup> For this reason, the eighth of the ABA's *Ten Principles* addresses the issue of resources for indigent defense, specifically in comparison with prosecution resources:

*There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.... No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.*

The principle of parity between the resources of a district attorney's office and an indigent defense system is fairly straightforward. It derives from the fact that indigent defense workloads are driven by external factors – both by the prosecution, as noted, and by indigency rates among the defendant population. Whatever the percentage of criminal defendants entitled to counsel in a jurisdiction that are typically indigent, that same percentage is used as a starting point for calculating the ratio of prosecution funding to indigent defense funding. These figures may be adjusted up or down depending on the existence of other relevant factors increasing or decreasing one side's workload or budget.

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<sup>168</sup> NLADA does not take a position on whether or not the District Attorney's office in Avoyelles Parish is adequately funded.

<sup>169</sup> Chief Justice Warren Burger wrote in 1972 "society's goal should be 'that the system for providing the counsel and facilities for the defense should be as good as the system which society provides for the prosecution.'" (*Argersinger v. Hamlin*, 407 U.S. 25, 43 (concurring opinion)). The Justice Department's 1999 report, *Improving Criminal Justice* concludes that: "Salary parity between prosecutors and defenders at all experience levels is an important means of reducing staff turnover and avoiding related recruitment/training costs and disruptions to the office and case processing. Concomitant with salary parity is the need to maintain comparable staffing and workloads – the innately linked notions of 'equal pay' for 'equal work.' The concept of parity includes all related resource allocations, including support, investigative and expert services, physical facilities such as a law library, computers and proximity to the courthouse, as well as institutional issues such as access to federal grant programs and student loan forgiveness options."

For example, the prosecutor’s office may have some duties not requiring indigent defense representation, such as certain civil cases or providing victim support services, or internal policies may lead it to routinely decline prosecution in a certain percentage of the cases reviewed upon referral by the police. On the other hand, indigent defense providers may not have access to supplemental types of funding available to the prosecutor’s office, such as forfeited assets, fines, or federal grants; and as in all jurisdictions, some key resources and services available to prosecutors are furnished through other agencies budgets, and are hence “off budget” and not visible in a simple comparison of direct appropriations to the local offices of the District Attorney and the Public Defender. Examples of such “off-budget” items include the investigative resources of local law enforcement, state and federal crime labs, psychiatric and mental health experts, and federal agency personnel (e.g., FBI). As the U.S. Department of Justice has suggested, such policies, practices, and off-budget resources must be calculated into the parity balance sheet.<sup>170</sup>

In Louisiana there is nothing close to parity between prosecution and defense. On average, Louisiana prosecutors outspent their indigent defense counterparts by nearly 3 to 1 (total reported statewide expenditure for prosecution: \$75,790,140; statewide indigent defense trial-level resources: \$25,279,558).<sup>171</sup> Again, this does not take into account the amount of investigative resources provided at no cost to the prosecution by police, sheriffs, or FBI but which the indigent defense system must pay for directly, nor the cost of state crime labs or experts. At the close of 2002, Louisiana district attorneys collectively had over \$38 million in reserves -- a 420.55% disparity between the collective statewide IDB reserves.

Prosecutors in Louisiana also have the long-standing benefit of a retirement system enacted by the State Legislature in 1956. District Attorney staff who joined the retirement system after 1990 receive 3.5% of their final year’s salary multiplied by the number of years service every year upon retiring. For example an attorney working for 25 years as a district attorney, and who made \$75,000 in the final year of her career, would earn \$65,625 per year upon retirement. Other benefits include disability, early retirement, and death benefits. At the close of 2002, the District Attorneys Retirement System had a year-end balance of \$135,176,917 in reserves. Contract public defense attorneys must budget for their own retirement.<sup>172</sup>

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<sup>170</sup> See *Indigent Defense Services in Large Counties, 1999*, Bureau of Justice Statistics, U.S. Department of Justice ([www.ojp.usdoj.gov/bjs/abstract/idslc99.htm](http://www.ojp.usdoj.gov/bjs/abstract/idslc99.htm)) (“Some categories of expenses are typically borne by indigent defense but not necessarily by local prosecution agencies, thus hindering direct comparisons (e.g., expenditures of prosecutors’ offices may not include investigative resources provided by law enforcement agencies, forensic laboratory work or expert witnesses, office space or technology, and training”).

<sup>171</sup> See Appendix K (page 127) for a district-by-district parity analysis of indigent defense and prosecution services. This analysis simply reflects what was reported to the State Legislative Auditor. There are a number of instances in which further analysis is warranted. For example, in 2002, the District Attorney audit of the 34<sup>th</sup> Judicial District (St. Bernard Parish) reported that only \$6,298.00 was expended by the office. Comparatively, the IDB in the same parish reported expending \$272,509.00. Such differences are far and few between and the analysis reveals overwhelmingly that Louisiana’s judicial districts do not practice resource parity between prosecution and defense.

<sup>172</sup> The availability of retirement benefits to those attorneys working in staffed public defender offices vary from district to district. For example, the 19<sup>th</sup> Judicial District (East Baton Rouge) does have a 403(b) Plan in place that was approved by the IDB in 1992. The IDB contributes 7.8% of the employee’s salary to the Plan. The employee is not required to contribute, but he or she can if so desired. The 19<sup>th</sup> Judicial District also has a 401K cafeteria plan available for employees, though the IDB does not contribute to this plan.

Again, the 12<sup>th</sup> Judicial District serves as a good example of what this disparity means on a local level. To begin with, both the IDB and the District Attorney receive a near equal percentage of court-imposed fees. Moreover, in every court case we witnessed, guilty defendants were assessed both the cost of defense counsel *and* the cost of prosecution.<sup>173</sup> Thus, the District Attorney office begins with a nearly equal share of the primary indigent defense revenue stream *before* factoring in state and local monies.

The District Attorneys office in Avoyelles Parish consists of ten prosecuting attorneys. In addition to District Attorney Riddle, one attorney is the First Assistant District Attorney. Two prosecutors are exclusively assigned to one of the two District Courtrooms and another two prosecutors are assigned to the other courtroom. One prosecutes juvenile offenders and handles prosecutions in Bunkie City Court. One attorney heads up the Special Victims Unit.<sup>174</sup> One of the attorneys operates as a floater, while the other handles the civil department. The office has 12 support staff.<sup>175</sup>

The indigent defense system on the other hand operates with just four part-time attorneys, or the equivalent of two full-time attorneys. Three of the attorneys share workspace and have to pay for all of their office support (rent, overhead, Internet access) out of the money earned through their indigent defense contracts and private cases.<sup>176</sup> The IDB generally has a staff position to handle the bookkeeping and other administrative functions, though at the time of our visit, this position was vacant.

The disparity in resources between the prosecution and defense functions is graphically reflected in the differences that exist between the two Avoyelles Parish offices. The district attorney's office recently underwent an \$850,000 renovation, including all new computers with high-speed Internet access. We were told that most of the changes were funded through Federal grants, though some Parish money was used. Mr. Riddle's office exudes professionalism with all of the modern conveniences offered to prosecutors.

Mr. Riddle's office exudes professionalism with all of the modern conveniences offered to prosecutors.

By contrast, the Indigent Defender Board Office is in disarray. Generally unmanned (at least at the time of our visit), the office looked abandoned. The waiting area was poorly lit, and papers and case files were piled in the one hallway that connected the few offices.

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<sup>173</sup> Depending on severity of the charge, the District Attorney's share of court costs is between \$10-\$20. IDB gets \$25 regardless of severity of the charge. Additionally, the District Attorney and the IDB both receive \$125 apiece to off set the cost of the prosecution and defense, respectively.

<sup>174</sup> District Attorney Riddle created the Special Victims Unit (SVU) upon taking office. While a State Representative he authored the bill that allows victims to allocute at the sentencing phase. SVU cases include: domestic violence, sex offenses, and crimes against the elderly and against minors. Other support staff includes a "Hot Check Coordinator" assigned to work with businesses in an effort to assist them in collection of bad checks.

<sup>175</sup> This number includes the Victims Assistance Coordinator (VAC). The State authorized and funded a VAC for each judicial District. As in other jurisdictions, the VAC is dedicated to the concerns of victims, such as hearing dates, sentencing dates, release dates from jail of the criminal, and other matters.

<sup>176</sup> The fourth indigent defense attorney has a private office in Rapides Parish, making it all but impossible for clients to meet her in her office.



Indigent Defender Board Office



District Attorney's Office

### Summary of Chapters III & IV

In violation of LIDAB’s own requirement for receiving district assistance grant funding, the 12<sup>th</sup> Judicial District IDB is not “immediately” working on achieving the goal of meeting LIDAB-promulgated standards. In fact, documented evidence indicates that any “work” undertaken by the IDB has resulted in the indigent defense system in Avoyelles Parish falling further away from the statewide standards.

As indicated in Chapter I of this report, The American Bar Association’s *Ten Principles of a Public Defense Delivery System*, was devised as a set of standards which constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney. The substantial failing of the system to meet these standards can only mean that the indigent defense system devised by the legislature in Louisiana delivers ineffective, inefficient, poor quality, unethical, conflict-ridden representation to the poor. Based on a review of Louisiana statutes, LIDAB standards, recent reports by other reputable organizations, and our own firsthand courtroom observations in Avoyelles Parish, NLADA has created an easy to reference scorecard (below) regarding the extent to which the indigent defense system in Louisiana fails to meet the vast majority of the *Ten Principles*:

<u>ABA Principle</u>	<u>Explanation</u>	<u>Grade</u>
1. <i>The public defense function, including the selection, funding, and payment of defense counsel, is independent.</i>	Louisiana Statutes do not safeguard against undue judicial interference. Judges appoint IDB board members in direct violation of this principle.	F
2. <i>Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.</i>	Instead of creating public defender offices in those jurisdictions where high caseloads warrant such a model, Louisiana’s judicial districts have instead closed public defender offices in favor of flat-fee contract systems. The indigent defense system is not entirely state-funded as directed in this Principle’s subsection.	F
3. <i>Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.</i>	As demonstrated in Avoyelles Parish, clients are not screened for eligibility. Counsel is not appointed in a timely manner. Clients are not appointed counsel in the early stages of a case. Statutory guarantees of a “speedy trial” are not effective in practice.	F
4. <i>Defense counsel is provided sufficient time and a confidential space with which to meet with the client.</i>	As demonstrated in Avoyelles Parish, client confidentiality is continually abridged. The failure of attorneys to meet with clients before court forces meetings to be held in the courtroom. There are no provisions in Louisiana statutes safeguarding confidentiality.	F
5. <i>Defense counsel’s workload is controlled to permit the rendering of quality representation.</i>	Louisiana statutes do not safeguard against public defender overload. Workload of Louisiana public defenders are far in excess of all nationally recognized standards, as demonstrated in Avoyelles Parish and a recent report in Calcasieu Parish. Failure to control caseload permits poor quality representation.	F

<u>ABA Principle</u>	<u>Explanation</u>	<u>Grade</u>
6. <i>Defense counsel's ability, training, and experience match the complexity of the case.</i>	Louisiana statutes do not safeguard against unqualified attorneys being appointed to indigent defense cases. As demonstrated in Avoyelles Parish, attorneys are assigned cases for which they are not qualified to represent. There is no systematic indigent defense training in the state.	F
7. <i>The same attorney continuously represents the client until completion of the case.</i>	As demonstrated in Avoyelles Parish, the same attorney does not represent clients from assignment through disposition.	F
8. <i>There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.</i>	A review of all prosecutor and IDB financial audits reveal that there is no parity between prosecution and indigent defense resources. Indigent defense is not a co-equal partner in the justice system in Louisiana.	F
9. <i>Defense counsel is provided with and required to attend continuing legal education.</i>	All attorneys are required to attend continuing legal education in Louisiana. <sup>177</sup> In violation of this Principle's subsection, the general training is not specifically appropriate to the indigent defense field. Indigent defense training is not equal to the prosecutor training.	C
10. <i>Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.</i>	Louisiana statutes provide no guarantee that indigent defense attorneys be reviewed for quality. LIDAB has no authority or capacity to do so. There is no supervision or quality review of the indigent defense system.	F

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<sup>177</sup> The Rules of the Supreme Court of Louisiana require all attorneys to complete 12.5 hours on continuing legal education (CLE) annually. At least one hour each must be devoted to ethics and legal professionalism.

Chapter V  
**An Analysis of the Failure of Post-Peart Reform  
to Improve the Quality of Indigent Defense Services in Louisiana**

***Finding #11:*** *As demonstrated in the previous two chapters, the trial-level indigent defense system in Louisiana is rife with systemic deficiencies despite the single biggest reform effort of the post-Peart era – the Louisiana Indigent Defense Assistance Board. LIDAB has failed to improve the quality of trial-level indigent defense services for four main reasons: since its inception it has been essentially flat-funded despite increased responsibilities; participation in the District Assistance Fund (DAF) program is not dependent on compliance with state standards; LIDAB is not a regulatory commission empowered to verify the uniformity and accuracy of reported statistics nor does it have the capacity to do so; and, the DAF funding matrix is fundamentally flawed in assessing need. Moreover, the district assistance fund model can never work in a funding system that is reliant on court costs and recoupment as the primary revenue stream.*

The single biggest effort to reform indigent defense services over the past decade was the creation of the Louisiana Indigent Defense Assistance Board (LIDAB), and its predecessor the Louisiana Indigent Defender Board (LIDB). LIDAB, and in particular the state’s district assistance fund, is patterned on the successful state assistance grants model employed in the State of Indiana. Louisiana, however, has significantly altered the Indiana model, and in doing so, has ceded its constitutional responsibilities to the local level in such a way that results in neither the state nor the local government having accountability for the issue.

After a brief description of the Indiana indigent defense system, this Chapter will explore the fundamental flaws responsible for the failure of LIDAB to improve the delivery of defense services to indigent defense clients at the trial-level.

*A Closer Look at Indigent Defense Services in Indiana*

Like Louisiana, Indiana has a strong home-rule tradition, favoring local autonomy over state control in many matters. Indigent defense in Indiana has always been organized at the county level, and has been provided primarily by part-time “public defenders,” generally operating under a contract. Indiana’s indigent defense standards<sup>178</sup> are written, as are Louisiana’s, at the state level, by a statewide independent commission, and compliance by the counties is purely voluntary. However, unlike Louisiana, counties that choose to comply with the state indigent defense standards are eligible to have a portion of their indigent defense costs reimbursed by the state. A state statute authorizes the reimbursement from state funds of 40% of the indigent defense expenditures of counties that meet certain standards (including client eligibility, attorney qualifications and workload).<sup>179</sup> A county that wishes to be considered for reimbursement is statutorily

<sup>178</sup> *Standards for Indigent Defense Services in Non-Capital Cases, with commentary*, Indiana Public Defender Commission, effective Jan. 1, 1995, as amended October 28, 1998.

<sup>179</sup> IC 33-9-11-4(b); 33-9-15-10.5(b). The 40 percent reimbursement figure applies only in non-capital felony and juvenile cases. Misdemeanor cases are not eligible for reimbursement. State reimbursement is available in capital cases, with two differences: the standards are issued by the state Supreme Court (as Rule 24 of the state’s Rules of Criminal Procedure), rather than the state Public Defender Commission, under similar statutory authority; and the reimbursement rate is raised to 50 percent – producing a standards-compliance rate of 100 percent.

required to establish a local County Public Defender Board of at least three members, whose responsibilities include writing a comprehensive plan for indigent defense in the county, appointing a county public defender, overseeing the office and its budget, and submitting requests for state reimbursement.<sup>180</sup>

The State Public Defender is a separate entity from the Commission that provides representation in all post-conviction proceedings, as well as some direct appeals. Indigent defense in Indiana is further assisted through an indigent defense resource center, the Indiana Public Defender Council (IPDC). IC 33-9-12 directs IPDC to: assist in the coordination of indigent defense providers through preparing manuals of procedures; assist in the preparation of trial briefs, forms and instructions; conduct research and studies of interest to indigent defense practitioners; and maintain liaison contact with study commissions, organizations and agencies of all branches of government (local, state and federal) that will benefit criminal defense as part of the fair administration of justice.

*11.1: Despite expanded services, LIDAB has been essentially flat-funded since its inception. No new monies have been appropriated to offset the cost-of-living or the cost of an expansion of services, some of which were legislatively mandated.*

Louisiana has not matched Indiana’s ability to increase state funding to the state assistance grants program. When LIDB was first created on the heels of the *Peart* decision, \$5 million was budgeted by the Louisiana Legislature for its success. In the next year, the budget was increased to \$7.5 million where it has stayed, for the most part, for the next eight years.<sup>181</sup> During this time, the cost of living has climbed by 20.73%.<sup>182</sup> Since 1999, the earliest year for which court data is readily available, district court criminal and traffic cases have increased 10.5%.<sup>183</sup> During this time, LIDAB services were expanded by the Legislature to include providing defense services in post-conviction cases without any new resources dedicated to the agency.

Thus, increased need, costs and services have been met with no new funding. As such, Louisiana’s state assistance program funds have not only decreased but have fluctuated inconsistently from year to year from a high of \$3.5 million in 1999 to as low as \$1,044,048 in 2000.<sup>184</sup> This means that if the pool of judicial districts that need assistance grows over time, the actual dollars going to any particular IDB will likely decrease. And, as the cost of providing indigent defense services increases, the percentage of revenues from LIDAB should fall exponentially. As history has shown,

<sup>180</sup> IC 33-9-15-6; IC 33-9-15-10.5. Counties with populations under 12,000 are exempted from the requirement to establish a County Public Defender Board.

<sup>181</sup> The initial \$5 million appropriation and subsequent increase to \$7.8 million is significantly lower than the \$20 million recommendation of noted indigent defense expert Robert L. Spangenberg. See: The State of Louisiana Supreme Judicial Court, Judicial Counsel’s Statewide IDB Commission, *Study of the Indigent Defense System in Louisiana*, 1992, prepared by The Spangenberg Group.

<sup>182</sup> See the American Institute of Economic Research: [www.aier.org/cgi-bin/colcalculator.cgi](http://www.aier.org/cgi-bin/colcalculator.cgi).

<sup>183</sup> The Supreme Court of Louisiana, *Annual Report 2002 of the Judicial Council of the Supreme Court*, 2003. *Supra* note 43.

<sup>184</sup> This funding fluctuation is caused by the fact that IDBs operate on a calendar year, while LIDAB dispenses state grants on a fiscal year. In fiscal year 2001, LIDAB disseminated \$3 million but only \$1.044 million in calendar year 2000. This put a huge burden on local IDBs to make up the difference.

IDBs will likely respond to this dynamic by further lowering the quality of services to fit available resources.

This stands in direct contrast to Indiana, where funding to the Commission has increased over time to offset a higher and higher percentage of counties that have come into compliance with the state standards. When state reimbursement in Indiana was first authorized in 1993, \$1.25 million was dedicated to the commission to reimburse counties at a rate of 25% of all county indigent defense expenditures (and 13 counties came into compliance that first year). In 1997, the Commission's appropriation increased to \$3 million and the reimbursement rate was raised to 40%. Though the reimbursement rate is still 40%, state expenditures of \$7 million annually has allowed an additional 41 counties to qualify for reimbursement – for a current total of 54 of Indiana's 92 counties that have opted in (or 58.7% of counties that are in compliance with state standards).<sup>185</sup> Significantly, this is the increased expenditure of the state assistance to counties program. The money for the State Public Defender (which is akin to many of the LIDAB expanded services) and money for the resource center (for which there is no correlation to Louisiana) is appropriated under separate line items. The State of Indiana now spends over \$14 million in total on indigent defense services.

*11.2: Participation in LIDAB's DAF program is not dependent on compliance with state standards.*

As demonstrated in Indiana, compliance with state standards (and thus improvement in services) is directly related to the availability of state reimbursement. When the Indiana Commission originally adopted their non-capital standards in 1989, and when compliance was completely voluntary, no counties were known to be in compliance. Improvement in Indiana's indigent defense services only came because no money is ever disseminated to counties unless and until compliance with standards has been objectively demonstrated.

LIDAB Board members have been resistant to employing a similar philosophy of making district assistance money dependent on compliance with state standards. At the LIDAB hearing at the state Capitol in April 2003, LIDAB board members expressed the belief that the funding crisis is so bad in Louisiana that they would be derelict in their ethical duties to withhold *any* money to the local IDBs. Yet, if DAF assistance is forthcoming no matter what, there is no incentive for judicial districts ever to ensure adequacy of services through compliance with standards. In this way, Louisiana is like Georgia, which also had a state assistance board that did not enforce standards. After numerous lawsuits and reports uncovered that the failure to enforce standards resulted in constitutionally inadequate defense services throughout the state, the Georgia Legislature passed a bill, that was subsequently signed in to law by the Governor, replacing the

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<sup>185</sup> *Annual Report of the Public Defender Commission, 2001-2002* available at: [www.in.gov/judiciary/admin/pub\\_def/docs/01-02-ann-rept.doc](http://www.in.gov/judiciary/admin/pub_def/docs/01-02-ann-rept.doc). It is important to note that the Indiana Commission is experiencing funding issues. In the last fiscal year, the Commission had to prorate reimbursements to counties due to lack of funding. The Indiana Supreme Court has requested a budget of \$8.8 million (FY 2004) and \$9.5 million (FY 2005) for the Commission while the state Budget Agency has proposed flat funding. See *Letter from Indiana Public Defender Commission, Norm Lefstein, to the Chair of the Senate Finance Committee* at: [www.in.gov/judiciary/admin/pub\\_def/docs/fundingletter.doc](http://www.in.gov/judiciary/admin/pub_def/docs/fundingletter.doc). This exposes a main flaw in the indigent defense delivery model that attempts to improve indigent defense quality through state financial incentives to local jurisdictions. Should state funding not increase at a rate to continue to entice local jurisdictions to improve services, local government may choose simply to not provide adequate representation to the poor.

statewide assistance to local counties structure with a state administered system of regional public defender offices.<sup>186</sup>

*11.3: LIDAB has no verification mechanism to guarantee the uniformity and accuracy of self-reported caseload statistics.*

As noted earlier in the report, LIDAB is not a regulatory commission with powers to compel local jurisdictions to comply with its standards nor does it have the capacity to institute procedures for verification. As such, there is no ombudsperson at LIDAB to verify that the caseload data reported are factually true. We are not implying that local IDBs would purposefully and consciously report false data in an effort to secure more funding -- though the system certainly is not set up to deter such abuse. Rather, because there is no uniform definition of what constitutes a “case,” some jurisdictions may be reporting the number of felony charges, another reporting the number of felony defendants, still another reporting felony indictments/informations, and still others some combination thereof. The impact of this is enormous.

Because LIDAB’s DAF funding formula is so heavily weighted to caseload, a jurisdiction that reports the number of felony “charges” will unfairly get more assistance than a jurisdiction that reports number of “defendants.”<sup>187</sup> It is not possible for LIDAB to visit every judicial district to verify the caseload numbers, and indeed, Mr. Ed Greenlee of LIDAB informed us that he has never been to Avoyelles Parish at all in his professional capacity.

It is important at this point in time to revisit the inconsistency of the caseload numbers reported to LIDAB for Avoyelles Parish. Over the four-year period from 1999 to 2002 the reported felony caseload numbers decreased by approximately 50% despite the view of the majority of interviewees that the indigent defense caseload in the 12<sup>th</sup> Judicial District continues to increase year after year. Had the 12<sup>th</sup> Judicial District IDB reported even 75% of the total district felony cases reported in the *Louisiana Supreme Court Annual Report* (or 1,485 of 1,980) instead of simply relying on unverified court reports, their LIDAB DAF grant in 2003 would have increased from the \$25,666 they did receive to \$199,885 (or an increase of 678.8%).<sup>188</sup>

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<sup>186</sup> <http://www.georgiacourts.org/aoc/press/IDsigning-PR.pdf>

<sup>187</sup> 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).” A defendant that is charged with reckless driving who subsequently assaults the arresting officer would be counted as one case for reporting purposes. On the other hand, a defendant who is charged with shoplifting from one store on one day and another store on another day should have the cases treated as two cases for workload purposes since the public defender would have to interview two sets of witnesses, visit two different crime scenes, etc. This holds true even if the two shopliftings were filed on a single bill of information.

<sup>188</sup> The imprecision of caseload counts can be attributed to a number of factors. First and foremost, the lack of funding does not allow IDBs to invest in case-tracking software to allow for accurate case counts. Second, because attorneys are paid the same amount regardless of caseload (at least in Avoyelles Parish and other flat-fee contract districts) there is no district-level financial requirement to track cases accurately. Finally, because the Avoyelles Parish IDB does not have the legal perspective to understand the implications of heavy workloads, it may not have been given a high priority.

The low number of felony cases the IDB received from the court may be a matter of clerical error or a failure to include the name of the attorney of record in all cases on any case-tracking system. If a report is run asking for the number of cases represented by Attorney W, and Attorney W’s name was entered in only half of the cases, the report would under-report the actual number of cases the attorney actually handle. NLADA was not allowed to review the court case-tracking system and thus this is only a hypothesis that has not been proven.

*11.4: LIDAB's district assistance fund matrix is not methodologically sound because the disproportional reliance on "Opened Felony Cases" is not an accurate measure of needed resources.*

Even if open felonies were reported uniformly and accurately, and LIDAB was in a position to verify the statistics, "opened felony cases" or new assignments is not a sound measure of resource need. First of all, a jurisdiction may have a high percentage of juvenile delinquency cases or misdemeanor cases that is never factored into the equation. For example, District Y may have 500 felony cases, but only 100 juvenile delinquency cases whereas District Z may have 450 felony cases, 250 juvenile cases and 1,000 misdemeanor cases. Under the current LIDAB formula District Y would get more assistance despite District Z having a greater need for services (assuming that both hypothetical districts are uniform in every other way – e.g., have the same cash reserves, etc.).

More importantly, new felony assignments alone cannot give an accurate portrayal of need without an examination of pending cases, as explained earlier in this report. For instance, suppose that District A has 220 new felony cases in a given year but can only dispose of 150 of them. It leaves a balance of 70 cases still to be completed during the ensuing year. If in year two the same District is assigned another 220 felony cases but can still only adequately dispose of 150, the District will have 140 cases pending at the start of year three. This means that in year three, District A has 360 felony cases to work on (despite only being assigned 220 new cases). Contrast this with District B that has 250 new felony cases assigned to it during year one but can dispose of all of them. The same thing happens in each of the subsequent years. Under DAF disbursement calculations, District B would get more funding (again if all other factors are equal) though District A has a greater need for indigent defense resources.

*11.5: The successful Indiana model of providing monetary incentives to local indigent defense boards that comply with standards will never work in an indigent defense funding system that relies primarily on revenues garnered through court costs and recoupment.*

Louisiana's primary reliance on court costs to fund indigent defense services stands in contrast to Indiana's mixture of state and local governmental general funding for similar services. The distinction is critical and worth exploring because it will never be possible for the DAF program to work effectively in Louisiana.

In Indiana, county government has a financial stake in the delivery of indigent defense services. Hypothetically, Indiana County W may have spent \$300,000 on indigent defense services in the year before applying for state assistance. To come into compliance with the workload standards, the county may have to add two attorneys at \$60,000 each. Doing so raises their expenditure to \$420,000. Yet, because the state will reimburse them 40% of the costs (or in this example \$168,000) the net result in improving indigent defense through compliance with standards means that the county will actually save \$48,000 in the next year ( $\$168,000 - \$120,000 = \$48,000$ ).

In Louisiana, there is no financial incentive to the police juries to ever improve indigent defense in this manner because they are not required to contribute anything toward the cost of indigent defense. If LIDAB were to require compliance with standards under the current delivery structure, *there is no way for an IDB to try and increase its revenue stream in an attempt to improve services.* Whereas an Indiana county may decide that the initial investment in indigent defense services will eventually bring greater

savings and make a decision to make indigent defense a fiscal priority over some other government responsibility, Louisiana's IDBs have no such ability to shift revenue from one budget line to the other – they only have the one pot of money that is woefully inadequate.

*This does not mean that the answer to the indigent defense funding crisis is to shift the entire burden of paying for the right to counsel to the police juries.* Though a local government general fund appropriation for indigent defense would certainly be more stable and reliable than the current Louisiana funding system, all national standards call for 100% state-funding because leaving local government responsible for administering and funding indigent defense services puts an undue hardship on local jurisdictions to ensure adequate representation of poor people accused of crimes. Nationally, counties with fewer sources of revenue may have to dedicate a far greater portion of their limited budget to defender services than would counties in better economic standing. Thus, at a time when tax-revenues may be down due to depressed real estate prices and people leaving the community, the criminal justice system's workload often escalates.<sup>189</sup> A county's revenue base may also be strained during economic downturns because of the need for increased social services, such as indigent medical costs. In addition, counties also must provide the citizenry with other important services, such as public education. The need to balance these responsibilities while maintaining fiscal accountability to the local citizenry often leaves county officials in the unenviable position of having to choose between funding needed services and upholding the constitutional commitment to guarantee adequate indigent defense services.

Moreover, since the state sets criminal justice policy that directly impacts the cost of indigent defense services, the state must be held responsible for the fiscal impact of its decisions. In other words, if an indigent defense fiscal impact statement was required of any new legislation creating a new crime, expanding the number of district judges, or increasing state appropriations for district attorneys or other law enforcement, policy-makers may not be as willing to enact the legislation if they know that the result will increase another budget item, indigent defense, for which they are accountable.<sup>190</sup>

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<sup>189</sup> As reported earlier in this report, crime rates tend to increase when there is a high level of unemployment. *Supra*, note 76.

<sup>190</sup> Of course, legislative action can decrease costs as well. For example, if the legislature decriminalized more non-serious, non-violent misdemeanors and felonies, the right to counsel would no longer apply and the workload of public defenders would decrease. This initial step at decreasing public defender workload comes at no cost.

***Finding #12:*** *The newly created up-front application fee will not generate the projected revenue forecasted in the bill.*

The only allowable recoupment plans under national standards are ones in which indigent-but-able-to-contribute clients pay for part of the cost of their defense prior to the disposition of the case. There are two principle forms of these “contribution” plans: 1) a promissory note to pay all or part of the representation, signed by a defendant or the parent/guardian of a juvenile defendant before the disposition of the case;<sup>191</sup> and, 2) up-front administrative fees or costs payable during the financial eligibility screening process.

In 2003, the State of Louisiana passed legislation authorizing a \$40 eligibility fee to be imposed on people seeking the services of the public defender in each judicial district.<sup>192</sup> A report of the American Bar Association, *2001 Public Defender Up-Front Application Fees Update*, informs jurisdictions contemplating such programs that “[a]ll revenues should supplement, not supplant, general fund appropriations” and that “[t]he existence of such programs does not relieve governments’ obligation to fund adequate public defense services.”<sup>193</sup> But, because state DAF grants will be based on a schematic that takes into account revenues collected through the up-front fee *before* calculating state disbursements (and potentially make a district not qualify for DAF funding), the new up-front fee may in fact supplant state funding.

Moreover, the ABA report concludes, “[a]pplication fee programs do not generate a large amount of revenue. Only 6-20% of all people requesting appointment of counsel are able to pay and do pay.” Based on this, at best the new revenue stream will bring in \$80,000 to \$100,000. This is significantly below the fiscal impact statement attached to the bill (\$5 million). Moreover, to the extent that any money is actually collected through the new fee, it is likely to be substantially offset by reductions in revenues from the exorbitant court costs already being imposed, which are at or beyond the outside limit of most indigent defendants’ ability to pay.

Finally, as demonstrated in Avoyelles Parish, some jurisdictions do not screen applicants for eligibility at all. The NLADA site team did not observe a single defendant being screened or assessed this fee during our site visit. Without screening processes, defendants cannot be charge the \$40 fee. So to the extent that revenue projection were based on simple caseload data without taking into account the number of judicial districts that do not bother with eligibility screening, the new fee will generate far less revenue than the \$80,000-\$100,000 projected above.

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<sup>191</sup> Though payments of promissory notes do not have many of the legal ramifications associated with post-disposition cost-recovery programs, they can be just as costly to administer.

<sup>192</sup> Sixteen other states now have such fees (AR, CT, DE, FL, KY, MA, MN, NJ, NM, ND, OR, SC, TN, VT and WI). Six other states allow counties the discretion to impose such a fee (CA, CO, GA, IN, OH, and OK).

<sup>193</sup> The ABA report was prepared by The Spangenberg Group and is available on-line at: [www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-narrative.pdf](http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-narrative.pdf)

## Chapter VI

### The Louisiana Correctional System & The Importance of Indigent Defense Reform

The practices of the correction system in Louisiana make the need for an adequate defense system particularly acute. Louisiana has the highest per capita rate of incarceration in the nation, with 794 inmates per 100,000 residents, according to a report from the Bureau of Justice Statistics released in late July 2003.<sup>194</sup> From all accounts, the state's high incarceration rate is impacted by a state policy that essentially allows parish jails to profit from housing state prisoners.

In response to a serious prison over-crowding situation, the state began housing state prisoners in local jails in the late 1970's. Each parish or local jail is paid \$22.39 by the state each day for every Louisiana Department of Corrections prisoner it holds. This is a huge cost savings for the state that otherwise would have to pay approximately \$40 per day to house prisoners at state facilities. On the other hand, the extremely low wages paid to most local jail workers allows the parish jails to realize profits by housing state inmates.<sup>195</sup> As a result, all felons sentenced to less than 20 years currently serve their entire sentence in local jails, with the result that a system that was originally supposed to be a mere stopgap measure has become firmly entrenched. Currently, the state pays \$145 million a year to local Sheriffs to house state prisoners with little, or more likely no, accountability as to how the money is used or the services provided to prisoners.<sup>196</sup>

Because of potential financial advantage of holding state prisoners, there was a major proliferation of local jails throughout the state in the late 1990's as Parish Sheriffs competed against one another for the "windfall" that came from holding state prisoners. Nowhere was that more true than in Avoyelles Parish. To promote economic development in the Parish, the Sheriff was a leading proponent of building more local jail space.<sup>197</sup> Currently, the Avoyelles Parish Sheriff has 319 full time deputies and another 295 part-time deputies, making him one of the largest employers in the Parish.<sup>198</sup>

In an effort to retard, or reverse, the escalation of corrections costs the State Legislature recently repealed mandatory sentencing for many nonviolent crimes, allowed a review of some drug possession cases and created a new sentence review mechanism to aid some prisoners seeking probation or parole. These significant changes have caused

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<sup>194</sup> 37,000 of the state's nearly 4.5 million residents are incarcerated in federal prison, state prison or local jail (or approximately 1 out of every 121 residents are locked up).

<sup>195</sup> For instance without state prisoners, Sheriffs are more typically paid only \$3.50 per day by the local police jury to house those arrested for misdemeanor crimes or those awaiting trial.

<sup>196</sup> On September 17, 2003, a total of 907 people were incarcerated under the supervision of the Avoyelles Parish Sheriff in the Marksville Main Jail (319), the Avoyelles Women's Correctional Center (192), the Avoyelles Bunkie Detention Center (226), or the Avoyelles Simmesport Center (170). Of these, 784 were state inmates, or 86.4% of the total number in jail. On the day of our site visit, the Avoyelles Parish Sheriff's Office held 16 federal prisoners (1.8% of the total population) and 28 other inmates who we were told were out-of-state prisoners (3.1%). Only 79 people in jail, or 8.7% of the total population, were parish or city. Avoyelles Parish Sheriff's Office, *Population Breakdown Report*, September 17, 2003.

<sup>197</sup> At the time of our visit, there were 1,126 jail beds under the authority of the Avoyelles Parish Sheriff. The Avoyelles Parish Sheriff told NLADA representatives that he sees it as part of his civic duty as an elected official to try to spur on economic development.

<sup>198</sup> The Sheriff is the third largest employer in Avoyelles behind the casino and school department. See: [www.entergy.com/content/LA/ed/profiles/Avoyelles2\\_parish.pdf](http://www.entergy.com/content/LA/ed/profiles/Avoyelles2_parish.pdf).

local sheriffs to scramble for resources to keep from having to reduce the size of their staff. One such way sheriffs fill vacant bed spaces is by acting on warrants for minor offenses. Though the money for housing revocation defendants is not as great as state prisoners, police juries are obligated to pay for these costs. Another manner to keep jails at maximum capacity is to hold federal prisoners, and even some out-of-state prisoners. Both practices are employed in Avoyelles Parish.<sup>199</sup>

Contrary to the desire of the Avoyelles Parish Sheriff to spur economic development through the expansion of corrections, national research has concluded, “the contention that prisons are a valuable economic tool [in rural America] has not been grounded in any empirical evidence.”<sup>200</sup> There are a number of reasons why expanded correctional facilities are actually bad for the local economy. First, correctional facilities have few linkages to the local economy.<sup>201</sup> That is, unlike manufacturing or agricultural industries, corrections offer few “spin-off” industries. Whereas an automobile plant may generate local growth in companies supplying raw materials to be processed, a correctional facility only has the immediate jobs associated with housing people. Moreover, what few spin-off industries are associated with expanded correctional facilities, like food service or communication services, are commonly owned by local sheriffs, in whole or in part.

Moreover, large correctional facilities in rural America have been objectively shown to “pit local residents in competition for employment with inmates.”<sup>202</sup> Avoyelles parish is a good example of this dynamic. The Sheriff enforces a work release program in which prison labor is offered to non-profit organizations (churches, hospitals, graveyards) and governmental agencies at costs well below minimum wage. The program is supported by garnishing 50% of the prisoner wages and charging them the cost of transportation to and from work. Considering the relatively small size of the Parish and the relatively large number of prisoners, the work release program has the effect of eliminating a large number of jobs that otherwise would be going to people who are not incarcerated. Given the high poverty and low high school graduation rates in Avoyelles Parish, the jail workforce is used to do the types of low-skilled jobs that may be in short supply for a less highly skilled workforce. In short, the expansion of the prison work force reduces opportunities for people of little or no economic resources who are then led to consider crime as a means of supporting themselves.<sup>203</sup>

<sup>199</sup> Despite these efforts, on the day of our site visit the Avoyelles Parish Sheriff’s Office was at 81% its maximum capacity (or 907 of 1,126). *Supra*, note 196.

A study of the financial audit of Parish Sheriffs for 2002 shows that the Avoyelles Parish Sheriff is one of only four parishes in the state reported a negative year-end balance (Caldwell Parish, Tangipahoa, and West Carroll were the others). The Avoyelles Parish Sheriff reported a deficit of \$183,190. Analysis of Sheriff’s audits is included as Appendix L (page 128). For comparison purposes with IDB and district attorney audits, NLADA grouped Parish Sheriffs by judicial districts (though the Sheriffs do not operate in this manner). Interestingly, in doing so, the number of Sheriffs reporting deficits is reduced by half (Avoyelles and Caldwell).

<sup>200</sup> The Sentencing Project, *Big Prisons, Small Towns: Prison Economics in Rural America*, page 19.

<sup>201</sup> Clement, D. *Big House on the Prairie*, Fed Gazette: A Publication of the Federal Reserve Bank of Minneapolis. (January 2000).

<sup>202</sup> *Supra* note 200.

<sup>203</sup> The jail workforce situation in Avoyelles Parish is not universal for every Louisiana Parish. Indeed, Dr. Bernadette Palumbo of the Louisiana State University at Shreveport preliminary analysis of the indigent defense system in Caddo Parish indicates that 70% of the population of that parish jail consists of pre-trial detainees (an NLADA site team member conducted a telephone interview with Dr. Palumbo in early February 2004). Nationally, early entry of counsel into cases helps to divert certain indigent defense clients out of jail (See, for example, United States Department of

Across the country, public defenders not only serve the general population by providing representation services in specific criminal cases, but also by challenging the questionable practices of the other governmental agencies that do not serve the interests of justice. In this case, the assumptions underlying the premise that the economic fortunes of Avoyelles Parish is tied to keeping the parish jails at maximum capacity must be challenged at every turn. As the title implies, public defenders serve the interests of the *public*. In Avoyelles Parish, and elsewhere, this critical responsibility of public defenders is undermined if local judges appoint less than qualified people to oversee the indigent defense system, legislators refuse to adequately fund the system, District Attorneys turn a blind eye to unethical practices of defense practitioners, the judiciary allows the system of justice to falter, and the Sheriffs stand to directly profit from increased incarceration rates.

Investing in indigent defense services produces cost savings throughout the rest of the criminal justice system. Louisiana legislators must examine and repair the system that allows vast amounts of unused resources to sit in bank accounts across the state while constitutional rights are not protected due to lack of funding. As was the case with the amount of money sitting in dedicated prosecutor bank accounts, the amount of unused money sitting in the Sheriff's accounts across the state is staggering to someone unfamiliar with local government practices in Louisiana. At the close of 2002, over \$310 million was sitting unspent in reserve accounts, or enough money to fully fund indigent defense services at its current low rate for 10 years.<sup>204</sup>

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Justice, National Institute of Justice, *The Implementation and Impact of Indigent Defense Standards*, December 2003). Without such defendants being unnecessarily detained pre-trial or incarcerated post-trial, correctional resources are more precisely targeted to people who pose a real threat to public safety or are a flight risk. The situation in Caddo Parish gives credence to the assertion in the Louisiana State Bar Association resolution that "the failure of Louisiana to meet the majority of the ABA *Ten Principles* has produced inefficiencies and increased costs throughout the criminal justice system, including unnecessary pretrial detention."

<sup>204</sup> See Appendix L (page 127).

Chapter VI  
**Conclusion**

The right to counsel is one of the only checks afforded to those of modest means against an unjust intrusion by the state upon their life and liberty. Without adequate defense services ensuring a fair day in court, the social fabric of our democratic way of life begins to erode. As Justice Hugo Black declared in the *Gideon* decision: “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

The Louisiana Constitution states that one of the legitimate ends to government is to secure justice for *all*. Both state and local government (inclusive of the executive, legislative and judicial branches) were specifically established in Louisiana to “protect the rights” of all people, *including* those traditionally marginalized by society: people of color, children, the mentally ill, the developmentally disabled, immigrants, those addicted to drugs or alcohol, and the poor. Neither the Louisiana nor the Federal Constitution allows for justice to be rationed to the poor for any reason -- including insufficient funding or political expediency.

As demonstrated in this report, Louisiana fails to meet its federal obligations under *Gideon*. In violation of Louisiana’s own Constitution, the indigent defense funding structure is not “uniform” among the parishes and does not “secure qualified counsel.” And, with no lawyers present in the early stages of a case, counsel is not secured for people of insufficient means “at each stage of the proceeding.”

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*“The right to effective assistance of counsel is not, of course, just about separating the innocent from the guilty. It’s the most fundamental of a criminal defendant’s constitutional rights, guilty or innocent, and without it, the whole premise of our criminal justice system simply collapses. Without adequate counsel, none of the other constitutional or statutory or jurisprudential rights can be protected or exercised. Due process, fundamental fairness, and equal protection simply disappear.”*

- **Judge Helen “Ginger” Berrigan, United States District Court**  
*Eastern District of Louisiana, October 31, 2003*<sup>205</sup>

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<sup>205</sup> *Supra*, note 1.

**Appendix A***Louisiana State Bar Association's Gideon Resolution*

VIII.6

LOUISIANA STATE BAR ASSOCIATION  
HOUSE OF DELEGATES JUNE 12, 2003RESOLUTION RE: APPOINTMENT OF A BLUE RIBBON COMMISSION TO  
DEVELOP AND IMPLEMENT A STRATEGIC PLAN FOR INDIGENT DEFENSE  
REFORM

WHEREAS, 2003 marks the 40th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963), establishing the obligation of the states, pursuant to the Sixth and Fourteenth Amendments to the U.S. Constitution, to provide counsel to persons accused of felony crimes who cannot afford to hire a lawyer;

WHEREAS, the Supreme Court stated in *Gideon* the "obvious truth" that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him";

WHEREAS, the Supreme Court has consistently extended the right to counsel to critical stages of criminal proceedings and any case that may result in the potential loss of liberty, including: direct appeals -- *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogations -- *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement -- *In Re Gault*, 387 U.S. 1 (1967); preliminary hearings -- *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving imprisonment -- *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and, most recently, misdemeanors involving suspended sentences -- *Shelton v. Alabama*, 535 U.S. 654 (2002);

WHEREAS, the Louisiana Constitution of 1974, Article 1, Sec. 1, states that one of the ends of government is to "secure justice for all";

WHEREAS, Louisiana Constitution of 1974, Art 1., Sec. 13, entitles an accused person to the assistance of counsel "appointed by the court if he is indigent and charged with an offense punishable by imprisonment," and states, "The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents."

WHEREAS, Louisiana is one of a minority of states (18 of 50, or 36%) that do not assume at least half of the constitutional obligation to fund indigent defense services at the state level and the only state in the nation that attempts to fund the majority of its obligation through court costs collected on criminal offenses, primarily traffic tickets;

WHEREAS, a District's funding is wholly unrelated to need because there exists no correlation between a court's ability to assess/collect court costs and the resources levels needed to ensure adequate, constitutionally-guaranteed counsel;

WHEREAS, less affluent Districts without a high volume of traffic violations are hard pressed to provide resources for an adequate defense, including proper investigation and expert witnesses when appropriate;

WHEREAS, the Louisiana Indigent Defense Assistance Board (LIDAB) was created to supplement local funding and set uniform standards, but lacks a mechanism to enforce standards;

WHEREAS, LIDAB has been assigned additional responsibilities without receiving additional funding, while defense caseloads and the costs associated with representation have increased;

WHEREAS, LIDAB lacks the funding to collect and verify statistical data on indigent defense caseloads and costs and to monitor performance to hold Districts accountable for the efficient and effective use of taxpayer resources;

WHEREAS, the American Bar Association (ABA) recommends that, in order to design a system that provides effective, efficient, high quality, ethical, and conflict-free legal representation to criminal defendants who are unable to afford an attorney, states must meet the following Ten Principles of a Public Defense Delivery System:

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

WHEREAS, the failure of Louisiana to meet the majority of the ABA *Ten Principles* has produced inefficiencies and increased costs throughout the criminal justice system, including unnecessary pretrial detention, increased congestion of court dockets, and increased appellate reversals due to ineffective assistance of counsel;

WHEREAS, Louisiana has the highest per capita incarceration rate in the United States, a consequence of which is disproportionately high financial requirements imposed on state and local governments to operate jails and prisons;

WHEREAS, the lack of resources has effectively barred Public Defenders from providing counsel at the early stages of the prosecution, resulting in overcrowding in local jails due to the large-scale detention of accused persons prior to their indictment and creating serious budget problems for Parish Government and local Sheriffs;

WHEREAS, Public Defenders carry cases far in excess of nationally-recognized standards, preventing constitutionally-effective representation for individual clients;

WHEREAS, Public Defenders are forced to meet clients for the first time in court without adequate time or private space to safeguard confidential attorney-client communications;

WHEREAS, inadequate funding has led to a proliferation of low-bid, flat fee contracts in which a public defender is expected to handle an unlimited amount of cases for a fixed rate, thereby giving attorneys an incentive to minimize the amount of work performed;

WHEREAS, revenue shortfalls have led to the routine denial of counsel to many indigent misdemeanor defendants in Louisiana's Parish and City Courts, in direct violation of the mandate to provide counsel in misdemeanor cases carrying a potential loss of liberty or a suspended sentence;

WHEREAS, insufficient funding has led some jurisdictions to adopt a horizontal representation system in which different attorneys serve clients at different phases of a case, a practice at odds with nationally-recognized standards;

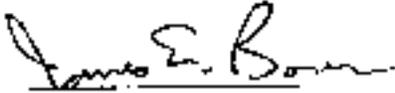
WHEREAS, by letter of February 27, 2003 the U.S. Department of Justice informed Governor Mike Foster of its "...investigation into whether juveniles with cognitive impairments are waiving their right to counsel in delinquency proceedings in violation of the United States Constitution and federal law. The investigation is being conducted pursuant to the Violent Crime Control and Law Enforcement Act, 42, U.S.C. § 14141".

WHEREAS one of the principal missions of the Louisiana State Bar Association is to "assure access to and aid in the administration of justice;"

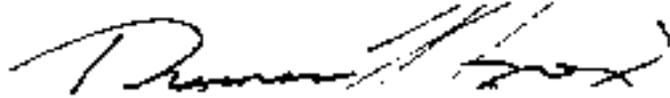
WHEREAS, state government has created a system in which the loss of one's liberty may be more dependent on a person's income-level and the jurisdiction in which the crime is alleged to have been committed than on the factual merits of the case;

WHEREAS, district judges appoint the members of the local indigent defense boards, potentially compromising the independence of the public defense function and creating a situation in which the aims of the court can conflict with the rights of the accused;

THEREFORE, be it resolved that, in honor of the 40th anniversary of Gideon v. Wainwright, the Louisiana State Bar Association shall forward this resolution to Governor M.J. "Mike" Foster, Jr., Chief Justice Pascal F. Calogero, Jr., Senate President John J. Hainkel, Jr. and Speaker of the House Charlie DeWitt urging all three branches of Louisiana state government to cooperate to establish a Blue Ribbon Commission to develop a strategic plan for indigent defense system reform and set a timetable for implementation



JAMES E. BOREN  
Delegate, 19<sup>th</sup> Judicial District  
East Baton Rouge Parish



THOMAS LORENZI  
Delegate, 14<sup>th</sup> Judicial District  
Calcasieu Parish

**Appendix B**  
*Louisiana House Resolution 151*

HLS 03-797

ORIGINAL

Regular Session, 2003

HOUSE RESOLUTION NO. 151

BY REPRESENTATIVES L. JACKSON, ALARIO, K. CARTER, CAZAYOUX,  
GALLOT, GREEN, HUNTER, M. JACKSON, LAFLEUR, LANDRIEU, MARTINY,  
MURRAY, RICHMOND, AND TOWNSEND

INDIGENT DEFENSE: To create the Louisiana Task Force on Indigent  
Defense Services

## A CONCURRENT RESOLUTION

To recognize the 40th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963), and to rededicate the State of Louisiana to the promise of equal justice for all, regardless of income, in accordance with the American Bar Association's (ABA) *Ten Principles of a Public Defense Delivery System*, by creating the Louisiana Task Force on Indigent Defense Services.

WHEREAS, 2003 marks the 40th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, mandating that states provide counsel to persons who are accused of felony crimes and who cannot afford to hire their own lawyer; and

WHEREAS, the Supreme Court stated in *Gideon* the "obvious truth" that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him"; and

WHEREAS, the Supreme Court has consistently extended the right to counsel to critical stages of criminal proceedings and any case that may result in the potential loss of liberty, including: direct appeals -- *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogations -- *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement -- *In Re Gault*, 387 U.S. 1 (1967); preliminary hearings -- *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving imprisonment -- *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and, most recently, misdemeanors involving suspended sentences -- *Shelton v. Alabama*, 535 U.S. 654 (2002); and

WHEREAS, the Louisiana Constitution of 1974, Article 1, Sec. 1, states that one of the ends of government is to "secure justice for all"; and

WHEREAS, reflecting the right to counsel mandated by the Sixth Amendment to the Constitution, Louisiana Constitution Article 1, Section 13 entitles an accused person to the assistance of counsel "appointed by the court if he is indigent and charged with an offense punishable by imprisonment," and states, "The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents;" and

WHEREAS, Louisiana is the last state in the nation that attempts to fund the majority of its constitutional obligation to provide qualified counsel through court costs collected on criminal offenses, primarily traffic tickets; and

WHEREAS, there exists no correlation between a court's ability to assess and collect court costs and the resource levels needed to ensure adequate, constitutionally guaranteed right to counsel, producing a non-uniform system in which the right a district's funding is wholly unrelated to need, is unpredictable, and leaves local boards without the ability to effectively budget from year to year; and

WHEREAS, the Louisiana Indigent Defense Assistance Board (LIDAB) was created to supplement local funding and to increase uniformity among the districts through the use of standards, but lacks the resources and authority to make compliance with its standards mandatory or to raise the indigent defense system to its constitutionally mandated level; and

WHEREAS, Louisiana's current system lacks the ability to collect and verify statistical data on indigent defense caseloads and costs and to monitor performance to ensure the efficient and effective use of taxpayer resources; and

WHEREAS, the American Bar Association recommends that in order to design a system that provides effective, efficient, high quality, ethical, and conflict-free legal representation to criminal defendants who are unable to afford an attorney, states must meet the following Ten Principles of a Public Defense Delivery System:

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.

8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

WHEREAS, Louisiana values a fair and reliable criminal justice system; and

WHEREAS, on June 12, 2003, the Louisiana State Bar Association adopted a resolution urging all three branches of state government to cooperate to establish a Blue Ribbon Commission to develop a strategic plan for indigent defense system reform and set a timetable for implementation of that plan; and

WHEREAS, this House Resolution reflects the substantive provisions of, and has been adopted in furtherance of, the Resolution adopted by the House of Delegates of the Louisiana State Bar Association on June 12, 2003.

THEREFORE, BE IT RESOLVED that the Louisiana Task Force on Indigent Defense Services is hereby created.

BE IT FURTHER RESOLVED that the Louisiana Task Force on Indigent Defense Services shall be composed of the following persons, or their designees:

1. The chief justice of the Louisiana Supreme Court;
2. The president of the Conference of Court of Appeals Judges;
3. The president of the Louisiana District Judges Association;
- 4.. The president of the Louisiana Council of Juvenile and Family Court Judges;
5. The president of the Louisiana City Court Judges Association;
6. The president of the Council for a Better Louisiana;
7. The executive director of the Louisiana Interchurch Conference;
8. The president of the Louisiana AFL-CIO;
9. The president of the Louisiana Association of Business and Industry;
10. The deans of the four Law Centers in Louisiana;
11. The governor of Louisiana;
12. The Louisiana commissioner of administration;
13. The president of the Louisiana Public Defender Association;
14. The president of the Louisiana Criminal Defense Lawyers Association;
15. The president of the Louisiana State Bar Association;
16. The director of the Louisiana State Law Institute;
17. The president of the Louisiana Legal Services Corporation;
18. The president of the Louisiana Chapter of the Louis A. Martinet Society;
19. The president of the Louisiana Association of Women Attorneys;
20. The secretary of the Louisiana Department of Social Services;

21. The president of the Louisiana Senate;
22. The speaker of the Louisiana House of Representatives;
23. The chairmen of the Louisiana House Committee on Appropriations and the Louisiana Senate Committee on Finance;
24. The chairmen of the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary C;
25. The director of the Louisiana Indigent Defense Assistance Board.

BE IT FURTHER RESOLVED that the Louisiana Task Force on Indigent Defense Services shall study the system in Louisiana of providing legal representation to indigent persons who are charged with violations of criminal laws and shall make an initial report of its findings, together with any recommendations for changes in legislation, to the Legislature of Louisiana no later than March 1, 2004.

BE IT FURTHER RESOLVED that this Resolution shall become effective at noon on the second Monday of January 2004.

**Appendix C**  
*Louisiana Senate Resolution 112*

ENROLLED

Regular Session, 2003

SENATE RESOLUTION 112

BY SENATOR C. JONES

A RESOLUTION

To recognize the 40th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963), and to rededicate the State of Louisiana to the promise of equal justice for all, regardless of income, in accordance with the American Bar Association's (ABA) *Ten Principles of a Public Defense Delivery System*, by creating the Louisiana Task Force on Indigent Defense Services.

WHEREAS, 2003 marks the 40th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, mandating that states provide counsel to persons who are accused of felony crimes and who cannot afford to hire their own lawyer; and

WHEREAS, the Supreme Court stated in *Gideon* the "obvious truth" that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him"; and

WHEREAS, the Supreme Court has consistently extended the right to counsel to critical stages of criminal proceedings and any case that may result in the potential loss of liberty, including: direct appeals -- *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogations -- *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement -- *In Re Gault*, 387 U.S. 1 (1967); preliminary hearings -- *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving imprisonment -- *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and, most recently, misdemeanors involving suspended sentences -- *Shelton v. Alabama*, 535 U.S. 654 (2002); and

WHEREAS, the Louisiana Constitution of 1974, Article 1, Sec. 1, states that one of the ends of government is to "secure justice for all"; and

WHEREAS, reflecting the right to counsel mandated by the Sixth Amendment to the Constitution, Louisiana Constitution Article 1, Section 13 entitles an accused person to the assistance of counsel "appointed by the court if he is indigent and charged with an offense punishable by imprisonment," and states, "The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents;" and

WHEREAS, Louisiana is the last state in the nation that attempts to fund the majority of its constitutional obligation to provide qualified counsel through court costs collected on criminal offenses, primarily traffic tickets; and

WHEREAS, there exists no correlation between a court's ability to assess and collect court costs and the resource levels needed to ensure adequate, constitutionally guaranteed right to counsel, producing a non-uniform system in which the right a district's funding is wholly unrelated to need, is unpredictable, and leaves local boards without the ability to effectively budget from year to year; and

WHEREAS, the Louisiana Indigent Defense Assistance Board (LIDAB) was created to supplement local funding and to increase uniformity among the districts through the use of standards, but lacks the resources and authority to make compliance with its standards mandatory or to raise the indigent defense system to its constitutionally mandated level; and

WHEREAS, Louisiana's current system lacks the ability to collect and verify statistical data on indigent defense caseloads and costs and to monitor performance to ensure the efficient and effective use of taxpayer resources; and

WHEREAS, the American Bar Association recommends that in order to design a system that provides effective, efficient, high quality, ethical, and conflict-free legal representation to criminal defendants who are unable to afford an attorney, states must meet the following Ten Principles of a Public Defense Delivery System:

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

WHEREAS, Louisiana values a fair and reliable criminal justice system; and

WHEREAS, on June 12, 2003, the Louisiana State Bar Association adopted a resolution urging all three branches of state government to cooperate to establish a Blue Ribbon Commission to develop a strategic plan for indigent defense system reform and set a timetable for implementation of that plan; and

WHEREAS, this Senate Resolution reflects the substantive provisions of, and has been adopted in furtherance of, the Resolution adopted by the House of Delegates of the Louisiana State Bar Association on June 12, 2003.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature hereby creates the Louisiana Task Force on Indigent Defense Services.

BE IT FURTHER RESOLVED that the Louisiana Task Force on Indigent Defense Services shall be composed of the following persons, or their respective designees:

- (1) The chief justice of the Louisiana Supreme Court;
- (2) The president of the Conference of Court of Appeals Judges;
- (3) The president of the Louisiana District Judges Association;
- (4) The president of the Louisiana Council of Juvenile and Family Court Judges;
- (5) The president of the Louisiana City Court Judges Association;
- (6) The president of the Council for a Better Louisiana;
- (7) The executive director of the Louisiana Interchurch Conference;
- (8) The president of the Louisiana AFL-CIO;
- (9) The president of the Louisiana Association of Business and Industry;
- (10) The deans of the four Law Centers in Louisiana;
- (11) The governor of Louisiana;
- (12) The Louisiana commissioner of administration;
- (13) The president of the Louisiana Public Defender Association;
- (14) The president of the Louisiana Criminal Defense Lawyers Association;
- (15) The president of the Louisiana State Bar Association;
- (16) The director of the Louisiana State Law Institute;
- (17) The president of the Louisiana Legal Services Corporation;
- (18) The president of the Louisiana Chapter of the Louis A. Marinet Society;
- (19) The president of the Louisiana Association of Women Attorneys;
- (20) The secretary of the Louisiana Department of Social Services;
- (21) The president of the Louisiana Senate;
- (22) The speaker of the Louisiana House of Representatives;
- (23) The chairmen of the Louisiana Senate Committee on Finance and the Louisiana House Committee on Appropriations;
- (24) The chairmen of the Senate Committee on Judiciary C and the House Committee on Administration of Criminal Justice; and

(25) The director of the Louisiana Indigent Defense Assistance Board.

BE IT FURTHER RESOLVED that the Louisiana Task Force on Indigent Defense Services shall study the system in Louisiana of providing legal representation to indigent persons who are charged with violations of criminal laws and shall make an initial report of its findings, together with any recommendations for changes in legislation, to the Legislature of Louisiana no later than March 1, 2004.

BE IT FURTHER RESOLVED that this Resolution shall become effective at noon on the second Monday of January 2004.

## Appendix D

### *“Ten Principles of a Public Defense Delivery System”*

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1. ***The public defense function, including the selection, funding, and payment of defense counsel,<sup>1</sup> is independent.*** *The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.<sup>2</sup> To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.<sup>3</sup> Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.<sup>4</sup> The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.<sup>5</sup>*
  
2. ***Where the caseload is sufficiently high,<sup>6</sup> the public defense delivery system consists of both a defender office<sup>7</sup> and the active participation of the private bar.***

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<sup>1</sup> “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.

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

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

<sup>4</sup> Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Independence, 1997).

<sup>5</sup> ABA, *supra* note 2, Standard 5-4.1

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

*The private bar participation may include part time defenders, a controlled assigned counsel plan, or contracts for services.<sup>8</sup> The appointment process should never be ad hoc,<sup>9</sup> but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.<sup>10</sup> Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.<sup>11</sup>*

- 3. Clients are screened for eligibility,<sup>12</sup> and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request,<sup>13</sup> and usually within 24 hours thereafter.<sup>14</sup>**
- 4. Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.<sup>15</sup> Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client.<sup>16</sup> To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.<sup>17</sup>**

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

<sup>8</sup> ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>9</sup> NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

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

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

<sup>12</sup> For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

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

<sup>14</sup> NSC, *supra* note 2, Guideline 1.3.

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

<sup>16</sup> NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-2.3, 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

<sup>17</sup> ABA Defense Function, *supra* note 15, Standard 4-3.1.

5. ***Defense counsel's workload is controlled to permit the rendering of quality representation.*** Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.<sup>18</sup> National caseload standards should in no event be exceeded,<sup>19</sup> but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.<sup>20</sup>
6. ***Defense counsel's ability, training, and experience match the complexity of the case.*** Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.<sup>21</sup>
7. ***The same attorney continuously represents the client until completion of the case.*** Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.<sup>22</sup> The attorney assigned for the direct appeal should represent the client throughout the direct appeal.
8. ***There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.*** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.<sup>23</sup> Assigned counsel should be paid a reasonable fee in addition to

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

<sup>19</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also *ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (NLADA, 1988; ABA, 1989) [hereinafter "Death Penalty"].

<sup>20</sup> ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980), Standard 1-F.

<sup>21</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

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

<sup>23</sup> NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20, ABA Counsel for Private Parties, *supra* note 2, Standard 2.1 (B) (iv). See NSC, Guideline 4.1 (includes numerical staffing ratios, e.g., there must be one supervisor for

*actual overhead and expenses.<sup>24</sup> Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases,<sup>25</sup> and separately fund expert, investigative and other litigation support services.<sup>26</sup> No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.<sup>27</sup> This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.*

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

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

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every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

<sup>24</sup> ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

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

<sup>26</sup> ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

<sup>27</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

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

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

**Appendix E***Letter from District Judge Bennett to NLADA*

WILLIAM J.  
BENNETT  
JUDGE,  
DIVISION B  
P.O. BOX 84

**TWELFTH JUDICIAL DISTRICT COURT**

AVOYELLES PARISH COURTHOUSE  
312 NORTH MAIN STREET  
MARKSVILLE, LOUISIANA 71351

PHONE  
(318) 253-9418  
FAX  
(318) 253-9418

August 18, 2003

Mr. David J. Carroll

Director of Research & Evaluation National Legal Aid & Defender Association  
1140 Connecticut Avenue  
NW Suite 900  
Washington, DC 20036-4019

Dear Mr. Carroll,

I am in receipt of and thank you for yours dated August 8, 2003. Both myself and Judge Mark Jeansonne, Judge of Division A of the Twelfth Judicial District Court welcome and look forward to your visit. Your letter requested the opportunity to conduct interviews with the Judges and other criminal justice stakeholders in our Parish regarding the adequacy of indigent defense services. In anticipation of your visit, I offer the following general information:

1) Pursuant to statute, there is an Avoyelles Parish Indigent Defender Board which is presently comprised of five board members, with the chairman of the board being Charles Jones (ret. colonel). The Avoyelles Parish Indigent Defender Board maintains an office at the following address and phone number:

Indigent Defender Board Office  
East Mark Street  
P.O. Box 111  
Marksville, Louisiana 71351  
318-253-0091

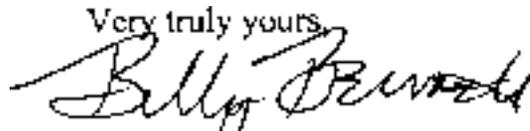
2) The Avoyelles Parish Indigent Defender Board employs four attorneys on a part-time basis. Three attorneys are assigned to the felony cases and one attorney is assigned to juvenile and misdemeanor cases. These individuals are as follows:

- A) Maxwell Bordelon, Attorney at Law, 313 N. Main Street, Marksville, La 71351  
318-253-4481
  
- B) Bridgett Brown, 3504 Masonic Drive, P. O. Box 12478, Alexandria, La 71315  
318-443-9000
  
- C) Keith Manuel, Attorney at Law, 115 E. Mark Street, Marksville, La 71351  
318-253-5126
  
- D) Jonathan Gaspard, Attorney at Law, 313 N. Main Street, P. O. Box 546, Marksville,  
La 71351 - 318-240-7329

The individuals listed above, especially Colonel Jones, have access to the “numbers” which you may be interested in.

We are certainly here to help you in your endeavor and look forward to meeting with you. For your information, criminal court proceedings are normally scheduled on the first and third Tuesdays for Division A and second and fourth Tuesdays for Division B. These days are for arraignments, pre-trial motions, and probation revocation hearings. Separate days are scheduled for misdemeanor trials. Additionally, felony trials are scheduled for a week at a time on approximately six occasions during the year. Our next felony week is scheduled to begin Monday, September 8, 2003, and the next felony week will begin Monday, October 20, 2003. You are more than welcome to visit with us at any time, especially any of the dates when criminal proceedings are being conducted. We look forward to meeting with you.

With kindest regards, I remain

Very truly yours,  


WILLIAM J. BENNETT  
12<sup>th</sup> JUDICIAL DISTRICT COURT JUDGE  
DIVISION B

WJB/amh

cc: Hon. Mark Jeansonne  
Colonel Charles Jones

**Appendix F**  
*NLADA Analysis of*  
*LIDAB's District Assistance Fund Matrix*

The first calculation in the LIDAB District Assistance Fund matrix is to divide the balance left in the IDB account at the end of the year by the year's total indigent defense expenditure.<sup>1</sup> If the resulting percentage is greater than 100% (i.e. if there is more money in reserve than was spent in the prior year) the IDB is not eligible for DAF grants. If the resulting percentage is less than 100%, but greater than or equal to 50%, LIDAB adjusts the IDB revenue figure by adding to it the IDB account balance at the close of the year. This is called the "Adjusted Revenue" figure. If the resulting percentage is less than 50%, the revenue figure is maintained unchanged in the "Adjusted Revenue" column.<sup>2</sup>

Next, LIDAB divides the total number of reported felony cases<sup>9</sup> into the "Adjusted Revenue." This produces a dollar figure reflecting the "Adjusted Revenue Per Case."<sup>4</sup> Because of the calculations done in the prior steps to adjust the revenue figures, the "Adjusted Revenue Per Case" figure does not reflect the actual cost per felony case.<sup>5</sup>

LIDAB then makes two separate calculations to determine the "approximate" amount of the DAF distribution for a given year. First, LIDAB takes 90% of the total amount of available funds (\$2,475,000 of the total \$2,750,000) and multiplies it by the percentage of the total number of felony cases statewide that were opened in a particular district (or, more correctly, the total number of felony cases opened collectively in those jurisdictions seeking DAF funds divided by the total number opened in a particular district).<sup>6</sup>

In an effort to further assist those jurisdictions that have higher trial rates (calculated as the number of trials divided by total felony assignments) and thus, theoretically, higher costs per case, LIDAB takes the other 10% of available DAF funds (currently \$275,000 of the total \$2,750,000) and multiplies it by the percentage resulting from dividing the total

---

<sup>1</sup> To illustrate the required mathematical calculations: assume that District X ends the year with \$155,000 in its IDB account and expended \$250,000 for indigent defense services in the prior year. The first required calculation would result in a percentage of 62% ( $\$155,000 \div \$250,000 = 0.62$ , or 62%).

<sup>2</sup> Since the local IDB account balance in District X is less than it expended on services last year, it is eligible for DAF grants (62%  $\div$  100%). But since its IDB account balance is more than 50% of the expenditure in the prior year, LIDAB will perform the necessary adjustment to their revenue figure (62%  $\div$  50%). In this example, District X collected \$210,500 in revenues in the previous year. Therefore, LIDAB determines the "Adjusted Revenue" figure by adding their revenues (\$210,500) to their ending IDB account balance (\$155,000). In this case, District X's "Adjusted Revenue" figure is \$400,500 ( $\$210,500 + \$155,000 = \$400,500$ .) Under prior LIDAB Directors, no adjustment was made to distinguish between IDB's with greater or lesser balances under 100% of expenditures.

<sup>3</sup> The definition of what constitutes a felony "case" is discussed at length in the ensuing chapter.

<sup>4</sup> Assume District X reported a total of 575 felonies opened during the previous year. Dividing the "Adjusted Revenue" figure (\$400,500) by the total number of felony cases opened (575) produces an "Adjusted Revenue Per Case" of \$696.62 ( $\$400,500 \div 575 = \$696.62$ ).

<sup>5</sup> Again, this does not mean that District X actually spent \$696.62 per felony case. Besides the adjustment, actual expenditure money is used during the year for non-felony cases, such as juvenile and misdemeanor cases, as well as felony cases opened in years prior but not closed until the year in question.

<sup>6</sup> If in the same year District X reported 575 felony cases opened, the total number of felonies opened in all districts seeking funds was 48,502, then the percentage of felony cases opened in District X was 1.19% ( $575 \div 48,502 = 0.0119$ , or 1.19%). Multiplying that percentage by the 90% of the available DAF monies (\$2,475,000) equals \$29,342 ( $\$2,475,000 \times 90\% = \$29,342$ ).

number of felony jury trials collectively occurring in districts applying for DAF grants by the number of felony jury trials that occur in the district itself.<sup>7</sup> The 10% figure is an arbitrary number that was approved by LIDAB to appease representatives of districts with greater trial rates.<sup>8</sup> That resulting amount is then added to the amount calculated in the prior step (i.e., the calculation based on felony assignments) to determine the “Approximate Fund Disbursement” amount.<sup>9</sup>

LIDAB then calculates the “Adjusted Fund Index” which is the percentage determined by dividing the total “Adjusted Revenue Per Case” of all of the reporting districts by the local “Adjusted Revenue Per Case.”<sup>10</sup> The “Adjusted Fund Index” and the “Approximate Fund Disbursement” are then multiplied to produce the “Preliminary Fund Disbursement.”<sup>11</sup>

Because of rounding issues, the sum of each district’s “Preliminary Disbursement Amount” will end up being somewhat greater than the available district assistance funds. So, LIDAB divides the total available DAF grant money (\$2,750,000) by the total sum of each district’s “Preliminary Disbursement Amount.”<sup>12</sup> This percentage is then applied to each districts “Preliminary Disbursement Amount” to determine the final amount of their DAF grant.<sup>13</sup>

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<sup>7</sup> In our example, District X had 10 felony jury trials. If in the same hypothetical year the total number of jury trials in those districts applying for DAF grants was 629, District X would have provided representation in 1.59% of the jury trials statewide ( $10 \div 629 = 0.0159$ , or 1.59%).

<sup>8</sup> District X gets an additional \$4,372 ( $\$27,500 \times 1.59\% = \$4,372$ ).

<sup>9</sup> The approximate DAF grant for District X is \$33,714 ( $\$29,342 + \$4,732 = \$33,714$ ). “Approximate Fund Disbursement” is a term coined by NLADA to help the reader understand the matrix used by LIDAB. LIDAB does not use this term of art.

<sup>10</sup> We have already determined that District X’s “Adjusted Revenue Per Case” figure is \$696.62. Assume that in the same year the total “Adjusted Revenue Per Case” figure for all of the districts seeking DAF grants was \$563.81. District X’s “Adjusted Fund Index” would be 80.95% ( $\$563.81 \div \$696.62 = 0.8095$ , or 80.95%).

<sup>11</sup> District X’s “Approximate Fund Disbursement” was calculated to be \$33,714. Since their “Adjusted Fund Index” is 80.95%, their “Preliminary Fund Disbursement” is \$27,290 ( $\$33,714 \times 80.95\% = \$27,290$ ). In this example, one can see how the “Adjusted Fund Index” (and therefore the “Adjusted Revenue Per Case) is used to “weight” the disbursements in favor of those districts that have less than 50% of what they expended in a given year left in their IDB bank account at the close of the year. By adding (i.e., “adjusting”) a district’s annual revenue to the closing IDB account balance in those jurisdictions with 50% or greater rolled over expenditure costs in their balance, a district will always have a greater “Adjusted Revenue Per Case” figure than the state average. Since this figure becomes the denominator in the “Adjusted Fund Index”, these jurisdictions’ “Preliminary Fund Disbursement” will always be less than their “Approximate Fund Disbursement” figure. Conversely, jurisdictions that do not have their revenues “adjusted” will always have an “Adjusted Fund Index” that is greater than 100%. Thus, these districts will always have a higher “Preliminary Fund Disbursement” than their “Approximate Disbursement” amount.

<sup>12</sup> In our example, the sum of each district’s “Preliminary Fund Disbursement” equals \$2,960,420, or \$210,420 more than what is available. Therefore each district’s “Preliminary Fund Disbursement” needs to be adjusted by 92.892% ( $\$2,750,000 \div \$2,960,420 = 0.92892$ , or 92.892%). This percentage will necessarily change from year to year.

<sup>13</sup> In the final step, District X’s “Preliminary Fund Disbursement” (\$27,290) is multiplied by 92.892%. District X’s final DAF grant amount is \$25,350 ( $\$27,290 \times 92.892\% = \$25,350$ ).

## Appendix G

### *NLADA's Model Contract for Public Defense Services*

The [City, County, State], referred to as “the Contracting Authority,” and [law firm or non-profit organization], referred to hereafter as “the Agency,” agree to the provision of public defense services as outlined below for the period [date] to [date]. The Contracting Authority Administrator is [ ], and the Managing Director of the Agency is [ ].

Following are the underlying bases for the Contract:

- [City, County, State] has a constitutionally mandated responsibility to provide public defender services which is specifically defined in [local ordinance or statute], and/or a [statutory/judicially-required] duty to provide [specify juvenile, civil commitment, etc. services].
- The Contracting Authority desires to have legal services performed for eligible persons entitled to public representation in \_\_\_\_ [City, County, State] by the Agency, as authorized by law.
- The Agency agrees to provide, and the Contracting Authority agrees to pay for, competent, zealous representation to its clients as required by the controlling Professional Responsibility [Rules or Code].
- The Contracting Authority and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to eligible clients of the Agency.

The parties agree as follows:

#### I. DURATION OF CONTRACT

This Contract shall commence on \_\_\_\_\_ and terminate on \_\_\_\_\_, unless extended or terminated earlier in a manner allowed by this Contract.

#### II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client means a defendant, parent, juvenile, or person who is facing civil commitment or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney, pursuant to [relevant state statute, court rule, and constitutional provision].
- B. Case; Case Completion: A Case shall mean representation of one person on one charging document. In the event of multiple counts stemming from separate

transactions, additional case credit will be recognized. Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s): In criminal cases, from arraignment through disposition, from arraignment through the necessary withdrawal of counsel after the substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after arraignment through no fault of the Agency) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Agency from providing necessary legal services to an eligible client prior to arraignment, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below. In other cases, [define according to type of case—juvenile, family, etc.].

- C. Disposition: Disposition in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any other hearing on that cause number, including but not limited to felony or misdemeanor probation review, that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal, if applicable. Nothing in this definition prevents the Agency from providing necessary legal services to an eligible client after disposition, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below. Disposition in other cases shall mean: [define according to type of case—juvenile, family, etc.].
- D. Representational Services: The services for which the Contracting Authority is to pay the Agency are representational services, including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Agency do not include extraordinary expenses incurred in the representation of eligible clients. The allowance of extraordinary expenses at the cost of the Contracting Authority will be determined by a court of competent jurisdiction in accordance with [relevant state statute, court rule, and constitutional provisions].
- E. Complex Litigation Cases: Complex Litigation refers to: 1) all Capital homicide cases, 2) all aggravated homicide cases, 3) those felony fraud cases in which the estimated attorney hours necessary exceeds one hundred seventy (170) hours, 4) cases which involve substantial scientific information resulting in motions to exclude evidence pursuant to controlling case law emanating from *Frye v. United*

*States*, 293 F. 1013 (D.C. Cir. 1923), and *Daubert v. Merrell Dow*, 113 S.Ct. 2786 (1993), or similar opinions, and 5) other cases in which counsel is able to show the appropriate court in an *ex parte* proceeding that proper representation requires designation of the case as complex litigation.

- F. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Agency, including expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in Capital cases is included in this category.
- G. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.

### III. INDEPENDENT CONTRACTOR

The Agency is, for all purposes arising out of this Contract, an independent contractor, and neither the Agency nor its employees shall be deemed employees of the Contracting Authority. The Agency shall complete the requirements of this Contract according to the Agency's own means and methods of work, which shall be in the exclusive charge and control of the Agency and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

### IV. POLICY BOARD

Oversight of the Agency in matters such as interpretation of indigent defense standards, recommendation of salary levels and reasonable caseloads, and response to community and client concerns, shall be provided by the Policy Board. The Policy Board shall be [appointed/designated] by the Contracting Authority and shall consist of [3-13] diverse members, a majority of which shall be practicing attorneys, and shall include representatives of organizations directly servicing the poor or concerned with the problems of the client community, provided that no single branch of government shall have a majority of votes, and the membership shall not include prosecutors, judges or law enforcement officials. The Agency will meet regularly with the Policy Board.

## V. AGENCY'S EMPLOYEES AND EQUIPMENT

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

## VI. MINIMUM QUALIFICATIONS FOR AGENCY ATTORNEYS

- A. Every Agency attorney shall satisfy the minimum requirements for practicing law in [state] as determined by the [state] Supreme Court. Seven hours of [each year's required or (where CLE is not otherwise required) yearly] continuing legal education credits shall be in spent in courses relating to criminal law practice or other areas of law in which the Agency provides legal services to eligible clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
- B. Each Agency attorney representing a defendant accused of a [\_\_\_\_ (e.g. Class A)] felony, as defined in [relevant local statute], must have served at least two years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in 5 felony cases that have been submitted to a jury.
- C. Each staff attorney representing a juvenile respondent in a [\_\_\_\_ (e.g. Class A)] felony, as defined in [relevant local statute], shall meet the qualifications of (B) above and demonstrate knowledge of the practices of the relevant juvenile court, or have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, assigned to the prosecution or defense of accused persons in juvenile court, or have demonstrably similar experience, and handled at least 5 felony cases through fact finding and disposition in juvenile court.
- D. Each staff attorney representing a defendant accused of a [\_\_\_\_ (e.g. Class B or C)] felony, as defined in [relevant local statute], or involved in a probation or parole revocation hearing, must have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been sole trial counsel of record in five misdemeanor cases brought to final resolution, or been sole or co-trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury alone or of record with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.
- E. Each attorney representing any other client assigned as a part of this Contract shall meet the requirements of (B) above or work directly under the supervision of a senior, supervising attorney employed by the Agency, who meets the requirements of (B) above. Such direct supervision shall continue until the

attorney has demonstrated the ability to handle cases on his/her own. Should the caseload under this Contract require 10 or more FTE attorneys, the Agency will provide one FTE supervising attorney for every 10 FTE caseload attorneys.

- C. Notwithstanding the above, each Capital case assigned to the Agency will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience
- D. Notwithstanding the above, each Capital case assigned to the Agency will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience
- E. Notwithstanding the above, each Complex Litigation case assigned to the Agency other than a Capital case shall be staffed by one FTE attorney with at least seven years of criminal law experience, or the equivalent of one half-time (.5 FTE) attorney with seven years of criminal law experience and one half-time (.5 FTE) attorney with five years of criminal law experience.
- H. Failure on the part of the Agency to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.

## VII. PERFORMANCE REQUIREMENTS

The Agency agrees to provide the services and comply with the requirements of this Contract. The number of cases for which such services will be required is the amount specified on Worksheet A, subject to the variance terms specified in Section VII (Variance). Any material breaches of this agreement on the part of the Agency or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Agency agrees to provide representational services in the following types of cases:  
[ ]

The Agency agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Agency agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Agency from making necessary staff changes or staff rotations at reasonable intervals, or from

assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.

- C. The Agency agrees that an attorney will make contact with all other clients within 5 working days from notification of case assignment.
- D. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Agency agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the Contracting Authority when a conflict is discovered. The Agency will refer to the [state] Rules of Professional Conduct, as interpreted by [the (state or other relevant) Bar Association and /or] opinions of the state judiciary, and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.
- E. It is agreed that the Agency will maintain average annual caseloads per full time attorney or full time equivalent (FTE) no greater than the following:

Felony Cases	150
Misdemeanor Cases	400
Juvenile Offender Cases	200
Juvenile Dependency Cases	60
Civil Commitment Cases	250
Contempt of Court Cases	225
Drug Court Cases	200
[Appeals	25]

These numbers assume that the attorney is assigned only cases that fit into one category. If, instead, a FTE attorney spends half of her time on felony cases and half of her time on misdemeanor cases, she would be expected to carry an annual caseload no greater than 75 felonies and 150 misdemeanors. If the same attorney works less than full time or splits her time between Contract cases and private business, that attorney would be expected to carry a maximum caseload proportional to the portion of her professional time which she devotes to Contract cases. All attorneys who split their time between Contract work and private business as well as work under this contract must report the quantity of hours they devote to private business to the Contracting Authority so that Agency caseload levels may be accurately monitored.

It is assumed that the level of competent assistance of counsel contemplated by this Contract cannot be rendered by an attorney who carries an average annual caseload substantially above these levels. Failure on the part of the Agency to limit its attorneys to these caseload levels is considered to be a material breach of this agreement.

Complex Litigation is considered to be outside of the normal caseload and is handled as described in Section VI. G. below.

- F. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels described above. The parties agree and expect that at a minimum the Agency will employ support staff services for its attorneys at a level proportionate to the following annual caseloads:

One full time Legal Assistant for every four FTE Contract attorneys  
One full time Social Service Caseworker for every 450 Felony Cases  
One full time Social Service Caseworker for every 600 Juvenile Cases  
One full time Social Service Caseworker for every 1200 Misdemeanor Cases  
One full time Investigator for every 450 Felony Cases  
One full time Investigator for every 600 Juvenile Cases  
One full time Investigator for every 1200 Misdemeanor Cases

In addition, attorneys must have access to mental health evaluation and recommendation services as required.

It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the jurisdiction. The Agency may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.

- G. If the Agency is to be responsible for representing defendants in Complex Litigation cases, the following provisions apply. Complex Litigation cases occupy the full time or FTE of one attorney and the half time of one investigator prior to completion, except for Capital cases which typically require 2 FTE attorneys and the FTE of one investigator, as well as the services of a mitigation specialist. Aggravated homicide cases are considered Capital cases until such time as an irrevocable decision is made by the [Prosecuting Attorney/District Attorney] not to seek the death penalty in the case.

Complex Litigation cases remain pending until the termination of the guilt phase and penalty phase of the trial, or entry of a guilty plea. Upon entry of a verdict or guilty plea, such cases are complete for the purposes of accepting additional Complex Litigation cases. Payment for post-conviction, pre-judgment representation shall be negotiated.

Other special provisions of this Contract which relate to Complex Litigation are found in Section V (Minimum Qualifications) and Section VIII (Assignment of Complex Litigation).

- H. Sexual Predator Commitment Cases: "Sexual predator commitment" cases shall be handled as Complex Litigation cases.

- I. The Agency may use legal interns. If legal interns are used, they will be used in accordance with [citation to State Admission to Practice Rules].
- J. The Agency agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all of its staff.

#### Significant Changes

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Agency's responsibility within the terms of this Contract. Any requests by the courts for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the agency and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

### **VIII. VARIANCE**

The Agency and the Contracting Authority agree that the actual number of cases assigned under this contract may vary from the numbers agreed on Worksheet A by the following levels:

Monthly Variance	20%
Quarterly Variance	15%
Semi-Annual Variance	15%
Yearly Variance	5%

Any deviation in the number of cases assigned that is within the limits above shall not result in alteration of payment owed to the Agency by the Contracting Authority and shall not be the cause of renegotiation of this Contract except as provided in Section XII (Requests for Modifications). The Contracting Authority agrees to make good faith efforts to keep the number of cases assigned within the variance level. In no event shall the Agency be required to accept cases above the level of the variance, even for extra compensation, if doing so would imperil the ability of the Agency's attorneys to maintain the maximum caseload standards provided in Section VI (Performance Requirements). The Contracting Authority shall provide the Agency with quarterly estimates of caseload to be assigned at least one month prior to the beginning of each calendar quarter and shall make available, upon request, the data and rationale which form the basis of such estimate(s).

### **IX. ASSIGNMENT OF COMPLEX LITIGATION CASES**

[If assignment of Complex Litigation cases is contemplated by this Contract,] the Agency will designate a full time or FTE attorney for that purpose. Thereafter, the Agency shall accept all Complex Litigation cases assigned to it by Contracting Authority subject to the following special provisions:

- A. The Contracting Authority shall not assign further Complex Litigation cases while the Agency has a pending Complex Litigation case, unless the Agency has

available qualified staff and the Contracting Authority provides the necessary resources.

- B. In the event the Agency attorney designated to handle Complex Litigation is not occupied with a Complex Litigation case, Contracting Authority may increase the assignment of other felony cases up to 12.5 per month.
- C. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Agency will negotiate a reduction in Agency caseload or provision of extra compensation to provide for the services of that attorney.
- D. Once a Complex Litigation case has proceeded for two months, Contracting Authority may request a review of the case, including but not limited to hours spent by the agency attorney(s) and the expected duration of the case. Such review may result in reclassification of the case or modification in payment structure to ensure that the requirements of Sections V.G. and VI. G above can be met.

#### **X. ATTORNEY TRAINING**

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Agency shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules. If an attorney is transferred to a particular type of case (*e.g.* a Capital case or other Complex litigation after having participated in the required seven hours of annual CLE required in Section V.A, the Agency shall require additional training in the particular type of case, as necessary.

#### **XI. ATTORNEY EVALUATION**

If the caseload in this Contract requires the services of two or more attorneys, the Agency director, or his/her designee, shall evaluate the professional performance of Agency attorneys annually. Evaluations should include monitoring of time and caseload records, review of case files, and in court observation. The Agency shall make available to Contracting Authority its evaluation criteria and evidence that evaluations were conducted, although all evaluations are to be confidential between the Agency's director and the Agency attorney.

## **XII. COMPENSATION AND METHOD OF PAYMENT**

- A. For the term of this contract, the Contracting Authority shall pay the Agency a rate of \$\_\_\_\_\_ for the caseload specified on Worksheet A, plus or minus the variance agreed to in Section VII (Variance). Payments will be made on a monthly basis. It is possible that the actual amount of compensation will vary according to other terms of this Contract. The parties contemplate that attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. The Contracting Authority shall provide the Agency with a certification of case assignments 10 working days after the close of each calendar month. The Agency shall return the signed certification within 10 working days of receipt. The Contracting Authority will pay the Agency by the 8th working day of the following month.
- C. If services in addition to those called for by this Contract are required because of unexpected increases in annual caseload(s), the Contracting Authority shall provide supplemental funding to the Agency at a rate to be negotiated which is commensurate with the rate paid under this Contract (or, in the event that new categories of cases (*e.g.* Capital cases or other Complex Litigation) are added, commensurate with the rate prosecutors receive for similar work) and the actual cost to the Agency of providing the extra service. This provision in no way limits the right of the Agency to refuse to accept cases in excess of the agreed caseload and variance as described in Section VII (Variance).
- D. If the number of cases assigned by the Contracting Authority falls below the agreed caseload and variance, the Contracting Authority will remain liable for the full rate agreed unless it has complied with the provisions in Section XII (Request for Modifications).
- E. In the event of Agency failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination as provided in Section XIX of this Contract.

## **XIII. REQUESTS FOR CONTRACT MODIFICATIONS**

The Contracting Authority shall evaluate the number of cases assigned to the Agency and make projections as to the number of cases that will be assigned to the Agency in future months. These projections will be provided to the Agency on a quarterly basis as specified in Section VII (Variance). If the projection indicates that the cases assigned to the Agency will exceed the variance, the Contracting Authority will negotiate with the Agency for supplemental funding to cover the increased caseload, commensurate with the rate paid in this Contract and the actual cost of providing

representation. The Agency shall have the right without penalty to refuse to accept additional cases beyond the agreed caseload and variance in order to preserve its ability to manage the caseloads of its attorneys as specified in Section VII (Variance).

If the Contracting Authority determines that forces beyond its control such as an unexpected decline in availability of cases for assignment will require the number of cases assigned to the Agency to drop below the agreed caseload and variance, the Contracting Authority may request renegotiation of the rate to be paid under this contract in writing no less than 30 days prior to the date that any change would become effective. Both parties agree in these circumstances to negotiate in good faith for a new rate proportionate to the rate paid under this Contract, taking into account the expenses incurred by the Agency and the Agency's opportunity to realize cost savings and devote resources to other work.

In addition, the Agency may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Agency finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Agency budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Agency within 30 days of the finding of the request that the supplemental funds shall not be available.

#### **XIV. REPORTS AND INSPECTIONS**

The Agency agrees to submit to the Contracting Authority the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

##### **A. Position Salary Profile**

The Agency shall submit to the Contracting Authority on the last working day in January and by the 15th day of the first month of each subsequent quarter, a profile of Full-Time Equivalent (FTE) positions for both legal and support staff who perform work on this Contract, distributed by type of case. The report will designate the name and salary for each FTE employee in a format to be provided. The Contracting Authority will not release this information except as required by law. If the employee splits his/her work between work under this Contract and other business, the report will indicate the amount of time that employee devotes to private matters compared to work under this Contract.

B. Caseload Reports

By the seventh day of the month, the Agency will report the number of cases completed in the past month, separated by category, to the Contracting Authority Administrator.

C. Expenditure Reports

Within 20 days of the last day of each calendar month, the Agency will certify to Contracting Authority a monthly report of the prior month's expenditures for each type of case handled, in the format to be provided. Expenditure reporting shall be on an accrual basis.

D. Annual Subcontract Attorney Use Report

If the Agency uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Agency shall submit to Contracting Authority a summary report.

E. Bar Complaints

The Agency will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the [state Bar Association/disciplinary body] has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Agency's staff or working for the Agency.

F. Inspections

The Agency agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Agency shall provide to the Contracting Authority right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Agency in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Agency agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The Contracting Authority will respect the attorney-client privilege.

**XV. ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Agency agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Agency on each case.
- B. The Agency agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Agency shall have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

**XVI. HOLD HARMLESS AND INDEMNIFICATION**

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Agency to Agency employees or others by reason of the Contract. The Agency shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Agency's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract..
- B. The Agency agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Agency, its officers, employees, representatives or agents.

- C. The Contracting Authority shall indemnify and hold harmless the Agency and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Agency, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Agency and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

## **XVII. INSURANCE**

Without limiting the Agency's indemnification, it is agreed that the Agency shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

### **A. General Liability Insurance**

The Agency shall maintain continuously public liability insurance with limits of liability not less than: \$250,000 for each person, personal injury, \$500,000 for each occurrence, property damage, liability, or a combined single limit of \$500,000 for each occurrence, personal injury and/or property damage liability.

Such insurance shall include the Contracting Authority as an additional insured and shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. The Agency shall provide a certificate of insurance or, upon written request of the Contracting Authority, a duplicate of the policy as evidence of insurance protection.

### **B. Professional Liability Insurance**

The Agency shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Agency which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than \$1,000,000 combined single limit per claim/aggregate. The Agency further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Agency shall not be required to make any payments for professional

liability, if such liability is occasioned by the sole negligence of the Contracting Authority. The Agency shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Agency and the Contracting Authority.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. The Agency shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

C. Automobile Insurance

The Agency shall maintain in force at all times during the performance of this contract a policy or policies of insurance covering any automobiles owned, leased, hired, borrowed or used by any employee, agent, subcontractor or designee of the Agency to transport clients of the Agency.

Such insurance policy or policies shall specifically name the Contracting Authority as an additional insured. Said insurance coverage shall be primary insurance with respect to the Contracting Authority, and any insurance, regardless of the form, maintained by the Contracting Authority shall be excess of any insurance coverage which the Agency is required to maintain pursuant to this contract.

Automobile liability as stated herein shall be maintained at \$500,000 combined single limit per accident for bodily injury and property damage.

D. Workers' Compensation

The Agency shall maintain Workers' Compensation coverage as required by the [state statutory reference].

The Agency shall provide a certificate of insurance or, upon written request of the Contracting Authority, a certified copy of the policy as evidence of insurance protection.

## **XVIII. EVALUATION GUIDELINES**

The Contracting Authority will review information obtained from the Agency to monitor Agency activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

**XIX. CORRECTIVE ACTION**

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The Contracting Authority will notify the Agency in writing of the nature of the breach.
2. The Agency shall respond in writing within five (5) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The Contracting Authority will notify the Agency in writing of the Contracting Authority's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Agency to implement an appropriate corrective action plan.

In the event that the Agency does not respond to the Contracting Authority's notification within the appropriate time, or the Agency's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Agency which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

**XX. TERMINATION AND SUSPENSION**

- A. The Contracting Authority may terminate this Contract in whole or in part upon 10 days' written notice to the Agency in the event that –
  1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract;
  2. The Agency engages in misappropriation of funds; or

3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to Section XIX. A.1, the Contracting Authority shall provide the Agency written notice of termination, which shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the Contracting Authority within 10 working days from the date of the Contracting Authority's notice. If the Agency elects to submit a written response, the Contracting Authority Administrator will review the response and make a determination within 10 days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Contracting Authority Executive. In the event the Contracting Authority Executive reaffirms termination, the Contract shall terminate in 10 days from the date of the final decision of the Contracting Authority Executive. The Contract will remain in full force pending communication of the Contracting Authority Executive to the Agency. A decision by the Contracting Authority Executive affirming termination shall become effective 10 days after it is communicated to the Agency.

- B. The Agency reserves the right to terminate this Contract with cause with 30 days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.
- C. In the event of the termination or suspension of this Contract, the Agency shall continue to represent clients that were previously assigned and the Contracting Authority will be liable for any payments owed for the completion of that work. The Agency will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Contracting Authority Administrator may request that the Agency attempt to withdraw from any case assigned and not completed. Should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency on behalf of any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Agency upon judicial verification that continued representation is required.
- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Agency shall

return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the Contracting Authority.

- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees.

#### **XXI. RESPONSIBILITY OF MANAGING DIRECTOR OF AGENCY**

The managing director of the Agency shall be an attorney licensed to practice law in the State of \_\_\_\_\_. The managing director of the Agency shall be ultimately responsible for receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment provided pursuant to this Contract.

#### **XXII. ASSIGNMENT/SUBCONTRACTING**

- A. The Agency shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Agency in writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal service contracts with individuals to perform work under the direct supervision and control of the Agency. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.
- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the Agency.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but is not limited to counseling services, consulting services, social work services, investigator services and legal services.

**XXIII. RENEGOTIATION**

Either party may request that the provisions of this Contract be subject to renegotiation. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

**XXIV. ATTORNEYS' FEES**

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

**XXV. NOTICES**

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Directed to the Chief Executive Officer of the Agency and the director/manager of the Contracting Authority department/division specified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

**XXVI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT**

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

**XXVII. NONDISCRIMINATION**

During the performance of this Contract, neither the Agency nor any party subcontracting with the Agency under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in

employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Agency shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

**XXVIII. CONFLICT OF INTEREST**

**A. Interest of Members of Contracting Authority and Agency**

No officer, employee, or agent of the Contracting Authority, or the State of \_\_\_\_\_, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Agency.

**B. Interests of Agency Directors, Officers, and Employees**

The following expenditures of Contract funds shall be considered conflict of interest expenditures and prima facie evidence of misappropriation of Contract funds without prior disclosure and approval by the Administrator of the Contracting Authority:

1. The employment of an individual, either as an employee of the Agency or as an independent consultant, who is either: (a) related to a director of the Agency; (b) employed by a corporation owned by a director of the Agency, or relative of a director of the Agency. This provision shall not apply when the total salary to be paid to the individual pursuant to his employment agreement or employment contract would be less than \$1500 per annum.
2. The acquisition or rental by the Agency of real and/or personal property owned or rented by either: (a) an Agency officer, (b) an Agency director, (c) an individual related to an Agency officer or Agency director, or (d) a corporation owned by the Agency, an Agency director, an Agency officer, or relative of an Agency officer or director.

Agreed:

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Contracting Authority

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Worksheet A**

The Agency agrees to accept the following cases from the Contracting Authority for the duration of this Contract for the rates shown, subject to the terms of this Agreement:

<b><u>Case Type</u></b>	<b><u>Annual Caseload</u></b>	<b><u>Monthly Caseload</u></b>	<b><u>Payment</u></b>
Adult Felony			
Adult Misdemeanor			
Juvenile Offender			
Juvenile Dependency			
Civil Commitment			
Misdemeanor Appeal			
[Specialty Courts; Other]			
<b><u>Total:</u></b>			

The Agency agrees to provide the following other services for the Contracting Authority for the rate shown, subject to the terms of this agreement:

<b><u>Service</u></b>	<b><u>Payment</u></b>
Complex Litigation	
24 Hour Advisory Service	
In Custody Arraignments	
[Other]	
<b><u>Total:</u></b>	

Appendix H  
1999 Louisiana IDB Revenues & Expenditures

District	Poverty Rate	Revenues			Expenditure		Deficit Balance	Fund Balance (End of FY98)	Fund Balance (End of FY99)	Fund Balance as % of Expenditure
		Court Costs	LIDAB Grant	Miscellaneous	Total	Total				
1	21.10%	\$ 1,227,832.00	\$ 501,401.00	\$ 34,243.00	\$ 1,763,476.00	\$ 1,932,732.00	\$ 903,852.00	\$ 734,596.00	38.01%	
2	24.20%	\$ 186,811.00	\$ 6,605.00	\$ 6,688.00	\$ 200,104.00	\$ 192,588.00	\$ 201,072.00	\$ 208,588.00	108.31%	
3	23.72%	\$ 212,027.00	\$ 5,000.00	\$ 600.00	\$ 217,627.00	\$ 288,700.00	\$ 277,616.00	\$ 206,543.00	71.54%	
4	21.76%	\$ 984,160.00	\$ 55,000.00	\$ 20,072.00	\$ 1,059,232.00	\$ 1,425,915.00	\$ 676,651.00	\$ 309,968.00	\$21.74%	
5	27.08%	\$ 118,573.00	\$ 58,020.00	\$ 5,684.00	\$ 124,257.00	\$ 148,994.00	\$ 172,891.00	\$ 148,154.00	99.44%	
6	37.81%	\$ 137,088.00	\$ 5,000.00	\$ 1,445.00	\$ 196,553.00	\$ 205,588.00	\$ 58,405.00	\$ 49,370.00	24.01%	
7	28.75%	\$ 55,376.00	\$ 5,000.00	\$ 10,028.00	\$ 70,404.00	\$ 83,701.00	\$ 326,055.00	\$ 312,758.00	373.66%	
8	21.50%	\$ 40,853.00	\$ 28,555.00	\$ 1,072.00	\$ 70,480.00	\$ 79,402.00	\$ 9,963.00	\$ 1,041.00	1.31%	
9	20.50%	\$ 513,950.00	\$ 309,005.00	\$ 32,547.00	\$ 855,502.00	\$ 675,029.00	\$ 50,085.00	\$ 230,558.00	34.16%	
10	26.50%	\$ 185,921.00	\$ 78,999.00	\$ 13,218.00	\$ 199,139.00	\$ 233,298.00	\$ 210,852.00	\$ 176,693.00	75.74%	
11	23.38%	\$ 223,164.00	\$ 76,630.00	\$ 761.00	\$ 302,924.00	\$ 281,814.00	\$ 95,247.00	\$ 116,357.00	41.29%	
12	25.90%	\$ 79,263.00	\$ 18,465.00	\$ 4,714.00	\$ 160,607.00	\$ 166,006.00	\$ 91,999.00	\$ 86,600.00	52.17%	
13	32.20%	\$ 99,547.00	\$ 138,271.00	\$ 17,157.00	\$ 1,067,884.00	\$ 1,097,257.00	\$ 18,579.00	\$ 16,894.00	14.11%	
14	15.40%	\$ 912,456.00	\$ 144,205.00	\$ 2,642.00	\$ 1,399,400.00	\$ 1,394,489.00	\$ 306,898.00	\$ 311,809.00	59.26%	
15	18.54%	\$ 1,252,553.00	\$ 33,817.00	\$ 10,140.00	\$ 909,442.00	\$ 1,026,422.00	\$ 364,672.00	\$ 247,692.00	22.36%	
16	23.01%	\$ 865,485.00	\$ 44,852.00	\$ 4,890.00	\$ 417,651.00	\$ 314,417.00	\$ 103,234.00	\$ 164,593.00	24.13%	
17	16.50%	\$ 367,909.00	\$ 63,590.00	\$ 1,362.00	\$ 503,416.00	\$ 386,459.00	\$ 116,957.00	\$ 267,827.00	85.18%	
18	21.39%	\$ 438,464.00	\$ 435,747.00	\$ 302,285.00	\$ 2,589,535.00	\$ 2,387,450.00	\$ 227,826.00	\$ 155,828.00	40.32%	
19	17.90%	\$ 1,851,503.00	\$ 102,913.00	\$ 7,272.00	\$ 110,185.00	\$ 64,957.00	\$ 202,085.00	\$ 429,911.00	18.01%	
20	21.72%	\$ 661,329.00	\$ 17,000.00	\$ 20,605.00	\$ 698,934.00	\$ 797,884.00	\$ 45,228.00	\$ 217,239.00	334.44%	
21	17.69%	\$ 939,473.00	\$ 240,449.00	\$ 15,469.00	\$ 1,195,391.00	\$ 1,127,000.00	\$ 603,468.00	\$ 504,518.00	63.23%	
22	12.43%	\$ 350,665.00	\$ 426,660.00	\$ 94,580.00	\$ 445,245.00	\$ 418,105.00	\$ 27,140.00	\$ 679,926.00	60.33%	
23	21.28%	\$ 2,109,438.00	\$ 35,000.00	\$ 18,002.00	\$ 2,638,786.00	\$ 2,499,194.00	\$ 1,748,038.00	\$ 239,718.00	57.33%	
24	13.70%	\$ 137,035.00	\$ 602,063.00	\$ 7,067.00	\$ 144,102.00	\$ 140,031.00	\$ 124,815.00	\$ 1,887,630.00	75.53%	
25	18.00%	\$ 464,297.00	\$ 5,000.00	\$ 33,624.00	\$ 497,921.00	\$ 769,479.00	\$ 890,123.00	\$ 128,886.00	92.04%	
26	15.61%	\$ 40,693.00	\$ 35,000.00	\$ 866.00	\$ 46,559.00	\$ 42,977.00	\$ 34,361.00	\$ 795,169.00	103.34%	
27	29.30%	\$ 355,296.00	\$ 318,698.00	\$ 5,368.00	\$ 324,066.00	\$ 217,672.00	\$ 665,820.00	\$ 716,960.00	160.47%	
28	18.70%	\$ 270,244.00	\$ 241,279.00	\$ 11,634.00	\$ 786,866.00	\$ 793,672.00	\$ 322,052.00	\$ 37,943.00	88.29%	
29	11.40%	\$ 104,606.00	\$ 9,200.00	\$ 16,140.00	\$ 129,946.00	\$ 138,979.00	\$ 251,909.00	\$ 337,293.00	72.54%	
30	15.30%	\$ 116,307.00	\$ 141,496.00	\$ 579.00	\$ 258,382.00	\$ 231,512.00	\$ 117,318.00	\$ 147,290.00	37.70%	
31	20.90%	\$ 41,710.00	\$ 5,000.00	\$ 2,600.00	\$ 49,310.00	\$ 56,752.00	\$ 9,328.00	\$ 121,407.00	55.78%	
32	19.10%	\$ 164,405.00	\$ 5,000.00	\$ 4,487.00	\$ 173,892.00	\$ 187,832.00	\$ 122,176.00	\$ 315,246.00	39.72%	
33	19.90%	\$ 29,602.00	\$ 10,000.00	\$ 10,302.00	\$ 39,602.00	\$ 41,857.00	\$ 13,761.00	\$ 242,876.00	174.76%	
34	13.10%	\$ 93,328.00	\$ 10,000.00	\$ 2,767.00	\$ 103,630.00	\$ 117,829.00	\$ 233,913.00	\$ 144,188.00	62.28%	
35	21.50%	\$ 33,547.00	\$ 31,627.00	\$ 20,036.00	\$ 46,314.00	\$ 36,638.00	\$ 41,759.00	\$ 1,886.00	3.32%	
36	15.60%	\$ 177,308.00	\$ 306,497.00	\$ 3,267.00	\$ 228,971.00	\$ 262,665.00	\$ 159,532.00	\$ 108,236.00	57.62%	
37	21.20%	\$ 1,646,089.00	\$ 19,045,934.00	\$ 884,363.00	\$ 1,955,853.00	\$ 2,236,206.00	\$ 1,051,350.00	\$ 770,997.00	27.49%	
38	12.30%	\$ 93,328.00	\$ 10,000.00	\$ 2,767.00	\$ 103,630.00	\$ 117,829.00	\$ 13,761.00	\$ 219,714.00	186.47%	
39	29.90%	\$ 33,547.00	\$ 31,627.00	\$ 20,036.00	\$ 46,314.00	\$ 36,638.00	\$ 41,759.00	\$ 51,435.00	140.39%	
40	16.70%	\$ 177,308.00	\$ 306,497.00	\$ 3,267.00	\$ 228,971.00	\$ 262,665.00	\$ 159,532.00	\$ 125,838.00	47.91%	
Orleans	27.90%	\$ 1,646,089.00	\$ 19,045,934.00	\$ 884,363.00	\$ 1,955,853.00	\$ 2,236,206.00	\$ 1,051,350.00	\$ 770,997.00	34.48%	
<b>Total</b>	<b>19.60%</b>	<b>\$ 19,045,934.00</b>	<b>\$3,527,370.00</b>	<b>\$ 884,363.00</b>	<b>\$ 23,457,667.00</b>	<b>\$ 23,923,692.00</b>	<b>\$ 12,933,369.00</b>	<b>\$ 12,467,344.00</b>	<b>52.11</b>	

Appendix H (continued)  
1999 Louisiana IDB Revenues & Expenditures

District	Poverty Rate	Revenues			Expenditure		Deficit Balance	Fund Balance (End of FY98)	Fund Balance (End of FY99)	Fund Balance as % of Expenditure
		Court Costs	LIDAB Grant	Miscellaneous	Total	Total				
1	21.10%	\$ 1,236,269.00	\$ 153,526.00	\$ 34,515.00	\$ 1,424,310.00	\$ 1,900,805.00	\$ (476,495.00)	\$ 734,596.00	\$ 258,101.00	13.58%
2	24.20%	\$ 209,571.00	\$ -	\$ 9,481.00	\$ 219,052.00	\$ 196,059.00	\$ 22,993.00	\$ 208,588.00	\$ 231,581.00	118.12%
3	23.72%	\$ 226,295.00	\$ 6,500.00	\$ -	\$ 232,795.00	\$ 246,967.00	\$ (14,172.00)	\$ 206,543.00	\$ 192,371.00	77.89%
4	21.76%	\$ 1,027,091.00	\$ 6,500.00	\$ 6,560.00	\$ 1,040,151.00	\$ 1,137,816.00	\$ (97,665.00)	\$ 309,968.00	\$ 212,303.00	18.66%
5	27.08%	\$ 141,346.00	\$ -	\$ 6,397.00	\$ 147,743.00	\$ 145,364.00	\$ 2,379.00	\$ 148,154.00	\$ 150,533.00	103.56%
6	37.81%	\$ 199,512.00	\$ 25,000.00	\$ 1,183.00	\$ 225,695.00	\$ 192,932.00	\$ 32,763.00	\$ 49,370.00	\$ 82,133.00	42.57%
7	28.75%	\$ 66,799.00	\$ -	\$ 13,376.00	\$ 80,175.00	\$ 88,929.00	\$ (8,754.00)	\$ 312,758.00	\$ 304,004.00	341.85%
8	21.50%	\$ 79,727.00	\$ -	\$ 551.00	\$ 80,278.00	\$ 57,178.00	\$ 23,100.00	\$ 1,041.00	\$ 24,141.00	42.22%
9	20.50%	\$ 535,723.00	\$ 42,657.00	\$ 12,250.00	\$ 590,630.00	\$ 710,156.00	\$ (119,526.00)	\$ 230,558.00	\$ 111,032.00	15.63%
10	26.50%	\$ 178,799.00	\$ -	\$ 7,173.00	\$ 185,972.00	\$ 200,820.00	\$ (14,848.00)	\$ 176,693.00	\$ 161,845.00	80.59%
11	23.38%	\$ 221,309.00	\$ 10,264.00	\$ 503.00	\$ 232,076.00	\$ 248,760.00	\$ (16,684.00)	\$ 116,357.00	\$ 99,673.00	40.07%
12	25.90%	\$ 90,221.00	\$ 75,139.00	\$ 2,108.00	\$ 167,468.00	\$ 174,053.00	\$ (6,585.00)	\$ 86,600.00	\$ 80,015.00	45.97%
13	32.20%	\$ 98,449.00	\$ 6,214.00	\$ -	\$ 104,663.00	\$ 100,100.00	\$ 4,563.00	\$ 16,894.00	\$ 21,457.00	21.44%
14	15.40%	\$ 881,063.00	\$ 32,631.00	\$ 15,044.00	\$ 928,738.00	\$ 1,323,845.00	\$ (395,107.00)	\$ 650,256.00	\$ 255,149.00	19.27%
15	18.54%	\$ 1,303,953.00	\$ 36,466.00	\$ 2,571.00	\$ 1,342,990.00	\$ 1,488,092.00	\$ (145,102.00)	\$ 311,809.00	\$ 166,707.00	11.20%
16	23.01%	\$ 849,717.00	\$ 12,697.00	\$ 3,340.00	\$ 865,754.00	\$ 1,022,480.00	\$ (156,726.00)	\$ 247,692.00	\$ 90,966.00	8.90%
17	16.50%	\$ 401,222.00	\$ 12,085.00	\$ -	\$ 413,307.00	\$ 332,343.00	\$ 80,964.00	\$ 267,827.00	\$ 348,791.00	104.95%
18	21.39%	\$ 429,370.00	\$ 23,500.00	\$ 5,334.00	\$ 458,204.00	\$ 428,695.00	\$ 29,509.00	\$ 155,828.00	\$ 185,337.00	43.23%
19	17.90%	\$ 2,005,019.00	\$ 169,013.00	\$ 76,951.00	\$ 2,250,983.00	\$ 2,316,589.00	\$ (65,606.00)	\$ 429,911.00	\$ 364,305.00	15.73%
20	21.72%	\$ 82,375.00	\$ -	\$ 9,761.00	\$ 92,136.00	\$ 64,587.00	\$ 27,549.00	\$ 217,239.00	\$ 244,788.00	379.01%
21	17.69%	\$ 716,725.00	\$ 10,000.00	\$ 18,164.00	\$ 744,889.00	\$ 976,089.00	\$ (231,200.00)	\$ 504,518.00	\$ 273,318.00	28.00%
22	12.43%	\$ 1,027,254.00	\$ 46,355.00	\$ 22,298.00	\$ 1,095,907.00	\$ 1,027,253.00	\$ 68,654.00	\$ 679,926.00	\$ 748,580.00	72.87%
23	21.28%	\$ 395,627.00	\$ -	\$ 10,997.00	\$ 406,624.00	\$ 448,813.00	\$ (42,189.00)	\$ 239,718.00	\$ 197,529.00	44.01%
24	13.70%	\$ 2,216,667.00	\$ 105,595.00	\$ 122,652.00	\$ 2,444,914.00	\$ 2,640,088.00	\$ (195,174.00)	\$ 1,887,630.00	\$ 1,692,456.00	64.11%
25	18.00%	\$ 155,730.00	\$ -	\$ 10,027.00	\$ 165,757.00	\$ 137,437.00	\$ 28,320.00	\$ 128,886.00	\$ 157,206.00	114.38%
26	15.61%	\$ 748,293.00	\$ -	\$ 29,031.00	\$ 777,324.00	\$ 815,333.00	\$ (38,009.00)	\$ 795,169.00	\$ 757,160.00	92.87%
27	29.30%	\$ 392,068.00	\$ -	\$ 34,103.00	\$ 426,171.00	\$ 453,156.00	\$ (26,985.00)	\$ 716,960.00	\$ 689,975.00	152.26%
28	18.70%	\$ 32,009.00	\$ 15,000.00	\$ 840.00	\$ 47,849.00	\$ 61,956.00	\$ (14,107.00)	\$ 37,943.00	\$ 23,836.00	38.47%
29	11.40%	\$ 391,317.00	\$ 3,500.00	\$ 18,685.00	\$ 413,502.00	\$ 446,985.00	\$ (33,483.00)	\$ 337,293.00	\$ 303,810.00	67.97%
30	15.30%	\$ 307,009.00	\$ -	\$ 6,170.00	\$ 313,179.00	\$ 298,105.00	\$ 15,074.00	\$ 147,290.00	\$ 162,364.00	54.47%
31	20.90%	\$ 330,039.00	\$ 3,500.00	\$ -	\$ 333,539.00	\$ 259,048.00	\$ 74,491.00	\$ 121,407.00	\$ 195,898.00	75.62%
32	19.10%	\$ 572,417.00	\$ 14,080.00	\$ 15,962.00	\$ 602,459.00	\$ 598,525.00	\$ 3,934.00	\$ 315,246.00	\$ 319,180.00	53.33%
33	19.90%	\$ 144,455.00	\$ 3,500.00	\$ 11,149.00	\$ 159,104.00	\$ 153,558.00	\$ 5,546.00	\$ 242,876.00	\$ 248,422.00	161.78%
34	13.10%	\$ 161,400.00	\$ 53,385.00	\$ 421.00	\$ 215,206.00	\$ 270,702.00	\$ (55,496.00)	\$ 144,188.00	\$ 88,692.00	32.76%
35	21.50%	\$ 49,563.00	\$ 10,000.00	\$ -	\$ 59,563.00	\$ 53,320.00	\$ 6,243.00	\$ 1,886.00	\$ 8,129.00	15.25%
36	15.60%	\$ 175,084.00	\$ 3,500.00	\$ 4,295.00	\$ 182,879.00	\$ 179,787.00	\$ 3,092.00	\$ 108,236.00	\$ 111,328.00	61.92%
37	21.20%	\$ 82,745.00	\$ -	\$ 1,010.00	\$ 83,755.00	\$ 38,881.00	\$ 44,874.00	\$ 1,098.00	\$ 45,972.00	118.24%
38	12.30%	\$ 87,618.00	\$ -	\$ 11,761.00	\$ 99,379.00	\$ 105,064.00	\$ (5,685.00)	\$ 219,714.00	\$ 214,029.00	203.71%
39	29.90%	\$ 40,810.00	\$ -	\$ 1,346.00	\$ 42,156.00	\$ 44,162.00	\$ (2,006.00)	\$ 51,435.00	\$ 49,429.00	111.93%
40	16.70%	\$ 266,875.00	\$ 3,500.00	\$ 20,803.00	\$ 291,178.00	\$ 273,528.00	\$ 17,650.00	\$ 125,838.00	\$ 143,488.00	52.46%
Orleans	27.90%	\$ 2,006,394.00	\$ 160,041.00	\$ 11,250.00	\$ 2,177,685.00	\$ 2,353,198.00	\$ (175,513.00)	\$ 770,997.00	\$ 595,484.00	25.31%
<b>Total</b>	<b>19.60%</b>	<b>\$ 20,563,929.00</b>	<b>\$ 1,044,148.00</b>	<b>\$ 558,062.00</b>	<b>\$ 22,166,139.00</b>	<b>\$ 24,011,558.00</b>	<b>\$ (1,845,419.00)</b>	<b>\$ 12,456,936.00</b>	<b>\$ 10,611,517.00</b>	<b>44.19%</b>

Appendix H (continued)  
1999 Louisiana IDB Revenues & Expenditures

District	Poverty Rate	Revenues			Expenditure		Deficit Balance	Fund Balance (End of FY98)	Fund Balance (End of FY99)	Fund Balance as % of Expenditure
		Court Costs	LIDAB Grant	Miscellaneous	Total	Total				
1	21.10%	\$ 1,207,383.00	\$ 472,581.00	\$ 22,301.00	\$ 1,702,265.00	\$ 1,717,105.00	\$ (14,840.00)	\$ 258,101.00	\$ 243,261.00	14.17%
2	24.20%	\$ 257,858.00	\$ -	\$ 11,016.00	\$ 268,874.00	\$ 208,635.00	\$ 60,239.00	\$ 231,581.00	\$ 291,820.00	139.87%
3	23.72%	\$ 111,404.00	\$ 90,669.00	\$ 8,488.00	\$ 210,561.00	\$ 248,175.00	\$ (37,614.00)	\$ 192,371.00	\$ 154,757.00	62.36%
4	21.76%	\$ 1,000,880.00	\$ -	\$ 2,172.00	\$ 1,003,052.00	\$ 1,103,613.00	\$ (100,561.00)	\$ 212,303.00	\$ 111,742.00	10.13%
5	27.08%	\$ 147,955.00	\$ -	\$ 5,686.00	\$ 153,641.00	\$ 165,076.00	\$ (11,435.00)	\$ 150,533.00	\$ 139,098.00	84.26%
6	37.81%	\$ 212,171.00	\$ -	\$ -	\$ 212,171.00	\$ 173,389.00	\$ 38,782.00	\$ 82,133.00	\$ 120,915.00	69.74%
7	28.75%	\$ 47,504.00	\$ 2,334.00	\$ 15,846.00	\$ 65,684.00	\$ 89,390.00	\$ (23,706.00)	\$ 304,004.00	\$ 280,298.00	313.57%
8	21.50%	\$ 64,497.00	\$ -	\$ 1,667.00	\$ 66,164.00	\$ 70,700.00	\$ (4,536.00)	\$ 24,141.00	\$ 19,605.00	27.73%
9	20.50%	\$ 632,616.00	\$ 60,589.00	\$ 8,844.00	\$ 702,049.00	\$ 594,874.00	\$ 107,175.00	\$ 111,032.00	\$ 218,207.00	36.68%
10	26.50%	\$ 191,451.00	\$ -	\$ 7,052.00	\$ 198,503.00	\$ 187,999.00	\$ 10,504.00	\$ 161,845.00	\$ 172,349.00	91.68%
11	23.38%	\$ 254,551.00	\$ 5,649.00	\$ 570.00	\$ 260,770.00	\$ 238,785.00	\$ 21,985.00	\$ 99,673.00	\$ 121,658.00	50.95%
12	25.90%	\$ 92,962.00	\$ 108,728.00	\$ 3,407.00	\$ 205,097.00	\$ 171,214.00	\$ 33,883.00	\$ 80,015.00	\$ 113,898.00	66.52%
13	32.20%	\$ 82,785.00	\$ 12,392.00	\$ -	\$ 95,177.00	\$ 100,270.00	\$ (5,093.00)	\$ 21,457.00	\$ 16,364.00	16.32%
14	15.40%	\$ 976,983.00	\$ 66,928.00	\$ 6,634.00	\$ 1,050,545.00	\$ 1,120,373.00	\$ (69,828.00)	\$ 255,149.00	\$ 185,321.00	16.54%
15	18.54%	\$ 1,218,704.00	\$ 270,112.00	\$ 2,334.00	\$ 1,491,150.00	\$ 1,600,938.00	\$ (109,788.00)	\$ 166,707.00	\$ 56,919.00	3.56%
16	23.01%	\$ 972,940.00	\$ 104,695.00	\$ 2,496.00	\$ 1,080,131.00	\$ 1,011,639.00	\$ 68,492.00	\$ 90,966.00	\$ 159,458.00	15.76%
17	16.50%	\$ 389,327.00	\$ 43,445.00	\$ 17,521.00	\$ 450,293.00	\$ 374,376.00	\$ 75,917.00	\$ 348,791.00	\$ 424,708.00	113.44%
18	21.39%	\$ 433,207.00	\$ 25,472.00	\$ 6,112.00	\$ 464,791.00	\$ 487,239.00	\$ (22,448.00)	\$ 185,337.00	\$ 162,889.00	33.43%
19	17.90%	\$ 1,795,679.00	\$ 353,713.00	\$ 312,713.00	\$ 2,462,105.00	\$ 2,533,214.00	\$ (71,109.00)	\$ 364,305.00	\$ 293,196.00	11.57%
20	21.72%	\$ 89,019.00	\$ -	\$ 11,127.00	\$ 100,146.00	\$ 66,131.00	\$ 34,015.00	\$ 244,788.00	\$ 278,803.00	421.59%
21	17.69%	\$ 864,867.00	\$ 25,751.00	\$ 6,980.00	\$ 897,598.00	\$ 996,752.00	\$ (99,154.00)	\$ 273,318.00	\$ 174,164.00	17.47%
22	12.43%	\$ 971,792.00	\$ 160,445.00	\$ 8,551.00	\$ 1,140,788.00	\$ 1,220,892.00	\$ (80,104.00)	\$ 746,870.00	\$ 666,766.00	54.61%
23	21.28%	\$ 513,329.00	\$ -	\$ 17,216.00	\$ 530,545.00	\$ 480,406.00	\$ 50,139.00	\$ 197,529.00	\$ 247,668.00	51.55%
24	13.70%	\$ 1,982,207.00	\$ 263,667.00	\$ 76,474.00	\$ 2,322,348.00	\$ 2,568,370.00	\$ (246,022.00)	\$ 1,720,172.00	\$ 1,474,150.00	57.40%
25	18.00%	\$ 156,126.00	\$ -	\$ 9,386.00	\$ 165,512.00	\$ 180,882.00	\$ (15,370.00)	\$ 157,206.00	\$ 141,836.00	78.41%
26	15.61%	\$ 640,630.00	\$ -	\$ 18,744.00	\$ 659,374.00	\$ 1,098,091.00	\$ (438,717.00)	\$ 757,160.00	\$ 318,443.00	29.00%
27	29.30%	\$ 432,800.00	\$ -	\$ 30,485.00	\$ 463,285.00	\$ 447,493.00	\$ 15,792.00	\$ 689,975.00	\$ 705,767.00	157.72%
28	18.70%	\$ 41,619.00	\$ 29,537.00	\$ -	\$ 71,156.00	\$ 81,753.00	\$ (10,597.00)	\$ 23,836.00	\$ 13,239.00	16.19%
29	11.40%	\$ 475,066.00	\$ 3,000.00	\$ 12,714.00	\$ 490,780.00	\$ 434,112.00	\$ 56,668.00	\$ 303,810.00	\$ 360,478.00	83.04%
30	15.30%	\$ 299,174.00	\$ -	\$ 8,278.00	\$ 307,452.00	\$ 373,818.00	\$ (66,366.00)	\$ 162,364.00	\$ 95,998.00	25.68%
31	20.90%	\$ 366,778.00	\$ 49,319.00	\$ -	\$ 416,097.00	\$ 401,810.00	\$ 14,287.00	\$ 195,898.00	\$ 210,185.00	52.31%
32	19.10%	\$ 651,520.00	\$ 65,948.00	\$ 11,819.00	\$ 729,287.00	\$ 655,226.00	\$ 74,061.00	\$ 319,800.00	\$ 393,241.00	60.02%
33	19.90%	\$ 143,523.00	\$ -	\$ 9,600.00	\$ 153,123.00	\$ 151,072.00	\$ 2,051.00	\$ 248,422.00	\$ 250,473.00	165.80%
34	13.10%	\$ 131,797.00	\$ 118,353.00	\$ 915.00	\$ 251,065.00	\$ 259,944.00	\$ (8,879.00)	\$ 88,692.00	\$ 79,813.00	30.70%
35	21.50%	\$ 46,311.00	\$ 10,500.00	\$ -	\$ 56,811.00	\$ 52,739.00	\$ 4,072.00	\$ 8,129.00	\$ 12,201.00	23.13%
36	15.60%	\$ 150,338.00	\$ 3,000.00	\$ 4,870.00	\$ 158,208.00	\$ 179,023.00	\$ (20,815.00)	\$ 111,328.00	\$ 90,513.00	50.56%
37	21.20%	\$ 57,752.00	\$ -	\$ 1,663.00	\$ 59,415.00	\$ 39,522.00	\$ 19,893.00	\$ 45,972.00	\$ 65,865.00	166.65%
38	12.30%	\$ 100,598.00	\$ -	\$ 7,591.00	\$ 108,189.00	\$ 119,717.00	\$ (11,528.00)	\$ 214,029.00	\$ 202,501.00	169.15%
39	29.90%	\$ 61,279.00	\$ -	\$ 1,180.00	\$ 62,459.00	\$ 49,255.00	\$ 13,204.00	\$ 49,429.00	\$ 62,633.00	127.16%
40	16.70%	\$ 301,316.00	\$ 31,076.00	\$ 21,258.00	\$ 353,650.00	\$ 325,543.00	\$ 28,107.00	\$ 143,488.00	\$ 171,595.00	52.71%
Orleans	27.90%	\$ 2,018,653.00	\$ 631,016.00	\$ 6,181.00	\$ 2,655,850.00	\$ 2,145,256.00	\$ 510,594.00	\$ 595,484.00	\$ 1,106,078.00	51.56%
<b>Total</b>	<b>19.60%</b>	<b>\$ 20,587,351.00</b>	<b>\$ 3,008,919.00</b>	<b>\$ 699,891.00</b>	<b>\$ 24,296,161.00</b>	<b>\$ 24,524,811.00</b>	<b>\$ (228,650.00)</b>	<b>\$ 10,637,523.00</b>	<b>\$ 10,408,873.00</b>	<b>42.44%</b>

Appendix H (continued)  
1999 Louisiana IDB Revenues & Expenditures

District	Poverty Rate	Revenues			Expenditure		Deficit Balance	Fund Balance (End of FY98)	Fund Balance (End of FY99)	Fund Balance as % of Expenditure
		Court Costs	LIDAB Grant	Miscellaneous	Total	Total				
1	21.10%	\$ 1,166,202.00	\$ 490,149.00	\$ 12,716.00	\$ 1,669,067.00	\$ 1,680,668.00	\$ (11,601.00)	\$ 243,261.00	\$ 231,660.00	13.78%
2	24.20%	\$ 252,423.00	\$ -	\$ 7,108.00	\$ 259,531.00	\$ 243,600.00	\$ 15,931.00	\$ 291,820.00	\$ 307,751.00	126.33%
3	23.72%	\$ 249,898.00	\$ 7,845.00	\$ 3,234.00	\$ 260,977.00	\$ 285,377.00	\$ (24,400.00)	\$ 154,757.00	\$ 130,357.00	45.68%
4	21.76%	\$ 1,059,078.00	\$ 31,719.00	\$ -	\$ 1,090,797.00	\$ 1,079,671.00	\$ 11,126.00	\$ 111,742.00	\$ 122,868.00	11.38%
5	27.08%	\$ 141,565.00	\$ 2,833.00	\$ 600.00	\$ 144,998.00	\$ 142,921.00	\$ 2,077.00	\$ 139,098.00	\$ 141,175.00	98.78%
6	37.81%	\$ 178,329.00	\$ 21,404.00	\$ 773.00	\$ 200,506.00	\$ 236,375.00	\$ (35,869.00)	\$ 120,915.00	\$ 85,046.00	35.98%
7	28.75%	\$ 48,307.00	\$ 13,240.00	\$ 6,174.00	\$ 67,721.00	\$ 94,118.00	\$ (26,397.00)	\$ 280,298.00	\$ 253,901.00	269.77%
8	21.50%	\$ 45,192.00	\$ 20,983.00	\$ 10,782.00	\$ 76,957.00	\$ 83,069.00	\$ (6,112.00)	\$ 19,605.00	\$ 13,493.00	16.24%
9	20.50%	\$ 632,416.00	\$ 60,689.00	\$ 8,944.00	\$ 702,049.00	\$ 594,874.00	\$ 107,175.00	\$ 218,207.00	\$ 325,382.00	54.70%
10	26.50%	\$ 221,096.00	\$ 10,396.00	\$ -	\$ 231,492.00	\$ 186,740.00	\$ 44,752.00	\$ 172,349.00	\$ 217,101.00	116.26%
11	23.38%	\$ 286,893.00	\$ 13,842.00	\$ 167.00	\$ 300,902.00	\$ 278,265.00	\$ 22,637.00	\$ 121,658.00	\$ 144,295.00	51.86%
12	25.90%	\$ 100,774.00	\$ 45,701.00	\$ 2,543.00	\$ 149,018.00	\$ 186,495.00	\$ (37,477.00)	\$ 113,898.00	\$ 76,421.00	40.98%
13	32.20%	\$ 69,294.00	\$ 12,362.00	\$ 10,328.00	\$ 91,984.00	\$ 94,002.00	\$ (2,018.00)	\$ 16,364.00	\$ 14,346.00	15.26%
14	15.40%	\$ 845,141.00	\$ 263,041.00	\$ 14,269.00	\$ 1,122,451.00	\$ 1,257,847.00	\$ (135,396.00)	\$ 185,321.00	\$ 49,925.00	3.97%
15	18.54%	\$ 1,177,289.00	\$ 252,334.00	\$ 1,385.00	\$ 1,431,008.00	\$ 1,347,030.00	\$ 83,978.00	\$ 56,919.00	\$ 140,897.00	10.46%
16	23.01%	\$ 805,546.00	\$ 114,319.00	\$ 3,123.00	\$ 922,988.00	\$ 1,101,413.00	\$ (178,425.00)	\$ 159,458.00	\$ (18,967.00)	-1.72%
17	16.50%	\$ 352,640.00	\$ -	\$ 23,835.00	\$ 376,475.00	\$ 423,354.00	\$ (46,879.00)	\$ 424,708.00	\$ 377,829.00	89.25%
18	21.39%	\$ 513,209.00	\$ 3,000.00	\$ 3,906.00	\$ 520,115.00	\$ 503,210.00	\$ 16,905.00	\$ 162,889.00	\$ 179,794.00	35.73%
19	17.90%	\$ 1,990,728.00	\$ 366,869.00	\$ 258,229.00	\$ 2,615,826.00	\$ 2,691,107.00	\$ (75,281.00)	\$ 293,196.00	\$ 217,915.00	8.10%
20	21.72%	\$ 94,086.00	\$ -	\$ 6,812.00	\$ 100,898.00	\$ 74,109.00	\$ 26,789.00	\$ 278,803.00	\$ 305,592.00	412.35%
21	17.69%	\$ 827,505.00	\$ 177,281.00	\$ 10,102.00	\$ 1,014,888.00	\$ 1,028,040.00	\$ (13,152.00)	\$ 174,164.00	\$ 161,012.00	15.66%
22	12.43%	\$ 961,811.00	\$ 80,128.00	\$ 7,106.00	\$ 1,049,045.00	\$ 1,117,918.00	\$ (68,873.00)	\$ 666,766.00	\$ 597,893.00	53.48%
23	21.28%	\$ 588,015.00	\$ -	\$ 108,172.00	\$ 696,187.00	\$ 557,628.00	\$ 138,559.00	\$ 247,668.00	\$ 386,227.00	69.26%
24	13.70%	\$ 2,228,813.00	\$ 229,284.00	\$ 27,072.00	\$ 2,485,169.00	\$ 2,545,419.00	\$ (60,250.00)	\$ 1,474,150.00	\$ 1,413,900.00	55.55%
25	18.00%	\$ 88,759.00	\$ -	\$ 3,154.00	\$ 91,913.00	\$ 194,784.00	\$ (102,871.00)	\$ 141,836.00	\$ 38,965.00	20.00%
26	15.61%	\$ 640,630.00	\$ -	\$ 18,744.00	\$ 659,374.00	\$ 1,098,091.00	\$ (438,717.00)	\$ 318,443.00	\$ (120,274.00)	-10.95%
27	29.30%	\$ 442,494.00	\$ -	\$ 33,479.00	\$ 475,973.00	\$ 406,678.00	\$ 69,295.00	\$ 705,767.00	\$ 775,062.00	190.58%
28	18.70%	\$ 40,259.00	\$ 42,596.00	\$ -	\$ 82,855.00	\$ 57,138.00	\$ 25,717.00	\$ 13,239.00	\$ 38,956.00	68.18%
29	11.40%	\$ 408,586.00	\$ 13,520.00	\$ 6,450.00	\$ 428,556.00	\$ 475,374.00	\$ (46,818.00)	\$ 360,478.00	\$ 313,660.00	65.98%
30	15.30%	\$ 328,063.00	\$ 4,375.00	\$ 2,032.00	\$ 334,470.00	\$ 345,370.00	\$ (10,900.00)	\$ 95,998.00	\$ 85,098.00	24.64%
31	20.90%	\$ 323,538.00	\$ 14,566.00	\$ -	\$ 338,124.00	\$ 311,049.00	\$ 27,075.00	\$ 210,185.00	\$ 237,260.00	76.28%
32	19.10%	\$ 584,926.00	\$ 42,791.00	\$ 5,766.00	\$ 633,483.00	\$ 696,788.00	\$ (63,305.00)	\$ 393,241.00	\$ 329,936.00	47.35%
33	19.90%	\$ 122,351.00	\$ -	\$ 6,443.00	\$ 128,794.00	\$ 153,633.00	\$ (24,839.00)	\$ 250,473.00	\$ 225,634.00	146.87%
34	13.10%	\$ 118,187.00	\$ 83,847.00	\$ 747.00	\$ 202,781.00	\$ 272,509.00	\$ (69,728.00)	\$ 79,813.00	\$ 10,085.00	3.70%
35	21.50%	\$ 47,788.00	\$ 10,500.00	\$ -	\$ 58,288.00	\$ 58,873.00	\$ (585.00)	\$ 12,201.00	\$ 11,616.00	19.73%
36	15.60%	\$ 169,017.00	\$ 3,000.00	\$ 3,733.00	\$ 175,750.00	\$ 173,304.00	\$ 2,446.00	\$ 90,513.00	\$ 92,959.00	53.64%
37	21.20%	\$ 30,416.00	\$ -	\$ -	\$ 30,416.00	\$ 50,281.00	\$ (19,865.00)	\$ 65,865.00	\$ 46,000.00	91.49%
38	12.30%	\$ 99,813.00	\$ -	\$ 3,597.00	\$ 103,410.00	\$ 108,331.00	\$ (4,921.00)	\$ 202,501.00	\$ 197,580.00	182.39%
39	29.90%	\$ 52,328.00	\$ -	\$ 602.00	\$ 52,930.00	\$ 37,590.00	\$ 15,340.00	\$ 62,633.00	\$ 77,973.00	207.43%
40	16.70%	\$ 341,560.00	\$ 21,146.00	\$ 24,896.00	\$ 387,602.00	\$ 360,467.00	\$ 27,135.00	\$ 171,595.00	\$ 198,730.00	55.13%
Orleans	27.90%	\$ 1,764,990.00	\$ 519,959.00	\$ 3,775.00	\$ 2,288,724.00	\$ 2,653,557.00	\$ (364,833.00)	\$ 1,106,078.00	\$ 741,245.00	27.93%
<b>Total</b>	<b>19.60%</b>	<b>\$ 20,439,975.00</b>	<b>\$ 2,973,719.00</b>	<b>\$ 640,798.00</b>	<b>\$ 24,054,492.00</b>	<b>\$ 25,279,558.00</b>	<b>\$ (1,225,066.00)</b>	<b>\$ 10,408,873.00</b>	<b>\$ 9,183,807.00</b>	<b>36.33%</b>

## Appendix I

### *A Discussion of National Indigency Screening Procedures*

*Though Gideon v. Wainwright requires states to provide counsel for those unable to afford counsel, it does not state explicitly how to determine financial eligibility. Jurisdictions across the country have weighed various interests when considering how best to make such determinations. Policy-makers must decide to what extent the need to ensure the public that money is being spent efficiently outweighs the cost of eligibility verification processes. If it is determined to move ahead with more rigorous screening, national standards can be used to structure the process.*

The Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services state that, “[e]ffective representation should be provided to anyone who is unable, without substantial financial hardship to himself or to his dependents, to obtain such representation.”<sup>14</sup> “Substantial hardship” is also the standard promulgated by the ABA.<sup>15</sup> While ABA Defense Services Standard 5-7.1 makes no effort to define need or hardship, it does prohibit denial of appointed counsel because of a person’s ability to pay part of the cost of representation, because friends or relatives have resources to retain counsel, or because bond has been or can be posted. In practice, the “substantial hardship” standard has led many jurisdictions to create a tiered screening system. At some minimum asset threshold, a defendant is presumed eligible without undergoing further screening. Defendants not falling below the presumptive threshold are then subjected to a more rigorous screening process to determine if their particular circumstances (including seriousness of the charges being faced, monthly expenses, local private counsel rates) would result in a “substantial hardship” were they to seek to retain private counsel. The great majority of defendants currently being offered the services of public defenders in Louisiana should qualify for public counsel under the presumptive standard, thus minimizing the need to use a more expansive screening and verification process. Examples of such presumptive standards include:

- A defendant is presumed eligible if he or she receives public assistance, such as Food Stamps, Aid to Families of Dependent Children, Medicaid, Disability Insurance, or resides in public housing.<sup>16</sup>
- A defendant is presumed eligible if he or she is currently serving a sentence in a correctional institution or is housed in a mental health facility.

For those who do not meet the presumptive standard but who may still qualify under the “substantial hardship” standard, many jurisdictions have developed financial eligibility formulas that take into account a household’s net income, liquid assets, “reasonable” necessary expenses and other “exceptional” expenses. *The National Study Commission on Defense Services*

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<sup>14</sup> Guideline 1.5.

<sup>15</sup> ABA Standards for Criminal Justice: Providing Defense Services 5-7.1 states: “Counsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship.”

<sup>16</sup> An additional benefit to using public aid as a presumptive threshold is that other agencies already rigorously screen and verify the person to qualify for such assistance. Using these standards allows a jurisdiction to, in effect, “piggy-back” onto the verification process without duplicating efforts.

*guidelines are more comprehensive than other national standards* in guiding this second tier of eligibility determinations. *The first* step is to determine a defendant's net income (usually verified through documented pay stubs) and liquid assets. Under Guideline 1.5, liquid assets include cash in hand, stocks and bonds, bank accounts and any other property that can be readily converted to cash. Factors not to be considered include the person's car,<sup>17</sup> house,<sup>18</sup> household furnishings, clothing, any property declared exempt from attachment or execution by law, the person's release on bond, or the resources of a spouse, parent or other person.

Next, the screening agency assesses a defendant's reasonable necessary expenses and other money owed for exceptional expenses, like medical care not covered by insurance, or court-ordered family support. Though jurisdictions vary as to what constitutes "necessary" expenses, most include rent, day-care and utilities.

Screeners then determine an individual's available funds to contribute toward defense representation by adding the net income and liquid assets and subtracting from the total the sum of reasonable and exceptional expenses. [(Net Income + Liquid Assets) – (Reasonable + Exceptional Expenses) = Available Funds]. The resulting "available funds" can then be measured against a second tier presumptive eligibility standard. In many jurisdictions, this second presumptive level is tied to a percentage of the Federal Poverty guidelines. For instance, Florida sets its presumptive standard at 250% of the Federal Poverty guideline.<sup>19</sup> Table I-1 (below) shows the 2002 Health and Human Services Poverty Guidelines, by family size and annual income, and compares the 250% and 150% standard for both annual and monthly income.

Family Size	Poverty Index	150%		250%	
		Annual	Monthly	Annual	Monthly
1	\$8,860	\$13,290	\$1,107.50	\$22,150	\$1,845.83
2	\$11,940	\$17,910	\$1,492.50	\$29,850	\$2,487.50
3	\$15,020	\$22,530	\$1,877.50	\$37,550	\$3,129.17
4	\$18,100	\$27,150	\$2,262.50	\$45,250	\$3,770.83
5	\$21,180	\$31,770	\$2,647.50	\$52,950	\$4,412.50
6	\$24,260	\$36,390	\$3,032.50	\$60,650	\$5,054.17

In some jurisdictions, eligibility screening is terminated if a person's net income and liquid assets exceed these income thresholds, and the person is deemed ineligible for public

<sup>17</sup> A defendant's vehicle may be the only thing keeping him and her off of public assistance by allowing him or her the means to get to work, or comply with conditions of probation or pretrial release such as drug or mental health treatment, or family counseling. In a large geographically expansive counties, including a car in a person's liquid assets may be ultimately more costly than appointing the person a public defender.

<sup>18</sup> It is assumed that the goals of the criminal justice system are not served by rendering homeless a charged-but-unadjudicated defendant, or his or her family.

<sup>19</sup> FL. Stat. §27.52. Though a state-by-state, county-by-county study has not been conducted to determine the total number of jurisdictions that use the Federal Poverty guidelines and some presumptive percentage thereof, the evaluation team's range of experience suggests a national norm of approximately 150% of the federal rate.

<sup>20</sup> *Federal Register*, Vol. 67, No. 31, February 14, 2002, pp. 6,931-6,933. For each additional household member, add \$3,080.

appointment of counsel. In others, persons can be deemed eligible if their net income and liquid assets exceed these thresholds, but reasonable and exceptional expenses bring them under the threshold.

One example of jurisdiction employing such a financial determination system is New York City. There, the formula also takes into account the seriousness of the charge. As with most jurisdictions, defendants in New York City whose gross income falls at or below the current federal poverty index are presumptively eligible for assigned counsel. However, even defendants with household gross incomes above these levels are eligible for assigned counsel, if they are financially unable to retain counsel. In determining whether a defendant is unable to retain counsel, the court considers the household's other financial commitments, including rent or mortgage payments, the cost of food and utilities, debts, the likely cost of counsel, unusual expenses, and available liquid assets.<sup>21</sup>

As in Florida, New York City's guidelines provide that defendants charged with misdemeanors are presumptively eligible for assigned counsel when the gross household income is at or below 250% of the federal poverty standard. The guidelines similarly provide that defendants charged with felonies are presumptively eligible for assigned counsel when the gross household income is at or below 350% of the federal poverty standard.

In lieu of the Federal Poverty guidelines, other jurisdictions take into account the going rate for private counsel to represent a defendant on various case types. For instance, private attorneys may routinely ask for a \$5,000 retainer to represent a person on a felony indictment, in which case a defendant may fall above the 150% Federal Poverty index (\$1,107.50 monthly available funds) but would still face a "substantial hardship" if he or she were to retain private counsel.

The three-tiered screening system described above has an added benefit to the overall justice system. In many jurisdictions, public defenders employ investigation interns to conduct these eligibility screenings at little or no cost.<sup>22</sup> These interns regularly go to the jail each morning and afternoon to conduct the financial screening on all people brought in on new charges. The appointment of the public defender can be made as soon as the eligibility is determined, and attorneys are able to make bail recommendations earlier, reducing the number of beds in the County jail used for pre-trial detention. And early appointment of counsel allows earlier investigation, discovery and preparation, which results in more prompt

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<sup>21</sup> Once the public defender has been assigned, a court may not relieve it on the ground of non-indigency unless the defender agency first moves to be relieved. Construing County Law §722-d, the Appellate Division has stated that "the report of counsel [is] a predicate to any action on the part of the court to relieve counsel of the assignment." *Matter of The Legal Aid Society v. Samenga*, 39 A.D.2d 912, 913 (2d Dept. 1972). Thus, for example, where a court suspects that a defendant has the resources to retain counsel because bail has been posted, at most it would ask the assigned attorney to review the accused's eligibility, keeping in mind that persons who contribute to bail cannot be required to assign their money for purposes of hiring an attorney unless they also are obligated to contribute to the defendant's support. Therefore, where bail is posted by the accused's spouse, that money can be considered as an asset in evaluating eligibility, but bail money posted by an employer, family friend or member of the defendant's extended family (aunt, uncle, cousin) ordinarily should not be considered as an asset of the accused.

<sup>22</sup> As mentioned above, other jurisdictions employ Pre-Trial Services departments that are able to make financial eligibility determinations at the same time as screening to determine eligibility for release on one's own recognizance.

**Appendix J**  
*The American Council of Chief Defenders’*  
*Ethics Opinion 03-01*  
*April 2003*

***Situation presented:***

Due to budgetary pressures within a jurisdiction, a public defense agency is under pressure to accept a substantial budget cut, even though the agency’s caseload is not projected to decrease. Alternatively, the agency faces a flat budget but substantially increasing caseloads. In either event, the agency’s chief executive officer has determined that some portion of the caseload will be beyond the capacity of the staff to competently handle. What are the ethical obligations of the agency’s chief executive officer in such a situation?

<b>1. General duty of lawyer to act competently, diligently and promptly</b>	<b>2</b>
<b>2. Indigent defender’s duty to limit workload so as to ensure quality, and to decline excess cases</b>	<b>3</b>
<b>3. Determining whether workload is excessive</b>	<b>5</b>
<b>4. Special duties of the chief executive officer of a public defense agency</b>	<b>6</b>
<b>5. Civil liability of chief public defender and unit of government</b>	<b>7</b>
<b><i>Conclusion</i></b>	<b>8</b>

*A chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency’s attorneys to provide competent, quality representation in every case. The elements of such representation encompass those prescribed in national performance standards including the NLADA Performance Guidelines for Criminal Defense Representation and the ABA Defense Function Standards.*

*When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency’s attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.*

***Principle sources:*** American Bar Association Model Code of Professional Responsibility (“Model Code”); American Bar Association Model Rules of Professional Conduct (“Model Rules”); *Ten Principles of a Public Defense Delivery System* (American Bar Association, 2002) (“ABA Ten Principles”); American Bar Association *Standards for Criminal Justice, Defense Function* (3rd ed. 1993) (“ABA Defense Function”); National Legal Aid and Defender Association *Performance Guidelines for Criminal Defense Representation* (1995) (“Performance Guidelines”); Monahan and Clark, “Coping with Excessive Workload,” Ch. 23 of *Ethical Problems Facing the Criminal Defense Lawyer*, American Bar Association, 1995 (“Ethical Problems”).

1. General duty of lawyer to act competently, diligently and promptly

The ABA Model Code requires that a lawyer “should represent a client competently.” The ABA Model Rules further require that a lawyer “act with reasonable diligence and promptness” (Rule 1.3), including “zeal in advocacy upon the client’s behalf” (*id.*, comment), and communicate promptly and effectively with clients. (Rule 1.4). “Competence” is discussed in terms of the training and experience of the lawyer to handle any particular type of case (comment to ABA Model Rule 1.1).

Inexperience is not a defense to incompetence (*Ethical Problems*, citing *In re Deardorff*, 426 P.2d 689, 692 (Col. 1981)). Being too busy with cases is not an acceptable excuse to avoid discipline for lack of knowledge of the law. (*Id.*, citing *Nebraska State Bar Association v. Holscher*, 230 N.W. 2d 75, 80 (Neb. 1975)).

The question of what constitutes competent representation is addressed in the two national sets of performance standards for criminal defense representation: ABA *Defense Function* Standard 4-1.2 (obligation to provide “effective, quality representation”), and NLADA *Performance Guideline* 1 (duty to provide “zealous, quality representation”). These and various state and locally adopted standards derived there from are published as Volume 2 of the U.S. Department of Justice *Compendium of Standards for Indigent Defense Systems* (Office of Justice Programs, 2000 [www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/)).

Among the basic components of competent representation under the ABA and NLADA standards, and as discussed in *Ethical Problems*, *supra*, are:

- Timeliness of representation, encompassing prompt action to protect the rights of the accused;
- Thoroughness and preparation, including research to discover readily ascertainable law, at risk of discipline and disbarment;
- Independent investigation of the facts of the case (use of a professional investigator is more cost-effective than a higher-compensated attorney performing this function)
- Client relationship and interviewing, including not just timely fact gathering, but building a relationship of trust and honesty that is necessary to an effective working relationship;
- Regular client communications, to support informed decision-making; prompt and thorough investigation;
- Discovery (failure to request exculpatory evidence from prosecution is violation of constitutional right to counsel, *Kimmelman v. Morrison*, 477 U.S. 365, 368-69, 385 (1986));
- Retention of experts (including mitigation specialists in capital cases) and forensic services, where appropriate in any case;
- Exploring and advocating alternative dispositions;
- Competent discharge of duties at all the various stages of trial court representation, including from voir dire and opening statement to closing argument;
- Sentencing advocacy, including familiarity with all sentencing alternatives and consequences, and presence at all presentence investigation interviews;
- Appellate representation, including explaining the right, the consequences, the grounds, and taking all steps to preserve issues for appeal (there are additional duties of appellate counsel, under ABA Defense Function Standard 4-8.3, including reviewing the entire appellate record, considering all potential guilt or penalty issues, doing research, and presenting all pleadings in the interest of the client); and

- Maintaining competence through continuing legal education: mandatory CLE was mandated for the first time by the ABA – but only for public defense providers – in Principle 9 of its *Ten Principles*<sup>23</sup> (“**Defense counsel is provided with and required to attend continuing legal education.** Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors”). Training, it should be noted, takes away from the time an attorney has available to provide direct representation (ABA Principle 5, *infra*: numerical caseload limitations should be adjusted to reflect an attorney’s nonrepresentational duties).

Failure to perform such basic duties as researching the law, investigation, advising the client on available defenses, or other preparation, may constitute a constitutional violation, *State v. Felton*, 329 N.W.2d 161 (Wis. 1983), or warrant disciplinary sanctions, *Office of Disciplinary Counsel v. Henry*, 664 S. W. 2d 62 (Tenn. 1983); *Florida Bar v. Morales*, 366 So. 2d 431 (Fla. 1978); *Matter of Lewis*, 445 N.E.2d 987 (Ind. 1983). Under national standards, indigent defense counsel’s incurring of expenses such as for experts or investigators may not be subject to judicial disapproval or diminution. The first of the ABA Ten Principles (recapitulating other ABA standards) provides that indigent defense counsel should be “subject to judicial supervision only in the same manner and to the same extent as retained counsel,” and the courts have no role with regard to matters such as utilization of experts or investigators by retained counsel. By extension, prosecutors have no role in moving for any such judicial action.

Effective assistance of counsel means “that the lawyer not only possesses adequate skill and knowledge, but also that he has the time and resources to apply his skill and knowledge to the task of defending each of his individual clients.” *State v. Peart*, 621 So. 2d 780, 789 (La. 1993). It is no excuse that an attorney is so overloaded as to become disabled or diminished by personal strain or depression; when too much work results in lawyer burnout, discipline for neglect of a client is still the consequence. *In re Conduct of Loew*, 642 P.2d 1174 (Or. 1982).

## **2. Indigent defender’s duty to limit workload so as to ensure quality, and to decline excess cases**

The ABA has very recently placed these ethical commands in the context of workload limits on providers of public defense services. Principle 5 of the ABA’s *Ten Principles* states:

**Defense counsel’s workload is controlled to permit the rendering of quality representation.** Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.

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<sup>23</sup> The ABA Ten Principles are substantially identical to a document published by the U.S. Department of Justice in December 2000 to guide local jurisdictions in the development and adoption of indigent defense standards: the “Ten Commandments of Public Defense Delivery Systems,” written by James Neuhard, State Appellate Defender of Michigan and former NLADA President, and Scott Wallace, NLADA Director of Defender Legal Services, published as an introduction to the five-volume *Compendium of Standards for Indigent Defense Systems*. See [www.ojp.usdoj.gov/indigentdefense/compendium/standardsv1/v1intro.htm#Ten](http://www.ojp.usdoj.gov/indigentdefense/compendium/standardsv1/v1intro.htm#Ten).

This principle is not expressed as new policy, but as a restatement and summary of long-standing ethical standards and legal requirements relating to indigent defense systems, which are in turn derived from the basic commands of the ABA Model Code and Model Rules. The standards cited are:

- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “National Study Commission”], Guideline 5.1, 5.3;
- American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA Defense Services”], Standard 5-5.3;
- ABA Defense Function, Standard 4-1.3(e);
- National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter “NAC”], Standard 13.12;
- *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (National Legal Aid and Defender Association, 1984) [hereinafter “Contracting”], Guidelines III-6, III-12;
- *Standards for the Administration of Assigned Counsel Systems* (NLADA, 1989) [hereinafter “Assigned Counsel,” Standards 4.1,4.1.2;
- Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties,” Standard 2.2 (B) (iv).

The duty to decline excess cases is based both on the prohibition against accepting cases which cannot be handled “competently, promptly and to completion” (Model Rule 1.16(a)(1) and accompanying commentary), and the conflict-of-interest based requirement that a lawyer is prohibited from representing a client “if the representation of that client may be materially limited by the lawyer’s responsibility to another client.” (See *Keeping Defender Workloads Manageable*, U.S. Department of Justice, Bureau of Justice Assistance monograph, NCJ 185632, January 2001, at 4-6).

“As licensed professionals, attorneys are expected to develop procedures which are adequate to assume that they will handle their cases in a proficient fashion and that they will not accept more cases than they can manage effectively. When an attorney fails to do this, he or she may be disciplined even where there is no showing of malicious intent or dishonesty. The purpose of attorney discipline is not to punish the attorney but to ensure that members of the public can safely assume that the attorney to whom they entrust their cases is worthy of that trust.” *In re Martinez*, 717 P.2d 1121, 1122 (1986). The fact that the unethical conduct was a prevalent or customary practice among other lawyers is not sufficient to excuse unprofessional conduct. *KBA v. Hammond*, 619 S.W.2d 696, 699 (Ky. 1981). In *People v. Johnson*, 26 Cal. 3d 557, (Cal. 1980), the court found that a public defender’s waiver of one client’s speedy trial rights because of the demands of other cases “is not a matter of defense strategy at all; it is an attempt to resolve a conflict of interest by preferring one client over another.” Counsel’s abdication, if made “solely to resolve a calendar conflict and not to promote the best interests of his client,” the court held, “cannot stand unless supported by the express or implied consent of the client himself.” In any event, the client’s consent must be both fully informed and voluntary.

The duty to decline excess cases has been recognized and enforced through both constitutional caselaw and attorney disciplinary proceedings, as reviewed in *Ethical Problems*. “[T]he duty of loyalty [is] perhaps the most basic of counsel’s duties.” *Strickland v. Washington*, 466 U.S. 668, 692 (1984). “When faced with a workload that makes it impossible for a lawyer to prepare adequately for cases, and to represent clients competently, the staff lawyer should, except in extreme or urgent cases, decline new legal matters and should continue representation in pending matters only to the extent that the duty of competent, nonneglectful representation can be fulfilled.” Wisconsin Formal Opinion E-84-11, reaffirmed in Wisconsin Formal Opinion E-91-3. “There can be no question that taking on more work than an attorney can handle adequately is a violation of a lawyer’s ethical obligations.... No one seriously questions that a lawyer’s staggering caseloads can result in a breach of the lawyer’s duty of competence.” Arizona Opinion 90-10. *See State v. Alvey*, 524 P.2d 747 (1974); *State v. Gasen*, 356 N.E.2d 505 (1976).

A chief public defender may not countenance excessive caseloads even if it saves the county money (*Young v. County of Marin*, 195 Cal.App.3d §63, 241 Cal.Rptr. 3d 863). Nor is a chief public defender permitted to allow his or her financial interests, personal or professional, to oppose the interests of any client represented by any attorney in the office (*People v. Barboza*, 29 Cal.3d, 173 Cal.Rptr. 458). Nor can the lawyer’s ethical or constitutional obligations be contracted away by a public defender agency’s contract with the municipality or other government body.<sup>24</sup>

Though the duty to decline excess cases is the same for both the individual attorney and the chief executive of a public defense agency, the individual attorney may not always have the *ability* to withdraw from a case once appointed. If a court denies the attorney’s motion to withdraw from a case due to issues such as excessive workload, the attorney may, under ABA Model Rule 1.16(a) (Declining or Terminating Representation), have no choice but to continue representing the client, while retaining a duty to object and seek appropriate judicial review, as noted in *Ethical Problems*. A chief defender, on the other hand, has the ability not only to decline cases prospectively (as does the individual lawyer), but to redress an individual staff attorney’s case-overload crisis by reallocating cases among staff attorneys or declaring the whole office unavailable for further appointments.

### 3. Determining whether workload is excessive

The question of how to determine whether the workload of an attorney has become excessive and unmanageable is addressed in the remainder of ABA Principle 5. It provides that:

National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is a more accurate measurement.

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<sup>24</sup> Model Rule 1.8(f)(2) allows a lawyer to accept compensation for representing a person from a third party, but only if, first, there is no interference with the lawyer’s independence of professional judgment, and, second, no interference with the client-lawyer relationship. This would include all of the lawyer’s ethical & fiduciary obligations (including conflict of interest, zealous advocacy, competence), and legal obligations (including constitutional) to the client.

The national caseload standards referenced as unconditional numerical maxima per attorney per year, are those promulgated in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals, a body established by Administrator of the U.S. Law Enforcement Assistance Administration to write standards for all components of the criminal justice system, pursuant to the recommendation of the President's Commission on Law Enforcement and Administration of Justice in its 1967 report, *The Challenge of Crime in a Free Society*.<sup>25</sup> Courts have relied on numerical national caseload standards in determining the competence of the lawyer's performance for all of his or her clients. *See, e.g., State v. Smith*, 681 P.2d "1374 (Ariz. 1984). "The insidiousness of overburdening defense counsel is that it can result in concealing from the courts, and particularly the appellate courts, the nature and extent of damage that is done to defendants by their attorneys' excessive caseloads." *Id.* at 1381 (cited in *Ethical Problems*).

The concept of workload referenced in ABA Principle 5 is explained in a manual prepared for the National Institute of Justice by NLADA, *Case Weighting Systems: A Handbook for Budget Preparation*. Essentially, the National Advisory Commission's numerical caseload limits are subject to local adjustment based on the "weights," or units of work, associated with different types of cases and different types of dispositions, the attorney's level of support services, and nonrepresentational duties.

The concept of workload allows appropriate adjustment to reflect jurisdiction-specific policies and practices. The determination of workload limits might start with the NAC caseload limits, and then be adjusted by factors such as prosecutorial and judicial processing practices, trial rates, sentencing practices, extent and quality of supervision, and availability of investigative, social worker and support staff.<sup>26</sup> It is the responsibility of each chief public defender to set appropriate workload limits for attorney staff, reflecting national standards adjusted by local factors. Some jurisdictions may end up significantly below the numerical caseload standards (e.g., if the prosecution follows a no-plea policy, or pursues statutory mandatory minimums for any class of cases), and others significantly above (e.g., if court policies favor diversion of nonviolent offenders, and judicial personnel are responsible for matching the client with appropriate community-based service providers). Workload must always subsume completion of the ethical requirements of competent representation (see section 1, *supra*) for every indigent client.

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<sup>25</sup> As noted in a footnote to ABA Principle 5, these annual caseload limits per attorney are:

- 150 felonies
- 400 misdemeanors
- 200 juvenile
- 200 mental health, or
- 25 appeals

Capital cases, the note observes, are in a category by themselves: "the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea," citing *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). (Note: these are averages, not minima, and assume that, as required under federal law and national death penalty standards of the ABA and NLADA, at least two attorneys are appointed to each capital case, and that these hour-totals are spread among all attorneys on the case.)

<sup>26</sup> For maximum efficiency and quality, national standards call for particular ratios of staff attorneys to other staff, e.g., one investigator for every three staff attorneys (every public defender office should employ at least one investigator), one full-time supervisor for every ten staff attorneys, as well as professional business management staff, social workers, paralegal and paraprofessional staff, and secretarial/clerk staff for tasks not requiring attorney credentials or experience. National Study Commission, Guideline 4.1.

#### 4. Special duties of the chief executive officer of a public defense agency

In a structured public defender office environment, a subordinate lawyer is ethically required to refuse to accept additional casework beyond what he or she can ethically handle, even though ordered to by a supervisor (ABA Model Rule 5.2; Attorney Grievance Committee v. Kahn, 431 A.2d 1336 (Md. 1981) (lawyer's conduct not excused by employer's order on pain of dismissal)). And conversely, a supervisor is ethically prohibited from ordering a subordinate lawyer to do something that would cause a violation of the ethical rules (ABA Model Rule 5.1). Thus, "supervisors in a state public defender office may not ethically increase the workloads of subordinate lawyers to the point where the lawyer cannot, even at personal sacrifice, handle each of his or her clients' matters competently and in a non-neglectful manner." Wisconsin Formal Opinion E-84-11, *reaffirmed*, Wisconsin Formal Opinion E-91-3. A supervisor who does so, or a chief defender who permits it, acts unethically.

Thus, the chief executive of a public defense agency is required to decline excessive cases. *See, e.g., In re Prosecution of Criminal Appeals by the Tenth judicial Public Defender*, 561 So. 2d 1130, 1138 (Fla. 1990) (where "woefully inadequate funding of the public defender's office despite repeated appeals to the legislature for assistance" causes a "backlog of cases in the public defender's office ... so excessive that there is no possible way he can timely handle these cases, it is his responsibility to move the court to withdraw"); *Hattern v State*, 561 So. 2d 562 (Fla. 1990); *State v. Pitner*, 582 A.2d 163 (Vt.1990); *Schwarz v Cianca*, 495 So. 2d 1208 (Fla. App. 1986).

The rule is the same if the excessive caseloads are caused not by an increase in case assignments, but by decrease in funded positions. The Model Code "creates a primary duty to existing clients of the lawyer. Acceptance of new clients, with a concomitant greater overload of work, is ethically improper. Once it is apparent that staffing reductions caused by loss of funding will make it impossible to serve even the existing clientele of a legal services office, no new matters should be accepted, absent extraordinary circumstances." ABA Formal Opinion 347, *Ethical Obligations of Lawyer to Clients of Legal Services Offices When Those Offices Lose Funding* (1981). DR 6-101(A)(2) and (3) are violated by the lawyer who represents more clients than can be handled competently. *Id.*

Chief public defenders also have various duties to effectively manage the agency's staff and resources, to ensure the most cost-effective and least wasteful use of public funding. ABA Principle 10 requires that in every defender office, staff be supervised and periodically evaluated for efficiency and quality according to national standards. Principle 9 requires that systematic and comprehensive continuing legal education be provided to attorneys, to assure their competence and efficiency. Principle 3 requires that defendants be screened for financial eligibility as soon as feasible, which allows weeding out of ineligible cases and triggering of cost-recovery mechanisms (such as application fees and partial reimbursement) for clients found to be partially eligible. And Principle 1 requires that in the performance of all such duties, the chief public defender should be accountable to an independent oversight board, whose job is "to promote efficiency and quality of services."

## 5. Civil liability of chief public defender and unit of government

In addition to ethical problems, both the chief public defender and the jurisdiction may have civil liability for money damages as a result of the violation of a client's constitutional right to counsel caused directly by underfunding of the public defense agency. In *Miranda v. Clark County, Nevada*, 319 F.3d 465, 2003 WL 291987, (9th Cir., February 3, 2003), the *en banc* Ninth Circuit ruled that a §1983 federal civil action may stand against both the county and the chief public defender (even though the individual assistant public defender who provided the inadequate representation does not qualify as a state actor for purposes of such a suit, under *Polk Co. v. Dodson*, 454 U.S. 312 (1981)). The chief public defender had taken various administrative steps to cut costs in response to underfunding by the county – steps other than increasing the caseloads of assistant public defenders. He adopted a policy of allocating resources for an adequate defense only to those cases where he felt that the defendant might be innocent, based upon polygraph tests administered to the office's clients. Even clients who "claimed innocence, but appeared to be guilty" through the polygraph testing, as the court put it, "were provided inadequate resources to mount an effective defense" (slip op. at 1507-08). He also adopted a policy of saving money on training, and assigning inexperienced lawyers to handle cases they were not qualified for – in this case, involving capital charges.

The court held that both policies were sufficient to create a claim of a pattern or practice of "deliberate indifference to constitutional rights," redressable under §1983. On the triage-by-polygraph policy specifically, the court wrote:

The policy, while falling short of complete denial of counsel, is a policy of deliberate indifference to the requirement that every criminal defendant receive adequate representation, regardless of innocence or guilt. *City of Canton*, 489 U.S. at 389. This is a core guarantee of the Sixth Amendment and a right so fundamental that any contrary policy erodes the principles of liberty and justice that underpin our civil rights. *Gideon*, 372 U.S. at 340-41, 344; *Powell v. Alabama*, 287 U.S. 45, 67-69 (1932); *see also Alabama v. Shelton*, 535 U.S. 654, 122 S. Ct. 1764, 1767 (2002).

### Conclusion

*A chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case, encompassing the elements of such representation prescribed in national performance standards including the NLADA Performance Guidelines for Criminal Defense Representation and the ABA Defense Function Standards.*

*When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.*

## Appendix K

## Comparative Analysis of Louisiana District Attorney Revenue &amp; Expenditures, 2002

District	Expenditures DA	Expenditures PD	Difference DA-PD	Exp. Ratio DA : PD	DA Fund Balance End of 02	PD Fund Balance End of 02	Difference DA-PD
1	\$ 4,702,745.00	\$ 1,680,668.00	\$ 3,022,077.00	2.8 : 1	\$ 1,574,058.00	\$ 231,660.00	\$ 1,342,398.00
2	\$ 595,405.00	\$ 243,600.00	\$ 351,805.00	2.4 : 1	\$ 134,787.00	\$ 307,751.00	\$ (172,964.00)
3	\$ 1,433,391.00	\$ 285,377.00	\$ 1,148,014.00	5 : 1	\$ (5,757.00)	\$ 130,357.00	\$ (136,114.00)
4	\$ 1,700,355.00	\$ 1,079,671.00	\$ 620,684.00	1.6 : 1	\$ 1,950,009.00	\$ 122,868.00	\$ 1,827,141.00
5	\$ 422,650.00	\$ 142,921.00	\$ 279,729.00	3 : 1	\$ 234,720.00	\$ 141,175.00	\$ 93,545.00
6	\$ 662,782.00	\$ 236,375.00	\$ 426,407.00	2.8 : 1	\$ 410,284.00	\$ 85,046.00	\$ 325,238.00
7	\$ 369,605.00	\$ 94,118.00	\$ 275,487.00	3.9 : 1	\$ (18,107.00)	\$ 253,901.00	\$ (272,008.00)
8	\$ 945,056.00	\$ 83,069.00	\$ 861,987.00	11.4 : 1	\$ (28,658.00)	\$ 13,493.00	\$ (42,151.00)
9	\$ 2,733,069.00	\$ 594,874.00	\$ 2,138,195.00	4.6:1	\$ 338,769.00	\$ 118,307.00	\$ 220,462.00
10	\$ 561,948.00	\$ 186,740.00	\$ 375,208.00	3:1	\$ 529,980.00	\$ 217,101.00	\$ 312,879.00
11	\$ 1,101,440.00	\$ 278,265.00	\$ 823,175.00	4:1	\$ 329,727.00	\$ 146,387.00	\$ 183,340.00
12	\$ 510,210.00	\$ 186,495.00	\$ 323,715.00	2.7:1	\$ 108,722.00	\$ 76,421.00	\$ 32,301.00
13	\$ 389,462.00	\$ 94,002.00	\$ 295,460.00	4.1:1	\$ 373,645.00	\$ 14,346.00	\$ 359,299.00
14	\$ 837,373.00	\$ 1,257,847.00	\$ (420,474.00)	1 : 1.5	\$ 3,159,935.00	\$ 49,925.00	\$ 3,110,010.00
15	\$ 2,507,898.00	\$ 1,347,030.00	\$ 1,160,868.00	1.9 : 1	\$ 1,095,265.00	\$ 140,897.00	\$ 954,368.00
16	\$ 5,586,065.00	\$ 1,101,413.00	\$ 4,484,652.00	5.1 : 1	\$ 2,795,976.00	\$ (18,967.00)	\$ 2,814,943.00
17	\$ 1,800,097.00	\$ 423,354.00	\$ 1,376,743.00	4.3 : 1	\$ 1,156,369.00	\$ 377,829.00	\$ 778,540.00
18	\$ 1,592,137.00	\$ 503,210.00	\$ 1,088,927.00	3.2 : 1	\$ 816,434.00	\$ 179,794.00	\$ 636,640.00
19	\$ 7,151,916.00	\$ 2,691,107.00	\$ 4,460,809.00	2.7 : 1	\$ 2,508,110.00	\$ 217,915.00	\$ 2,290,195.00
20	\$ 477,285.00	\$ 74,109.00	\$ 403,176.00	6.4 : 1	\$ 154,296.00	\$ 305,593.00	\$ (151,297.00)
21	\$ 768,089.00	\$ 1,011,572.00	\$ (243,483.00)	1 : 1.3	\$ 117,604.00	\$ 177,480.00	\$ (59,876.00)
22	\$ 1,441,588.00	\$ 1,117,918.00	\$ 323,670.00	1.3 : 1	\$ 148,872.00	\$ 597,893.00	\$ (449,021.00)
23	\$ 2,545,268.00	\$ 557,628.00	\$ 1,987,640.00	4.6 : 1	\$ 1,365,724.00	\$ 386,227.00	\$ 979,497.00
24	\$ 14,106,396.00	\$ 2,545,419.00	\$ 11,560,977.00	5.5 : 1	\$ 10,000,618.00	\$ 1,413,900.00	\$ 8,586,718.00
25	\$ 171,271.00	\$ 194,784.00	\$ (23,513.00)	1 : 1.1	\$ 1,438,697.00	\$ 38,965.00	\$ 1,399,732.00
26	\$ 1,541,403.00	\$ 1,098,091.00	\$ 443,312.00	1.4 : 1	\$ 932,191.00	\$ 318,443.00	\$ 613,748.00
27	\$ 1,907,611.00	\$ 406,678.00	\$ 1,500,933.00	4.7 : 1	\$ 623,594.00	\$ 775,285.00	\$ (151,691.00)
28	\$ 222,754.00	\$ 57,138.00	\$ 165,616.00	3.9 : 1	\$ 37,783.00	\$ 38,956.00	\$ (1,173.00)
29	\$ 457,320.00	\$ 475,374.00	\$ (18,054.00)	1:1	\$ 559,613.00	\$ 313,660.00	\$ 245,953.00
30	\$ 646,177.00	\$ 345,370.00	\$ 300,807.00	1.9 : 1	\$ 771,925.00	\$ 85,098.00	\$ 686,827.00
31	\$ 1,083,471.00	\$ 311,049.00	\$ 772,422.00	3.5 : 1	\$ 595,250.00	\$ 237,260.00	\$ 357,990.00
32	\$ 691,431.00	\$ 696,788.00	\$ (5,357.00)	1:1	\$ 364,317.00	\$ 337,863.00	\$ 26,454.00
33	\$ 945,144.00	\$ 153,633.00	\$ 791,511.00	6.2 : 1	\$ 461,166.00	\$ 225,634.00	\$ 235,532.00
34	\$ 6,298.00	\$ 272,509.00	\$ (266,211.00)	N/A	\$ 1,568,187.00	\$ 13,749.00	\$ 1,554,438.00
35	\$ 304,252.00	\$ 58,873.00	\$ 245,379.00	5.2 : 1	\$ 31,345.00	\$ 11,616.00	\$ 19,729.00
36	\$ 492,582.00	\$ 173,304.00	\$ 319,278.00	2.8 : 1	\$ 407,825.00	\$ 92,959.00	\$ 314,866.00
37	\$ 309,726.00	\$ 50,281.00	\$ 259,445.00	6.2 : 1	\$ 86,570.00	\$ 46,000.00	\$ 40,570.00
38	\$ 243,724.00	\$ 117,290.00	\$ 126,434.00	2.1 : 1	\$ 74,563.00	\$ 179,355.00	\$ (104,792.00)
39	\$ 143,179.00	\$ 37,590.00	\$ 105,589.00	3.8 : 1	\$ 263,241.00	\$ 77,972.00	\$ 185,269.00
40	\$ 1,127,831.00	\$ 360,467.00	\$ 767,364.00	3.1 : 1	\$ 326,668.00	\$ 198,730.00	\$ 127,938.00
Orleans	\$ 10,553,736.00	\$ 2,653,557.00	\$ 7,900,179.00	4 : 1	\$ 456,443.00	\$ 416,521.00	\$ 39,922.00
Total	\$ 75,790,140.00	\$ 25,279,558.00	\$ 50,510,582.00	3 : 1	\$ 38,250,760.00	\$ 9,095,365.00	\$ 29,155,395.00

**Appendix L**  
*Analysis of Louisiana Sheriff's Revenue & Expenditures, 2002*

District	Revenues	Expenditures	Deficit Balance	Fund Balance End of 01	Fund Balance End of 02
1	\$ 18,645,212.00	\$ 15,459,869.00	\$ 3,185,343.00	\$ 4,117,134.00	\$ 7,302,477.00
2	\$ 9,167,251.00	\$ 8,298,452.00	\$ 868,799.00	\$ 2,473,591.00	\$ 3,342,390.00
3	\$ 5,696,348.00	\$ 5,858,280.00	\$ (161,932.00)	\$ 3,223,108.00	\$ 3,061,176.00
4	\$ 20,421,178.00	\$ 20,258,160.00	\$ 163,018.00	\$ 4,599,715.00	\$ 4,762,733.00
5	\$ 14,461,051.00	\$ 13,636,133.00	\$ 824,918.00	\$ 5,319,326.00	\$ 6,144,244.00
6	\$ 25,175,432.00	\$ 23,971,132.00	\$ 1,204,300.00	\$ 3,092,007.00	\$ 4,296,307.00
7	\$ 10,819,966.00	\$ 9,090,516.00	\$ 1,729,450.00	\$ 5,315,841.00	\$ 7,045,291.00
8	\$ 1,486,259.00	\$ 1,721,580.00	\$ (235,321.00)	\$ 1,219,125.00	\$ 983,804.00
9	\$ 20,616,784.00	\$ 20,081,733.00	\$ 535,051.00	\$ 11,418,745.00	\$ 11,953,796.00
10	\$ 3,368,212.00	\$ 3,126,112.00	\$ 242,100.00	\$ 810,804.00	\$ 1,052,904.00
11	\$ 5,893,258.00	\$ 5,849,666.00	\$ 43,592.00	\$ 3,261,650.00	\$ 3,305,242.00
12	\$ 11,084,443.00	\$ 11,079,096.00	\$ 5,347.00	\$ (188,537.00)	\$ (183,190.00)
13	\$ 2,073,872.00	\$ 1,914,797.00	\$ 159,075.00	\$ 721,725.00	\$ 880,800.00
14	\$ 36,116,373.00	\$ 37,528,090.00	\$ (1,411,717.00)	\$ 14,110,931.00	\$ 12,699,214.00
15	\$ 34,780,160.00	\$ 36,064,657.00	\$ (1,284,497.00)	\$ 13,052,253.00	\$ 11,767,756.00
16	\$ 29,836,893.00	\$ 28,105,601.00	\$ 1,731,292.00	\$ 4,917,995.00	\$ 6,649,287.00
17	\$ 15,673,908.00	\$ 15,750,111.00	\$ (76,203.00)	\$ 4,422,635.00	\$ 4,346,432.00
18	\$ 23,393,751.00	\$ 22,897,748.00	\$ 496,003.00	\$ 8,509,241.00	\$ 9,005,244.00
19	\$ 45,632,916.00	\$ 45,204,772.00	\$ 428,144.00	\$ 26,398,939.00	\$ 26,827,083.00
20	\$ 7,800,081.00	\$ 7,327,075.00	\$ 473,006.00	\$ 5,344,870.00	\$ 5,817,876.00
21	\$ 23,920,050.00	\$ 24,373,484.00	\$ (453,434.00)	\$ 9,728,412.00	\$ 9,274,978.00
22	\$ 37,369,639.00	\$ 37,727,053.00	\$ (357,414.00)	\$ 10,086,070.00	\$ 9,728,656.00
23	\$ 26,638,527.00	\$ 26,340,820.00	\$ 297,707.00	\$ 16,688,793.00	\$ 16,986,500.00
24	\$ 92,491,747.00	\$ 89,787,044.00	\$ 2,704,703.00	\$ 40,249,334.00	\$ 42,954,037.00
25	\$ 11,751,761.00	\$ 11,604,407.00	\$ 147,354.00	\$ 3,383,820.00	\$ 3,531,174.00
26	\$ 17,512,162.00	\$ 17,078,169.00	\$ 433,993.00	\$ 12,437,617.00	\$ 12,871,610.00
27	\$ 4,648,793.00	\$ 4,643,557.00	\$ 5,236.00	\$ 167,930.00	\$ 173,166.00
28	\$ 6,795,890.00	\$ 6,942,237.00	\$ (146,347.00)	\$ 1,323,378.00	\$ 1,177,031.00
29	\$ 17,758,618.00	\$ 20,957,570.00	\$ (3,198,952.00)	\$ 9,726,867.00	\$ 6,527,915.00
30	\$ 7,094,029.00	\$ 7,022,524.00	\$ 71,505.00	\$ 362,804.00	\$ 434,309.00
31	\$ 2,513,029.00	\$ 2,109,149.00	\$ 403,880.00	\$ 1,430,551.00	\$ 1,834,431.00
32	\$ 18,176,603.00	\$ 17,992,788.00	\$ 183,815.00	\$ 6,582,793.00	\$ 6,766,608.00
33	\$ 3,695,990.00	\$ 3,259,518.00	\$ 436,472.00	\$ 1,594,596.00	\$ 2,031,068.00
34	\$ 16,190,769.00	\$ 14,825,554.00	\$ 1,365,215.00	\$ 1,543,816.00	\$ 2,909,031.00
35	\$ 2,272,264.00	\$ 2,146,043.00	\$ 126,221.00	\$ 1,333,826.00	\$ 1,460,047.00
36	\$ 4,435,066.00	\$ 4,613,126.00	\$ (178,060.00)	\$ 1,968,179.00	\$ 1,790,119.00
37	\$ 4,873,962.00	\$ 5,082,802.00	\$ (208,840.00)	\$ 112,740.00	\$ (96,100.00)
38	\$ 3,684,835.00	\$ 3,295,571.00	\$ 389,264.00	\$ 1,827,189.00	\$ 2,216,453.00
39	\$ 1,839,327.00	\$ 1,836,797.00	\$ 2,530.00	\$ 988,531.00	\$ 991,061.00
40	\$ 11,465,094.00	\$ 11,463,356.00	\$ 1,738.00	\$ 3,496,092.00	\$ 3,497,830.00
Orleans	\$ 83,831,963.00	\$ 91,340,487.00	\$ (7,508,524.00)	\$ 60,331,443.00	\$ 52,822,919.00
Total	\$ 741,103,466.00	\$ 737,665,636.00	\$ 3,437,830.00	\$ 307,505,879.00	\$ 310,943,709.00

**The Provision of the Right to Counsel  
in Caddo Parish, Louisiana  
July 2004**

**Louisiana State University, Shreveport**

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## Executive Summary

**This study examines the provision of the constitutional right to counsel afforded to poor people in criminal cases in Caddo Parish, Louisiana.** The assessment is divided into two sections. Section 1 is an independent fiscal parity analysis of the District Attorney's Office and the Public Defender's Office. Section 2 is an assessment of public defender performance.

### Major Findings:

- 1) Despite national American Bar Association standards calling for adequate funding of indigent defense services and resource parity between indigent defense services and the prosecuting attorney's office, resources for the Public Defender's Office pale significantly to those of the District Attorney's Office in Caddo Parish on *every* financial indicator. The total financial resources available to the prosecution is three times greater than the total financial resources available for defender services -- even after adjustments were made for disparate workload considerations. And, the financial disparity is growing over time. While the District Attorney's resources grew nearly 22% from 1999 to 2002 (from \$3,862,000 to \$4,703,000), the Public Defender's resources decreased 13% (from \$1,939,000 to \$1,681,000) over the same time period -- and this from a 1999 level where the District Attorney received about twice the funding as the Public Defender.
- 2) Inadequate and imbalanced funding forces public defenders to carry caseloads far in excess of the standards set by the Louisiana Indigent Defense Assistance Board ("LIDAB"). To meet the LIDAB standards the public defender staff would need to be increased from 12 attorneys to 20 attorneys. National standards call for six investigators and six social workers to be employed to support an attorney staff of that size. The office currently has no social workers and functions with just four investigators. The inadequate staffing precludes public defense attorneys from meeting clients promptly and providing effective representation.
- 3) The failure to promptly meet with clients costs taxpayers of Caddo Parish money. A full 70% of inmates of the Parish jail are pre-trial detainees. The Commander of Caddo Correctional Center ("CCC") attributes this problem to the lengthy detention of pre-trial detainees represented by the Public Defender's Office. According to this Commander, this problem represents an additional administrative and financial burden on CCC, and he suggests that this problem could be resolved with speedier indigent defense representation. He estimates that Caddo Parish residents must bear the financial burden of six months additional pre-trial detention on average per inmate at an approximate annual cost of one half million dollars.
- 4) Adding to the economic burden of the Parish, 65% of the indigent defense clients had full-time jobs at the time of their arrests and detention. When public defenders do not interview clients early, they cannot help assess the likelihood that a client poses a risk either to the public safety or to flee court obligations. Public defenders with heavy caseloads cannot advocate for the client to get out of jail pending trial so that they can remain gainfully employed -- contributing to the Parish's tax base instead of being housed at tax payer's expense.

5) People of color are disproportionately represented by public defense attorneys and therefore are disproportionately affected by the failure of the system to adequately protect their state and federal constitutional right to counsel.

6) Inadequate public defender funding and staffing increases the likelihood that indigent clients receive poor outcomes. Disposition data from the District Attorney's database reveals that defendants represented by public defenders were less likely to have their charges rejected or dismissed, were more likely to plead guilty to charges, were less likely to have other outcomes such as diversion, and were less likely to go to trial, than defendants represented by private attorneys.

## **Introduction**

The American criminal justice system is rooted in the basic premise that every person stands equal before the law and has the right to a fair day in court before an impartial jury of their peers. In 1963, the United States Supreme Court established a constitutional right to counsel in criminal prosecutions that may result in a loss of liberty, declaring that our “noble ideals” of justice “cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”<sup>1</sup>

Nationwide there is great concern that the spirit and intent of this landmark Supreme Court decision are not being fulfilled at the state level, including such organizations as the American Bar Association (“ABA”), the National Association of Criminal Defense Lawyers (“NACDL”), the National Legal Aid & Defender Association (“NLADA”), and the American Civil Liberties Union (“ACLU”).<sup>2</sup> In Louisiana, a recent report commissioned by NACDL and researched by NLADA found that “Louisiana has constructed a disparate system that fosters systemic ineffective assistance of counsel due primarily to inadequate funding and a lack of independence from undue political interference.”<sup>3</sup>

The conclusion of the NLADA study is especially troubling given the fact that the right to counsel is not just a federal right, but is also a basic tenet of the Louisiana Constitution.<sup>4</sup> This sentiment is echoed in two separate examinations of indigent defense services, in East Baton Rouge<sup>5</sup> and Calcasieu parishes,<sup>6</sup> both of which concluded that those public defense delivery systems were incapable of providing effective assistance of counsel.

The purpose of this study is to examine the provision of indigent defense services in Caddo Parish. Issues addressed in this research report include: parity of resources between the

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<sup>1</sup>See *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>2</sup>NACDL is actively litigating the failure of indigent defense systems in Michigan and Pennsylvania, and have commissioned studies in Virginia and Louisiana. See <http://www.nacdl.org/public.nsf/DefenseUpdates/Index?OpenDocument> (last accessed June 2004); The ABA held a series of hearings in 2003 to document the extent to which states meet their constitutional obligation to provide meaningful and effective representation to poor people accused of crimes. See <http://www.abanet.org/legalservices/sclaid/defender/projects.html> (last accessed June 2004); The ACLU is actively litigating the issues surrounding the rights guaranteed to criminal suspects and defendants in Montana and Washington, among others. See <http://www.aclu.org/CriminalJustice/CriminalJusticeMain.cfm> (last accessed June 2004); NLADA has noted deficiencies in indigent defense systems in California, Nevada, Pennsylvania, and Louisiana. See <http://www.nlada.org> (last accessed June 2004).

<sup>3</sup>NLADA, *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years after Gideon*, p. 19; see <http://www.nacdl.org> and <http://www.nlada.org> (last accessed March 2004).

<sup>4</sup>See Art. 1, §13 of the Louisiana Constitution of 1974.

<sup>5</sup>The Spangenberg Group, *A Study of the Operation of the Indigent Defense System in the 19<sup>th</sup> Judicial District East Baton Rouge Parish, Louisiana* (1992).

<sup>6</sup>Kurth, Michael M., Ph.D. and Daryl V. Burckel, DBA & CPA, *Defending the Indigent in Southwest Louisiana* (unpublished report, July 2003).

Public Defender's Office ("PDO") and the District Attorney's Office ("DAO"); PDO caseloads; adequacy of indigent client contact; adequacy of PDO investigation resources; and the sufficiency of PDO resources for trial-related expenses, such as expert witnesses.

Research data for this report was collected and analyzed over a period of eleven months, between March 2003 and February 2004. The financial parity section was researched and written by Jeffrey D. Sadow, Ph.D., Associate Professor of Political Science at Louisiana State University in Shreveport.<sup>7</sup> Dr. Sadow's analysis is derived primarily from interviews with representatives from both the DAO and the PDO, as well as from public financial records from both offices.<sup>8</sup> Dr. Bernadette Jones Palombo, Associate Professor of Criminal Justice, researched and wrote the section on attorney performance.<sup>9</sup> Her research findings addressed in this report include the results of surveys of indigent pre-trial detainees, Caddo Correctional Center attorney/investigator jail visitation records for 2002, and computerized criminal case records furnished by the Caddo Parish DAO.

### **Section I: Financial Parity Assessment of Public Defender and District Attorney**

In the landmark U.S. Supreme Court decision extending the right to counsel to misdemeanor cases involving potential incarceration, Chief Justice Warren Burger stated: "society's goal should be 'that the system for providing the counsel and facilities for the defense should be as good as the system which society provides for the prosecution.'"<sup>10</sup> This concept of parity, according to a 1999 U.S. Department of Justice Report, includes "all related resource allocations, including support, investigative and expert services, physical facilities such as a law library, computers and proximity to the courthouse, as well as institutional issues such as access to federal grant programs and student loan forgiveness options."<sup>11</sup>

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<sup>7</sup>Dr. Sadow received his Bachelor of Arts in public administration and political science from the University of Oklahoma, his M.B.A. (concentrating in management information systems and finance) from the Owen Graduate School of Management, Vanderbilt University, and his Ph.D. in political science from the University of New Orleans. Among other subjects, Dr. Sadow has taught research methods, public policy evaluation, and nonprofit administration.

<sup>8</sup>Data for this section of the report rely on the annual reports (1999 through 2002) of the PDO and DAO, and from Alan Golden, Chief Counsel of the PDO.

<sup>9</sup>Dr. Palombo is an Associate Professor of Criminal Justice at Louisiana State University in Shreveport and has been the criminal justice program coordinator there since 1995. She received her Bachelor of Arts degree in Political Studies in 1985 from Pitzer College of the Claremont Colleges, California, her Master of Arts degree in Criminal Justice in 1991 and her Doctorate of Philosophy in Political Science in 1993 both from the Center for Politics and Economics at the Claremont Graduate University, California. Her academic areas of concentration include Criminal Justice, Criminology and Research Methodology. She teaches in the areas of research methodology (in criminal justice/criminology and in non-profit organizations), criminological theory, gangs, juvenile delinquency, sex crimes and white-collar crime.

<sup>10</sup>*Argersinger v. Hamlin*, 407 U.S. 25, 43 (1972) (C.J. Burger, concurring).

<sup>11</sup>U.S. Department of Justice, *Improving Criminal Justice* (1999).

Toward this goal, the ABA explicitly calls for resource parity between PDO's and DAO's in its national standards.<sup>12</sup> True parity can only exist when PDO's and DAO's share similar funds, including reserves, proportional to their respective caseloads.

**Major Finding # 1:**

**After adjustments for disparate workloads, the Caddo Parish Public Defender's Office is, on every financial indicator, significantly lacking in resources compared to those of the Caddo Parish District Attorney's Office.**

Funding for indigent defense services in Louisiana comes from three main sources.<sup>13</sup> First, a \$35 court charge is assessed to all convicted defendants in the jurisdiction.<sup>14</sup> Second, the Louisiana Indigent Defense Assistance Board ("LIDAB") provides grant monies to jurisdictions in an effort to bring relatively resource-poor jurisdictions more resources through its District Assistance Fund ("DAF"). Third, some indigent clients of the Public Defender provide reimbursement for assistance at the rate of \$40 per case.<sup>15</sup> In addition, indigent defense agencies may rely upon reserve funds accumulated in prior years to offset projected expenditure overruns in relation to revenue projection shortfalls.

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<sup>12</sup>See Principle 8 of the ABA's *The Ten Principles of a Public Defense System*, <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf> (last accessed June 2004); see also *In Defense of Public Access to Justice*, supra n. 3 at 52.

<sup>13</sup>The data presented here and throughout this section are drawn from the annual reports produced by the Public Defender and District Attorney, as summarized in Table 1.

<sup>14</sup>See generally LSA-R.S. 15:146.

<sup>15</sup>See LSA-R.S. 15:147A(D).

**Table 1****Data Used for Fiscal Analysis**

<u>Year</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Court costs for PDO (\$ thousands)	<u>1228</u>	<u>1236</u>	<u>1207</u>	<u>1166</u>
LIDAB grants for PDO (\$ thousands)	<u>501</u>	<u>154</u>	<u>473</u>	<u>490</u>
Reimbursements for PDO (\$ thousands)	<u>34</u>	<u>35</u>	<u>22</u>	<u>13</u>
Total PDO Revenues (\$ thousands)	<u>1763</u>	<u>1425</u>	<u>1702</u>	<u>1669</u>
Total PDO Expenses (\$ thousands)	<u>1933</u>	<u>1901</u>	<u>1717</u>	<u>1681</u>
Balance for PDO (\$ thousands)	<u>-170</u>	<u>-476</u>	<u>-15</u>	<u>-12</u>
Begin PDO reserve amount (\$ thousands)	<u>903</u>	<u>735</u>	<u>258</u>	<u>243</u>
End PDO reserve amount (\$ thousands)	<u>735</u>	<u>258</u>	<u>243</u>	<u>232</u>
Total DA expenses (\$ thousands)	<u>3862</u>	<u>4075</u>	<u>4166</u>	<u>4703</u>
DA minus PDO expenses (\$ thousands)	<u>1929</u>	<u>2174</u>	<u>2449</u>	<u>3022</u>
Expense Ratio (\$/\$)	<u>2.0</u>	<u>2.1</u>	<u>2.4</u>	<u>2.8</u>
End DA reserve amount (\$ thousands)	<u>1836</u>	<u>1997</u>	<u>2060</u>	<u>1574</u>
DA minus PDO reserve amount (\$ thousands)	<u>1101</u>	<u>1739</u>	<u>1817</u>	<u>1342</u>
Reserve Ratio (\$/\$)	<u>2.5</u>	<u>7.7</u>	<u>8.5</u>	<u>6.8</u>
Personnel expense DA (\$ thousands)	<u>2859</u>	<u>3042</u>	<u>3234</u>	<u>3493</u>
Personnel expense PDO (\$ thousands)	<u>1318</u>	<u>1364</u>	<u>1215</u>	<u>1179</u>
DA minus PDO personnel expense (\$ thousands)	<u>1541</u>	<u>1678</u>	<u>2019</u>	<u>2314</u>
Personnel Ratio (\$/\$)	<u>2.2</u>	<u>2.2</u>	<u>2.7</u>	<u>3.0</u>

As shown in Table 1, the funding mechanism for indigent defense relies mainly upon assessed court costs (\$35 per guilty plea/verdict).<sup>16</sup> Such reliance is inherently flawed. The collection of the \$35 court cost is not guaranteed in that assessed defendants do not always pay them. Thus, while there is a theoretical correlation between resources and demand – more defendants should mean proportionate resources – in reality, the resources do not meet the demand.<sup>17</sup>

The system is also flawed in that the court cost and reimbursement components depend upon the activities of law enforcement. Crime rates and vigilance of law enforcement agencies directly affect the number of cases eventually to be prosecuted. At lower levels, this can create difficulties because of invariant costs that must be paid regardless of caseload, such as rent, utility costs, supplies and equipment expenditures, staffing levels, etc., leaving fewer resources that may be allocated to the actual (variable) costs of defense. As case numbers rise, however, because the funding mechanism is both variable and, in practice, imperfect, there is not a corresponding rise in the level of revenue available per case.

Expenses are the best indicator of resources available because they track well the resources available to each agency, in the form of revenues to perform their tasks. The balance of reserve funds can also be used as an indicator of resources available. Both the DAO and the

<sup>16</sup>Assessed costs typically represent a minimum of 70% of total revenues. In 2001, such costs accounted for more than 86% of total revenues.

<sup>17</sup>Chief Defender Alan Golden advises that past efforts at improving collection by this office have not been cost effective.

PDO must prepare budgets from anticipated revenues; if actual expenses exceed revenues, then the agency must use up reserve fund assets built up in years where the opposite was true.<sup>18</sup> Consistent “deficit spending”<sup>19</sup> (which becomes more likely as caseloads decline because of the fixed-cost problem discussed above) erodes reserve funds such that current levels of per case spending (regardless of whether they are deemed adequate to provide prosecution or defense) cannot be maintained.

A final factor considered in comparing resource availability is in understanding the different caseloads that the District Attorney and Public Defender have. According to the NLADA report referenced above, a rough estimate of cases that a Public Defender’s office will have to handle is about 80% of felony cases brought to the DAO.<sup>20</sup> That is, roughly 80% of defendants in felony cases are represented by the Public Defender. Data over the past two years in the First Judicial District confirms this estimate (the relevant figure being about 81%).

While some District Attorney resources are spent on misdemeanor cases, which equal almost as many open cases as felony cases, it is a very small fraction of total resources. The Public Defender’s Office handles mainly felony cases.<sup>21</sup> Thus, parity in resources between the two agencies would occur at a ratio of 5:4 dollars spent by the District Attorney relative to dollars spent by the Public Defender (or 80%). This ratio would apply as well to the reserve funds.

The authors have compiled a series of graphs (Figures 1-4, below) to show the disparity of resources between the PDO and the DAO and how that disparity has grown over time. Figure 1 shows a comparison of PDO and DAO expenditures:

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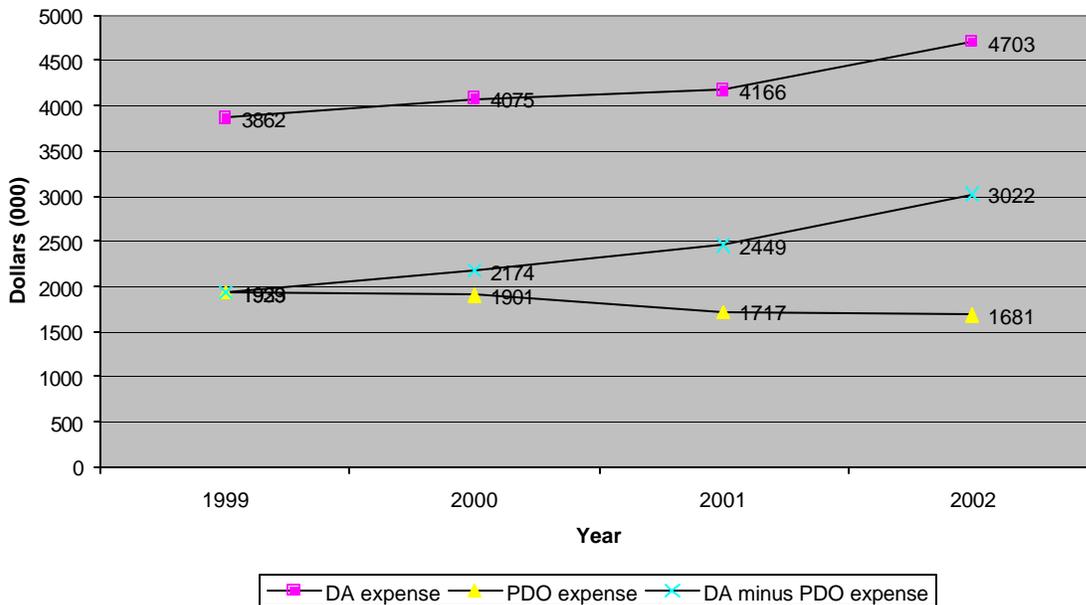
<sup>18</sup>Typically, government agencies relying on formulaic funding that is dependent upon a cyclical activity establish reserve funds because the demands placed upon them vary widely while at the same time they must meet certain fixed costs, as explained above. A stable funding system would have approximately equal and alternating periods of surpluses and deficits. An unstable system would allow many consecutive and growing periods of deficit spending.

<sup>19</sup>The term “deficit spending” is used as a placeholder to denote the experience of an agencies using reserve fund revenue to augment other funding resources. No public agency is allowed under Louisiana law to actually spend beyond their limitations.

<sup>20</sup>*See In Defense of Public Access to Justice*, supra n. 3, n. 118 at 35.

<sup>21</sup>Misdemeanor cases are assigned to attorneys outside of the Public Defender’s Office. They also represent roughly 80% of total such filed cases.

**Figure 1**  
**Expenditures, 1999-2002**

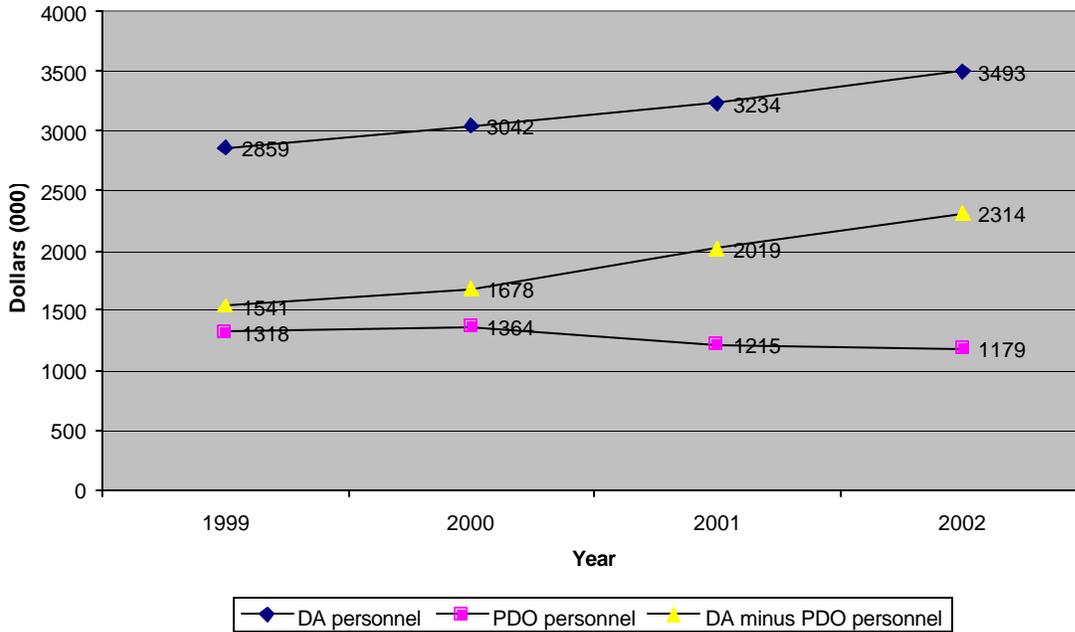


The 1999 expenditures by the PDO were nearly half of the DAO's, meaning the data points appear on top of each other in the above figure. While the DAO's resources have grown nearly 22% over this period, the PDO's have decreased 13% – and this from a 1999 level where the DAO received nearly twice the funding of the PDO. The middle line shows the increasing gap over this period, approximately 56%.<sup>22</sup>

Figure 2 shows the expenditure trends over this time period for the largest area of expense: personnel. The greatest effort in criminal prosecution or defense comes in the hours spent by attorneys and their support staff in analyzing and preparing cases:

<sup>22</sup>The 1999 expenditures by the PDO were nearly half of the DAO's, meaning the data points for this and the difference between the two on this chart appear on top of each other.

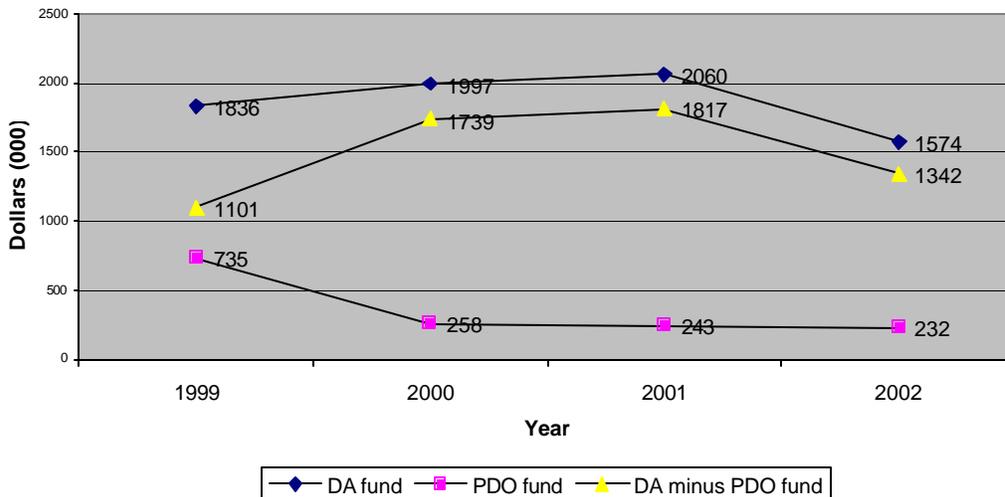
**Figure 2**  
**Personnel costs, 1999-2002**



Not surprisingly, the same pattern occurs here as in Figure 1. DAO personnel expenditures increased 22% while the Public Defender's *decreased* almost 12%. The gap between personnel resources increased substantially, 50% over the three year period.

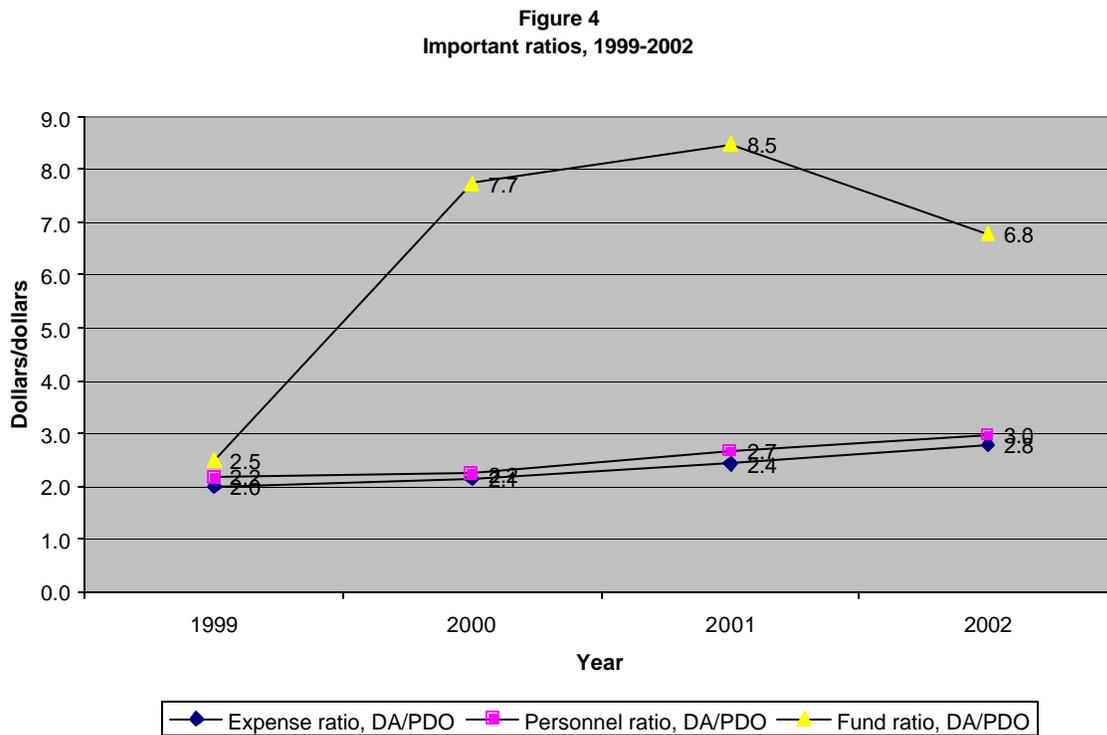
Figure 3 presents reserve funds levels for the 1999-2002 period for each agency. Figure 3 shows data detailing that the relative “deficit spending” level has been increasing to the detriment of the PDO:

**Figure 3**  
**Fund Balances, 1999-2002**



From a comparative perspective, the disparity here is even more pronounced. Starting from a large imbalance, reserves have dropped dangerously low for the PDO (from 38% of annual expenditures to less than 8%). Over the same time span, a small drop has taken place for the DAO. However, its reserve level still is approximately one-third of expenditures. The difference between the two has risen almost 22%.

Figure 4 presents ratios for the DAO compared to PDO on the above three key measures: expense ratios, personnel ratios and fund ratios. Given felony caseloads, equivalency would exist at a ratio of 5:4 or 1.25:1.<sup>23</sup>



At no point over this time span do the ratios reach the desired 1.25:1 -- a ratio that denotes relative parity. Instead, resources are higher consistently for the DAO and never less than 2.0 (in 1999 for total expense ratio).

In summation, the Caddo Parish District Attorney currently outspends the Public Defender by an amount almost triple, or a ratio of nearly 3:1 instead of the 1.25:1 as dictated by the 80% standard. This spending rate for indigent defense has devastated the PDO's reserves which by 2002 had fallen to one-quarter of its 1999 level.

<sup>23</sup>In order to make the graphical presentations understandable, the latter ratio is derived by dividing both terms of the ratio by 4.

Furthermore, the evidence also demonstrates that the DAO has far more resources to call upon in its prosecutions than does the PDO in its defenses.<sup>24</sup> The former enjoys far greater reserves and is increasing its advantage over time in expenditures. Such imbalances could be interpreted as giving prosecutors substantial advantages over indigent defendants. For financial parity to exist in available resources and reserve funds for the PDO relative to the DAO, revenues to support expenses matching approximately 80% of the DAO's expenses must occur. Without such remedial measures, parity cannot be reached and indigent defendants will not be guaranteed even our best effort at justice.

## **Section II: Assessment of Attorney Performance**

### *A. Caseload*

#### **Major Finding # 2:**

#### **Inadequate funding forces public defenders to carry excessive caseloads and to work with inadequate staffing.**

A major issue raised by the previous discussion is the effect of this financial disparity on PDO performance. There are various yardsticks by which the adequacy of defense services may be measured. One such yardstick is the lawyer's caseload.<sup>25</sup> No lawyer who has too many clients, no matter her/his expertise, dedication and/or resources will be able to provide adequate services.<sup>26</sup>

In order to properly assess caseload, it is imperative to understand the figures that represent an acceptable caseload.<sup>27</sup> LIDAB sets maximum caseloads for indigent defense lawyers in the State of Louisiana. LIDAB caseload limits are less stringent than those proposed by the ABA and NLADA.<sup>28</sup> LIDAB caseload limits are demonstrated in Table 2 below:

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<sup>24</sup>The DAO has access to the investigative resources of local law enforcement, state and federal crime labs, and FBI, whereas PDO's must pay for such investigative services out of available resources. *In Defense of Public Access*, supra n. 3 at 53.

<sup>25</sup>*Ten Principles* at Principle 5 (providing that "Defense Counsel's workload is controlled to permit the rendering of quality representation").

<sup>26</sup>It should be noted that excessive caseloads have serious ethical implications, *see* NLADA Study, Appendix J p. 117 et seq.)

<sup>27</sup>This research uses several sources for the data on caseloads. The source for this research is from the staff members themselves, provided to the researcher at the beginning of this study early in 2003. Since the Caddo PDO maintains caseload information, their data is reflected in Table 3, entitled "2003 Caddo Parish Caseloads for In-house Attorneys."

<sup>28</sup>For example, the ABA and NLADA limits provide that the felony caseload of a public defender should not exceed more than 150 per attorney per year. Furthermore, these national standards are based on work done on *any* felony case handled during the year and not just those opened during the year in question. To the extent that there are any cases that are continued from previous years (which cannot be determined accurately at this point in time) the attorney's caseloads are even greater than portrayed in Table 3. *See* Standard 13.12 of NLADA's *Standards for the Defense*, [http://www.nlada.org/Defender/Defender\\_Standards/Standards\\_For\\_The\\_Defense](http://www.nlada.org/Defender/Defender_Standards/Standards_For_The_Defense) (last accessed June 2004); Principle 5 of ABA's *Ten Principles*; *In Defense of Public Access*, supra n. 3 at 36

**Table 2 - LIDAB Standards**

<u>Type of Case</u>	<u>Maximum Caseload</u>
Capital	3-5
Automatic Life Sentence	15-25
Other Felonies	150-200
Misdemeanors	400-450
Traffic	400-450
Juvenile	200-250
Mental Health	200-250
Other trial cases	200-250
Capital Appeals	3-5
Non-capital felony appeals	40-50

A comparison of LIDAB caseload standard to the caseloads of the PDO provides an initial assessment of the adequacy of defense services. Table 3 shows the PDO caseloads for Caddo Parish for the early part of 2003.

**Table 3: 2003 Caddo Parish Caseloads for In-house Attorneys**

<b>Lawyer</b>	<b>Admin</b>	<b>Capital</b>	<b>Life</b>	<b>Other Felony</b>
1. Alan Golden	Director	5	3	
2. Kurt Goins		4	6	2
3. David McClatchey		3	6	4
4. Ricky Swift			31	38
5. Michelle Brown			30	48
6. Mary Harried			30	19
7. Mary Jackson	Sect. 1			411
8. Kammi Whatley	Sect. 2			412
9. Jerry Kircus	Sect. 3			437
10. Michael Bowers	Sect. 4			338

11. Michael Vergis	Sect. 5			426
12. Stuart Harville	Sect. 6			419

Table 3 indicates that the PDO Director has five capital cases, in addition to three life cases that do not include the possibility of the death penalty. According to LIDAB standards, such a caseload requires the attention of 1.2 full-time equivalency attorneys (“FTE”). Yet, Alan Golden also has his duties as Director/Administrator of the Agency. Moreover, at the beginning of 2003, the Caddo Parish PDO was currently assigned a total of 12 capital cases handled by Golden and two additional attorneys, 106 with a mandatory life sentence which are primarily handled by two attorneys, and 2,554 other felony cases which are primarily handled by six attorneys.

On average, this 2003 caseload in the Caddo Parish PDO is more than twice the LIDAB standard. To meet minimum LIDAB standards, capital case attorneys should not be handling additional life or other felony cases; the staff of attorneys who handle life cases should be expanded from three to four not handling other felony cases; and, the staff of six full time attorneys who handle all other felony cases needs to be expanded to a total of twelve attorneys, an addition of one attorney for each criminal court section.<sup>29</sup>

Moreover, the number and type of support staff (investigators, social workers, paralegals, legal secretaries, and office managers) needs to be substantially increased.<sup>30</sup> National standards promulgated by the ABA and NLADA require adequate support staff. The Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services direct that “defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office.”<sup>31</sup> The Guidelines further prescribe precise numeric ratios of attorneys to non-attorney staff:<sup>32</sup>

<sup>29</sup>In the beginning of 2004, the attorney staff has been expanded to include two additional full time and one part time public defense attorney. The preliminary caseload figures continue to show caseloads above the LIDAB standard. See Appendix 2 for these preliminary caseload figures provided by the Public Defender.

<sup>30</sup>“Investigators, for example, have specialized experience and training to make them more effective than attorneys at critical case-preparation tasks such as finding and interviewing witnesses, assessing crimes scenes, and gathering and evaluating evidence – tasks that would otherwise have to be conducted, at greater cost, by an attorney. Similarly, social workers have the training and experience to assist attorneys in fulfilling their ethical obligations with respect to sentencing, by assessing the client’s deficiencies and needs (e.g., mental illness, substance abuse, domestic problems, educational or job-skills deficits), relating them to available community-based services and resources, and preparing a dispositional plan meeting the requirements and expectations of the court, the prosecutor and the law. Such services have multiple advantages: as with investigators, social workers are not only better trained to perform these tasks than attorneys, but more cost-effective; preparation of an effective community-based sentencing plan reduces reliance on jail, and its attendant costs; defense-based social workers are, by virtue of the relationship of trust engendered by the attorney-client relationship, more likely to obtain candid information upon which to predicate an effective dispositional plan; and the completion of an appropriate community-based sentencing plan can restore the client to a productive life, reduce the risk of future crime, and increase public safety.” See NLADA, *Evaluation of the Public Defender’s Office in Clark County, NV* (Las Vegas, 2003).

<sup>31</sup>National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* 4.1 (1976).

<sup>32</sup>*Id.* Numeric guidelines for professional business management staff are not in the National Study Commission guidelines, but the Commission commented that “professional business management staff should be employed by defender offices to provide

One full time Legal Assistant for every four FTE attorneys  
One full time Social Service Caseworker for every 450 Felony Cases  
One full time Social Service Caseworker for every 600 Juvenile Cases  
One full time Social Service Caseworker for every 1200 Misdemeanor Cases  
One full time Investigator for every 450 Felony Cases  
One full time Investigator for every 600 Juvenile Cases  
One full time Investigator for every 1200 Misdemeanor Cases

By these standards, the Caddo Parish Public Defender's Office should have six investigators and six social workers on staff. It currently has four investigators and no social workers. This heavy caseload does not only mean that its staff is over-worked, and that the staff needs to be doubled, but that the clients of the PDO also continue to bear the burden of receiving inadequate assistance of defense counsel.

*B. Analysis of Jail Visitation Records for 2002*

**Major Finding # 3:**

**Excessive caseloads and inadequate PDO staff result in excessive pre-trial detention and at an annual cost of one half million dollars.**

This inadequacy is further supported by the quantitative and qualitative responses of inmate survey data discussed further on in this report. CCC Commander John Sells provided this researcher with jail data on monthly inmate census reports from January 1998 to September 2003. This data clearly indicates that the Correctional Center has been operating at above inmate capacity for 2001, 2002 and 2003. This in-house data shows that with a capacity of 1,070, and 70% of inmates representing pre-trial detainees, the center has been operating on average 15 inmates over capacity.

In a conversation with this researcher, the Commander attributed this problem to the lengthy detention of indigent pre-trial detainees represented by the PDO. According to the Commander, this problem represents an additional administrative and financial burden on CCC, and he suggested that this problem could be resolved by more adequate and speedier indigent defense representation. Assessment of the monthly inmate report data provided to this researcher supports the axiom that "Justice delayed is justice denied,"<sup>33</sup> and tax-paying residents of Caddo

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expertise in budget development and financial management, personnel administration, purchasing, data processing, statistics, record-keeping and information systems, facilities management and other administrative services if senior legal management are expending at least one person-year of effort for these functions or where administrative and business management functions are not being performed effectively and on a timely basis."

<sup>33</sup>English jurist William Gladstone lamented more than a century ago about the delay of justice, a problem many believe still exists today . . . in that "the accused incurs costs because of pre-trial restrictions on freedom, loss of income" and case delays produce backlogs which "wasted court resources, needlessly increase lawyer fees, and create confusion and conflict in allocating judges' time." American Bar Association of State Trial Judges, *Standards Relating to Court Delay Reduction*, 5 (Chicago, 1984).

Parish must bear the financial burden of six months additional pre-trial detention on average per inmate at an approximate annual cost of one half million dollars.

Jail visitation records for January through December of 2002 were reviewed and assessed to determine the extent of client contact by both the attorneys and investigators of the PDO representing primarily pre-trial inmates. Data from daily record logs for the 2002 year were categorized into visits by private attorneys, visits by public defense attorneys, and visits by conflict attorneys (hired by the PDO in cases involving multiple indigent defendants, for example) to determine if there were significant differences in the amount of time in individual visits spent with the inmate client.<sup>34</sup> In those visits where the attorneys spent time meeting with multiple clients, an average amount of time needed to be calculated from the total amount of time recorded in the visitation log.

A statistical measure known as the One-way Analysis of Variance (“ANOVA”) was used to measure differences between group averages or means to answer the question: “Were the number of minutes spent by private defense attorneys, public defense attorneys and conflict attorneys with their clients different from each other?” Analyses of the results shows that statistically, a significant difference exists between the average number of minutes each type of defense attorney spent with a client in 2002. Private defense attorneys spent an average of 44 minutes per client, the public defense attorney spent an average of 24 minutes per client, and appointed conflict attorneys spent an average of 31 minutes per client.

**Table 4**

**Multiple Comparisons**

Dependent Variable: TIME  
Scheffe

(I) TYPE	(J) TYPE	Mean Difference (I-J)	Std. Error	Sig.	95% Confidence Interval	
					Lower Bound	Upper Bound
public defender	private	-19.20*	1.019	.000	-21.70	-16.71
	conflict	-6.85*	2.149	.006	-12.12	-1.59
private	public defender	19.20*	1.019	.000	16.71	21.70
	conflict	12.35*	2.139	.000	7.11	17.59
conflict	public defender	6.85*	2.149	.006	1.59	12.12
	private	-12.35*	2.139	.000	-17.59	-7.11

\*. The mean difference is significant at the .05 level.

Upon determining that differences exist among the means, a post hoc range test and pairwise multiple comparisons can determine which means differ. A Scheffe statistical test was performed for simultaneous pairwise comparisons using the F sampling distribution. These

<sup>34</sup>Professor Palombo verified the validity of this categorization of these attorneys with the Office Manager of the Caddo Parish Public Defenders Office on several occasions. Appendix 3 provides this listing of conflict and/or public defense attorneys.

findings show that generally on average, private defense attorneys spend more time with each of their clients, the conflict attorneys spend the next highest amount of time, and the average public defense attorney spends the least amount of time visiting inmate clients at CCC. Figure 5, below, illustrates these differences:

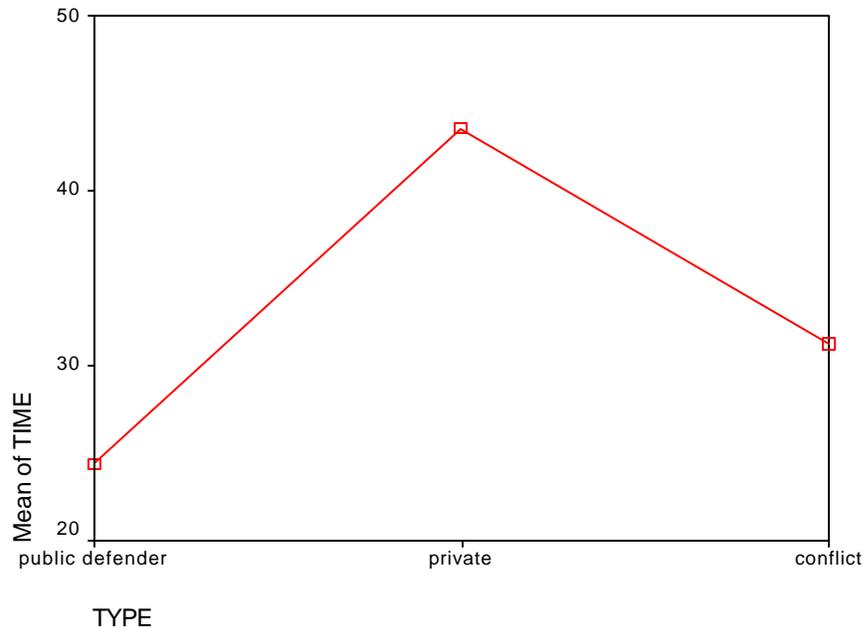


Figure 5 - Differences in Average Time Spent with Client by Type of Attorney

A major limitation of this data is that there is no way to assess the quality of client visits. Having said that, it should be noted that the jail visitation records did show that public defense attorneys visited a substantially higher number of clients per visit than did the private defense attorneys – indicating that each client gets substantially less “attorney time” than when represented by a private attorney. The records also show that a larger percentage of the public defense attorney visits were made in the evenings, and on Saturdays and Sundays than were the private attorney visits – suggesting that workload considerations keep them in court for most of the work week.<sup>35</sup> In the inmate survey discussion to follow, comments by client’s inmates themselves suggest that much of this time spent by public defense attorneys with the inmates consisted of filling out forms and discussing possible plea agreements.

Descriptive statistics were generated to determine the number of visits and the length of time spent by both Public Defender’s Office investigators and experts.<sup>36</sup> These results show that visits by investigators and experts represented approximately 1% of all the visits made by the

<sup>35</sup>Of the total of 2,916 visits made by criminal defense attorneys in Caddo Correctional Center in 2002, approximately 48% were made by private defense attorneys (1,420 visits), 44% (1,290 visits) made by public defense attorneys, and 6% were made by conflict attorneys (175 visits). Assessment of visitation records also show that on an average visit to CCC, both private defense attorneys and conflict attorneys visited an average of three clients per visit whereas public defense attorneys visited an average of eight clients per visit.

<sup>36</sup>The names of these investigators and experts were confirmed by the Office Manager of the Caddo Parish Public Defender’s Office.

PDO during the year. Although the PDO investigation staff averaged longer visits to inmates -- averaging 59 minutes per visit -- they were shown to visit inmate offenders on only ten different occasions over the course of the year.

*C. Analysis of Results of Indigent Client Survey*

**Major Finding # 4:**

**Excessive caseloads keep public defenders from properly addressing pre-trial release of defendants, 65% of whom were employed when arrested, further burdening taxpayers.**

**Major Finding # 5:**

**People of color are disproportionately represented by public defense attorneys and therefore are disproportionately affected by the failure of the system to adequately protect their state and federal constitutional right to counsel.**

“Indigent Client Surveys” were administered to a randomly selected group of inmates represented by PDO attorneys and detained in CCC in March of 2003.<sup>37</sup>

Surveys were disseminated to 119 detainees represented by PDO attorneys.<sup>38</sup> The primary purpose for engaging in a random selection of participants was to allow the researcher to be able to generalize study results from this sample of 119 respondents to the larger general pre-trial detainee population in the jail at the time.<sup>39</sup>

Overall, 73% of the respondents to this inmate survey were African American, and 25% were Caucasian. Less than 2% were Hispanic or identified as other. Population data for Caddo Correctional Center with a total of 1,118 inmates shows a breakdown by race with 77% African-

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<sup>37</sup>Subsequent to the administration of this survey, the issue was raised by a newly appointed member of the local Indigent Defense Board as to the questionable value and credibility of pre-trial detainee responses accurately representing the quality of defense services provided by the Public Defender’s Office. Since students from Columbia University School of Law volunteered many hours of their time administering these surveys to the respondents, it is assumed that the responses recorded on these surveys are accurate representations of what the respondents told the student volunteers. As to the “value and credibility” of the respondents’ views, that is an issue that cannot be addressed here. It is assumed that respondents’ perceptions presented here represent what they actually perceive or believe, irrespective of any possible errors in memory recall or reasoning ability.

<sup>38</sup>See Appendix 1.

<sup>39</sup>Coding for these surveys was completed by the primary researcher in August of 2003, and both quantitative and qualitative data analyses were then conducted. As stated, results of this analysis represent pre-detainee perceptions as to the amount and quality of contact public defense attorneys have had with them as well as the extent of investigative work by investigative staff with the PDO. Questions included whether or not inmates attempted to and successfully contacted their public defense attorney, whether they attempted to hire a private lawyer, if they had met with their attorneys prior to or after arraignment, and if they had met with an investigator from the PDO. Information on characteristics of offenders was also collected. Demographic information on the respondents was also collected to get an assessment not only of the characteristics of the respondent sample but also the characteristics of the larger population of detainees represented by the PDO.

American inmates, 22% Caucasian inmates and less than 1% Hispanic and Asian inmates.<sup>40</sup> 2000 Census population data for Caddo Parish shows a racial composition of 44.6% African American, 52.9% Caucasian, 1.5% Hispanic or Latino and less than 1% Asian.<sup>41</sup> This data represent a disparity in pre-trial detainee rates for African Americans in Caddo Parish in relation to their percentage in the overall population.

**Table 5**

**Respondent's race/ethnicity**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid African-American	87	73.1	73.1	73.1
White	30	25.2	25.2	98.3
Hispanic	1	.8	.8	99.2
Other	1	.8	.8	100.0
Total	119	100.0	100.0	

Regarding the amount of education completed by these respondents, approximately 44% of the respondents had received less than a high school education, approximately 38% had completed a high school education, and a little more than 18% had completed at least some college or more. A majority of these respondents (78.2%) had a total of two or fewer prior felony convictions and a majority (79.1%) had two or fewer prior misdemeanor convictions. Also, a majority of respondents, approximately 65%, stated that they were employed in a full time job prior to their arrests.

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<sup>40</sup>Memo from CCC, April 26, 2004.

<sup>41</sup>U. S. Census Bureau, American Factfinder <[http:// factfinder.census.gov/servlet/](http://factfinder.census.gov/servlet/)> (last accessed June 2004).

**Table 6****Educational Level**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid less than high school degree	52	43.7	43.7	43.7
high school degree	45	37.8	37.8	81.5
college	22	18.5	18.5	100.0
Total	119	100.0	100.0	

**Table 7****No. of prior felony convictions**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 0	37	31.1	31.1	31.1
1	29	24.4	24.4	55.5
2	27	22.7	22.7	78.2
3	14	11.8	11.8	89.9
4	5	4.2	4.2	94.1
5	5	4.2	4.2	98.3
6	1	.8	.8	99.2
10	1	.8	.8	100.0
Total	119	100.0	100.0	

**Table 8****No. of prior misdemeanor convictions**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 0	78	65.5	65.5	65.5
1	7	5.9	5.9	71.4
2	9	7.6	7.6	79.0
3	7	5.9	5.9	84.9
4	5	4.2	4.2	89.1
5	4	3.4	3.4	92.4
6	1	.8	.8	93.3
10	2	1.7	1.7	95.0
14	1	.8	.8	95.8
15	1	.8	.8	96.6
20	1	.8	.8	97.5
25	3	2.5	2.5	100.0
Total	119	100.0	100.0	

**Table 9**

**Employed - time of arrest**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	41	34.5	34.7	34.7
	yes	77	64.7	65.3	100.0
	Total	118	99.2	100.0	
Missing	System	1	.8		
Total		119	100.0		

Respondents were asked questions concerning their attempts to contact and their interactions with their PDO attorney. Analysis of quantitative data from these 119 respondents indicated that 20% of these offenders could not identify who their public defense attorneys were. The majority of the respondents (58.8%) indicated that they had attempted to contact their public defense attorney by phone or letter, but they did not receive a response to their repeated attempts.

**Table 10**

**Attempt to contact lawyer**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	49	41.2	41.2	41.2
	yes	70	58.8	58.8	100.0
	Total	119	100.0	100.0	

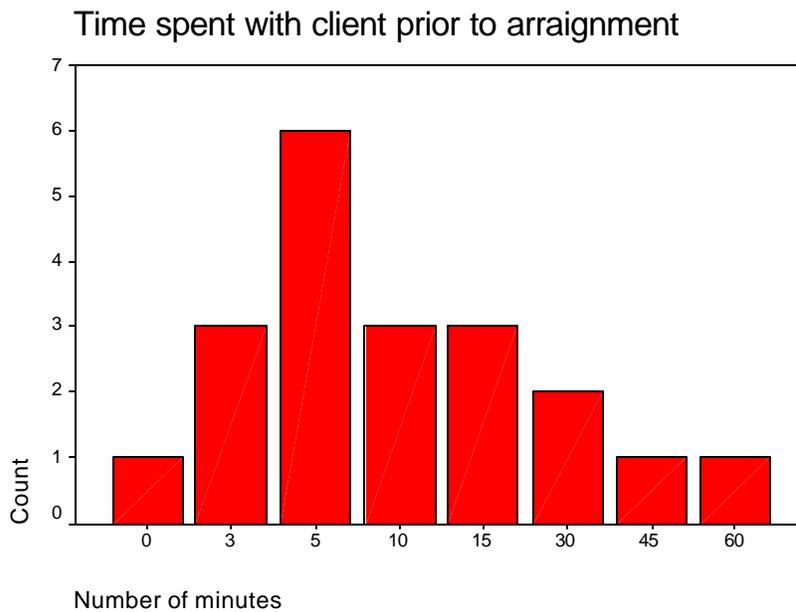
When asked if they had met with their public defense attorney prior to their arraignment, approximately 15% or 18 of the respondents indicated that they had met with their public defense attorney prior to arraignment. Since 11% of the respondents had not yet been arraigned, this data, if accurate and valid, reflects the fact that an overwhelming majority of pre-trial detainees represented by the PDO, or approximately 73.5% of the remainder of the sample, had expressed that they had no contact with their public defense attorney prior to their arraignment. Of those respondents who did have contact with their public defense attorney prior to their arraignment, the average amount of time spent meeting with the client averaged approximately fourteen minutes.

**Table 11**

**Met attorney - prior arraignment**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	86	72.3	73.5	73.5
	yes	18	15.1	15.4	88.9
	not yet arraigned	13	10.9	11.1	100.0
	Total	117	98.3	100.0	
Missing	System	2	1.7		
Total		119	100.0		

**Figure 6**



When asked if they had met with their public defense attorney in jail after their arraignment, a minority of respondents, approximately 31%, responded that they had met with their public defense attorney after their arraignment. Since 11% of the respondents indicated that they had not yet been arraigned, this data show that the majority of pre-trial detainees represented by the PDO, approximately 57% of the respondents, had expressed that they did not have contact with their public defense attorneys in jail after their arraignment. Of those respondents who did have contact with their public defense attorney in jail after their arraignment, the average number of times the attorney met with the client was approximately 1.59, and the average amount of time the attorney spent meeting with client averaged approximately 21 minutes. For six of the respondents, their attorneys spent more than 45 minutes with them after their arraignment.

**Table 12**

**Met attorney - after arraignment**

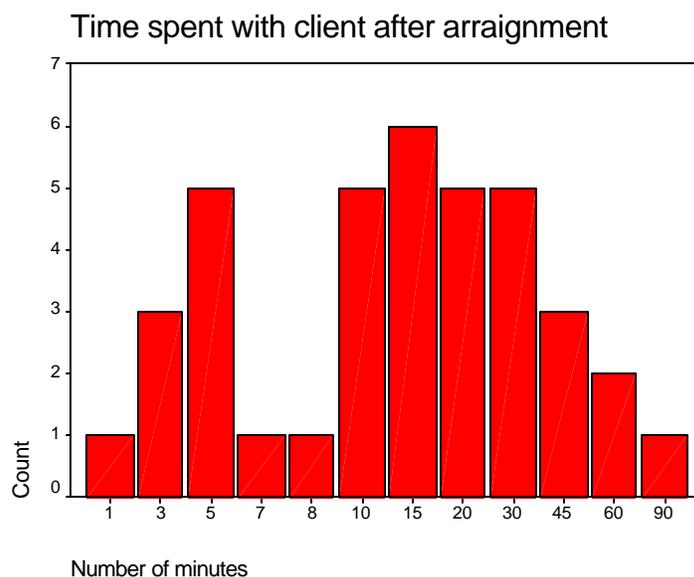
	Frequency	Percent	Valid Percent	Cumulative Percent
Valid no	68	57.1	57.1	57.1
yes	37	31.1	31.1	88.2
not yet arraigned	14	11.8	11.8	100.0
Total	119	100.0	100.0	

**Table 13**

**Descriptive Statistics**

	N	Minimum	Maximum	Mean	Std. Deviation
Number of times - after	39	1	10	1.59	1.534
Number of minutes	38	1	90	20.66	19.295
Valid N (listwise)	38				

**Figure 7**



As to the perceived amount of investigative efforts by the Public Defender investigative staff, 7.6% of the respondents (a total of 9 respondents) indicated that they were visited by an investigator regarding their cases while being held in detention. However, at least one of these respondents commented that these investigators were detectives from the Police department, not investigators from the Public Defender’s office. Nonetheless, the average amount of time spent by the investigator as indicated by the respondent was approximately 32 minutes.

**Table 14**

**Number of times - investigator**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	7	5.9	77.8	77.8
	2	1	.8	11.1	88.9
	3	1	.8	11.1	100.0
	Total	9	7.6	100.0	
Missing	System	110	92.4		
Total		119	100.0		

**Table 15**

**Statistics**

		Number of times - investigator	Length of time in minutes
N	Valid	9	6
	Missing	110	113
Mean		1.33	31.67
Std. Deviation		.707	43.665
Minimum		1	5
Maximum		3	120

Toward the completion of the survey, respondents were asked the open-ended question, “In your opinion, how can the public defender system serve you better?” A majority of the respondents indicated their disappointment with the quality and amount of legal representation they had received from their public defense attorney. A major concern was the lack of attorney-client contact at all stages of the pretrial and trial process. Another concern was the perception by some of the respondents that public defense attorneys were negotiating with the DAO to plea bargain cases so as to reduce caseloads without having fully examined the merits of the individual defendant’s case. Another common concern was the extensive length of time before cases were either plea-bargained or sent to trial. Several respondents expressed their concern that they had been waiting a least a year for their trials to begin without having met with their public defense attorneys.

A general analysis of qualitative responses from the inmate survey seems to suggest that inmates generally perceive a substantial need for client contact by their public defense counsel. Overall, responses suggest that there is minimal legal investigative legal work prior to trial; and, the clients’ interests in a speedy trial and a favorable outcome are not the primary concerns of the attorney representing them. Several respondents did express praise for the efforts of specifically named public defense attorneys who were representing them, despite the length of time they had been detained awaiting resolution to their cases, whereas others seemed to express frustration and disappointment with their services.

*D. Results of Caddo Parish Criminal Case Records Analysis*

**Major Finding # 6:**

**Inadequate public defender funding and staffing increases the likelihood that indigent clients receive poor outcomes.**

Computerized criminal case records for 1998 and 2002 in the form of an Excel spreadsheet were provided to this researcher by the DAO. Qualitative analyses of these agency records was conducted to compare case outcomes between those offenders represented by public defense attorneys, those represented by conflict attorneys (hired by the PDO in cases involving multiple indigent defendants) and private attorneys.<sup>42</sup>

Criminal charges filed by the Caddo Parish DAO for 1998 to 2002 represented 23,374 criminal case filings for five years. Of these cases, approximately 6,644 cases were dismissed by the courts prior to legal representation, and one case has been omitted due to a system-missing variable. The findings for type of attorney representation are as follows: 20.4% (3,406) of all defendants were represented by private defense attorneys, 64.2% (10,741) were represented by public defense attorneys and 15.4% (2,583) were represented by conflict attorneys.

**Table 16**

**Type of Attorney**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	private	3406	14.6	20.4	20.4
	indigent defender	10741	46.0	64.2	84.6
	conflict	2583	11.1	15.4	100.0
	Total	16730	71.6	100.0	
Missing	99.00	6643	28.4		
	System	1	.0		
	Total	6644	28.4		
Total		23374	100.0		

Overall, without taking into account type of attorney representation, disposition outcomes for these five years shows that in 47% of the cases (10,992) the charges were either rejected or dismissed; 41% or 9,661 charges were pled as guilty; 1.2% or 283 cases were found guilty at trial, less than 1% or 103 cases were found not guilty at trial and approximately 10% of all cases (2325) were either diverted, institutionalized, given DA probation or had other outcomes.

<sup>42</sup>However, these records were collected by the DAO for purposes other than this present analysis. Several variables needed to be created from existing variables in order to compare sentencing outcome differences. Other information was not useable for the purposes of this study. Additionally, the assistance of several representatives from the PDO in February 2004 in clarifying the names and employment dates of public defenders and conflict attorneys representation, necessary for the comparative analysis. See Appendix 3.

**Table 17**

**New Disposition**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	REJECTED/DISMISSED	10992	47.0	47.0	47.0
	GUILTY PLEA	9661	41.3	41.3	88.4
	GUILTY TRIAL/JUDGE	283	1.2	1.2	89.6
	NOT GUILTY	113	.5	.5	90.1
	DIV/DAPROB/EXT/INST/ NC/OT	2325	9.9	9.9	100.0
	Total	23374	100.0	100.0	

The next step was to compare case outcomes by type of attorney, private defense attorney, public defense attorney and conflict attorney, to answer the question as to whether the type of attorney representing an offender has an influence on the dispositional outcome of the case. A total of 16,730 cases were included in the comparison between these three group outcomes, and a cross tabulation statistical analysis utilizing a Chi square statistic<sup>43</sup> was conducted to determine if there is a relationship between type of attorney and case outcomes. A Chi-square statistic of 260.538 indicates that such a relationship does exist.

**Table 18**

**Chi-Square Tests**

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	260.538 <sup>a</sup>	8	.000
Likelihood Ratio	250.095	8	.000
N of Valid Cases	16730		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 15.90.

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<sup>43</sup>The Chi Square statistic compares the tallies or counts of categorical responses between the independent groups of “types of attorney” and “sentencing outcome” to determine if the differences found to exist are representative of all cases.

Results of cross tabulation analysis are reflected in the following table. Analysis of the cells of Table 19 show that: 1) Public defense attorney cases were dismissed by the court fewer times than expected (in 39.9% of their cases) whereas private defense cases were dismissed by the courts more times than expected (in 48.3% of their cases) as were cases represented by conflict attorneys (in 50.4% of their cases); 2) Whereas clients of public defense attorneys entered guilty pleas a far greater number than expected (55.6% of all public defense attorney cases), private defense cases entered guilty pleas fewer times than expected (in 43.9% of their cases) and conflict attorneys were similar to private attorneys in that clients entered guilty please in 44.5% of their cases.

Of those 2.2% defendants overall who did go to trial, more were found guilty than expected when represented by all three types of attorneys, for public defense attorney 1.5%, for private attorney 1.7% and for conflict attorney 1.8%. However, for those found not guilty, more were found not guilty than expected when represented by a private attorney (1.4%) whereas fewer were found not guilty than expected when represented by a public defense attorney (.4%) and conflict attorney (.3%). Overall, less than one percent of all cases goes to trial and are found not guilty (.6% or 103 cases). As for other dispositions by the court (such as diversion programs, institutionalization, etc.) a larger number of cases than expected by private attorneys (4.8% or 163 cases) were given this outcome whereas for public defense attorneys, fewer defendants (2.5% or 267 cases) received this outcome. For conflict attorneys, the number of defendants given other dispositional outcomes consisted of 76 cases or 2.9% an expected outcome.

**Table 19**

**Type of Attorney \* New Disposition Crosstabulation**

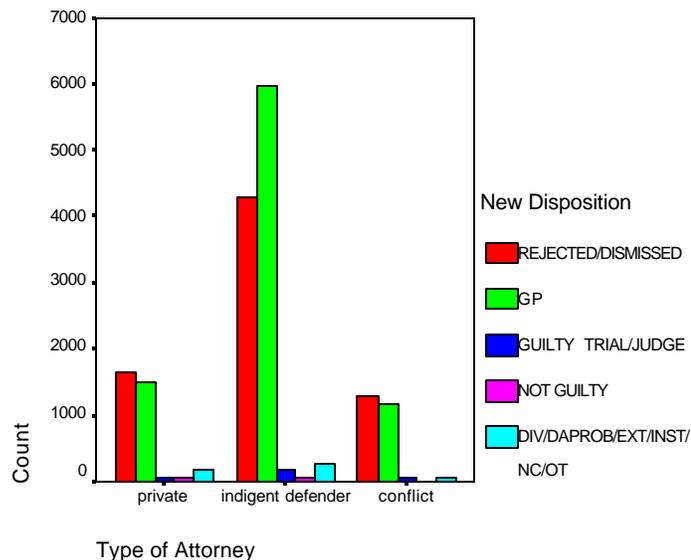
			New Disposition					Total
			REJECTED/ DISMISSED	GUILTY PLEA	GUILTY TRIAL/JUDGE	NOT GUILTY	DIV/DAPR OB/EXT/IN ST/NC/OT	
Type of Attorney	private	Count	1644	1495	58	46	163	3406
		Expected Count	1472.5	1754.9	54.6	21.0	103.0	3406.0
		% within Type of Attorney	48.3%	43.9%	1.7%	1.4%	4.8%	100.0%
		% within New Disposition	22.7%	17.3%	21.6%	44.7%	32.2%	20.4%
		% of Total	9.8%	8.9%	.3%	.3%	1.0%	20.4%
indigent defender	Count	4287	5975	164	48	267	10741	
	Expected Count	4643.7	5534.2	172.1	66.1	324.9	10741.0	
	% within Type of Attorney	39.9%	55.6%	1.5%	.4%	2.5%	100.0%	
	% within New Disposition	59.3%	69.3%	61.2%	46.6%	52.8%	64.2%	
	% of Total	25.6%	35.7%	1.0%	.3%	1.6%	64.2%	
conflict	Count	1302	1150	46	9	76	2583	
	Expected Count	1116.7	1330.9	41.4	15.9	78.1	2583.0	
	% within Type of Attorney	50.4%	44.5%	1.8%	.3%	2.9%	100.0%	
	% within New Disposition	18.0%	13.3%	17.2%	8.7%	15.0%	15.4%	
	% of Total	7.8%	6.9%	.3%	.1%	.5%	15.4%	
Total	Count	7233	8620	268	103	506	16730	
	Expected Count	7233.0	8620.0	268.0	103.0	506.0	16730.0	
	% within Type of Attorney	43.2%	51.5%	1.6%	.6%	3.0%	100.0%	
	% within New Disposition	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	
	% of Total	43.2%	51.5%	1.6%	.6%	3.0%	100.0%	

Statistical analysis of Caddo Parish District Attorney case records used for this research for the years of 1998 to 2002 show that sentencing outcome is related to the type of defense

attorney representing the criminal offender for certain outcomes. Defendants represented by private attorneys are more likely to have their cases dismissed, are less likely to plea bargain, and are more likely to have their cases referred to a diversion program than the public defender client. Defendants represented by public defense attorneys were less likely to have their charges rejected or dismissed, were more likely to plea guilty to charges, and were less likely to be given other outcomes such as diversion.

However, when cases did go to trial, the type of attorney representing the client did not affect the outcome of a guilty verdict (from either judge or jury trial). Offenders represented by private, contract or public defense attorneys were more likely to be found guilty than expected. Regarding not guilty verdicts, (from either judge or jury trial) private attorneys had a higher number of not guilty verdicts than expected (1.4%), whereas both public defense attorneys and conflict attorneys received a lower number of not guilty verdicts than expected (.4% and .3% respectively).

The bar chart below shows a comparison of disposition outcome counts by type of attorney representing the client. Comparatively, far more cases are plea-bargained by the public defense attorney than by private or contract attorneys. Other research and results of a current study suggest that the extended use of plea-bargaining is due to the workload and high number of cases represented by each public defense attorney.



**Figure 8 - Dispositional Outcomes by Type of Attorney**

**Discussion and Conclusion**

The quality of legal services provided to indigent defendants in Caddo Parish is far below what is recommended by LIDAB standards and by national norms. Much of these deficiencies can be traced back to overwhelming caseloads and inadequate funding. There is a lack of meaningful client contact by the PDO attorneys, little if any investigative and/or legal work

performed on cases prior to trial resulting in the minimal assertion of clients' legal rights, and very little if any use of outside experts for these cases.

In summary, this investigation of the extent (adequacy and quality) of legal services being provided to indigent defendants in Caddo Parish has shown that those accused of a crime have little or no meaningful contact with court-appointed lawyers both inside and outside the courtroom and that their cases receive very little attention in the way of meaningful investigation or expert assistance. In other words, indigent defendants have injustice by attrition and default rather than justice by litigation.

On every financial indicator, resources for the PDO pale significantly to those of the DAO. An unstable set of financial resources has seriously depleted reserve funds for the PDO. The lack of resources forces public defenders to carry caseloads far in excess of the standards set by LIDAB. The lack of adequate attorney and support staff causes delays that cost the taxpayers of Caddo Parish money.

Adding to the economic burden, public defense attorneys with heavy caseloads cannot advocate for the client to get out of jail pending trial so that they can remain gainfully employed – contributing to the Parish's tax base instead of being housed at tax payer's expense. Inadequate public defender staffing increases the likelihood that indigent clients receive poor outcomes; defendants represented by public defenders were less likely to have their charges rejected or dismissed, were more likely to plead guilty to charges, were less likely to have other outcomes such as diversion, and were less likely to go to trial, than defendants represented by private attorneys.

Defendants of African-American descent who are detained in CCC and who are disproportionately represented by public defense attorneys seem to be disproportionately affected by the failure of the system to adequately protect their state and federal constitutional right to counsel.

The essential problem of the Caddo PDO, from which all other inadequacies stem, is the inherent lack of stable, adequate funding.



5. Have you attempted to hire a private lawyer for your current charge(s)?

No

Yes If yes, please explain why you desired a private lawyer

\_\_\_\_\_

If yes, please explain why you were unable to obtain a private lawyer

\_\_\_\_\_

6. When were you initially incarcerated for the current charge(s)? \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(Month / Day / Year)

7. Were you granted bail on your first charge?

No

Yes If yes, was bail revoked on the basis of new charges or for violation of your bail conditions? Please explain: \_\_\_\_\_

\_\_\_\_\_

9. As best as you can recall, please provide us with information regarding all charges currently pending against you as well as your trial dates for each of these charges:

Charge	Current Crime Charged	Current Trial Date (Month / Day / Year)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

10. Other than for your 72 hour court appearance (which is where you are brought before a judge a few days after your arrest and bond is set), about how long after your arrest did you first meet with an attorney for the current charge(s)?

\_\_\_\_\_ number of days  
\_\_\_\_\_ have not met with my attorney

11. Prior to arraignment (when you are brought to court to plead not guilty and have an attorney assigned to you) did you meet with your attorney?

\_\_\_\_\_ No  
\_\_\_\_\_ Yes     If yes, about how many times? \_\_\_\_\_  
                  If yes, about how long each time? \_\_\_\_\_ minutes  
\_\_\_\_\_ I have not been arraigned yet

12. After your arraignment, have you been visited by your attorney in jail while you have been incarcerated for the current charge(s)?

\_\_\_\_\_ No  
\_\_\_\_\_ Yes    If yes, about how many times? \_\_\_\_\_  
                  If yes, about how much time in total minutes were you visited by such attorneys in jail? \_\_\_\_\_ (minutes)  
\_\_\_\_\_ I have not been arraigned yet

13. Have you been visited by investigators (someone who will speak to witnesses and assist the lawyers in your defense) in jail while you have been incarcerated for the current charge(s)?

\_\_\_\_\_ No  
\_\_\_\_\_ Yes    If, yes, how many times? \_\_\_\_\_ number of times  
                  If yes, about how much time in total minutes have you been visited by such investigators in jail? \_\_\_\_\_ minutes

14. While you were present in the courthouse:

- a. About how many times have you spoken with your attorney? \_\_\_\_\_ number of times
- b. About how long were your discussions with your attorney? \_\_\_\_\_ total number of minutes

15. What is the status of your case for your current charge(s)?

\_\_\_\_\_ Accepted plea bargain                    If accepted plea or trial completed, explain

\_\_\_\_\_ Trial Completed sentence outcome? Sentence: \_\_\_\_\_  
\_\_\_\_\_ Trial ongoing Fine: \_\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_ Probation or parole violation on earlier charges  
\_\_\_\_\_ Other: Please explain: \_\_\_\_\_

16. In your opinion, how can the public defender system serve you better? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Information about you:**

17. Your gender: \_\_\_\_\_ male  
\_\_\_\_\_ female

18. Your date of birth: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(Month / Day / Year)

19. Your race/ethnicity:  
\_\_\_\_\_ African-American  
\_\_\_\_\_ White  
\_\_\_\_\_ Hispanic  
\_\_\_\_\_ Other Explain: \_\_\_\_\_

20. Your highest educational level achieved: \_\_\_\_\_ years of school completed

22. Number of prior convictions you have:  
\_\_\_\_\_ Felonies  
\_\_\_\_\_ Misdemeanors

22. At the time of your arrest for the current charge(s):

a) Did you have a job?

\_\_\_\_\_ No

\_\_\_\_\_ Yes If yes, what was your job title/position: \_\_\_\_\_

If yes, how long had you been in this job? : \_\_\_\_\_ number of months

If yes, what was your wage/salary? \$ \_\_\_\_\_ per month

b) Did you have other source(s) of income:

\_\_\_\_\_ No

\_\_\_\_\_ Yes

If yes, what were your other sources of income?

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If yes, about how much additional income did you have

\$\_\_\_\_\_ per month

**Read to respondent:** Thank you for completing this survey. Your time and participation is greatly appreciated, since it will assist us in determining the quality of legal services provided to other indigent defendants such as yourself in Caddo Parish.

**Interviewer notes:**

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## Appendix 2

### May 2004 Caddo Parish Caseloads of In-house Attorneys

Lawyer	Admin	Capital	Life*	Other Felony**	LIDAB Standards
1. Alan Golden	Director	2	11		3-5 Capital or 15-25 Life
2. Kurt Goins	Cap. Att.	3	17		
3. David McClatchey	Cap. Att.	3	16		
4. Ricky Swift	Senior - Sect. 1		48		15-25 Life or 150-200 Other felonies
5. Michelle Andrepont	Senior Sect. 2		33		
6. Mary Harried	Senior Sect. 3		41		
7. Michael Bowers	Senior Sect. 4		36		
8. Carolyn Sartin	Sect. 1			344	150-200 other felonies
9. Kammi Whatley	Sect. 2			255	
10. Wayne Dishman	Sect. 1,2			231	
11. Glen Garret	Sect. 3			212	
12. Casey Simpson	Sect. 4			277	
13. Jerry Kirkus	Sect. 3,4			231	
14. Michelle Tabarrok	Sect. 5			253	
15. Liz Gardner	Sect. 5			210	

\* Senior staff attorneys handle cases that carry either life or virtual life sentences. "Virtual life sentences" are sentences ranging from 40 to 99 years (e.g., forcible rape and 2nd degree kidnapping - 40 years, attempted murder-50 years and armed robbery - 99 years).

\*\* When a defendant has more than one docket number the PDO counts each one separately. Docket numbers present a more accurate measure of the amount of cases and thus the workload each attorney actually has. For reporting purposes to LIDAB, docket numbers are used.

### APPENDIX 3

#### ID AND CONFLICT ATTORNEYS – February 26, 2004

##### LISTING OF BOTH ID and CONFLICT ATTORNEYS

Andrepoint, Michele	ID (10/94 – 12/31/97; 7/1/99 to present) Conflict (1/1/98 to 6/30/99)
Book, Gary	Conflict
Bowers, Michael	ID (3/1/98 to present) drug section
Brewer, John	Conflict
Brown, Michelle	ID Juvenile Court
Carmody, Michael	Conflict
Clark, Joseph	Conflict
Cole, Rollin W.	Conflict
Collins, Stephen	Conflict
Cranford, Victoria	Conflict (pre 1997)
Dishman, Wayne	ID (3/1/98 to 4/28/2000) rehired 1/2004
Fisher, Richard	Conflict - Misdemeanor
Foster, Diane	ID (11/3/97 to 9/3/99)
Franklin, Jared	Conflict - Misdemeanor
Frederick, Mark	Conflict - Misdemeanor
Glassel, Steve	Conflict – capital
Goins, Jesse	ID (3/1/96 to 11/20/01)
Goins, Kurt	ID (1/2/87 to present)
Golden, Alan	ID – felony/capital
Goorley, Richard	Head of CAPOLA
Harried, Mary	ID (12/15/97 to present)
Harris, Alan	ID (4/86 to 11/14/97) Conflict to present
Harville, Stuart	ID (7/1/98 to 12/03)
Hood, James	Conflict - misdemeanor
Inderbitzin, Ronald	Conflict - misdemeanor
Jackson, Mary	ID (1/1/02 to 12/31/03) Conflict misd <2002
Johnson, Ginger	Conflict - regular
Kirkus, Jerry	ID (1/1/01 to present)
Lester, Calvin	ID – Juvenile Court
McDonald, Stanley	Conflict
McClatchey, David	ID (4/1/91 to present)
Mouton, Edward	ID (1/1/97 to 6/30/99)
Perkins, Michele	ID Juvenile Court
Shacklette, Ross	Conflict - Misdemeanor
Smart, Pamela	ID (1/1/91 to 1/31/02) Conflict to present
Stegall, Alan	Conflict - Misdemeanor
Straub, Scott	Conflict - Misdemeanor
Stroud, Martin	Conflict

Swift, Ricky	ID (3/4/96 to present)
Thomas, Floyd & Lloyd	Conflict - regular
Vergis, Michael	ID (9/25/98 – 4/18/03); Private presently
Thornell, Warren	Conflict – regular and capital
Waltman, Angela	ID (5/8/2000 to 12/29/2000)
Waltman, Tim	Conflict - misdemeanor
Whatley, Kammy	ID (9/1/99 to present)
Winchell, Mary	Conflict (resigned ID 6/30/95)
Zaccaria, Frank	ID – (1/7/97 to 2/15/01) Conflict to present

**ID ATTORNEYS LISTING**

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Stegall, Alan	Conflict - Misdemeanor
Straub, Scott	Conflict - Misdemeanor
Stroud, Martin	Conflict
Thomas, Floyd & Lloyd	Conflict - regular
Thornell, Warren	Conflict – regular and capital
Waltman, Tim	Conflict - misdemeanor
Winchell, Mary	Conflict

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### **STATUTES**

LSA-R.S. 15:145B

LSA-R.S. 15:146

LSA-R.S. 15:147A(D)

# Commonwealth of Kentucky Department of Public Advocacy



Public Advocacy Commission

Justice Jeopardized Final Report

September 2005

Ernie Lewis  
Public Advocate

# JUSTICE JEOPARDIZED: A REPORT OF THE PUBLIC ADVOCACY COMMISSION ON KENTUCKY PUBLIC DEFENDER CASELOADS

September 2005

“Our willingness to assure the least among us the guiding hand of counsel is a test of our American faith.” Anthony Lewis, Author of *Gideon’s Trumpet*, from the Foreword to *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice*.

## EXECUTIVE SUMMARY

Forty years ago, in the landmark case of *Gideon v. Wainwright*, the United States Supreme Court declared “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” As the justices said, “This seems an obvious truth.” Yet decades later, has the promise of *Gideon* been fulfilled in Kentucky? Since September 2004, Kentucky’s Public Advocacy Commission, charged with oversight of the state’s Indigent Defense System, has been exploring the challenging answer to this question.

After the 2004 Defender Caseload Report revealed, among other things, continued increases in overall caseloads among public defenders, the Public Advocacy Commission began hosting a series of public meetings to solicit input from the criminal justice community. At that time, defender caseloads in Kentucky were nearly twice the level recommended in nationally-recognized standards.

Commission members attended meetings throughout the state and heard testimony from Supreme Court Justices, Court of Appeals judges, public defenders, concerned members of the private bar, judges, prosecutors, and others. The consistent theme was that of an overwhelmed and jeopardized criminal justice system.

The following report summarizes not only the key findings based on testimony heard at each of the meetings but more importantly vital recommendations that policy makers are urged to implement in light of Kentucky’s continued crisis to serve adequately its poor citizens.

Listed below are the key recommendations of this report.

## **Recommendations**

- 1. The criminal justice system should be understood as a system that requires resource parity among the different components. Policy makers should take steps to ensure that the key elements of Kentucky's criminal justice system, the courts, prosecution, and indigent defense, become and remain balanced throughout the courts, prosecution, and indigent defense.**
- 2. The Commonwealth should fully fund the Kentucky public defender system. At a minimum, an additional \$10 million per year is necessary to bring Kentucky into the mid-level area in comparison with other programs in important benchmark areas such as cost-per-case.**
- 3. Caseloads for trial attorneys should never be above 400 new mixed cases per lawyer per year.**
- 4. When Drug Task Forces provide adequate funding for law enforcement in a particular area, additional funding must be provided for public defenders, prosecutors, and courts.**
- 5. When drug or family courts are created, additional funding must also be provided to public defenders, prosecutors, and courts.**
- 6. Additional funding should be supplied for conflict attorneys in field offices.**
- 7. Each public defender office in Kentucky should have on its staff a social worker who would help in juvenile court, in drug cases, and in preparation of alternative sentencing recommendations.**
- 8. There should be 1 investigator for every 6 trial public defenders.**
- 9. There should be 1 support staff member (secretarial or para-legal) for every 2 attorneys.**
- 10. Consideration should be given by policy makers to establishing caseload limits in KRS Chapter 31 for trial level public defenders.**

## Context for this Report

The Public Advocacy Commission has been concerned for many years about the growing problem of excessive caseloads carried by Kentucky public defenders. For at least the last fifteen (15) years, caseloads for public defenders in Kentucky have exceeded national standards. As DPA has converted to a full-time system from a part-time contract system, the Commission is concerned that the excessive caseload problem, despite the best efforts of DPA attorneys, lowers the quality of services being rendered by DPA attorneys at the trial level.

At its October 2004 meeting, the Public Advocacy Commission received the Department of Public Advocacy's Annual Defender Caseload Report for FY04. The Commission was distressed to hear that despite efforts to lower caseloads through increased funding from the General Assembly, caseloads remained too high, practically guaranteeing a compromise in quality of defense provided to indigent clients. Funding, intended to lower caseloads, was simply insufficient to keep up with the growing number of indigent defense appointments at the trial level. Among the findings in the report were the following:

- Overall cases rose to 131,094, up from 117,132 the previous year.
- Cases at the trial level increased by 12% from FY03 to FY04.
- Cases rose steadily over the previous four years. In FY2000, DPA had 97,818 cases. In FY 01, DPA had 101,847 cases. This increased to 108,078 in FY02, and again to 117,132 in FY03.
- Public defenders finished FY03 with an average caseload of 484 new open cases. DPA used additional revenue during FY04 to hire 10 new caseload reduction lawyers and placed them in offices with the heaviest caseloads.
- Public defenders ended FY04 averaging 489 new cases annually. Despite the hiring of the new caseload reduction lawyers in FY04, the average caseload per lawyer rose by 1.1%. DPA's average caseload for its trial attorneys was 189% of the recognized National Advisory Commission's national standards.
- Fifteen offices had average caseloads in excess of 500 new cases per lawyer per year.

In response, the Public Advocacy Commission held a series of regional public meetings to learn how this problem was affecting the different components of the criminal justice system, including but not limited to public defenders. Those meetings were held in Somerset on December 16, 2004, Covington on February 18, 2005, Bowling Green on May 20, 2005, Prestonsburg on August 24, 2005, and Paducah on September 9, 2005. A brief summary of the comments heard by the Commission are contained in the Appendix.

In September 2005, the Department of Public Advocacy released its annual caseload report for FY05. This report confirmed all of the concerns entered into the record at the public meetings. The total caseload in the Department has continued to rise by 2.6% over FY04, from 131,094 to 134,584.

Despite the hiring of 8 caseload reduction lawyers during FY05, the average new open cases per lawyer dropped only from 489 to 483. Caseloads continue to be at 189% of the national standards. Fifteen field offices continued to average 500+ cases per lawyer in FY05. The cost-per-case remains low at \$233.

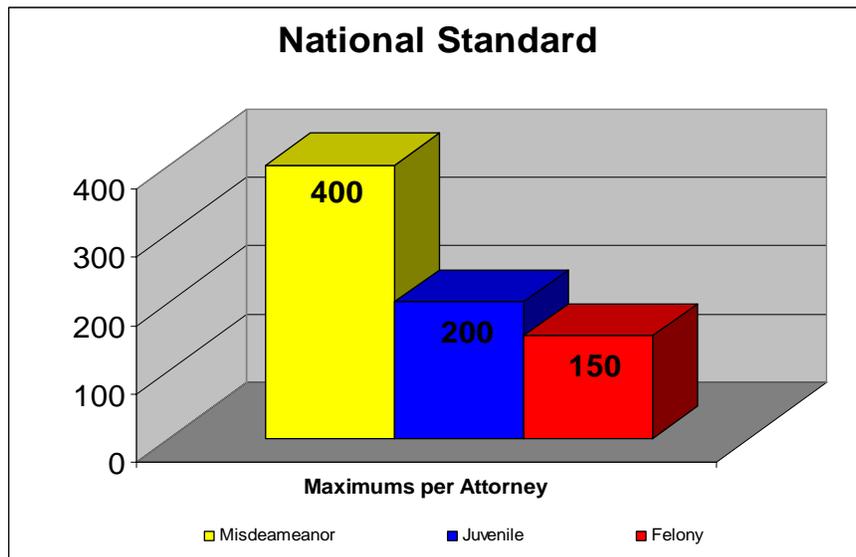
The caseload crisis in Kentucky continues to exist. As a result, the Public Advocacy Commission makes the following findings and recommendations to the policy makers of Kentucky.

## Findings

- 1. Kentucky public defenders have far too many cases. In FY04 & FY05, those caseloads were at 189% of national standards. These caseloads are jeopardizing the justice being provided to Kentucky's poor.**

### Kentucky public defenders' caseloads exceed national caseload standards

There is a nationally recognized numerical standard for the *maximum* number of cases that a trial level public defender should carry in a given year. The benchmark has been set in the National Advisory Commission Standards (1973) and has been followed by public defender agencies nationwide since that time. The black letter standard reads as follows: "The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding 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."



### **Judges control defenders' caseloads through the appointing decision**

Defenders have no control over their caseloads. Rather, judges make all appointing decisions as a result of the rules of procedure and statutory law. RCr3.05(2) states the following: "If the crime of which the defendant is charged is punishable by confinement and the defendant is financially unable to employ counsel, **the judge** shall appoint counsel to represent the defendant unless he or she elects to proceed without counsel." KRS 31.120(2) states that "[t]he determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court...Thereafter, **the court concerned shall determine**, with respect to each step in the proceedings, whether he is a needy person." KRS 31.120(2). The judge who reviews the defendants' indigency status is the gatekeeper for the number of cases assigned to Kentucky public defenders.

### **The caseload problem has been building for years**

Numerous reports over the past 8 years have detailed the extent to which high caseloads are a chronic reality in Kentucky. In 1997, Bob Spangenberg on behalf of the American Bar Association Bar Information Program stated that "[o]vershadowing all of the problems facing and the solutions proposed by DPA is that of burgeoning caseloads. Over the past decade DPA's caseloads have increased dramatically, while funding has failed to keep pace."

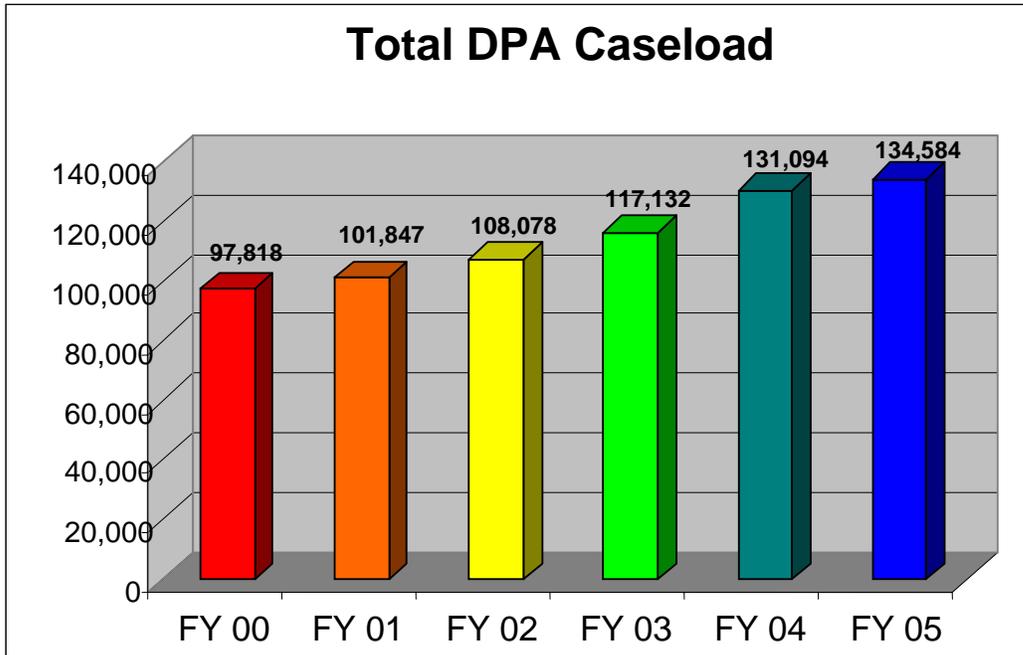
In 1999, the *Blue Ribbon Group on Improving Indigent Defense for the 21<sup>st</sup> Century* (hereinafter *Blue Ribbon Group*) issued its report, which included a number of findings and recommendations pertaining to caseloads. Finding #5 stated that "The Department of Public Advocacy per attorney caseload far exceeds national caseload standards." Recommendation #6 stated that "[f]ull-time trial staff should be increased to bring caseloads per attorney closer to the national standards. The figure should be no more than 350 in rural areas and 450 in urban areas."

In 2001, the *Blue Ribbon Group* met again and issued a resolution in response to a growing budget problem and threats of budget cuts for DPA and other parts of state government. The resolution said in part that the "...the BRG urges immediate action to fully fund the Public Advocacy system in order to achieve this constitutionally mandated basic service for the people of the Commonwealth of Kentucky."

In 2002, another report was issued that reflected on public defender caseloads for those attorneys representing children in juvenile court. "[T]he Kentucky Department of Public Advocacy and local public defender offices should ensure that...caseloads are reduced in all areas of the Commonwealth where they currently exceed the IJA/ABA Juvenile Justice Standards..." *Advancing Justice: An Assessment of access to counsel and quality of representation in delinquency proceedings* (ABA Juvenile Justice Center, National Juvenile Defender Center, and the Children's Law Center, Inc. September 2002).

**Total caseloads handled by DPA have gone up each year since 2000**

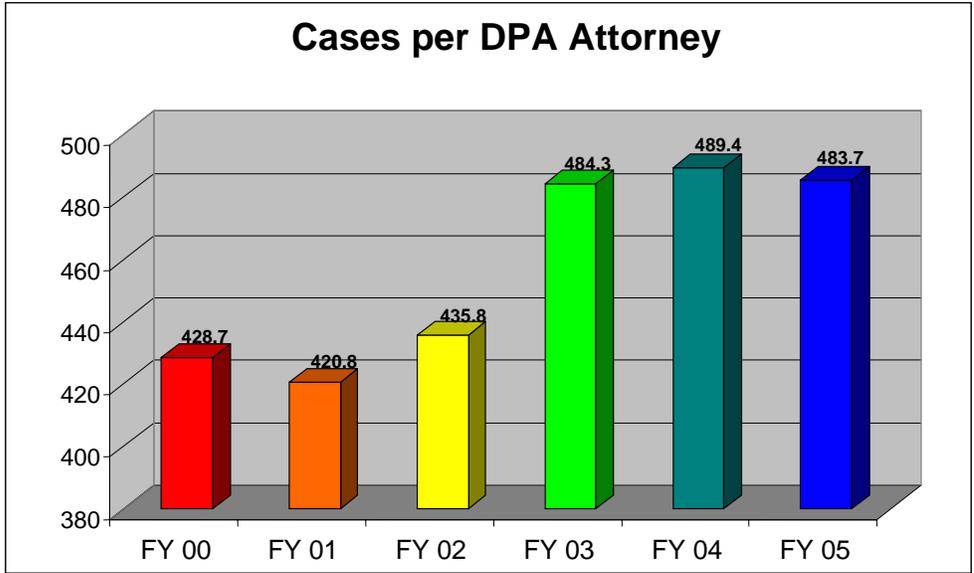
Total public defender cases have been increasing each year since 2000. That year, DPA handled 97,818 cases. By 2002 this had grown to 108,078. In FY03, this increased to 117,132. Between FY03 and FY04, the number of cases went up 12% at the trial level, from 117,132 to 131,094. In FY05, caseloads increased by another 2.6%, to 134,584 cases.



**Cases per attorney remain unacceptably high**

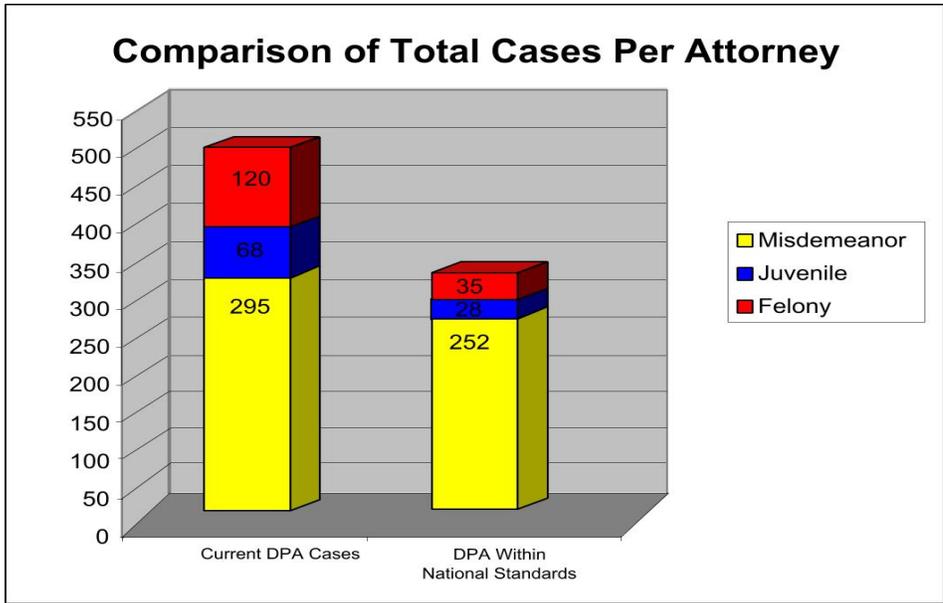
In FY01, caseloads per attorney were at 420 new open cases per lawyer per year at the trial level. In FY02 this rose to 435 cases; it rose again in FY03 to 484, and to 489 in FY04. In FY05, with 16 new caseload reduction attorneys being placed in field offices, the average new cases per attorney declined slightly to 483. It is important to remember that because Kentucky is mostly a rural state, that most defenders carry a mixed caseload. They are assigned to a county and generally handle cases in district, juvenile, and circuit court. In FY05, 24.88% of the caseload was in circuit court, up from 20.77% in FY00. 75.12% were district court cases, down from 79.10% in FY00.

Juvenile cases amounted to 13.87% of the caseload, down from 16% in FY02. Generally, cases handled in circuit court take far more time to complete than cases handled in district court.



### DPA’s caseloads violate nationally recognized standards

At 483 cases per lawyer, DPA caseloads are unacceptably high. Based upon the mixed caseload handled by Kentucky public defenders, DPA trial defenders are handling 189% of national standards. Given the current mix of cases, a typical Kentucky public defender is handling 120 felonies, 68 juvenile cases, and 295 misdemeanors.



### **Defenders have only 3.8 hours to spend on each case**

With 483 cases per year, defenders have only 3.8 hours to spend on each case, including some cases that are complex and of necessity time consuming, including capital and other violent felonies. Yet, in each case defenders are expected to do the following at a minimum:

- ◆ Interview the defendant
- ◆ Review the charging documents
- ◆ Go to court
- ◆ Investigate
- ◆ File motions
- ◆ Try the case or resolve the case through negotiations
- ◆ Participate in sentencing

It is clear that 3.8 hours is not sufficient to provide an adequate defense to DPA's clients.

### **Justice is jeopardized as excessive caseloads are affecting quality**

The Commission heard testimony that excessive caseloads are affecting the quality of services being rendered by Kentucky's public defenders. A circuit judge testified that while public defenders are some of the best lawyers who appeared in his courtroom, the quality of justice was suffering as a result of high caseloads that kept defenders from having time to prepare their cases. A regional manager testified that during her years with DPA, "I have seen the quality of representation decrease as our caseloads increase. This decline in quality of representation is not due to lack of skill or lack of training. The decline is due to our crushing caseloads...Innocent people may lose their freedom because high caseloads prevent their public defender from preparing their case."

Another directing attorney testified that clients were suffering in his office due to the excessive caseloads. He stated that phone calls were not being returned, jail visits were not occurring within 24 hours of appointment, and briefs on issues were not being prepared.

The Commission is concerned that excessive caseloads are also affecting quality of services in juvenile court. Testimony was heard that great progress has been made in improving the quality of services in juvenile court, particularly through the growth of full-time offices. However, progress is tempered with the fear that caseloads for juvenile defenders are still too high and that quality of representation is being affected.

### **Excessive caseloads are producing burnout and turnover**

The Commission heard considerable testimony that high public defender caseloads have a deleterious effect on public defenders and defender staff. A Directing Attorney, who handled 700 cases in the previous year testified that as a result of high caseloads, "there is a lot of burnout. Attorneys in many offices have not had a vacation in years. There is huge stress in representing clients not knowing if you had represented them well enough." A county attorney expressed concern that the "attorneys' lives are suffering because of the volume of the cases – their personal lives are suffering."

## **The Department of Public Advocacy Caseload Definition**

The definition of a case utilized by DPA was developed by a committee of stakeholders over a decade ago and has been utilized since that time. The committee discussed the need for a very conservative definition that would be a useful management tool. The committee also consulted a model caseload definition. The committee set out to eliminate anomalies and over counting that can reduce the usefulness of caseload data. The essence of the definition is that a “case consists of a single accused, having either under the same or different case number(s), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events. These charges must be brought contemporaneously against the defendant, stemming from the same course of conduct, and involving proof of the same facts.”

In an effort to improve continuously the accuracy of the caseload figures, the Department this year created a Caseload Integrity Committee. The Committee examined the caseload collection process and found ways that it could be improved. The Committee particularly focused on the education of those entering the data, generally one administrative specialist in each field office, regarding the caseload definition and how to implement it in different situations. Extensive education of those administrative specialists has occurred and is ongoing.

The Commission finds that the caseload figures upon which this report is based are accurate and dependable.

## 2. Defender caseloads in some offices are so high as to be unethical.

### Caseloads have ethical implications

The Commission considers caseloads handled by Kentucky public defenders within the context of several national standards. Rule 1.1 of the Kentucky Rules of the Supreme Court states that, “a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” SCR 1.3 states that, “a lawyer shall act with reasonable diligence and promptness in representing a client.” Both of these Supreme Court rules are implicated by excessive caseloads.

American Bar Association (ABA) *Standards Relating to the Administration of Criminal Justice* Standard 4-1.3(e) states that “[d]efense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client’s interest in the speedy disposition of charges, or may lead to the breach of professional obligations.”

*ABA Standards Relating to the Administration of Criminal Justice* Standard 5-5.3 states that “(a) Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Special consideration should be given to the workload created by representation in capital cases.”

*ABA Standards Relating to the Administration of Criminal Justice* Standard 5-5.3(b) states that: “Whenever defender organizations...determine, in the exercise of their best professional judgement, that the acceptance of additional cases...will lead to the furnishing of representation lacking in quality or the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.”

American Council of Chief Defenders Ethics Opinion 03-01 (April 2003) states that “[a] chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency’s attorneys to provide competent, quality representation in every case...When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency’s attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.”

In the ABA Report of 2005 entitled *Gideon's Broken Promise*, Recommendation #3 states that “[a]ttorneys and defense programs should refuse to continue indigent defense representation, or to accept new cases for representation, when, in the exercise of their best professional judgment, workloads are so excessive that representation will interfere with the rendering of quality legal representation or lead to the breach of constitutional or professional obligations.”

The ethical implications of the excessive caseloads present a dilemma for the Commission as well as leadership in DPA. Most of the Commission consists of attorney appointees. The Commission is responsible for “review[ing] the performance of the public advocacy system...” KRS 31.015(6)(c). The Public Advocate and the division directors of the Trial and Post-Trial Division are attorneys. Under Rule 5.1 of the Rules of the Supreme Court, a well-founded argument can be made that the Public Advocate and his Leadership Team as well as the Public Advocacy Commission are responsible for the ethical breaches of public defenders caused by excessive caseloads.

**3. Kentucky public defenders are unable to perform many of the tasks performed by private defense counsel due to their excessively high caseloads. These tasks include such matters as litigating pretrial release decisions, preparing alternatives to incarceration, preparing pretrial motions, and answering client phone calls and correspondence. One of the unintended consequences of the lack of defender capacity is jail overcrowding and increased costs to counties.**

The Commission was particularly concerned by testimony heard in more than one hearing that there were functions of representation performed regularly by private defense attorneys performed regularly that could not and were not being done by Kentucky public defenders because of the caseload crisis. One area affected is that of pretrial release advocacy. Testimony was heard that defendants, particularly those being arrested in conjunction with Drug Task Forces, had bond set at particularly high levels. Defenders expressed a desire to challenge those bonds but due to their excessive caseloads many are simply unable to do so.

DPA has adopted the National Legal Aid and Defender Association’s *Performance Guidelines for Criminal Defense Representation* (1994). Guideline 2.1 states that an “attorney has an obligation to attempt to secure the pretrial release of the client under the conditions most favorable and acceptable to the client.” Guideline 2.3 states that counsel “should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.” The Commission finds that these guidelines are not being followed by some defenders due to excessive caseloads.

A second area upon which testimony was offered was that of the preparation of alternatives to incarceration. Kentucky stresses that in every case in which a person is found guilty of a criminal offense, alternatives to incarceration must be considered.

See KRS 500.095 and KRS 533.010. With the use of incarceration increasing so rapidly, public defenders could play an important role in identifying alternatives to incarceration and preparing plans to present to the judge. The Commission heard testimony that private criminal defense lawyers regularly prepare motions for alternative sentencing that includes an alternate sentencing plan. The Commission is concerned that due to their excessive caseloads, Kentucky public defenders were unable to spend time doing this important task. This is inconsistent with NLADA Performance Guideline 8.6, which reads in part that “Counsel should prepare and present to the court a defense sentencing memorandum where there is a strategic reason for doing so. Among the topics counsel may wish to include in the memorandum are...(6)information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities; (7) presentation of a sentencing proposal.”

The Commission heard further testimony that other areas of criminal defense practice are not being done due to excessive caseloads. These include motion practice, visiting clients in jail, answering client telephone calls, and other work with clients and their families. The Commission finds that excessive caseloads are preventing Kentucky public defenders from performing some of the most basic functions performed by a criminal defense lawyer.

**4. Other components of the criminal justice system, including the judiciary and prosecutors, are aware of and affected by the increase in caseloads for public defenders. Many parts of the criminal justice system, including the judiciary and prosecutors, are supportive of relief for overworked public defenders. Some members of the judiciary noted that due to high caseloads defenders are not able to spend sufficient time to prepare major cases. In addition, excessive caseloads have caused delays in the processing of cases.**

The Commission was impressed by the high level of support that was expressed during testimony at the public meetings. The public meetings were attended by four members of the Kentucky Supreme Court, including the Chief Justice, and three members of the Kentucky Court of Appeals, including the Chief Judge. Numerous trial judges also attended the meetings. One circuit judge summed up the situation by warning that the system is “expecting too few attorneys to do too many cases” and that the only solution is “adequate funding to put us where we should be.”

The Chief Justice reflected that the caseload problems experienced by public defenders were also being experienced by other parts of the system. He expressed his support for addressing the issue of excessive caseloads, noting that he had served on the Kentucky *Blue Ribbon Group on Improving Indigent Defense for the 21<sup>st</sup> Century*. A second Supreme Court Justice stated that when trial attorneys have caseloads that are 189% of national standards that quality suffers. He stated that the Supreme Court of Kentucky is very concerned about the possibility of convicting an innocent person, a possibility made more likely by excessive caseloads. The Chief Judge of the Court of Appeals stated that efficiency suffers when caseloads are at 189% of national standards.

In her view the lack of funding is as much a matter of conscience as it is a matter of funding. One circuit judge expressed that as a result of high caseloads, cases are being delayed.

Prosecutors also expressed support for an adequately funded public defender system. One Assistant Commonwealth's Attorney testified that not having an adequately funded public defender system effects all parts of the criminal justice system. He stated that a poor person accused of a crime needs to have a public defender with enough time, resources, and support staff. A County Attorney testified that her concern was that because of high caseloads the "attorneys' lives are suffering because of the volume of the cases—their personal lives are suffering."

**5. Kentucky's "War on Drugs" has had a serious impact on the criminal justice system, and particularly Kentucky's public defenders. This is particularly true where federally funded drug task forces are in existence.**

One reason that caseloads are going up in Kentucky is that large sums of federal money are being used to fund police officers in Drug Task Forces. In 1995, there were 17,766 drug arrests in Kentucky. By 2004, this had risen to 40,793. Increased funding for law enforcement directly leads to an increase in the numbers of arrests, and as a result, an increase in public defender appointments. Federal money is being used to hire some state prosecutors. However, no federal money is allotted to fund indigent defense.

**Prosecutors are also experiencing an increase in caseloads.**

The same increase in caseloads is also affecting prosecutors across Kentucky. The Attorney General's 2004-2005 *Blue Ribbon Commission Report on Criminal Prosecution* stated that "prosecutors repeatedly voiced that they are struggling to handle massive increases in their caseloads...In their survey responses, prosecutors blame much of this caseload increase on an explosion of drug crimes." The Commission heard testimony by the President of the Commonwealth's Attorneys' Association that the same caseload pressures public defenders are experiencing are also affecting prosecutors.

**6. Kentucky continues to fund its system of indigent defense at a level that is at the bottom of the nation based upon the cost-per-case benchmark. The Commonwealth of Kentucky is at risk for failing to provide sufficient resources for its indigent defense system. Unless there is a response to this campaign, there is the possibility of a "KERA-like" lawsuit challenging the constitutionality of Kentucky's system of indigent defense.**

One way to examine the issue of funding for indigent defense is to compare what Kentucky spends with what other states similarly situated spend.

Based upon the latest available information, it is clear that Kentucky is funding its system of indigent defense at far below what other states are spending per case. Below is the cost-per-case from a number of states in the latest report of the Spangenberg Group (2002). Kentucky figures are for 2005.

- Colorado: \$889
- Ohio: \$719
- Alabama: \$603
- Iowa: \$570
- West Virginia: \$513
- Massachusetts: \$468
- North Carolina: \$435
- Missouri: \$384
- Georgia: \$310
- Maryland: \$306
- Virginia: \$250
- Kentucky: \$233

**7. Private attorneys working as conflict counsel for DPA trial offices are not being paid sufficiently. In many instances, private attorneys are not being reimbursed for their costs, and are thus working pro bono on indigent defense cases.**

The Commission is concerned that with the development of a full-time public defender system, pay for private lawyers in conflict cases has not kept pace. In FY 05, it is estimated that DPA paid \$297 per case in its field offices in conflict cases (excluding Jefferson, Fayette, and Boyd Counties). Testimony was heard from one Northern Kentucky conflict lawyer that DPA had only paid \$1,250 for a murder case he had handled, which was not sufficient to pay for his overhead. The President of the Kentucky Association of Criminal Defense lawyers testified that she had been paid only \$350 as a conflict lawyer and that the case took so much time the fee did not cover the cost of copying, travel, and collect calls.

**8. The Department employs too few support staff in its field offices. As a result, attorneys are handling clerical matters such as typing and filing.**

One support staff for every three attorneys, the current funding model for DPA, is inadequate and inefficient. The Commission heard testimony that in private practice, there is typically one support staff for every attorney. One person testified that DPA secretaries were overworked and attorneys are doing their own typing and filing. An attorney testified that when she was in private practice, there were 2 secretaries for every attorney. She testified that hiring additional support staff is at least as important as hiring additional attorneys. Without adequate support staff, the Commonwealth of Kentucky is wasting the resources invested in attorneys who are forced to perform clerical functions.

**9. The Department employs too few investigators, particularly in larger field offices. As a result, defenders are trying to handle investigations for lower level felonies and misdemeanors with the potential for troubling ethical consequences. .**

The Commission also finds that there are insufficient numbers of investigators in DPA's field offices. Investigators play a vital role in the preparation of cases whether by plea or by trial. In the long run, investigators save precious attorney time for the core functions of representation. DPA has only one investigator in each field office.

While that is adequate in some offices, there are offices such as Paducah, Elizabethtown, Hopkinsville, and Morehead with ten attorneys or more on staff with only one investigator. Testimony was heard that investigators do not have sufficient time to investigate all the cases in which there are requests. The result is that attorney time is being spent investigating cases, which is both inefficient and takes away from the crucial function of client representation.

**10. The availability of social worker services is critical in order for public defenders to play the role that the criminal justice system expects of them.**

There are only two social workers in the public defender system in Kentucky. They are located in the Hazard and Hopkinsville Offices where there are mental hospitals and many commitment hearings. With so few social workers, there are many unmet needs throughout the public defender system, including the assessment of persons arrested on drug offenses who are in need of immediate treatment. Many defender agencies across the country utilize the services of social workers to perform this assessment and who participate in placement of clients for treatment. There are states where resources are saved through diversion of mentally ill and addicted clients out of the criminal justice system and into the treatment system, all through the use of defender social workers.

A second need that is presently unmet in Kentucky defender offices is the assessment of juveniles for purposes of developing dispositional alternatives. Testimony was heard that some juvenile defenders are doing little more than triage with their juvenile clients because they do not have the resources available to the state to assess children and their families and develop dispositional alternatives to present to juvenile court.

Finally, DPA needs social workers to develop alternatives to incarceration for adult offenders through the preparation and presentation of sentencing plans. It is estimated that including a social worker in each field office could more than pay for itself through the diversion of adult offenders from costly prison beds into community services and other alternative sentencing options. In addition, as Kentucky alters its methods for treating sex offenders, social workers in DPA's field offices will play a vital role in reviewing the different assessments on sex offenders that will be taking place.

**11. There is a question whether the criminal justice system is doing an adequate job of determining eligibility. Some judges raised the issue of the verification of eligibility for those appointed a public defender. Some defenders supported the perception that people were being appointed a public defender who were not eligible, a perception with which other defenders disagreed.**

The Commission heard from one circuit judge who stated that no one in the system was verifying eligibility for persons appointed a public defender. The Executive Director of the Administrative Office of the Courts agreed that verification of indigency was something that needed to be done by her agency. Other witnesses stated that verification of eligibility was not a solution to the high caseload problem, that many crimes were committed by poor people and that as many people are not being appointed a public defender when they are eligible as are being appointed when they are not eligible.

## Recommendations

- 1. The criminal justice system should be understood as a system that requires resource parity among the different components. Policy makers should take steps to ensure that the key elements of Kentucky’s criminal justice system, the courts, prosecution, and indigent defense, become and remain balanced throughout the courts, prosecution, and indigent defense.**

Parity among the different parts of the criminal justice system is absolutely essential. The *Blue Ribbon Group for Improving Indigent Defense for the 21<sup>st</sup> Century* Final Report (1999) affirmed this concept strongly. In Finding #7, it stated that “[all] components of the criminal justice system should be adequately funded, particularly public defense.” In the ABA report *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice* (2005), it is stated that “[f]airness dictates that there should be a balance in the resources available to both sides in our adversary system of criminal justice. In an effort to ensure this balance, national standards specify that the government should provide equivalent funding and other resources to both the indigent defense and prosecution functions of state criminal justice systems.”

The Commission heard testimony from one prosecutor that expresses well the desirability of parity, particularly when applied to public defenders. He states that the “system works best when there is a balance. With the current drug situation facing all states and the federal government, the demands placed upon the prosecution and the defense have created a balance problem. Most of the resources have been allocated to the prosecution. From a prosecutor’s standpoint that is a good thing as it helps the police enforce the law. However, when more people are arrested and most of those people are indigent that creates an imbalance on the other end of the see-saw because the people assigned to the job of representing the poorest, least educated segment of our society have more work than they can handle. Thus, in dealing with a crisis we have created another crisis.”

- 2. The Commonwealth should fully fund the Kentucky public defender system. At a minimum, an additional \$10 million per year is necessary to bring Kentucky into the mid-level area in comparison with other programs in important benchmark areas such as cost-per-case.**

Since 1996, the DPA has been building a full-time system at the trial level. That system is now complete with 30 offices spread throughout the Commonwealth covering all 120 counties. DPA is a statewide administered public defender system. DPA is an independent state agency with an oversight board having as one of its primary duties the protection of DPA’s independence. The Commission recognizes that Kentucky has done an excellent job creating a public defender system with a model enabling statute and structure. Where Kentucky lags behind is in funding that public defender system. Indeed, Kentucky continues to lag at the bottom of the country in funding for indigent defense.

In the 1999 *Blue Ribbon Group* Report, it was found that the Department of Public Advocacy was near the bottom among all the states in per case funding. In FY 1998, the funding per case was at \$187. In FY03, the funding per case was at \$238. In FY04, per case funding declined by 4.2% to \$228. In FY05, the funding per case has risen only to \$233. Kentucky continues to spend far less per case than other states. The effects of underfunding is demonstrated most dramatically by Kentucky's caseload crisis. Kentucky's system of criminal justice is indeed jeopardized by having far too many cases with far too few public defenders.

The Public Advocacy Commission calls upon the Governor and the General Assembly to fully fund Kentucky's public defender system. It is estimated that for \$10 million annually added to the General Fund, the following goals can be accomplished:

- Lower caseloads of trial attorneys to no more than 400 new cases per year per lawyer.
- Attorney to support staff ratio of 2:1.
- Attorney to investigator ratio of 6:1.
- A social worker in each office.
- An increase of 25% in money for the conflict budgets going to defense counsel.

The Commission encourages Kentucky's policy makers to fund these reasonable goals when they are requested at the 2006 General Assembly.

**3. Caseloads for trial attorneys should never be above 400 new mixed cases per lawyer per year.**

The *Blue Ribbon Group* recommended in Recommendation #6 that "full-time staff should be increased to bring caseloads per attorney closer to the National Standards. The figure should be no more than 350 in rural areas and 450 in urban areas." Since that time, DPA trial attorneys have not only continued to exceed the national standards but have never achieved the 350/450 goal set by the *Blue Ribbon Group*. This recommendation recognizes that most of Kentucky's public defenders carry a mixed caseload. It is believed that were caseloads to be lowered to 400 per lawyer that many of the problems associated with excessive caseloads would be mitigated or eliminated.

**4. When Drug Task Forces provide adequate funding for law enforcement in a particular area, additional funding must be provided for public defenders, prosecutors, and courts.**

Drug Task Forces have resulted in a spike in arrests, prosecutions, and ultimately public defender appointments. Federal funds are primarily being utilized for law enforcement, with some funding going for special state prosecutors. Public policy makers should understand that fundamental fairness requires that when law enforcement is granted extra funding that other parts of the criminal justice system, including indigent defense, will be affected and thus need to be funded.

**5. When drug or family courts are created, additional funding must also be provided for public defenders, prosecutors, and courts**

One of the best things to have occurred in Kentucky's Court of Justice over the last decade is the development of two specialty courts, drug court and family court. Both courts add a great deal to the quality of justice provided to the people of Kentucky. Both, however, create additional dockets and cases for Kentucky's public defenders and prosecutors to cover. DPA has not been funded to handle either family court or drug court. Public policy makers should be sensitive to this and begin to fund the prosecution and defense so that they can play their appropriate roles in both family and drug courts.

**6. Additional funding should be supplied for conflict attorneys in field offices.**

In FY05, there were 3,283 cases that were not handled by a local trial office due to a conflict of interest. This did not include the Louisville, Lexington, or Boyd Offices. It is important in a full-time system to continue the involvement of the private criminal defense bar. That bar will not participate if funding is so low that it cannot even cover the cost of overhead. Policy makers need to add money into DPA's budget in order for private lawyers to be fairly compensated when they are providing services to poor people accused of crimes.

**7. Each public defender office in Kentucky should have on its staff a social worker who would help in juvenile court, in drug cases, and in preparation of alternative sentencing recommendations.**

Social workers are playing a vital role in public defender agencies across the country. This is not the case in Kentucky, however, due to chronic funding problems. At present, there are only 2 social workers in Kentucky's 30 field offices. Social workers can virtually pay for themselves by performing drug assessments, finding treatment options for drug offenders, presenting dispositional alternatives in juvenile court, and making alternative sentencing recommendations in adult court. The Commission strongly endorses the use of social workers in Kentucky's public defender offices, and encourages the funding of one social worker per office.

**8. There should be 1 investigator for every 6 trial public defenders.**

Consistent with the recommendation above, public defenders should not be doing all of their own investigation. In those offices with sufficient numbers of attorneys, funding should be provided to hire a second investigator.

**9. There should be 1 support staff member (secretarial or para-legal) for every 2 attorneys.**

There is insufficient support for Kentucky's public defenders. As a result, public defenders are doing their own typing, filing, and handling of other clerical tasks. This is inefficient, and is inconsistent with how private lawyers handle their practices. The Commission asks for the Governor and the General Assembly to grant sufficient funding to establish a 2:1 attorney to support staff ratio.

**10. Consideration should be given by policy makers to establishing caseload limits in KRS Chapter 31 for trial level public defenders.**

Caseloads for Kentucky public defenders have been considerably above national standards for some time. This has occurred despite repeated calls for funding that would enable national standards to be met. Some states and cities have mechanisms that prohibit this situation from occurring. In those jurisdictions, once a public defender agency has cases in excess of national standards, those cases are sent out to another entity, usually private lawyers, with funding to be made available to pay for those cases to be handled. While such caseload limits would be both costly and unwieldy, there may be no choice. Excessive caseloads for public defenders are jeopardizing the quality of justice for Kentucky's poor. Something must be done to alleviate this problem. Caseload limits should be considered by public policy makers.

## Conclusion

The Department of Public Advocacy is Kentucky's statewide public defender system. Over the past decade, DPA has been chronically underfunded at the same time that a system of full-time offices covering all of the counties in the Commonwealth has been created. DPA's structure is an excellent one for providing competent counsel for the poor. However, excessive caseloads for Kentucky's public defenders jeopardize the quality of justice provided by this system. For a relatively small sum of money, Kentucky could and should fully fund the Kentucky public defender system.

This report has been written at a time when funding for indigent defense has been declared inadequate throughout this nation. The ABA issued a report during 2005 entitled *Gideon's Broken Promise*. Included in the Executive Summary is the following: "Overall, our hearings support the disturbing conclusion that thousands of persons are processed through America's courts every year either with no lawyer at all or with a lawyer who does not have the time, resources, or in some cases the inclination to provide effective representation...The fundamental right to a lawyer that Americans assume apply to everyone accused of criminal conduct effectively does not exist in practice for countless people across the United States."

The Public Advocacy Commission strongly encourages public policy makers in Kentucky to fully fund the Department of Public Advocacy so that Kentucky will avoid the heart-breaking reality described in *Gideon's Broken Promise*. The Commission asks the Governor and the General Assembly to once and for all fully fund indigent defense in this Commonwealth.

"If we are to keep our democracy, there must be one commandment. Thou shall not ration justice".  
Justice Learned Hand

## **APPENDIX**

### **Somerset Public Meeting held on December 16, 2004**

Members of the Public Advocacy Commission held a public meeting in Somerset, Kentucky, on December 16, 2004.

#### **Chief Justice Joe Lambert**

Chief Justice Joe Lambert addressed the meeting. He recalled that he had been on the *Blue Ribbon Group on Improving Indigent Defense in the 21<sup>st</sup> Century* in 1999, and that there had been a good outcome from that effort. He reflected that the problems that public defenders are having with caseloads are part of a problem effecting many parts of the system. He stated that county judge executives across the Commonwealth are concerned about the costs of incarceration. He stated that in Union County, Kentucky alone that 55% of the county budget is devoted to incarceration.

The Chief Justice congratulated the Public Advocacy Commission for bringing the problems of excessive caseloads to the public's attention. He also expressed his support in addressing the excessive caseload issue.

#### **Jim Cox**

Jim Cox has been a public defender in the Somerset Office for over 2 decades. He said that he is proud to be a public defender, but that it "hurts me emotionally to see my people under stress...I feel helpless...Their health is deteriorating." He also stated that he worried about the poor clients represented by the Somerset Office.

#### **Dan Venters**

Dan Venters is a retired circuit judge from Pulaski and Rockcastle Counties. He noted how his docket that had been covered by 1 judge spending ½ day once a month now required 2 judges working all day to accomplish the same thing. He stated that what motivates him as well as the public to support indigent defense is the fundamental belief in liberty. He said that as a trial judge "I sleep better at night knowing there's a public defender system." "The obvious need is a lot more money in the system. This is not charity. This is money spent for our own peace of mind."

#### **Roger Gibbs**

Roger Gibbs is the directing attorney for the London Public Defender's Office, and regional manager for the Eastern Region, approximately the same region covered by Operation UNITE. He stated that without the growth of drug arrests, particularly for methamphetamine, that there would not be a caseload problem in his office. He said that in Bell County they had moved from 1 rule day a month, to 2 or more each month. He said that in Leslie County, court is held from 8:00 a.m. to 7:00 p.m. to deal with the caseload. "We do not have enough bodies—that's the problem. Every Tuesday, if someone is in trial, I don't have enough attorneys to cover all the courts in my counties."

### **Teresa Whitaker**

Teresa Whitaker is an attorney in the Somerset Office. She had once directed the office in Columbia. She expressed great frustration, saying “we’re busting our butts and we’re just treading water” as a result of high caseloads. She emphasized that just because a client has an attorney standing next to them doesn’t mean that the attorney is prepared to represent the accused. She complained that bonds were being set that were much too high but that she did not enough sufficient time to appeal the bonds. “People are staying in jail because defenders don’t have enough time to work on their bonds.” “My worst fear is that I’m not going to be able to defend the innocent client because of my caseload.”

### **Jennifer Hall**

Jennifer Hall has been a public defender in the Richmond Office for over a decade. She has seen the growth of her caseload in Clark County, where she has worked since she began. “There are so many clients that I cannot always be the guiding hand through the process that the right to counsel promises....Private counsel, with their one or two clients, can ask for time to speak with their defendants while the rest of the docket goes on. The ‘rest of the docket’ is my docket. The judge cannot wait for me because I represent most all of the defendants on the docket. I am spread much too thin to provide careful guidance to every client. And careful guidance is what the right to counsel promises.”

“I fear that my clients may serve jail time for offenses when private counsel’s clients may get the help they need. Zealously advocating for every possible option to incarceration is what the right to counsel promises. So maybe justice is for sale. If not because a client can buy ‘expertise’, then maybe because a client can buy something more precious—counsel’s time. I fear the promises of the right to counsel are being lost somewhere in the stack of files on my desk that just keeps growing taller. For now, I will continue to fight to keep my promises every day. But every day I get a little more tired and a little more convinced that I am fighting a losing battle.”

### **Glenda Edwards**

Glenda is the directing attorney of the Columbia Office which covers 9 counties and 2800 square miles. She said that three of her lawyers are on “jagged edge” as a result of their caseloads. “There is a lot of burnout. Attorneys are with the office who have not had a vacation in years. There is huge stress in representing clients not knowing if you had represented them well enough.” Glenda reported that last year she had over 700 cases with most of them being felonies.

### **Lynda Campbell**

Lynda Campbell is the regional manager for the Bluegrass Region, and the directing attorney for the Richmond Office. She has been a public defender for 24 years. “I have seen the quality of representation decrease as our caseloads increase. This decline in quality of representation is not due to lack of skill, or lack of training.

The decline is due to our crushing caseloads...Innocent people may lose their freedom because high caseloads prevent their public defender from preparing their case. Innocent people may lose their lives because of our high caseloads. All citizens in this Commonwealth lose as well. They lose their faith in our system of justice, and their belief that justice does not depend on the amount of money a person has. Prosecutors and judges know that the justice system wins every time a person accused of a crime is represented by an attorney who is a zealous advocate. Only Perry Mason won every case. But even when I lose a case, the justice system wins if an adequate defense is made. The rich can buy an attorney with the time to devote to their case. The poor cannot. Our justice system is in jeopardy.”

### **Public Meeting Held in Covington on February 18, 2005**

Over 80 members of the Northern Kentucky criminal justice community gathered for a Justice Jeopardized public meeting on the afternoon of February 18, 2005. Public Advocacy Commission members Mark Stavsky, Melinda Wheeler, Ed Worland, John Rosenberg, and Jerry Cox were in attendance. The public included Supreme Court Justice Donald Wintersheimer, judges, prosecutors, public defenders, clients, members of NAACP, and others. Legislators who had intended to attend were unable to do so as a result of the late meeting of the Kentucky General Assembly.

#### **Judge Greg Bartlett**

Kenton Circuit Judge Greg Bartlett spoke, saying he was concerned about the caseload statistics that he was hearing. He stated that while public defenders were some of the best lawyers who appeared in his court, the quality of justice was suffering as a result of high caseloads. He stated that public defenders did not have time to prepare on major cases.

#### **Judge Anthony Frohlich**

Boone Circuit Judge Anthony Frohlich stated that his circuit had the busiest docket in the state. Judge Frohlich states that he had been a public defender 15 years ago. He said that public defenders now have a much higher percentage of the caseload than they did 15 years ago. Another change is that as a result of high caseloads, cases are delayed when they were not before. He reflected that a significant hidden cost is that people are waiting in jail when they should have their cases resolved by probation.

#### **Kim Brooks-Tandy**

Kim Brooks-Tandy, Director of the Children’s Law Center, noted that she had been a part of two assessments of the quality of juvenile representation in Kentucky over the past 10 years. The quality of juvenile justice has improved a great deal during that period of time. She was concerned about the statistics that she had heard regarding the excessive caseloads. The challenge as she saw it was to finish the building of the full-time system for both children and adults.

### **Linda Tally-Smith**

Linda Tally-Smith is Commonwealth's Attorney for Boone and Gallatin Counties. She stated that the same caseload pressures occurring for public defenders are occurring as well with her office. She said that she told victims that it will take 18-24 months for a case to get to trial. She stated that in Boone County, caseloads are increasing by 27% per year since she's been prosecuting.

### **John Delaney**

John Delaney is the Directing Attorney of the Boone County Public Defender's Office. He stated that justice is being jeopardized in his office coverage area by the high caseloads his attorneys are carrying. He stated that clients were suffering as a result of these caseloads. Examples that he mentioned included phone calls not being returned timely, jail visits not occurring within 24 hours of appointment, lawyers focusing on cases that are going to trial within a week rather than investigating cases that are set for a longer period of time in the future, and briefs on legal issues not being prepared. He stated that the community is also suffering because he has not had time to work on important criminal justice projects such as the rocket docket or drug court. Finally, he stated that he did not have the time to mentor the young lawyers that he had hired.

### **Mary Rafizadeh**

Mary Rafizadeh is the Directing Attorney of the Covington Office. She stated that she had been staffed with 4 new lawyers to cover Campbell County and that she needed 6. Turnover is high in her office due to the caseloads, resulting in 9 new lawyers in her office, 4 of which are right out of law school. She says her lawyers are burned out having to work nights and weekends. Her newest lawyers are already in a panic and ready to leave due to being assigned high caseloads immediately upon being hired.

### **Michelle Arnold**

Michelle Arnold is a former client of the Maysville Office. She stated that she was represented in an excellent fashion. She is a single mom who could not afford the \$6500 cited to her as a fee by a private lawyer. She had heard horror stories about public defenders. She stated that her lawyers, Tom Griffiths and LaMer Kyle-Reno, had worked nights and weekends to defend her.

### **Patricia Summe**

Judge Summe is a Kenton Circuit Judge. She stated that everyone in the system has too many caseloads. Her concern was that no one was verifying eligibility. She feared that we were not using public money wisely as a result. She agreed that the lack of verification of eligibility was the "fault of the judiciary." She believed that a better system of verification would reduce the caseloads of public defenders. She also believed that public defenders should focus more on felony cases and less on juvenile and misdemeanor cases.

She was also concerned that the private criminal defense bar was not handling more criminal cases. She wondered whether private criminal defense lawyers couldn't do some of the cases to relieve overworked public defenders.

### **Karen Mauer**

Karen Mauer is a DPA lawyer with the Appeals Branch. She stated that what she had been seeing was problems with lawyers at the trial level who had so many cases that they were unable to write pretrial motions and unable to preserve the record for appeal.

### **Melinda Wheeler**

Public Advocacy Commission member Melinda Wheeler, who is also the Executive Director of the Administrative Office of the Courts, stated that she agreed that verification of indigency needed to be improved. She also agreed that everyone in the criminal justice system is overworked. "It is time for everybody to come together to improve the system." She stated that we are pouring money into law enforcement without looking at the effect of that use of resources on the entire system.

### **Jerome Bowles**

Jerome Bowles is the President of the Northern Kentucky Branch of the NAACP. He testified that his organization would like to partner with others to ensure that indigents have good representation.

### **Rob Riley**

Northern Regional Branch Manager Rob Riley testified that caseloads in his office in LaGrange have gone from 300 cases per lawyer to 520 cases per lawyer. As a result, defenders are working at 6:00 a.m. on a Sunday morning. "We are just grinding our public defenders down."

### **Frank Mungo**

Frank Mungo is a private criminal defense lawyer and former Assistant Commonwealth's Attorney in Boone County. He stated that the caseloads handled by public defenders were much too high, that he was successful because he handled only about 6-7 felonies per year. He believed a "high volume practice" was unethical. He also stated that DPA was paying too little for conflict cases. He stated that DPA paid only \$1250 for murder cases, which would not pay his overhead for a month. He said that innocent people will go to jail without a doubt if we pay only \$1250 per case.

### **Steven Jaeger**

Steven Jaeger is a Kenton Circuit Judge. He stated that the problems discussed at the meeting were the same problems that had been in existence since the time of the *Blue Ribbon Group*.

He regretted that solutions had not been discussed. He said that there needed to be working groups from the courts, prosecutors, and others to come up with solutions to these problems.

### **John Rosenberg**

Public Advocacy Commission member John Rosenberg stated that while the issue of eligibility needed to be examined, that verification was not the solution to the high caseload problem. He stated that he was proud of the public defenders present; he stated that they were the most courageous people in the courtroom.

### **Tom Griffiths**

Tom Griffiths is the Directing Attorney in the Maysville Office. He stated that the solution that public defenders in his office use is to work for nothing rather than go home with their family. He said that he never sees people in jail during the day, that all of his visits to the jail are at night. He said that his trial preparation is at night and on weekends.

## **Public Meeting Held in Bowling Green on May 20, 2005**

70+ members of the criminal justice community appeared at the Public Meeting held in Bowling Green on May 20, 2005. Robert Ewald, Chair of the Public Advocacy Commission, and Jerry Cox, Commission member, were present. Speaker Jodie Richards and Senator Brett Guthrie were in attendance, as were numerous judges, prosecutors, and public defenders and defender staff.

### **Katie Wood**

Katie Wood is the President of the Kentucky Association of Criminal Defense Lawyers. She stated that she had been paid only \$350 as a conflict lawyer for the Somerset Office in a case that took many hours. She stated that the money did not cover the cost of copying, travel, collect phone calls, and certainly not her time. "We funded her defense. We gave the state our time to meet the constitutional obligation."

### **Ed Monahan**

Ed Monahan is the Executive Director of the Catholic Conference. He entered a statement into the record, which is a part of the Appendix.

### **Rev. Nancy Jo Kemper**

Rev. Nancy Jo Kemper is the Executive Director of the Kentucky Council of Churches. She was unable to appear at the public meeting, but sent a statement that was made a part of the record and is part of the Appendix.

### **Vaughn Wallace**

Vaughn Wallace is an Assistant Commonwealth's Attorney with the Warren County Commonwealth's Attorney's Office. He is funded with a HIDTA federal grant. He stated that he had been a public defender, a private lawyer and a prosecutor. He stated that an adequately funded defender system is important, that it effects all parts of the system, that it saves the county money by getting indigents out of the jail sooner, and it gives the indigent a voice. He stated that a poor person accused of a crime needs to have a public defender with enough time, resources, and support staff.

### **Amy Milligan**

Amy Milligan is the Warren County Attorney. Four of her six lawyers came from the public defender's office. She stated that without adequate funding, the justice system will be slowed down in district court. She also said that her concern "is that the attorneys' lives are suffering because of the volume of cases—their personal lives are suffering."

### **Rob Sexton**

Rob Sexton is the regional manager for DPA's Central Region. He expressed gratitude for the funding increases that had occurred recently. His first year caseload as the directing attorney of the Owensboro Office had been over 1000 cases. That caseload is now around 450.

### **Judge Bill Harris**

Judge Harris is the Circuit Judge in Allen and Simpson Counties. He stated that he had been on the bench for 16 years and had seen the system evolve. He stated that there was no way to express the difference between the old contract system using private lawyers and the new full-time system. He stated that DPA lawyers in the Bowling Green Office "do an excellent job." He encouraged the legislators to "take these things to heart."

### **Judge Kelly Easton**

Judge Easton is a Hardin Circuit Court judge. He said that the problem is "expecting too few attorneys to do too many cases." He said that the only solution is "adequate funding to put us where we should be." The rocket docket is providing some relief. At one point caseloads were at 636 per lawyer in Elizabethtown, when they had "serious delays." Things have improved recently with the addition of a caseload reduction lawyer.

### **Allen Graf**

Allen Graf has been an attorney for 30 years, and is now with the Bowling Green DPA Office. He related a story of a client who recently hired a lawyer and told him that he had done so due to Graf's heavy caseload. Mr. Graf felt badly because the client told him this in front of another client who could not afford to go out and hire another lawyer.

### **Cindy Lyons**

Ms. Lyons is an Administrative Specialist with DPA's Owensboro Office. She worked in private practice for 15 years as well. In private practice the ratio of attorneys to support staff was 1-1. She said that she had checked with prosecutor's offices and that they also had an attorney to support staff ratio of 1-1. In Owensboro there are 9 lawyers to 3 secretaries. The same is true throughout the Central Region. The result is that secretaries are overworked and attorneys are doing their own typing and filing. "We need more secretarial and support staff."

### **Diana Werkman**

Diana Werkman is an attorney in the Bowling Green Office. One half of her time is spent on circuit court cases, and one half on status offender cases. Last year she had over 400 status offender cases in one year in addition to her circuit court caseload, despite the national standards recommending no more than 200 juvenile cases for any one defender in a year. She stated that her juvenile clients were not getting the services that they needed, that oftentimes little more than triage was occurring. She stated that DPA needs a social worker in every trial office to assist our juvenile defenders do their job.

### **Glenda Edwards**

She stated that she is worried for her attorneys due to their caseloads. She said that they were working nights and weekends. She said that all of them are getting their hearts broken by clients because they can't do everything for them that they need to do. "I want the Commission to know the physical toll this is taking on our attorneys."

## **Public Meeting Held in Prestonsburg on August 24, 2005**

The fourth meeting of the Justice Jeopardized Campaign was held at the Mountain Arts Center in Prestonsburg, Kentucky on August 24, 2005. Approximately thirty-one (31) people attended the meeting. Robert Ewald, Chair of the Public Advocacy Commission, and John Rosenberg, Vice-Chair of the Commission, were present. Justice Will Scott as well as Chief Judge Sara Combs, Circuit Judge John David Caudill, Johnson County Circuit Court Clerk Vicki Rice, and Greg Rush of the Justice Cabinet were in attendance, as were numerous public defenders and defender staff.

### **Justice Will Scott**

Justice Scott stated that justice does suffer in Kentucky at the trial level. When trial attorneys have a caseload at 185% capacity, you cannot achieve a quality of justice, or its requirement, a fair trial. He stated that the essence of the problem is that of funding. The reason DPA is not funded better is that public defenders have no political base. He encouraged defenders to thing big. He encouraged the Commission to consider the possibility of electing public defenders in each county in order to achieve a political base. He also raised the possibility that DPA should be moved from the Executive Branch into the Judicial Branch. He noted that Commonwealth's Attorneys do not have to have public campaigns in order to receive adequate funding.

He stated that while he did not speak for the Court, he believed that all of the other six Justices would support the Commission's quest for justice. Justice Scott noted that as caseloads go up, efficiency goes down, and that the risk of convicting an innocent person also goes up. The Supreme Court of Kentucky is very concerned about the possibility of convicting an innocent person.

### **Chief Judge Sara Combs**

The Chief Judge of the Court of Appeals, Judge Sara Combs, stated that public defenders touch people who are "basically untouchables." She viewed the funding issue as more than a funding issue but first an issue of conscience. She noted that if you are at 185% of nationally recognized standards, you cannot be at 100% efficiency. Judge Combs believed that public defenders did not have access to the time and money that we needed to do our jobs. She asserted that she was present when the KERA lawsuit was being prepared, and that she believed that there were many parallels between that situation in education and the present situation for public defense. She questioned whether a lawsuit might be the only solution to this problem.

### **Teresa Reed**

Teresa Reed is a public defender in the Hazard Office. She began her public defender career after having been in private practice and a federal prosecutor. She noted that a large percentage of her time was spent on matters other than preparing her cases. This included taking care of her clients' personal matters such as their medical conditions. She stated that was one reason DPA needs more support staff. She said that when she was in private practice, there was 2 support staff for every private lawyer. She criticized the stated goal of 1 support staff for every 2 lawyers, although she agreed that would be better than the present 1 to 3 ratio. She believed that additional support staff is at least as important as additional attorneys. She noted too that there were 259 people in the Perry County jail which had only 135 beds, and that this caused her to have to spend a large amount of time trying to solve that issue with the Department of Corrections as well as inmates' family members. All of this takes time, time that she said she did not have.

### **Harolyn Howard**

Harolyn Howard is the directing attorney of the Pikeville Office. She is in her 15<sup>th</sup> year as a public defender and is still paying off "massive student loans." She stated that the biggest problem in the Pikeville Office had been turnover. Recruiting for the Pikeville Office was also difficult, as was retention. She believed that the stated goal of 400 cases per lawyer was too high, that a mixed caseload of 300 to 350 was a goal more consistent with having sufficient time. 3.8 hours per case is not nearly enough to represent someone properly.

### **Roger Gibbs**

Roger Gibbs is the directing attorney of the London Office and regional manager for the Eastern Region. He related two events that summed up the problems in the London Office. He said that he had attended a meeting at which Congressman Rogers had given \$5 million for drug treatment, an amount that will allow 300 people to be treated. He said that was insufficient to meet the need. When he got home the previous night, WYMT reported that 40 new arrests had been made on drug charges in Clay County, with 60-80% of those predicted to go to his office. He stated that he needed social workers to assess clients within 48 hours of arrest in order to make treatment effective.

### **Steve Geurin**

Steve Geurin is the directing attorney of the Morehead Office. He stated that he had one attorney in his office with 640 cases, and a second attorney with over 1000 cases. He said that time did not allow his attorneys to represent people adequately due to the high caseloads.

## **Public Meeting Held in Paducah on September 9, 2005**

The fifth and final public meeting was held by the Public Advocacy Commission in Paducah, Kentucky, on September 9, 2005. In attendance for the Commission were Deb Miller, who chaired the meeting, and Ernie Lewis, *ex officio*. There were over 60 attendees, including Justice William Graves of the Kentucky Supreme Court, Judge Rick Johnson of the Kentucky Court of Appeals, Rep. Brent Yonts, Rep. Frank Rasche, and numerous judges and prosecutors throughout the Western Region. The following is a summary of the comments heard by the Commission:

### **Rick Johnson**

Court of Appeals Judge Rick Johnson stated that the primary message he has received from citizens in Western Kentucky is the need for more attorneys in the public defender system. Their biggest concern is that attorneys have too many cases and not enough time to prepare. Further, as a Court of Appeals judge, he sees many claims that allege that the attorney does not have sufficient time to prepare, as opposed to the more classic instance of ineffective assistance of counsel.

### **Representative Brent Yonts**

Rep. Yonts stated that the public defender system had progressed a great deal since he had been a public defender as a young lawyer.

### **Justice William Graves**

Justice Graves stated that when he began practicing law in 1965, that there was no public defender program. He said that it is clear state funding is inadequate. As a result, the Supreme Court is exploring the possibility of requiring all attorneys to provide *pro bono* services to indigents accused of crimes.

### **Ginger Massamore**

Ginger Massamore is the Directing Attorney in the Hopkinsville Office. She has been with DPA for 10 years. The Hopkinsville Office covers 6 counties consisting of an area over 200 miles across. The attorneys in the Hopkinsville Office have tried 34 cases since February 2005, and all but 5 were either acquittals or a sentence to less than the offer. Her office has had 8 death penalty cases since August of 2004. She stated that as a result of “staggering caseloads,” no client has suffered. However, the staff of the Hopkinsville Office is suffering, their families are suffering, and their health is suffering. “We are drowning under the caseloads and stress.” The one thing money can buy in the criminal justice system is the time of the attorney.

### **Mike Ruschell**

Mike Ruschell is the Directing Attorney of the Madisonville Office and the Regional Manager for the Western Region. He stated that his office has family members calling all of the time asking why the attorneys don’t go see a particular defendant in jail. He stated that the reason why this is not being done like it should be is the heavy caseloads.

### **David Massamore**

David Massamore, the husband of Ginger Massamore, is also the elected Commonwealth’s Attorney in 4<sup>th</sup> Circuit. The problems with increasing caseloads for public defenders is also happening with prosecutors’ offices. Thirty years ago Hopkins County had only 40 indictments; this last year there were over 500 indictments. There used to be 7 police officers in Madisonville; today there are 36. Massamore stated that the criminal justice system is like a see-saw that you have to watch to make sure that it does not become imbalanced. An imbalanced see-saw does not work. He stated that the criminal justice system is now like the imbalanced see-saw. He stated that the primary driver of the problem is the drug problem. While we need to fund law enforcement, we must also fund prosecutors and public defenders. He said that burned out, overworked, untrained public defenders are his worst enemy. Finally he stated that he was present as a family member. “I see what this job does to dedicated people.”

### **Amy Harwood**

Amy Harwood is a Paducah public defender who has been practicing for 7 years. She was concerned about the retention problem in DPA. She stated that in her office retaining experienced attorneys is very difficult, and that as a result, inexperienced attorneys are handling murder cases.

### **Chris McNeil**

Chris McNeil is the Directing Attorney in the Paducah Office. He stated that the public meeting was that of a criminal justice community coming together to talk about part of the problem, high caseloads for public defenders, as a criminal justice community.

### **Shane Beaubien**

Shane Beaubien has been the investigator in Murray since the opening of the office. His concern was that of turnover in the Murray Office. The Murray Office has lost 7 attorneys during the last three years. He was excited about the possibility of getting a social worker in each office who can work on the clients' underlying problems.

### **Brian Scott West**

Scott West is the Directing Attorney of the Murray Office. He said that a client has suffered in his office as a result of high caseloads. He told the story of a young attorney who had an innocent client. The attorney is now a nurse, and as a result, Scott inherited the case. When he got the case, he realized that the innocent client had sat for 6 months in jail. She had stayed in jail because Scott did not have the time to review the file, and did not have the time to coach the new attorney. He stated that only with new funding could he do a better job, and that that will ultimately save time and money for the system. He noted that both sides need to be adequately funded. When the Commonwealth's Attorney's Office received additional funding, that resulted in a more efficient operation.

### **Gail Cook**

Gail Cook is the Commonwealth's Attorney in the 42<sup>nd</sup> Circuit. In her opinion, the big reason for the caseload increase among prosecutors and public defenders is the growth in the drug problem, and particularly methamphetamine. The load presently being carried by all parts of the criminal justice system is untenable. The only thing that has kept the system going is the dedication of everyone in the system.

### **Cirrus Barnes**

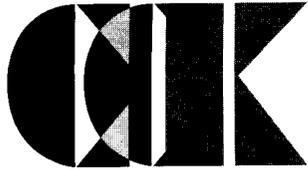
Cirrus Barnes is one of DPA's newest trial lawyers, located in the Murray Office. She said that her primary impression as a new lawyer was how heavy the caseload was and how much energy it takes to get through district court.

### **Cindy Long**

Cindy Long has been with DPA for two decades. She is an investigator in the Hopkinsville Office. She stated that DPA needed more investigators. She noted that the Commonwealth had immense investigative resources through their own investigators, sheriff's departments, the Kentucky State Police, City Police Departments, the Crime Lab, and Federal Task Forces. She noted that lawyers in her office were doing their own investigation because of the absence of sufficient investigators.

### **Deb Miller**

Deb Miller is not only on the Public Advocacy Commission but also appeared as a long-time staff member of Kentucky Youth Advocates. She has worked for 20 years with them, part of which was as Executive Director. Kentucky Youth Advocates has watched the juvenile justice system. She stated that KYA was very disturbed by the high caseload numbers. She also noted that regional detention has made the job of public defenders more difficult. KYA is pleased with changes in the law guaranteeing counsel for the poor. KYA is also concerned about the lack of sufficient support staff for attorneys. KYA is particularly enthusiastic about the possibility of social workers in public defender offices and what social workers can bring to the representation of juveniles.



May 20, 2005

## Catholic Conference of KY Supports Funding for Legal Services for the Poor

The Catholic Conference supports an increase in funding for legal services for the poor, the marginalized, the stranger and specifically increased funding for our Kentucky's indigent defense services. The inadequate funding of our present Kentucky public defender system is well documented. State and federal constitutional guarantees necessitate improved funding for our statewide indigent defense system. I appear today to offer an additional perspective for consideration for providing additional funds for legal services to the poor in Kentucky who are accused of or convicted of a crime.

The right to counsel for an indigent defendant to insure a just result has its roots in the Hebrew and Christian Scriptures and is recognized as important by religious leaders today. Most evident from the early Scriptures in this regard are the admonishments by the prophets to those who did not justly and fairly treat the poor "in the gate" of the city, which was the site for the judicial system of the time where justice was administered. Justice for the poor and vulnerable is one of the most pervasive themes in the Old Testament.

The early Christian community continued to plead for those on the margins. For instance, in September 401 during the Council of Carthage the African bishops petitioned the Roman emperor to provide a person, a *defensor civitatis*, to "alleviate the suffering of the poor" by defending the poor, protecting their civil rights, securing a just result amidst complicated Roman laws. In 407 Emperor Honorius ordered that a *defensor civitatis* should be elected.

In Chapter 25 of the Gospel of Matthew we are told that those who are faithful with the talents provided to them enjoy the kingdom of God. In that same Chapter we are informed that people at the last judgment will be separated with the sheep on God's right and the goats on His left. We will be judged by the degree that we cared for the ill, fed the hungry, welcomed the stranger, and visited those in prison. "Amen, I say to you, whatever you did for one of these least brothers of mine, you did for me." (Mt 25:40).

Christian leaders today continue the call for insuring justice for the poor. Pope John Paul II taught in "The Gospel of Life: On the Value and Inviolability of Human Life" (1995): "As disciples of Jesus, we are called to become neighbors to everyone (cf. Lk10:29-37), and to show special favour to those who are the poorest, most alone and most in need." In November 2000, the United States Bishops issued a statement on crime and criminal justice: *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, <http://www.usccb.org/sdwp/criminal.htm>. In that statement, the bishops say: "The fundamental starting point for all of Catholic social teaching is the defense of human life and dignity: every human person is created in the image and likeness of God and has an inviolable dignity, value, and worth, regardless of race, gender, class, or other human characteristics. Therefore, both the most wounded victim and the most callous criminal retain their humanity. All are created in the image of God and possess a dignity, value, and worth that must be recognized, promoted, safeguarded, and defended." The bishops also recognized "The Option for the Poor and Vulnerable: This principle of Catholic social teaching recognizes that every public policy must be assessed by how it will affect the poorest and most vulnerable people in our society."

**Most Reverend  
Thomas C. Kelly, O.P.**  
Archbishop of Louisville

**Most Reverend  
John J. McRaith**  
Bishop of Owensboro

**Most Reverend  
Roger J. Foys**  
Bishop of Covington

**Most Reverend  
Ronald W. Gainer**  
Bishop of Lexington

**Edward C. Monahan**  
Executive Director

More recently, the Catholic bishops of Kentucky issued “A Catholic Perspective on Crime and Criminal Justice: A Kentucky Call to Responsibility, Rehabilitation, and Restoration,” (<http://www.ccky.org/Pastoral%20Resources/Ky%20RRR%20Initiative.pdf>) and called for Catholic principles and values to be instilled in Kentucky’s criminal justice system and recognized that one of those values was that “we all are responsible for all.”

Continuing this tradition of calling for just and fair treatment of the least among us, the Catholic Conference of Kentucky supports increased funding for Kentucky’s Department of Public Advocacy, not just because it is in line with constitutional rights to justice, but also because it promotes core principles of Catholic social teaching. Criminal justice policies and funding must take special care to address and serve those with little or no money. Policies and funding must ensure that justice is as accessible to those who are poor as it is to those who are more affluent. Each person who is accused or convicted is a child of God. Jesus, who Himself was a prisoner, was devoted to justice for the poor, the marginalized, the stranger.

The proper funding of legal services for the poor, the marginalized, the stranger is a moral test for our Commonwealth. On behalf of those in jails and prisons who are visited and served by defenders and on behalf of people of faith, CCK urges more funding for the provision of the right to counsel for those accused and those convicted of a crime who are unable to afford counsel.



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Edward C. Monahan  
Executive Director

**Notes:**

*The Cultural World of Jesus, Sunday by Sunday, Cycle A* John J. Pilch. The Liturgical Press. 1995. pp. 22-24 “Trials in ancient Israel were decided by the leading men of the city or synagogue who administered justice ‘in the gate’ (see Amos 5:15; Deut 19:12).”.

**Amos 5:7, 15:** “Woe to those who turn judgment to wormwood and cast justice to the ground! ...Hate evil and love good, and let justice prevail at the gate; Then it may be that the LORD, the God of hosts, will have pity on the remnant of Joseph.”

**Job 5:4:** “His children shall be far from safety; they shall be crushed at the gate without a rescuer.”

**Isaiah 29: 20-21:**“For the tyrant will be no more and the arrogant will have gone; All who are alert to do evil will be cut off, those whose mere word condemns a man, Who ensnare his defender at the gate, and leave the just man with an empty claim.”

**Psalms 10:17:** “You listen, LORD, to the needs of the poor; you encourage them and hear their prayers.”



**"The Gospel of Life: On the Value and Inviolability of Human Life" (1995):** "In our service of charity, we must be inspired and distinguished by a specific attitude: we must care for the other person for whom God has made us responsible. As disciples of Jesus, we are called to become neighbors to everyone (cf. Lk 10:29-37), and to show special favour to those who are the poorest, most alone and most in need. In helping the hungry, the thirsty, the foreigner, the naked, the sick, the imprisoned - as well as the child in the womb and the old person who is suffering or near death - we have the opportunity to serve Jesus. He himself said: 'As you did it to one of the least of these my brethren, you did it to me.' (Mt 25:40)."

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*The Catholic Conference of KY (CCK) is an agency of the Catholic Bishops, established in 1983. It speaks for the Church in matters of public policy, serves as liaison to government and the legislature, and coordinates communications and activities between the church and secular agencies. There are 388,000 Catholics in the Commonwealth. The Bishops of the four dioceses of KY constitute CCK's Board of Directors.*



## **The Kentucky Council of Churches**

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Lexington, Kentucky 40511

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The Kentucky Council of Churches has a long history of advocacy for social justice, and as a voice for those who are most often excluded from society's decision-making arenas. We are particularly concerned, as was Jesus, about those who find themselves in trouble with the law, and who, by their actions, have harmed their neighbors. We hope for their restoration and redemption, not merely that they be punished for their misdeeds.

Over the past two decades, the Kentucky Council of Churches has prepared and circulated several policy papers, representing a consensus (and therefore unanimous) opinion among the member denominations and congregations of the Council, which address the issues of our system of justice. Among these policy papers is one adopted as long ago as 1987 on Crime and Criminal Justice; and another policy paper on the death penalty, adopted in 1997, that affirms our belief in the potential for redemption of every human being, no matter what heinous acts he or she may have committed.

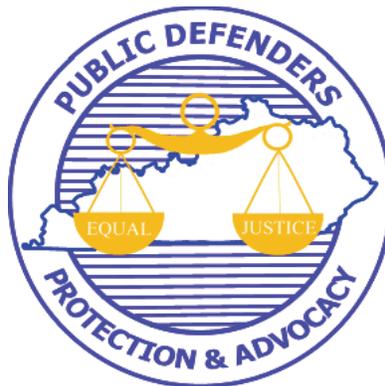
Today, we join other voices in declaring that justice for all of us is jeopardized when persons accused of crimes do not have access to quality legal assistance and defense. A stable system of justice requires that everyone be equal before the bar of justice. Yet we in the churches know how often the poor suffer more serious punishments for their crimes than do those who can afford to hire private attorneys. If we do not adequately fund our public defenders program, we are failing to live up to the noble ideals of our nation, and contributing to the proliferation of injustice. We cannot turn aside and not notice that the poor do not receive the same treatment in our courts.

Our policy statement on Crime and Criminal Justice states: "Throughout Scripture, the concepts of justice and righteousness are often interchangeable. Based on God's acts of deliverance, justice most often describes God's concern for the weak, vulnerable, and oppressed, as well as the corresponding ethical demands placed on the people of God. God acts in history to insure the worth, dignity, freedom, equality, and rights of each person. The criminal justice system must reflect God's concern for justice."

The statement continues: "Complementing this concept of justice, redemption describes God's mercy in making that which is broken whole again. Central to our understanding of the person and work of Christ is God's transforming power: (a) restoring all persons to health and wholeness; (b) actualizing the God-given potential of every person; (c) reconciling broken relationships among persons; and (d) creating a social order based on compassion. Even the wrath of God intends redemption, not destruction and punishment alone. A criminal justice system must include the possibility of redemption as its end for the victim, the offender, and society."

Finally, the Council's position paper on Crime and Criminal Justice calls for full funding of legal services for the indigent; asks the Bar Associations to offer their assistance to members of society unable to cope financially with the justice system; and we recommend funding which will insure adequate reimbursement to court appointed attorneys.

Respectfully submitted,  
Rev. Nancy Jo Kemper, Executive Director  
May 19, 2005



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## Indigent Defense in New Orleans: Better Than Mere Recovery

Vol. 33 No. 4

By Stephen I. Singer

Stephen I. Singer is an assistant professor of clinical law at Loyola University College of Law in New Orleans and chief of trials in the Orleans Public Defender's Office.

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Sometimes change is sudden, unsettling, and dramatic. Hurricane Katrina effected change with a vengeance. Water lapped at the criminal district courthouse steps and drowned the evidence room, prisoners saved from the floodwaters baked out on the 100-degree highway before getting lost in the system for months, the indigent defense structure, such as it was, blew away with the last of the hot winds.

At other times, change is slow, barely perceptible, and creeps along in painfully small increments. That is the case with the rebuilding of the indigent defense structure in New Orleans. If we are lucky, that system will be nothing like it was. To understand the profundity of something as simple as a public defender's office having its own office space, one has to understand a bit about how terribly broken the indigent defense system was before Katrina—mercifully—demolished it.

### A Pre-Katrina Disaster

Every outside expert who has studied indigent defense in New Orleans has concluded that the system was a disaster—among the worst in the nation. The Department of Justice Bureau of Justice Administration described it as “court-based,” catering primarily to the needs and convenience of the court and the individual criminal court judges rather than to those it was supposed to serve—its clients.

### About the Magazine

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The New Orleans Public Defender's Office was composed of forty-two attorneys who, save a few exceptions, were part time and were paid relatively small salaries. The public defenders maintained private practices that included private criminal cases in Orleans Parish. Because they were salaried, there was a perverse financial incentive to spend as little time as possible on their public cases so they could devote more time to private ones.

Cases were rarely investigated. Witnesses were rarely tracked down and interviewed. Public defenders infrequently visited their clients in jail or met with their families. Little, if any, time was spent preparing and filing motions or researching legal issues. Public defenders appeared in their designated courtrooms on their scheduled days, handled whatever matters were on the docket that day as quickly as possible, and then left to attend to their private practice or other matters.

Because the public defenders handled private criminal cases in the same courthouse as their public cases, there was an incentive to please the judges—or at least not anger them—and gain favorable treatment for their paying clients. This coincided nicely with the judges' and prosecution's interest in moving through the docket as fast as possible. Most days, most courtrooms were empty by lunchtime.

To encourage the speedy resolution of cases, individual public defenders were assigned by courtroom, not by cases or clients. Each handled whatever came through the courtroom doors on that day, attending to the needs of "his" or "her" judge, who referred to the defender as "my" public defender. Indeed, one district court judge famously paid one of the public defenders extra money out of court funds so that the defender would give up private practice and be "his" public defender full time. That judge no longer sits in the Orleans criminal district court. He was promoted to the intermediate appellate court.

This courtroom-based system of representation has had devastating consequences for indigent defendants in New Orleans. In Louisiana, the prosecution has forty-five days in the case of misdemeanors and sixty days in the case of felonies to file charges. The accused are usually held in jail during this time because they are too poor to post the draconian bonds set at the initial appearance. The horizontal structure of the New Orleans Public Defender's Office would leave an accused person unrepresented—hence, no investigation, few preliminary hearings, no bond reduction motions, no preservation of exculpatory evidence—for upward of two to three months. Only after formal charges were filed was a case allotted to one of twelve divisions of the Orleans Parish Criminal District Court. Only for arraignment, which may be

it did when originally published. Therefore, some biographical information about the authors may no longer be accurate.

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up to another thirty days later, did the accused finally meet a public defender and obtain any sort of attorney for representation.

The primary source of funding for the office was, and still remains, fees assessed on every conviction, including municipal and traffic violations and bond forfeitures, creating a perverse interest in the public defender's office as a whole: its funding is based on bad outcomes for its clients.

To further intertwine the public defenders with the court, the "office" consisted of a single room in the courthouse where coats, briefcases, and umbrellas could be left. There was no privacy for attorneys to meet with clients, families, or witnesses, and the attorneys did not have their own computers, telephones, or desks. Of the four working computers, only two had Internet access, and the two phone lines did not have voice mail. The office consisted of a few file cabinets, several shared desks, and a single copier for the entire staff of forty-two attorneys.

The public defender's office is supervised by a board of directors appointed by the criminal district court judges. Before and immediately after Katrina, this board consisted of private criminal defense attorneys who regularly practiced before the judges who appointed them. Indeed, the chair of the board was the attorney for the police officers' foundation and routinely represented police officers accused of misconduct. The board exercised direct control over hiring and firing and the assignment of attorneys. Overall, the system sorely lacked independence from the judiciary and had no semblance of competent, client-centered representation.

### **The Immediate Post-Katrina Havoc**

While Katrina clearly wreaked havoc on the lives of many who were jailed when the hurricane hit New Orleans, the foregoing description demonstrates that there was little to lose for the indigent defense system. After Katrina wiped out the primary source of funding for the office—fees on traffic tickets—the staff was reduced to six attorneys and one support person to handle more than 6,000 open cases. No one knows the actual number of open cases because the office had no case management system. Large numbers of cases never had even a paper case file, let alone an electronic one. Because the office itself was not flooded by Katrina, this shortcoming can be attributed to poor office practices.

### **Change and Resistance**

In April 2006, the old board of directors was finally ousted and a new, more professional and independent board was installed. It is composed primarily of attorneys who do not practice before the criminal district court judges. The new board brought on a new management team to reform and rebuild the office in the summer of 2006. That team includes Ronald Sullivan as chief consultant,

Jonathan Rapping as training director, Christine Lehmann as special litigation counsel, and me as chief of trials.

The first change one will notice is that there actually *is* a physical public defender's office. The public defenders have leased an entire floor of an office building a half block from the courthouse and jail. The office has a reception area, a conference room for meetings and training, and private interview rooms. It has furniture donated by the Minnesota Bar Association. The attorneys have offices with doors so that they can work and meet with clients, families, and witnesses in private. Each attorney has a desk, a telephone with a personal extension, and voicemail. Each has a laptop networked through individual docking stations their desks with an office-wide e-mail system, financed through a donation from the Louisiana State Bar. The District of Columbia Public Defender Service donated a state-of-the-art case management system, which is being installed. These seemingly ordinary aspects of any modern, functioning law office are nothing short of revolutionary for the New Orleans public defenders.

Another major change was the added requirement that all public defenders be full time and give up their private practice. Despite a salary increase, on par with the Orleans Parish District Attorney's Office, the change to full time caused an outcry from some public defenders, several of whom vacated their positions, as well as judges. Feeling the small breeze of change beginning, many judges objected, strongly preferring their dependent, part-time public defenders.

These judges played out their objections in the media and in court. The switch to full-time representation initially left some temporary gaps in representation, all of which were quickly filled. Suddenly and ironically, these judges were interested in the lack of representation for clients for whom they had shown little regard until this point. As a result, the judges have threatened to hold me in contempt over a half dozen times since I joined the office. They issued a contempt order and scheduled a contempt hearing against the top management and directors of the office for failure to assign and staff the office in the manner the judges desired. The judges backed down when confronted with negative press and a governing statute that prohibits them from participating in the management decisions of the office.

More recently, the chief judge of the Juvenile Court in New Orleans held me in contempt and incarcerated me at the Orleans Parish prison because he was dissatisfied with the way the court was being staffed and refused to discuss the status of reform in the public defender's office. I was released after several hours when the intermediate appellate court stayed the contempt ruling, which was later dismissed. The judge and I met, talked about the

pending reforms, and both subsequently appeared on the local news, speaking the same pro-reform message. Shortly thereafter, the office contracted its juvenile cases with a national, award-winning juvenile services organization.

Instead of relying upon an old guard, the office hired a new crop of energetic, committed young attorneys in the fall of 2006. Instead of being sent into courtrooms without any training, as their predecessors were, the newcomers were provided with intensive, weeklong training programs. The office plans to hire its second "class" of new attorneys this fall and is actively recruiting dedicated law students from around the country. This sort of nationwide recruitment is light years away from the old system of "appointments" among local friends.

In addition, the public defender's office is in the process of converting to a structure of vertical representation that provides continuous representation from first appearance, within twelve to twenty-four hours of arrest, through the conclusion of the case. The first step in this process is also meeting with judicial resistance. To make this conversion, the office must cover the huge backlog of cases in the sections, and it has relied upon an emergency pro hac vice rule passed for this purpose. The rule has allowed the office to create partnerships with the Public Defender's Offices in Minnesota, Philadelphia, and Washington, D.C.—all top-flight offices—which are sending two or three attorneys each for six-month sabbaticals to help represent indigent clients.

Again sniffing the winds of change, the chief judge refused to allow any out-of-state attorney to practice in his courtroom without a Louisiana lawyer literally by his side at all times. The rule does not require this, but change comes hard, and many of the judges will not go down without a fight.

Many of the judges have complained vociferously that the reform effort is a waste of money and that, against all reports, the criminal justice system in New Orleans worked just fine before Katrina and the public defender's office simply needs to return to the way it was. These judges have complained that money for proper office space, for computers and a modern telephone system, and for proper salaries for full-time attorneys are all a waste of resources. Yet, the current board and management team of the New Orleans Public Defender's Office are striving for more than recovery from a storm. We are fighting for real justice for real people for the very first time.

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**An Assessment of the  
Immediate and Longer-Term Needs  
of the  
New Orleans Public Defender System**

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**April 10, 2006**

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### An Assessment of the Immediate and Longer-Term Needs of the New Orleans Public Defender System

Justice, in the criminal sphere, is the law-breaker receiving what is due him or her, both in process and punishment. And it is the process, not the punishment, which distinguishes just governments. In the United States, we have agreed that before the government can take away our liberty, it must first provide us with a fair process. This process is not a gift—rather, it is owed to us—it is due us. That is the simple meaning of Due Process. What this process includes is what makes it complex. So complex, in fact, that whenever the government seeks to remove a citizen's liberty, the government is represented by an attorney (usually called a prosecutor or district attorney). Justice therefore dictates that throughout this complex process, the citizen facing the loss of liberty should also be represented by an attorney. Our pledge of allegiance promises in its last three words: "...justice for all." Consequently, citizens too poor to afford an attorney must be provided an attorney by the government.

Martin Luther King said, "Injustice anywhere is a threat to justice everywhere." Every day in New Orleans, public defenders are called upon to represent our poorest citizens. This report seeks to ensure that Orleans Parish defenders have the resources, skills, and management structure necessary to protect "justice for all."

## I. BACKGROUND

During the final quarter of 2005, as federal national disaster relief efforts coordinated by FEMA in the aftermath of Hurricane Katrina evolved from an emphasis on life-saving to infrastructure rebuilding and subsistence support, the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice, working through the Louisiana Commission on Law Enforcement

(LCLE), the "State Administrative Agency" for Congressional appropriations for state and local criminal justice system improvement, established a liaison relationship with the Southeast Louisiana Criminal Justice Recovery Task Force. This task force was established, with LECD assistance, to conduct criminal justice system needs assessments and coordinate system rebuilding efforts in the four Louisiana parishes hardest hit by Katrina: Orleans, Jefferson, Plaquemines, and St. Bernard. The Task Force, in turn, established several committees, or working groups, to focus on specific components of the criminal justice system in the four jurisdictions, including a *Courts Committee*, a *Law Enforcement Committee*, and a *Corrections Committee*. BJA staff interacted regularly with these working groups and, although not having any national disaster relief funds at its disposal, provided whatever consultant services it could from its existing grantee and contractor network around the country.

In February 2006, the Judicial Committee of the Task Force, which is responsible for state and local courts, clerk's offices, indigent defense services, and other court-related entities was confronted with having to respond to a situation where the absence of resources, both fiscal and human, to provide constitutionally valid legal representation to the thousands of pretrial detainees whose cases were pending (including many even awaiting filing of charges) in New Orleans metropolitan area courts had the criminal justice system on the verge of closing down completely. The LCLE and the Task Force petitioned BJA for emergency financial assistance to enable the indigent defense system to operate at minimally acceptable levels for a several month period while pending state and federal relief bills for the hurricane devastated areas worked their way through the respective legislative appropriations processes.

Agreement was reached that BJA would first commission an independent needs assessment of the indigent defense service delivery crisis in Orleans Parish, at least, since it represented the vast bulk of the metropolitan area-wide problem.

To conduct the assessment, BJA turned to its National Training and Technical Assistance Initiative project at American University (AU), which specialized in criminal justice system-wide analyses. The task presented was to select a team to travel to New Orleans for a two-three day site visit, where they were to meet with and interview appropriate criminal justice officials, legal system and community representatives, visit offices of the Orleans Indigent Defender Program (OIDP), collect available data related to indigent defense in Orleans Parish, and, based on the information collected, develop recommendations to address the immediate and longer-term needs for indigent defense in the Parish.

It was envisioned that the team's report was to form the basis for the Parish's application to BJA for the emergency short-term funding.

The AU technical assistance project recommended, and BJA and the Judicial Committee of the Task Force approved, the following three nationally experienced indigent defense and pretrial process specialists for the assessment team:

*Nicholas L. Chiarkas*, Chief Public Defender for the State of Wisconsin;

*Randolph N. Stone*, Clinical Professor of Law, University of Chicago Law School and former

Public Defender of Cook County, Illinois; and  
*D. Alan Henry*, Consultant and former Executive Director of the Pretrial Services Resource Center, in Washington, DC.

The local coordinator for the team's work was Justice Catherine D. Kimball, of the Louisiana Supreme Court, who is the Chair of the Judicial Committee of the Task Force. Elizabeth Griffith, Deputy Associate Director for Policy of BJA, was the BJA liaison for the assessment effort and accompanied the team on its site visit.

## II. THE SITE VISIT

Following several teleconferences for orientation purposes among team members, AU project staff, BJA officials, and New Orleans Task Force representatives, the team met in New Orleans and began interviews the evening of March 14, 2006, with interviews starting again the following morning and continuing for two days. The team completed its site visit on March 17, 2006.

During the visit, the team met with the following individuals:

- Hon. Catherine D. Kimball, Justice of the Louisiana Supreme Court, and Chair of the Judicial Committee of the Southeast Louisiana Criminal Justice Recovery Task Force
- Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana
- Hon. Calvin Johnson, Chief Judge, Orleans Criminal District Court
- Hon. David Bell, Chief Judge of the Orleans Parish Juvenile Court
- Hon. Gerard Hansen, Orleans Criminal District Court Judge
- Tilden Greenbaum, Orleans Parish Indigent Defender
- Danielle Berger, Accountant, Orleans Indigent Defense Board
- J.C. Lawrence, former member, Orleans Indigent Defense Board
- Bill Short, Chief Deputy Sheriff, Orleans Parish
- Hon. Marlin N. Gusman, Orleans Parish Criminal Sheriff
- Mary Baldwin Kennedy, Colonel, Orleans Sheriff's Office
- Hon. Helen Berrigan, Chief Judge of the U.S. District Court, Eastern District of Louisiana
- Jim Letten, United States Attorney for the Eastern District of Louisiana
- Virginia Schlueter, Chief Federal Defender, Eastern District of Louisiana
- Terry Ebbert, Director, Homeland Security for New Orleans
- Carmelite M. Bertaut, President, New Orleans Bar Association
- Shannon Bruno, President, Louis Martinet Society
- John T. Fuller, Attorney
- Edith Jones, President, Urban League of New Orleans
- Danatus King, President, New Orleans NAACP
- Pam Metzger, Director, Tulane Law Clinic
- Denise LeBoeuf, Attorney
- Michelle Ghetti, Professor, Southern Univ. Law Center and member of Indigent Defender Task Force
- Laurie White, Attorney, former ODP Board member

- Jelpi Picou, Executive Director, Capital Appeals Program
- R. Neil Walker, Director, Louisiana Capital Assistance Center
- Steven Singer, Majeeda Sneed, Joseph Walsh, and Courtney Schroeder, Loyola Law School Criminal Defense Clinic
- Rick Teissier, Attorney
- George Kendall, Attorney, Holland & Knight
- Michael A. Ranatza, Executive Director, Louisiana Commission On Law Enforcement
- William Kline, General Counsel, Louisiana Department of Corrections
- Scott Griffith, Drug Court Program Director, Louisiana Supreme Court
- Frank Neuner, President, Louisiana State Bar
- E. Pete Adams, Director, Louisiana District Attorneys Association
- Beverly S. McKenna, Publisher, New Orleans Tribune
- Mike Perlstein, Reporter, New Orleans Times Picayune
- Lamont Williams, Information Technology, Federal Public Defender
- Lisa Kung, Southern Center for Human Rights

Additional telephone interviews and follow-ups occurred after the team had left New Orleans.

We especially thank Justice Kimball, Judicial Administrator Hugh Collins and Task Force Special Counsel Chip Coulter, without whose help we would not have been able to carry out this task. They provided us with several meeting rooms at the Supreme Court; arranged for interviews and operational observations; shared insights; and, in short, met all of our needs with grace, openness and professionalism.

Besides providing us their time to answer questions about the indigent defense issue, many of the interviewees were also extraordinarily helpful in providing data, case law, relevant statutes, press clippings, and other useful material for our consideration.

Although our days on site were full, it is impossible to obtain a complete picture of the indigent defense process in New Orleans in two days, let alone to understand that process in the context of the broader criminal justice system. We realize that there are many more people whose counsel would have no doubt further illuminated our task.

Still, thanks to the frank and open discussions held with local criminal justice professionals, we believe that we have a fairly accurate picture of the indigent defense process, the ODP, and the general criminal process in Orleans Parish. In the subsequent sections of this report, we describe the present state of indigent defense and offer recommendations that we believe will help to improve not only indigent defense services, but also the quality of the justice system in general.

### III. INDIGENT DEFENSE IN NEW ORLEANS

After arrest, persons appear before a judicial officer for first appearance. At this point the arrestee, unless s/he already has an attorney, will have an ODP attorney available to "stand in"

for this brief appearance. The critical issue at this first hearing is bail; whether the person will be released pending the actual filing of charges (and eventual disposition of the case) or remain incarcerated. However, the attorney for the defense has not talked with the arrestee and has only the "gist sheet" (summary of basis for arrest) to shed light on the allegations.

The prosecutor (assistant district attorney) recites the arrestee's arrest/conviction record and recommends a bail amount. We were told that in the vast majority of cases, the bail amount requested by the prosecutor is granted. After bail is set, the case is continued pending the prosecutor's charging decision.

When setting bond, the judicial officer has no information about the defendant's ties to the community, history of bail and/or probation, or history of drug abuse or mental illness. Also, the judge does not have conditions of release, such as a bail-monitoring program, available.

The ODP attorney tells the defendant that a lawyer will be appointed at the next appearance, and the defendant is taken back to jail; sometimes the ODP gives the defendant the court papers to retain since there is no ODP file at this time in which to keep such material.

The defendant is then held in jail for a minimum of 45 days (misdemeanors) or 60 days (felony charges). During this period of detention, the defendant has no contact with any attorney unless s/he has been able to hire one.

At the next appearance, the defendant is assigned to a particular court for trial and disposition. Before Katrina, the ODP had attorneys assigned to all criminal courts and is attempting to cover the smaller number of operational criminal courts now. If the defendant does not already have an attorney, the ODP attorney in court is assigned to the case. We are told that in most instances, after the attorney speaks briefly with the defendant, one of three options takes place. First, the prosecutor may request a continuance because s/he is not yet prepared to file a case. Second, the prosecutor may decide not to file charges at all. Third, both sides are ready, and the formal arraignment takes place, with the case then set for trial (or, in some instances, a preliminary hearing at the defendant's request). (We received statistics compiled by the ODP for March and June of 2005. The data showed that no preliminary hearings took place for their clients during those two months.)

It is not clear how many continuances are allowed; we were told that is determined by the individual judges. One of the judges interviewed said that he scheduled a status hearing every thirty days. Nor was there available data regarding average time to disposition; in fact, there was no data that would give us the caseload of the office or the caseload of individual ODP attorneys.

In comparison, the Sheriff's Department provided us with current data that identified the number of incarcerated persons in the parish jail with open state cases, as well as those incarcerated for probation violations and parole violations. In addition, the Department could tell us the numbers for those incarcerated around the state or in Department of Correction facilities. Unfortunately, these numbers focus on people, not cases, as would be expected from a sheriff's department.

They also would not include those persons with charges pending who had obtained their release by posting bail. Thus, the Sheriff's data gave us only part of the picture of pending ODP cases in the Parish.

#### IV. THE ORLEANS PARISH INDIGENT DEFENSE PROGRAM

Our interviews revealed general agreement on the following information (some admittedly impressionistic, but on which we had to rely in the absence of time for courtroom observations and the unavailability of statistical data and files for review), about ODP:

- Everyone agreed that the office is under-financed now and that it had been before Katrina. The office is funded primarily by traffic ticket revenues.
- The system of indigent defense is court-based, rather than client-based. The ODP lawyers are assigned on an indefinite basis to a particular court with a particular judge and attempt to defend all indigent clients who happen to appear in that court (there are six attorneys currently assigned to Criminal Court). Under these circumstances, the attorney tends to focus on the preferences and work patterns of the particular judge to whom s/he is assigned and with whom s/he works every day, rather than on the indigent defendants who pass through the court.
- We were told that, aside from those cases in which the government decides not to file, very few cases are disposed of at the first or second hearings before a trial judge. When the government receives a continuance for filing purposes, there is nothing before the court, so no plea can be entered even if the defendant wishes to enter a guilty plea.
- We were told that ODP lawyers rarely meet with their clients, particularly when the clients are in jail.
- The ODP attorneys are paid \$29,000 per year; however, it appears that the job itself is in some instances less than half-time. Attorneys assigned to criminal courts are expected to stay in the court until adjournment. Consequently, if a court adjourns at noon, as sometimes happens for a variety of reasons, the attorney is free to leave. In still other courts, attorneys have in the past been able to work one week and then be off for the following week, with the court covered by another ODP attorney "splitting" coverage of the court.

ODP attorneys are allowed to have a private practice—including criminal cases—as long as the cases are not before the judges to whom they are assigned in their ODP capacity.

- While we heard significant criticism of the ODP process from virtually all of those interviewed, in most instances the remarks were aimed at the program and its administration; many of those interviewed said that the individual attorneys appeared to be very good lawyers.

- There appeared to be little accountability within the office. There were no client files or any other records or data, save a monthly tabulation of cases closed and how they were closed (e.g., trial, plea, dismissal). There is no phone number for the office, and clients cannot come to the office. We were told that attorney evaluations seem to be passive, based on judicial satisfaction with the attorneys assigned to their court. There is no supervisory evaluation of public defenders on such core skills as communication with clients, recognition of legal issues, or trial preparation.

## V. RECOMMENDATIONS

The strain brought on by Katrina and its after effects have been well documented. The hurricane displaced thousands; people lost their homes and loved ones, personal treasures, jobs...virtually everything in many instances. And criminal justice professionals were not spared. Professionals were often faced with the harrowing choice of doing their jobs (without communications, assignments, or structure), or helping people in desperate need; often family members.

The most basic problem facing the justice system was adequate staffing, a problem that still faces many parts of the system. The OI DP was particularly vulnerable, ironically because of the anachronistic way that indigent lawyers are paid. The lawyers in OI DP are paid primarily by the revenue from traffic tickets. But police have had more serious issues than issuing traffic tickets to attend to since Katrina. As a consequence, money to pay for lawyers has dried up; 75% of the indigent defense lawyers in the New Orleans office have been laid off, while arrests continue to average between 85 and 100 per day.

Without indigent defense lawyers, the system grinds to a halt. People wait in jail with no charges, and trials cannot take place; even defendants who wish to plead guilty must have counsel for a judge to accept the plea. Without indigent defense lawyers, New Orleans today lacks a true adversarial process, the process to ensure that even the poorest arrested person will get a fair deal, that the government cannot simply lock suspects and forget about them.

Despite the efforts of many professionals in the New Orleans criminal justice system, it appears to us that the only justice that can be meted out today is for those who can pay for a lawyer and a bondsman. For the vast majority of arrested individuals (primarily the poor, as in virtually every urban justice system), justice is simply unavailable.

Until a system for providing counsel to these people—not counsel serving primarily the court or the process—is implemented, they will remain in jail, their numbers increasing daily as new arrests are made. There is no time to waste.

The focus of our recommendations is on the immediate needs of the Orleans Parish public defender program. However, we recognize that any short-term fix will have long-term

ramifications; that what we recommend for Orleans Parish could be duplicated in other parishes or broadened to establish a regional or statewide public defender program; and that any modifications to the present public defender program will have corollary implications throughout the Orleans Parish (or broader) criminal justice system.

Consequently, in this section we present recommendations for both short-term and long-term actions to address the indigent defense needs in Orleans Parish. The short-term actions are primarily asking a leader in the law to oversee the restructuring of the public defender program; the hiring of private attorneys to immediately begin to address the backlog of cases attributable to Katrina; and the beginning of a process to create a viable, client-focused defender program. We agree that no effort should be made nor money spent on recreating the public defender philosophy and focus (court- and process- oriented, rather than client -centered) that existed before Katrina. Although many incarcerated clients are unaccounted for due to Katrina, if the public defender provided vertical, client-focused representation and kept records, each public defender would know who his or her clients were; would have contact information; and would have located them months ago.

The long-term actions are generally the completion of the necessary steps to restructure the defender program. These actions are described in more detail below in section VI. No doubt those coming after us will refine and adjust our long-range goals—we present them only as one example of a better destination.

#### *A. Short-term goals and recommendations*

The team's research suggests that an estimated 2,000 pre-trial detainees need services in Orleans Parish. Also, we were told that 85-100 people are arrested each day in Orleans Parish. Immediate action is necessary to provide the constitutional right of legal representation to these detainees. Simultaneously, policy makers need to set up a structure and process to ensure an effective and stable defender program.

We propose a five-month emergency intervention plan with following six goals:

1. Change the public defender program from court-and-process-centered to a client-centered public defender program;
2. Address the detainee backlog—represent all defendants waiting for hearings;
3. Gather five months of solid, accurate minute-by-minute data upon which the future (long term recommendations) can be based. You will also discover what works, what does not, and what is necessary;
4. Appoint a professional, committed Board;
5. Begin hiring full-time, client-centered public defenders; and
6. Create an atmosphere in which the criminal justice system is working together as a system instead of cloistered and disconnected parts.

We propose seven recommendations to achieve these goals:

1. Designate an esteemed individual to serve for a limited period of time (five-six months) as an interim director and coordinator (IDC) of the Orleans Parish indigent defense system to begin the development and implementation of a strategy to restructure it.

The IDC should be a leading and respected figure of the New Orleans legal community (e.g., law firm partner, retired judge or appellate court justice, former law school dean, law school professor, director of a legal services provider or non-profit, corporate counsel or CEO, bar association leader) with a demonstrated commitment to improving the legal system. A major responsibility of the IDC will be to create and develop reliable case management information and data while implementing practices to decrease backlog, track clients, and secure clients' release from pre-trial detention. The IDC would also create, implement, and monitor the process of appointing private lawyers to indigent defendants. The IDC will lay the foundation for performance standards and training modules, and begin the process of coordination, collaboration and dialogue with all of the major criminal justice system actors: public defenders, legal service providers, law schools, the District Attorney's Office, Sheriff's Department, trial court judges, private lawyers, police department, and client advocacy groups.

The IDC would help conduct a search for a permanent director for indigent defense services in conjunction with a newly reconstituted Orleans Indigent Defense Board.

An amount of \$75,000 should be allocated for compensation of the individual (or, perhaps, for at least partial recompense to the organization loaning his/her services) selected to serve in the temporary but critical IDC role. The IDC would need funds for a small staff, resources, access to expertise, and office space. We estimate the cost would be \$120,000 to hire an attorney assistant, an administrative assistant, and a numbers (data) person. We estimate that the IDC will need another \$20,000 for office space, supplies, services and extraordinary expenses.

All three of the review team members have agreed to commit ourselves and our agencies' expertise to assist with this Herculean task by providing any support that the IDC would request.

2. Immediate action should be taken to ensure that the Orleans Indigent Defense Board (OIDB) is independent (free of political or judicial influence or pressure), committed to the rights of our poorest citizens, and diverse.

The current Orleans Indigent Defender Board is down to three members; individuals were stepping down from the Board even as we were undertaking our interviews. By statute, new Board members are to be nominated by local bar associations to the Orleans Parish District Court for appointment. We understand that Chief Judge

Calvin Johnson has already called for such nominees from the bar.

The revamped OIDB should include members who bring management experience, technological experience, and experience with the Louisiana Legislature to the Board's deliberations. We also recommend that Board members serve staggered three-year terms.

3. Determine the scope of the problem/challenges confronting the indigent defense delivery system by establishing reliable data on the current backlog and what measures can be taken to reduce it as quickly as possible.

There is no available count as to the caseload of indigent cases currently before the criminal courts of New Orleans. Without this information, no effective plan can be developed; without knowing the breadth of the problem, suggesting a precise solution is impossible.

Although the Sheriff's office has current data as to the number of persons being held in a pretrial status in both the local jail and statewide, the office tracks persons; not cases. The OIDP office does not keep records of their clients out on bond or incarcerated clients, for that matter.

Since Katrina hit, The Louisiana Capital Assistance Center has taken on the task of tracking down persons in jail awaiting court action and filing habeas motions in the courts as necessary. To arrive at an accurate count of the current indigent cases, we recommend that the Center be contracted to continue that process as described below. We estimate the cost of this for a five-month period to be \$100,000.

Persons with pending cases should be divided into "Incarcerated" or "Released" categories. The following data should be collected on each person:

#### I. INCARCERATED

- Date incarcerated
- Initial Appearance Date
- Charge(s)
- Bail set
- Other holds
- Has there been an arraignment? Judge's name/court
- Plea entered
- Attorney appointed
- Name
- Preliminary Hearing
- Status Hearing
- Number of continuances
- Next court date

## II. RELEASED ON BAIL

Date arrested  
 Initial Appearance Date  
 Charge(s)  
 Bail posted  
 Date released on bail  
 Arraignment and Judges name/court  
 Attorney and Contact info  
 Plea  
 Number of court appearances  
 Next Court date

As the data is collected, cases should be triaged for court activity, beginning with cases in which the defendant has been held past the statutory limit without charges being filed; cases in which the person has been incarcerated longer than the maximum sentence the instant charge would allow if convicted; and the oldest cases.

4. Private attorneys (from the CJA list, former public defenders, and others) should be recruited immediately to address the backlog of indigent cases and new cases coming in every day. These lawyers should provide vertical representation (representation by the same attorney throughout the case) to all persons presently awaiting a court appearance who qualify for court-appointed counsel.

The recruitment goal should be a cadre of 40 competent private attorneys willing to commit an average of 15 hours per week for the 20 weeks of the five-month immediate response period, or a total of 120,000 hours of legal services. While it is not possible to predict with precision the impact this infusion of legal services would have on the current indigent defendant backlog in the short-term, it is our opinion that in conjunction with the other recommendations in this section – early representation in new cases, inventorying and triaging of existing cases, proactive case screening and negotiation with the District Attorney's Office, and coordination with other system actors -- several thousand cases could be fairly disposed of during the emergency intervention period.

A rate of \$60 per hour for the attorneys recruited for this element of the short-term response plan has been suggested by several legal system-knowledgeable people who talked to us. Although this amount is significantly less than the hourly rate of \$90 that is the current federal rate for criminal appointments, local officials and attorneys agree that it is sufficient to attract qualified private attorneys to accept appointments. Any lesser amount may be less than the overhead costs for many private attorneys and thus may jeopardize efforts to recruit and retain qualified attorneys to accept appointments.

In our experience, there is, on average, two months from the time an attorney accepts

a case until it is complete and the bill is paid. Therefore during the first two months of the five-month short-range plan, few if any bills will come due. Thus the cost estimate for 40 private attorneys, at \$60 per hour and each averaging 15 hours per week for 12 weeks (the last three months of this five-month period), is \$432,000.

In support of the enhanced legal representation for indigents envisioned by the above recommendation, consideration should be given to allocating a small portion of this \$432,000 to the local law school clinical program, or to a consortium clinical program, to improve the delivery of legal services to the indigent. For example, the clinical programs could establish a "bail project" designed to provide more and better information to the lawyers in court for purposes of obtaining reasonable conditions of release for their clients. Clinical programs could also develop representational models for advocacy at the initial bail hearing and at subsequent hearings to reduce bail. In any event, the law schools should be encouraged to have a continuing voice in the restructuring of the indigent defense system.

A final costing of this recommendation must take account of the fact that support services for public defenders generally run 1:4. Therefore, add to the direct costs for attorneys another \$108,000 for investigators, expert witnesses, and alternative sentencing specialists.

5. Planning should begin immediately to implement the long-term recommendations, which are discussed in the next subsection and in section VI, below. The major organizational restructuring that we recommend will take longer than five months to achieve. Tasks such as securing adequate funding, recruiting and hiring staff, locating and leasing office space, and designing a functional case management system will require extensive planning and hard work. We recommend that the IDC convene a planning team comprising interested parties who share the vision of an adequately-funded and client-focused defender program. Many of the people listed above would be logical participants in such an effort.

6. A retired judge should be hired to handle the habeas and probable cause cases and to work with Louisiana DOC to schedule hearings on the pending parole revocation cases. Estimated cost to hire a retired judge is \$45,000.

7. Officials in the indigent defense effort should work with the Sheriff's Department to expedite transport of inmates and ensure that attorneys have immediate access to inmates who are part of the backlog cases, etc. Officials should similarly work with the District Attorney's Office to dedicate two experienced prosecutors to review the "no charges yet" and "low bond" groups, either to decline charges or make plea offers. Set aside \$60,000 to assist the Sheriff and the District Attorney with this effort. This proposal recognizes the importance of all justice agencies having adequate resources for the system to deal effectively with the effects of Katrina.

The total cost for this five-month immediate plan would be \$960,000. However, keep in mind that there will be bills coming in from cases completed after this five-month initial response period. It is recommended that an additional \$100,000 be set aside to pay those bills as they come in. (Billings that extend beyond, say, the sixth month after the initial crisis response, will be costs included in the yearly budget for the re-structured Indigent Defense System). Thus, the five-six-month Katrina immediate response total would be **\$1,060,000**.

#### *B. Long-term recommendations*

As recommended above, the IDC should convene a planning team to implement the recommended restructuring of the Orleans Parish defender program. The following recommendations, explained in more detail in section VI, below, describe the central elements of this restructuring:

1. The philosophy and structure of the public defender program should change from court-focused or appearance-focused to a client-focused program.
2. The IDC, working with the planning team recommended in the previous subsection (V. A. 4.), should propose state and/or municipal legislation to ensure the long-term independence of the OIDP.
3. The Louisiana State Legislature and Orleans Parish officials should work together to provide the Orleans Parish defender program with funding in a manner that is adequate, predictable, and data-driven. Reliance on parking tickets as the main source of funding lacks these attributes. Much has been previously written about this problem; there is essential agreement that some form of parity with the District Attorney's funding should exist. The critical problem is the present source of funding: when a natural disaster occurs, parking tickets (either issuing or paying them) are rarely a priority. Yet, that is when the criminal justice system is most necessary for a community; it must be able to continue. Strong consideration should be given to a system of state funding; programs that rely on local funding often result in having the least resources in economically-challenged areas, where the need for services is greatest.
4. The defender program should rely, in the long run, primarily upon full-time staff attorneys to represent clients. Public defenders generally provide the highest quality and most cost-effective indigent defense services. Public defenders develop expertise in criminal law that allows them to handle cases both skillfully and efficiently. Furthermore, a well-managed defender organization can play a positive and influential role in improving the justice system (for example, by working with other

agencies to develop effective community interventions in lieu of imprisonment for non-violent offenders):

Full-time public defenders should have parity with the District Attorney's Office as to pay, benefits and retirement. Full-time indigent public defenders should not be permitted to engage in the outside practice of law.

5. The Orleans public defender program should implement and maintain an up-to-the-minute management information system as described below, pp. 22-24.
6. The Orleans public defender program should have professional offices where staff can conduct legal research, meet with clients and witnesses, and brainstorm cases.

In the following section, we expand upon our recommendations for restructuring the delivery of indigent defense services in Orleans Parish.

**Note:** Our estimates of the number of backlog cases and continuing number of new cases are based on the interviews that we conducted and published reports about the justice system. We caution, however, that because of the incredible devastation caused by Hurricane Katrina, there may be a considerable margin of error in estimates of both the current situation and the future trends in the justice system. Also, when we could not confirm numbers (such as likely operating costs for the size of office that we recommend, we used numbers from the State Public Defender offices in Milwaukee, Wisconsin, a city of roughly 600,000. Consequently, Orleans Parish decision makers will have to determine, for example, whether actual labor or rental costs differ from some of our estimates. The Wisconsin State Public Defender system is referenced throughout the restructuring discussion, not as a model program, but rather as a starting point (and point of comparison for cost purposes) for a program that will inevitably be adjusted to better suit the needs of Orleans Parish and Louisiana.

## VI. RE-STRUCTURING INDIGENT DEFENSE SERVICES IN ORLEANS PARISH

This proposal outlines the necessary components for an effective indigent defense system in Orleans Parish. The proposal requires the commitment of resources, both short-term and on a continuing basis. Perhaps more importantly, the proposal requires structural and philosophical changes in how indigent defense is provided.

An effective system of indigent defense must primarily serve the clients. Such a system also provides substantial benefits to the public: for example, by promoting effective alternatives to incarceration and enhancing respect for the justice system. However, the primary focus must be on providing effective representation to clients throughout all critical phases of their proceedings.

Effective representation requires manageable workloads, reasonable performance standards, and skilled and data-driven management.

The American Bar Association's publication, *ABA Ten Principles of a Public Defense Delivery System* [hereinafter *Ten Principles*], provides a concise synopsis of the general elements of an effective, client-focused public defender program. This proposal provides some additional detail to assist Orleans Parish in taking the practical steps necessary for a dramatic transformation of its present system.

*A. Competent and ethical representation*

1. Client-focused representation

Critical to competent and ethical representation is that it be client-focused, instead of court-focused or appearance-focused. See American Bar Association Model Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), and 1.4 (communication). The present practice in Orleans Parish has been described as focused primarily upon court events, with little or no communication with clients or case preparation on their behalf prior to and between court appearances. In fact, it appears that often the public defenders do not consider that they have an attorney-client relationship except when the defendant or suspect is brought to court.

Thus, a fundamental change must occur to ensure that public defenders (whether salaried employees or private-bar contractors) actively and zealously represent their clients throughout the critical time period that a case is formally pending (or during the incarceration of suspects who have not yet been charged).

In no instance should any detained arrestee be without counsel—appointed or retained—more than twenty-four hours after the initial appearance. The most critical issue that we see is a long-standing issue exacerbated by Hurricane Katrina: detainees have no representation for the first 30 to 45 days of their incarceration, other than the presence in court of a public defender (who usually says nothing in their behalf) during the brief bail hearing. Nor is there any review of the merits of the case—by prosecution, defense, or judiciary—during that time.

Thus, we view as critical the authority and resources necessary for the prompt assignment of an attorney, so that the attorney can provide meaningful representation at the initial appearance.

2. Performance standards

Meaningful performance standards are necessary to let public defenders know that they are expected, for example, to communicate adequately with clients, advocate (in and out of court) on their behalf, and prepare for hearings by learning the relevant facts and law. The public defender agency also needs to have supervisory staff to review attorney performance to ensure that public defenders adhere to these standards in representing their clients. See *Ten Principles*, p. 3.

### 3. Attorney workload

The agency must have adequate staff and other resources to handle the actual volume of cases (including the ability to assign cases to the private bar when the volume is excessive). An excessive workload impedes a public defender's ability to provide competent representation. See *Ten Principles*, p. 2. We propose a model used for budgeting purposes in Wisconsin, recognizing that future collection of data in Orleans Parish may support modifications of specific numbers. The model generally estimates the volume of cases that staff public defenders can ethically and competently handle, assigning different case weights to case types according to their relative complexity.

For example, a public defender in Wisconsin is expected to handle the equivalent of 200 felony cases (excluding first-degree homicides and other cases carrying a maximum penalty of 25 years or more of initial confinement). Wisconsin has a statute that defines the caseload of a staff public defender for budgeting purposes. Wis. Stats. sec. 977.08(5)(bn) (annual caseload standard is 184.5 felonies or other specified volumes for other case types). The Wisconsin State Public Defender has developed internal case weights, see Appendix p. ii, that modify the statutory weights on the basis of attorney time records.

In practice, most public defenders carry a mixed caseload (for example, felonies, misdemeanors, revocation cases, and juvenile cases). Thus, they handle an average of 300-350 cases, depending on the percentages of each case type. The Wisconsin State Public Defender's computerized information system has elements, described in more detail below in section C, pp. 22-24, that allow managers to review periodically the average attorney time spent on various case types and to adjust the internal case weights accordingly.

### 4. Definition of cases

A standard definition of a case, for purposes of public defender appointments, is essential to accurate measurement and fair distribution of workload. The Wisconsin definition is a good starting point: "a case is defined as representation provided by an attorney on one or more charges or allegations within a proceeding." Definitions should also be developed for specific case types, such as felony (probably with a separate category for the most serious non-capital felonies), misdemeanor, and juvenile.

Clear definitions of case types are necessary for the weighted-caseload system described in the previous section, which in turn helps in allocating cases internally and in reporting the office's workload to external stakeholders.

Given the reports of the high number of persons incarcerated for substantial periods without the filing of formal charges, it is critical that the scope of public-defender representation include bail reviews and other early representation for persons in

custody. Early representation is essential in Orleans Parish because of the frequency with which persons are held for several weeks or months, without access to an attorney, without judicial review of their bail status, and without formal charges being brought. Under the present system, it appears that such uncharged persons must rely upon the prosecutor or the sheriff to determine when they should be released.

In conjunction with other case definitions and with collection of case-related data, the public defender can determine the appropriate weight or value to assign to early representation compared to representation in formal court proceedings (for example, Wisconsin assigns an internal weight for such representation of .35 felony equivalent on the basis of average attorney time, but New Orleans data may lead to a greater relative weight to this type of representation since it appears that prosecutorial charging decisions take longer).

#### 5. Eligibility standards

Before a public defender is appointed, and as soon as possible after arrest, applicants should be screened for financial eligibility. *See Ten Principles*, p. 2. The screening can be done either by the defender program staff or by a separate organization. Promptness is important, however, to facilitate appointment of counsel at the earliest possible time after arrest. Financial eligibility standards can be linked to the federal poverty guidelines, but should also take into account the amount of money that would likely be necessary to retain counsel (an amount not built into the federal poverty guidelines). If an applicant has recently been found eligible for another needs-based program, this finding can serve as a basis for public-defender eligibility.

The program (or the organization handling eligibility) should have a mechanism to consider information from other sources to investigate possible fraudulent applications. The program should also develop a process to allow applicants to seek review of an initial finding that they exceed the financial threshold for appointment of a public defender.

#### *B. Effective management structure*

To support and sustain a program of competent and ethical representation, Orleans Parish will need an effective management structure for its public defender agency. Such a structure is essential not only for day-to-day internal operations, but also for documenting for budget-related purposes the office's workload and resource needs.

This section describes several of the most-critical management functions. Specific staffing levels and duties are discussed below in section E.

#### 1. Hiring and supervising staff

Two critical internal functions are the hiring and supervision of staff. *See Ten*

*Principles*, p. 3. The initial hiring of staff will be especially intensive, given the need to recruit and hire the numbers of staff needed to provide competent and ethical representation. We anticipate that outside entities, such as the local bar association, local law schools, and the Louisiana Indigent Defense Assistance Board (LIDAB), will provide volunteers to assist with this hiring initiative.

Given the diverse population of Orleans Parish, the defender system needs a recruitment and hiring strategy designed to ensure a diverse workforce, which will communicate effectively with clients and will promote their trust and confidence in the defender program.

In addition to initial hiring, there is a continuing need to recruit and hire staff. The Orleans Parish public defender will experience turnover, given the anticipated number of staff and the salary limitations inherent in public service. Thus, an important management function is an ongoing recruitment and hiring process that includes providing current information about job duties and employment opportunities, interviewing applicants, and checking applicants' references before offering them employment.

Effective supervision of staff is also critical to ensure that they learn and adhere to the performance expectations for effective client-focused representation. Supervisors must have adequate time to observe staff performance, to receive feedback from others (such as comments from judges, clients, and clients' relatives), to discuss performance issues with staff, and to document performance issues that may require formal personnel actions [see Appendix, pp. iii-xv, for copy of Wisconsin State Public Defender attorney performance evaluation]

## 2. Training and mentoring staff

Training and mentoring are essential to the professional development of staff. Training for attorneys should include skills training and training on substantive law. Skills training can be most effectively presented in small groups in which participants can role-play the various stages of a criminal proceeding and receive individual critiques from experienced trainers. Training on substantive law includes presentations on specific areas of law (such as rules of evidence, constitutional rules, and elements of specific offenses).

Additional training needs include training for support staff, pertinent ethical rules, and workplace issues (such as training on cultural competency, health and safety, and laws against harassment).

The management team will also need training in topics including leadership skills, performance monitoring, and long-range strategic and budget planning.

### 3. Certification and appointment of cases to the private bar

The staff size recommended in this proposal represents an increase for the Orleans Parish defender program. Nonetheless, given the need to keep staff workloads manageable and to provide all clients with competent and ethical representation, the defender will need the capacity to assign cases to private attorneys. *See Ten Principles*, p. 2. The defender program will assign cases to private attorneys not only because of the sheer volume of anticipated cases, but also to avoid ethical problems presented by representation of clients with conflicting interests (such as co-defendants charged in the same proceeding or suspected of the same crime). In addition, a mixed system provides cost-effective flexibility. For example, when cases increase and decrease, the program can simply increase and decrease the number of cases going to the private bar, instead of hiring and firing staff attorneys.

We recommend that private attorneys receive payment of \$60 per hour for work on Orleans Parish indigent defense cases. This rate has been recommended by several people whom we interviewed. Although this amount is significantly less than the federal hourly rate of \$90, local officials agree that it is sufficient to attract qualified private attorneys to accept appointments. Any lesser amount may be less than the overhead costs for many private attorneys and thus may jeopardize efforts to recruit and retain qualified attorneys to accept appointments.

Two major components of assignment of cases to the private bar are the certification of participating private attorneys and the actual case assignment process. A certification process promotes quality representation by requiring that attorneys attain certain levels of experience and proficiency before handling the most serious cases (see Appendix, pp. xvi-xvii, for Wisconsin State Public Defender Minimum Attorney Performance Standards, which are expectations for both staff and private attorneys). Such a process also includes a mechanism to investigate alleged misconduct and, if necessary, to suspend or terminate certification.

The appointment process matches specific public-defender cases with certified attorneys willing to accept appointments. The process should strive for fairness by offering all certified attorneys an equal opportunity to obtain appointments in a given case category. Support for the defender program can be damaged if favoritism is shown toward some attorneys. The appointment process also includes review and payment of private bar invoices. The review process requires written guidelines regarding permissible expenses, authority to modify or deny invoices under certain circumstances, and accurate recordkeeping (primarily of number of appointments and amount of payments).

The appointment of cases can be handled by the courts or by the public defender program. In Wisconsin, the State Public Defender is the appointing authority, both for cases appointed to staff attorneys and for those appointed to private attorneys who are certified for defender cases. This system has the advantage of insulating the

courts from any possible appearance that future appointments or payments might be jeopardized by aggressive litigation (such as criticizing or appealing judicial decisions).

The Wisconsin State Public Defender has an Assigned Counsel Division that oversees certification, invoice review, and payments. This division maintains extensive records of the appointments and payments to the private bar. It also works with State Public Defender training staff to include private attorneys in pertinent agency-sponsored training programs.

#### 4. Recordkeeping and reporting

Accurate recordkeeping is critical to the success of a defender program. Given the volume of cases in Orleans Parish, a functional case-management system needs to collect the data described in this section for both internal and external purposes.

For internal purposes, such as equitable distribution of workload, the program needs data regarding the average attorney time spent on different case types. Recordkeeping is also essential to respond to inquiries from clients and their families, inquiries that often include requests for prompt communication with the assigned attorney.

For external purposes, the defender program needs to collect sufficient information to answer reasonable questions that can be anticipated from key stakeholders. The history of indigent defense is a perpetual struggle for adequate resources to ensure competent and ethical representation. Generally, indigent defense providers have to make persuasive, data-driven presentations to funding sources to obtain (and often to maintain) resources.

The defender program's data must allow the program's management to explain the program's work, the connections between the volume of work and the requested resources, and the quality of the work. Thus, the defender program needs to develop and maintain accurate records regarding number of cases, attorney time per case, and other items described in the next section.

#### *C. Data collection*

Information technology (IT) operations support the core business function of any modern organization. The implementation of an efficient and effective IT structure is critical to the overall success of an improved Orleans Parish defender program. This subsection summarizes IT functions necessary to support the Orleans Parish public defender staff. A more-detailed list of recommended IT functions and an estimate of IT-related budget requirements are in the Appendix, p. xviii.

The following are critical areas of data collection. Decision makers need to consider the unique circumstances of Louisiana and Orleans Parish to determine whether to collect

additional types of critical data.

1. Number and type of cases

The number and nature of cases handled by the defender program are important as approximate measures of both individual and aggregate workload. The weighted system of assigning cases, described above, p. 17, depends upon accurate data regarding the total numbers of various case types assigned to each attorney. Total cases in each category for the program help document staffing needs and the budget for the private-bar appropriation. In conjunction with data regarding the average cost per case (discussed in the next subsection), this type of data is valuable in estimating the total projected direct-service cost for the program.

2. Attorney time and cost per case

The average cost per case can be largely calculated from data regarding the number of cases and the attorney time per case. Other pertinent variables include staff salaries (including fringe benefits and including both support staff and attorneys) and program operating costs. If the program experiences or anticipates a significant increase in caseload, the data on cost per case can help in preparing budget proposals to increase program capacity.

3. Case dispositions

Data on case dispositions help promote quality by showing, on both an individual and an aggregate basis, the litigation activity of public defenders (and private attorneys accepting appointments). Examples of disposition information collected in Wisconsin include whether a trial occurred (if so, jury trial or bench trial), whether the charges were dismissed or reduced, and the sentence received (if the client was convicted).

Not only is this type of information helpful in supervising staff attorneys, it also helps to respond to inquiries from policy makers. For example, Wisconsin's dispositional data allows the State to estimate the potential impact of converting certain non-violent misdemeanors to non-criminal ordinance offenses (the non-criminal violations do not trigger the right to a public defender; thus, this type of change can save money in the defender budget). If very few defendants are receiving jail sentences, the effect on the judicial system may be different than if a high percentage of defendants receive jail time. Without the data, the defender program cannot respond to these types of questions about proposed legislative changes.

Information about incarceration may show that the defender program successfully advocates for dispositional options that are less costly (and more effective in reducing recidivism) than imprisonment. With growing interest in and information about community-based sentencing options, the defender program can document its success

in presenting the courts with smart and cost-effective sentencing plans.

#### 4. Measures of key case-related activities

Other important information regarding case-related activities includes the use of expert witnesses, investigators, and client service specialists (client service specialists are professionals trained in social work and with expertise in working with clients and their families to develop effective alternatives to incarceration, such as treatment programs and other supportive community services). Similar to data discussed above, this type of data assists both with supervision of staff and with preparation of budget reports and requests. Internally, this information documents the work of support staff (investigators and client service specialists) and also shows the frequency with which individual attorneys enlist their assistance. Externally, this information can show the importance of support staff and expert witnesses (for example, by linking this information with information on dispositions, discussed in the previous subsection).

#### *D. Link between resources and quality representation*

A system of accurate case weights, combined with the type of recordkeeping described above, provides a mechanism to estimate the number of cases that the defender program could reasonably handle, given the size of the staff. For example, 70 staff attorneys, with a similar support-staff ratio to the Wisconsin State Public Defender, could handle about 14,000 standard felonies per year (excluding the most-serious cases, in which the defendant faces potential incarceration of 25 years or more for a single offense). Collection of data over time will enable the defender program to determine (and periodically adjust) the relative case weights for other case types, such as misdemeanors, juvenile delinquency proceedings, and early representation (clients taken into custody but ultimately released without formal charges). The capacity of the defender staff can then be estimated in comparison to the anticipated volume of cases.

Following is a hypothetical example of estimating staff capacity for budgeting purposes (using Wisconsin case weights and staff capacity of 200 standard felonies per attorney):

<u>Case type</u>	<u>Case Weight</u>	<u>Attorney Caseloads</u>
8,000 standard felonies	1.0	40
600 aggravated felonies	3.0	9
10,000 misdemeanors	0.5	25
4,000 juvenile delinquencies	0.55	11

In this example, the defender program is responsible for providing representation in four categories of cases, each type requiring, on average, a different amount of time. The program would need 85 attorneys handling full-time caseloads to provide competent and

ethical representation in all cases. Thus, if the program instead has 70 attorneys (full-time equivalent, accounting for attorneys who are part-time or who have additional responsibilities), the program can estimate staff capacity and the resulting number of cases (and thus the projected cost) for the program's private-bar component. The equivalent of 15 full caseloads needs to be appointed to the private bar in this hypothetical example.

#### *E. Budget estimate*

In this subsection, we estimate the costs of establishing and operating a client-focused defender eligible for its services. Our estimates are based on the available information about the present volume of cases in Orleans Parish. Because of the dramatic effect of Hurricane Katrina on the present Parish population, we note that re-population could affect the volume of cases (and thus the defender system's operating costs).

Available information suggests that the Orleans Parish public defender currently needs the capacity to provide counsel for approximately 480 new cases each week. Those cases, with varying degrees of complexity, would translate into 296 felony-equivalent cases per week, or 15,400 on an annual basis. We project the following staff and annual funding levels would be necessary to provide quality vertical representation to the clients, based on Wisconsin's experience. These projections can be adjusted to reflect actual levels of operational support that the public defender program receives from Orleans Parish and for prevailing wage rates.

1. Staff Attorneys - We estimate that 70.0 full-time equivalent (FTE) staff attorneys could handle approximately 91% of the cases. (The remaining cases would be appointed to private bar attorneys; see #8, below.) We assume an average salary and fringe benefit package of \$54,000 (average salary of \$40,000, plus a 35% fringe benefit rate).
2. Legal Secretaries - 23.5 FTE legal secretaries would provide a ratio of 1.0 secretary for every 3.0 attorneys. We assume an average salary and fringe benefit package of \$37,800 (average salary of \$28,000, plus a 35% fringe benefit rate).
3. Investigators - 10.0 FTE investigators would provide a ratio of 1.0 investigator for every 7.0 attorneys. We assumed an average salary and fringe benefit package of \$48,100 (average salary of \$35,600, plus a 35% fringe benefit rate).
4. Client Services Specialists (Alternative Sentencing Specialists) - 3.5 FTE client service specialists would provide a ratio of 1.0 client services specialist for every 20.0 attorneys. We assumed an average salary and fringe benefit package of \$42,800 (average salary of \$31,700, plus a 35% fringe benefit rate).
5. Attorney Supervisors - Four full-time equivalent attorney supervisors would provide an average supervisory ratio of 17.5 attorneys per supervisor. We assumed an average salary and fringe benefit package of \$67,500 (average salary of \$50,000, plus a 35% fringe benefit rate).
6. Management - We recommend that in addition to the Chief Defender, two full-time Deputy Chief Defender positions be established, each with a compensation package of \$87,750 (\$65,000 salary plus a 35% fringe benefit rate): A Deputy Chief Defender

for Legal Services would oversee the work performed by the attorneys, attorney supervisors, secretaries, investigators and client services specialists; and a Deputy Chief Defender for Administrative Services would oversee the personnel described below in the next subsection.

7. Administration - 1.0 FTE for payroll and benefits (\$35,000 salary plus 35% fringe); 1.0 FTE for Human Resources, Staff Development and Training (\$50,000 plus fringe); 3.0 FTE information technology professionals (with an average salary of \$45,000, plus fringe); 3.0 FTE for finance, purchasing and accounts payable, including auditing and paying private bar attorneys (a total of \$100,000 plus fringe for the three); and 1.0 FTE for reception and administrative support (\$25,000 plus fringe).
8. Private Bar funding - We project that \$770,000 per year would be needed to pay private bar attorneys for the cases that the staff attorneys would not be able to handle due to time constraints or conflicts of interest. This projection assumes an hourly rate of \$60.
9. Supplies and Services - An annual services-and-supplies budget of \$1,100,000 is projected to be needed for the remaining program costs. These costs include rent, supplies, IT, expert witness and interpreter fees, phones, transcripts, etc.

The total funding needed to run the Orleans Parish public defender program is projected to be \$8.2 million per year. Another \$1,150,200 will be needed to purchase computer equipment, licenses, peripherals, and to develop a management information system. IT requirements are detailed in Appendix p. xviii. Additional funding of \$305,000 will be needed in the first year for one-time costs associated with desks, chairs, and other equipment.

We also estimate that the cost to retain private bar attorneys (at \$60 per hour) to clear up the current backlog of cases would be an additional \$1,069,000. That figure will continue to grow until sufficient resources are provided to handle all the new cases that enter the system each day.

In sum, we estimate that the first-year cost for the Orleans Parish public defender program will be \$10,724,200, and the subsequent annual cost will be \$8,200,000. As noted previously, local officials will need to adjust these estimates on the basis of the local population, economy, and trends in criminal justice (most importantly, changes in the volume of criminal cases).

It is imperative that a stable and adequate funding source be established for the Orleans Parish public defender program. Without that commitment, it will remain impossible to provide defendants with the representation to which they are constitutionally entitled.

## VII. Conclusion

The City of New Orleans, along with the entire Gulf Coast, was terribly affected by Hurricane

Katrina; the city's criminal justice system was not exempt. But there are positive signs that indicate that the system is already moving forward, changing the ways that people and cases proceed through the system. The professionals in the system have demonstrated numerous times their capacity to adapt and change; examples of ingenuity by judges, Sheriffs Department officials, defense counsel, and the District Attorney's Office were reported to us repeatedly during our interviews.

There is still much to do, however, and all segments of the system need assistance in bringing together a new, more-effective, and fair criminal justice process. Our focus on the defense of arrested indigents has allowed us to make recommendations that we believe, if implemented, will result in a fairer, more cost-effective, and just system.

Although these recommendations will by no means "cure" all the problems of the system, they will go a long way towards the eventual goal for the justice professionals in New Orleans: better justice for its residents.

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## Effective Assistance of Counsel: Implementing the Louisiana Public Defender Act of 2007

On June 17, 2010, NLADA released [\*Effective Assistance of Counsel: Implementing the Louisiana Public Defender Act of 2007\*](#), a report concluding that the Louisiana Public Defender Act of 2007 has yet to take root in Louisiana's 15th Judicial District.

The Louisiana legislature passed the Louisiana Public Defender Act of 2007 ("Act 307") on a bipartisan and overwhelming vote, with the expressed intent of ensuring that "all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding" and "that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state."

Louisiana's historical deficiencies in ensuring the right to counsel were so ingrained that implementation of Act 307 has proven difficult at times. Contrary to the legislature's intent to impose oversight as a means of guaranteeing effective assistance of counsel, the indigent defense office (IDO) of the 15th JDC (Acadia, Lafayette, and Vermilion Parishes) operates with little to no coordinated management. Attorneys are paid a single flat fee to take an unlimited number of cases, creating a financial conflict between the right of the defendant to competent counsel and the attorney's take home pay. Indigent clients facing misdemeanor or traffic offenses carrying jail time may very well not receive counsel at all, despite the state and federal constitutional mandates that they be appointed an attorney. Defendants are likely to be represented by as many as three or four different attorneys during the course of a single case – typically known as "horizontal representation" and universally decried by all national standards and Act 307. And, many of the attorneys carry excessive caseloads as defined by national standards, before factoring in their private caseloads.

NLADA applauds the Louisiana legislature for its leadership in passing the comprehensive legislation. Now it is time for the Louisiana Public Defender Board to use the powers given to it under Act 307, including: contracting with all district defenders; regionalizing services in limited areas (like Southwest Louisiana); requiring district defenders in more populated areas to work full-time; and, promulgating more specific standards.

Overcoming the hurdles that prevent adequate implementation of the legislative intent of Act 307 will necessarily involve a concerted effort by advocates in Louisiana at both the state and local level. NLADA believes that, through several relatively small but significant steps, the LPDB and defense providers throughout the state of Louisiana can fully realize the plan of Act 307 and the guarantees of our state and federal constitutions to ensure the right to counsel for all.

Effective Assistance of Counsel is NLADA's third report on the right to counsel in the state of Louisiana. In 2004, NLADA released *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years After Gideon*, studying a single rural parish in Louisiana -- Avoyelles Parish -- to understand how public defense services were provided in non-urban jurisdictions. This study put the problem on the map for Louisiana policymakers.

NLADA's report on post-Katrina New Orleans, *A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana's Criminal Courts*, released in September 2006, was the starting point for a legislative advisory group, under the leadership of Senator Danny Martiny, which eventually resulted in Act 307. The Louisiana Public Defender Act of 2007, signed into law by then-Governor Blanco, created a comprehensive statewide public defender system. The new system abolished the local judiciary-controlled public defender boards in favor of a statewide independent board with regulatory authority to set and enforce a wide array of standards, including those related to: continuous representation; attorney qualifications; training; attorney performance; client contact; attorney supervision and evaluation; addressing client complaints; data collection and statistical reporting; conflict identification; and, appropriate salary and other compensation.

**Author/Organization:**

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**REVIEW OF THE CADDO PARISH  
INDIGENT DEFENDER OFFICE**

*FINAL REPORT*

*February 22, 2007*

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## **Introduction**

At the request of the Caddo Parish Indigent Defender Board, The Spangenberg Group (TSG) conducted this study of the Caddo Parish, Louisiana Indigent Defender Office. The Indigent Defender Board (IDB) sought our assistance in assessing the Indigent Defender Office that it oversees, including the quality and efficiency of services provided, and an analysis of public defender caseloads and workload management.

The Spangenberg Group is a nationally and internationally recognized criminal justice research and consulting firm that specializes in indigent defense services. TSG has conducted research in all 50 states and provides consultative services to developing and developed countries that are reforming their legal aid delivery programs. TSG has conducted comprehensive statewide studies of indigent defense systems in more than half of the states, and has performed many county and regional studies, including studies of individual public defender offices.

Since 1985, The Spangenberg Group has been under contract with the American Bar Association's Bar Information Program, which provides support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems. As the ABA's sole provider of technical assistance relating to indigent defense systems, TSG has worked with judges, bar associations, state and local governments, legislative bodies and public defender organizations in over 40 states around the country. TSG has performed extensive work for the ABA's Bar Information Program and has provided such technical assistance in every state. Our work has included assisting state commissions in reviewing their indigent defense systems, providing cost analyses of alternative delivery systems, reviewing workload and developing funding formula tied to workload, developing written indigency standards and assisting in the design of special projects to provide defense counsel in death penalty cases.

Prior to conducting this study in Caddo Parish, TSG was very familiar with indigent defense systems in Louisiana. In 1992, TSG conducted a statewide study of Louisiana's indigent defense system for the Task Force on Indigent Defense of Louisiana Supreme Court's Judicial Council, and reviewed provisions for state indigent defense systems. Later that year, TSG studied the indigent defense system in East Baton Rouge Parish for the Indigent Defender Board of the 19<sup>th</sup> Judicial District. In 1996, TSG prepared a report for the Louisiana Indigent Defender Board (LIDB) on the indigency determinations, partial indigency, and cost recovery in Louisiana. In 1997, TSG conducted a study of the Orleans Parish indigent defense system for LIDB). Finally, in June 2006, Robert Spangenberg visited Orleans Parish with Professor Norman Lefstein, on behalf of the ABA, to assess the indigent defense system post-Katrina. This recent work was conducted for the Louisiana State Bar in conjunction with the National Legal Aid and Defender Association.

## **Methodology**

Our goal in conducting this study was to assist the Caddo Parish Indigent Defender Board and the Indigent Defender Office (IDO) in their important task of ensuring that public defenders are able to provide indigent defendants with adequate and effective assistance of counsel.

The focus of our study was on the overall operation of IDO<sup>1</sup> and its provision of indigent defense services. Our overall methodology included the following:

- Review of the program’s budget, staffing, and allocation of resources;
- On-site interviews with Indigent Defender Board members and the Indigent Defender Office administrative staff;
- On-site interviews with Indigent Defender staff attorneys of all levels, as well as support staff;
- On-site interviews of other criminal justice stakeholders in the parish, including judges and prosecutors;
- On-site interviews with the Caddo Parish Commission’s Director of Finance and the Parish Attorney;
- Court observation;
- Review of office policies, procedures and practice standards;
- Review of attorney practices, including client contact, motions practice, trials, and use of investigators and expert services;
- Review of the training, supervision and evaluation of attorneys;
- Review of all staff salaries;
- Review of previous reports regarding the Indigent Defender Office, including:
  - *The Provision of the Right to Counsel in Caddo Parish, Louisiana*, by Bernadette Jones Palumbo and Jeff Sadow, Louisiana State University, Shreveport (July 2004).<sup>2</sup>
  - *Office of the Indigent Defender, First Judicial District, Caddo Parish, Financial Audit* by Samuel W. Stevens, III (released August 9, 2006);
  - *Operational Review of the Office of the Indigent Defender, Findings and Recommendations*, by Heard, McElroy & Vestal (July 11, 2006); and
  - *Caddo Parish, Louisiana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, by the National Juvenile Defender Center and the Juvenile Justice Project of Louisiana (August 2006);
- Collection and analysis of indigent defense caseload data; and
- Review of the current indigent defense case management system.

During the week of October 2<sup>nd</sup>, 2006, a four-member TSG project team visited Caddo Parish. During our visit, we met with over two-thirds of IDO attorney staff, nearly every non-attorney IDO staff member, three IDO contract attorneys, three prosecutors and two judges in the Caddo Parish District Court,<sup>3</sup> Criminal Division, as well as the District Court presiding judge and each of the three juvenile judges in the Juvenile Division. In addition, we met with former IDB member, Henry Walker.

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<sup>1</sup> Note that we were asked to focus our study on IDO staff and not on the conflict panels.

<sup>2</sup> Although we reviewed this report, we did not rely on it in the current study due to problems that we perceived with its methodology and with some of its findings.

<sup>3</sup> Note that at least two judges declined to speak with us.

We would like to thank all persons who gave their time to meet with us during that week. We would like to especially thank IDO and Office Manager Cindy Murray for making the necessary contacts to put together our schedule for our site visit.

## CHAPTER 1: CADDO PARISH INDIGENT DEFENSE SYSTEM

### The Right to Counsel

Since 1932, indigent defendants in state court have had a due process right to assistance of counsel within the meaning of the Fourteenth Amendment to the United States Constitution under *Powell v. Alabama*.<sup>4</sup> In *Powell*, the United States Supreme Court held that it was a violation of due process for a state court to fail to appoint counsel in a capital case. Thirty-one years after *Powell*, in the seminal case of *Gideon v. Wainwright*,<sup>5</sup> the Court held that the Sixth Amendment right to counsel applied to indigent defendants in state court through the Fourteenth Amendment, placing the states under the obligation to furnish indigent defendants with counsel. While *Gideon* clearly established the right to counsel in felony cases, *In re Gault*<sup>6</sup> held that the right extended to juveniles detained for a delinquent act, and *Argersinger v. Hamlin*<sup>7</sup> held that the right extended to any adult criminal defendant who is sentenced to incarceration, including petty offenses and misdemeanors. In 2002, the Court decided another seminal case, *Alabama v. Shelton*,<sup>8</sup> in which it held that a suspended sentence that may result in incarceration may not be imposed unless the defendant was afforded counsel in the prosecution of the underlying offense for which the suspended sentences was received.<sup>9</sup>

In addition to the federal right to counsel, Louisiana's constitution and statutes provide for indigent defense services. The constitution requires "a uniform system for securing and compensating qualified counsel for indigents."<sup>10</sup> The law further requires that appointed counsel be provided "at each stage of the proceedings" for all indigent persons in Louisiana who are "charged with an offense punishable by imprisonment."<sup>11</sup> In delinquency proceedings, juveniles must also be provided with counsel "at every stage of proceedings," and if the parents "are financially unable to afford counsel," the court must appoint counsel or refer the matter to the indigent defender board for representation.<sup>12</sup> Louisiana law also provides the right to appointed counsel at every proceeding in children in need of care cases (where the state alleges abuse and neglect by the child's parents), although the court may "order the parents to pay some or all of the costs of the child's representation" should the court find that they are financially able to do so.<sup>13</sup>

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<sup>4</sup> 287 U.S. 45 (1932).

<sup>5</sup> 372 U.S. 335 (1963).

<sup>6</sup> 387 U.S. 1 (1967).

<sup>7</sup> 407 U.S. 25 (1972).

<sup>8</sup> 535 U.S. 654 (2002).

<sup>9</sup> In other words, if the defendant fails to comply with the terms of a suspended or probated sentence (e.g., commits a new offense, fails to pay a fine, or fails to meet the terms of probation), that sentence may not be imposed nor probation revoked unless the defendant was afforded counsel or waived counsel on the underlying charge that resulted in the probated or suspended sentence.

<sup>10</sup> La. Const., Art. 1, Sec. 13.

<sup>11</sup> *Id.*; see also C.Cr.P. Art. 512, 513.

<sup>12</sup> La. Children's Code (CHC), Art. 809 (A) and (C).

<sup>13</sup> CHC Art. 607 (A) and (B); see also La. Supreme Court Rules, Part J, Rule XXXIII, Subpart II, Stand. 1.

## **Caddo Parish Indigent Defense System Overview**

Caddo Parish (Shreveport), the third-largest parish in Louisiana,<sup>14</sup> is governed by the Caddo Parish Commission, a political subdivision of the State of Louisiana with 12 elected members. However, its indigent defense system is established and managed by an indigent defender board. Louisiana law requires each judicial district in the state to establish an indigent defender board to establish and oversee the district's indigent defense system.<sup>15</sup> Each board must consist of three to seven members chosen by the district court.

In Caddo Parish, Louisiana's First Judicial District, the seven-member Indigent Defender Board established the Caddo Parish Indigent Defender Office with salaried attorneys and support staff to provide indigent defense representation to: (1) adults charged with capital and non-capital felonies; (2) youths charged with delinquent acts; and (3) children in children in need of care (CINC) cases. In conflict felony cases and in all misdemeanor cases, indigent adults are represented by private attorneys who contract on an annual basis with the Indigent Defender Office for a flat fee. In juvenile delinquency cases in which there is a conflict, juveniles are represented by private *pro bono* attorneys who are appointed from a list maintained by the juvenile court. Appeals are handled by the Louisiana Appellate Project.

Each judicial district in Louisiana is also required by state statute to also establish an indigent defender fund that is administered by the indigent defender board.<sup>16</sup> This account, which is primarily funded by a \$35 fee imposed to all persons convicted of any state or local violations (except parking tickets)<sup>17</sup> and fluctuates monthly, must fund all of the district's indigent defense services. The Louisiana legislature has determined that no parish in the state or the City of New Orleans is required to provide parish funding to support indigent defense, and few if any parishes have done so over the years. (In contrast, each parish is required to help fund the its District Attorney's Office.) The Caddo Parish Indigent Defender Fund not only funds the Indigent Defender Office, but also funds all contract counsel services and expert and investigative services both for contract counsel and for private counsel when the court has deemed the client indigent.<sup>18</sup>

## **Case Processing and Handling**

### Felonies

The Caddo Parish District Court has jurisdiction over all felony cases in the First Judicial District. The District Court hears felonies from arraignment through disposition and sentencing in one of five criminal sections, four regular sections and one section for drug cases.

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<sup>14</sup> Estimated population (2005) is 251,304, according to the U.S. Census Bureau.

<sup>15</sup> La. Revised Statute (RS) §§144, 145.

<sup>16</sup> La. RS §146.

<sup>17</sup> *Id.* Originally, this statute was enacted to include persons charged with moving traffic violations because they would have a greater ability to pay the fee than other offenders.

<sup>18</sup> For further discussion of the Indigent Defender Fund, see Chapter 4.

If a defendant is released on bond after a felony arrest, then s/he appears at a District Court arraignment date, at which time IDO is appointed if the defendant is determined to be indigent. Defendants who remain in custody after arrest first appear in the District Court at a 72-hour “jail clearance” docket via a live videophone from the jail. The jail clearance docket is held in one of the criminal sections each day of the week (except weekends) and is attended in court by a staff attorney from the Indigent Defender Office (IDO). Although the court sets bond, the staff attorney is unable to communicate confidentially with the defendant over the videophone and makes no bail argument. Once the court has determined indigency, all felony cases are assigned to IDO unless the court has determined that IDO has a conflict of interest. The cases are assigned to a criminal section and given a date for a preliminary examination (PE) hearing, which is an adversarial hearing at which the state must show that there is probable cause that the defendant committed the alleged offense(s), unless the defendant has already been indicted by the grand jury. The preliminary examination hearings, which are to be conducted “promptly,”<sup>19</sup> are scheduled between 30 and 60 days from the jail clearance docket. The IDO policy is to hold the PE hearing for all in-custody clients. Bail arguments are not normally made by the ID attorney until the PE hearing. We were told that the reason for this is a lack of discovery or information to support a bail reduction motion at this stage. From the PE hearing, a date is set for argument and hearing at which pre-trial issues such as motions to suppress may be litigated. From argument and hearing, trial dates are set.

Within each of the four regular sections of District Court, felony cases are handled by two staff (junior) attorneys and one senior attorney at IDO. In the drug section, which is the busiest District Court section, felony drug cases are handled by three staff attorneys – although during our site visit, one of the staff attorneys in the section was promoted to senior attorney.

Each District Court section has one primary contract attorney to handle felony conflicts; multiple co-defendant or conflict cases are assigned to contract attorneys from other sections.

### Misdemeanors

The Caddo Parish District Court has jurisdiction over all felony and state misdemeanor cases in the First Judicial District. The Shreveport City Court also has concurrent jurisdiction over state misdemeanor cases arising within the City of Shreveport and jurisdiction over all city ordinance violations.

All misdemeanor cases in Caddo Parish are assigned to contract attorneys. Five private attorneys hold contracts to handle misdemeanors in the District Court – one attorney in each section, and five attorneys hold contracts to handle misdemeanors in City Court. Misdemeanor cases are assigned to the contract attorney at misdemeanor arraignment sessions, which are held once or twice a month in each courtroom. Most misdemeanors are resolved on the day of arraignment; those that are not are scheduled for trial.

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<sup>19</sup> See La. CCRP 293.

## Juvenile Delinquency and CINC Cases

The Caddo Parish Juvenile Court has jurisdiction over juvenile delinquency and children in need of care (CINC) cases. Two sections of the Juvenile Court hear delinquency cases, and a third section hears CINC cases.<sup>20</sup> The two delinquency sections are staffed by one full-time and one part-time ID attorney, respectively. The section hearing CINC cases is staffed by one part-time attorney.

Caddo Parish Juvenile Court cases involve short-term statutory time limits and/or additional hearings not required in the adult criminal cases. In delinquency cases, if a juvenile is in custody after arrest, a continued custody hearing is held within three days in one of the delinquency sections;<sup>21</sup> the juvenile is represented by an ID attorney at this hearing. However, most juveniles are out of custody in delinquency cases and appear within 15 days of the filing of charges to answer the delinquency petition.<sup>22</sup> If the juvenile wishes to admit to the petition, the staff attorney in the section speaks to the juvenile and represents the juvenile for purposes of entering the plea. If the juvenile wishes to deny the petition, IDO is formally appointed and a trial date is scheduled within 30 days if the juvenile is in custody or otherwise within 90 days.<sup>23</sup> Finally, a disposition hearing to determine the juvenile's sentence must be held within 30 days of adjudication.<sup>24</sup>

In the civil section of Juvenile Court, when a child is removed from the parents' home, a continued custody hearing is held within three days of the removal; the ID attorney is appointed to represent the child (or all children) at that time.<sup>25</sup> Within 30 days of the custody hearing, the CINC petition is filed and must be adjudicated within 45 days of filing if the child is in custody or within 105 days if the child remains in the parents' custody.<sup>26</sup> If the child is adjudicated in need of care, a disposition hearing to determine the child's placement is held either immediately following the adjudication or within 30 days thereof.<sup>27</sup> Review hearings are then held at least every six months until a permanent plan is in place for the child.<sup>28</sup> Finally, a permanency hearing must be held to determine the permanent plan no later than one year after the child's removal, and review hearings continue every year after that until a permanent placement is found.<sup>29</sup> Representation of the child continues throughout each of these stages of a CINC case.

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<sup>20</sup> The Caddo Parish Juvenile Court also hears other juvenile and family law matters not handled by IDO and not addressed in this report (e.g., adult family drug court, family support, adoption and mental health proceedings).

<sup>21</sup> See CHC Art. 819.

<sup>22</sup> See CHC Art. 854.

<sup>23</sup> See CHC Art. 877.

<sup>24</sup> See CHC Art. 892.

<sup>25</sup> Parents are appointed private attorneys who are compensated at hourly rates by the state.

<sup>26</sup> See CHC Art. 632, Art. 659.

<sup>27</sup> See CHC Art. 678, Art. 681.

<sup>28</sup> See CHC Art. 692.

<sup>29</sup> See CHC Art. 702.

## **CHAPTER 2: INDIGENT DEFENDER OFFICE**

The Caddo Parish Indigent Defender Office (IDO) has one central location that houses all District Court felony attorneys and support staff and one satellite location that houses all juvenile attorneys and support staff at Juvenile Court. IDO is currently staffed with a total of: 18 indigent defender (ID) attorneys, including the Chief Counsel; four investigators,<sup>30</sup> including the Chief Investigator; and ten secretaries, including the Office Administrator.

### **Assignment of Cases**

Most new criminal cases assigned to IDO are assigned to ID attorneys according to predetermined variables, as opposed to cases being assigned on an individual basis to particular attorneys. Three capital attorneys, including the Chief Counsel, handle all of the cases in which a notice to seek the death penalty is filed. In addition, the capital attorneys handle a number of non-capital murder, rape and armed robbery cases when needed to help ease the caseloads of some senior attorneys. New non-capital cases are assigned within IDO according to the assigned criminal section of the case. One senior attorney in each section handles the armed robbery, rape, kidnap and non-capital murder cases that arise in that section. Two staff attorneys in each section split the remaining less serious felony cases in their section.

The two staff attorneys in each section receive assignments according to docket number, with one attorney receiving odd-number dockets and one receiving even-number dockets. Cases are assigned automatically by the receptionist according to this system. While this method of case assignment should ultimately result in equivalent caseloads among the two attorneys over the course of a year, at any one time this is not always the case, as one attorney may be disposing of a greater number of cases more quickly than another attorney. For instance, in at least one snapshot of open cases per staff attorney, open caseloads between the two staff attorneys in each criminal section differed by 18, 29, 34, 51 and 98 cases. While in the latter section, the attorney with the fewer cases is a new attorney, in two other sections, the newer attorneys (2006 hires) have larger caseloads than the other attorneys with whom they share the section. Even a caseload differential of 18 cases can be significant when handling felonies, and we feel that open caseloads should be considered more frequently as a factor in making new assignments. The staff attorneys are also responsible for handling the daily jail clearance docket for one week when it is rotated into their criminal section.

In Juvenile Court, the two delinquency attorneys (one part-time position and one full-time position) receive all cases assigned to their respective juvenile court sections. In addition, every two weeks the attorneys rotate the duty assignment of handling all continued custody hearings. On the civil side, the part-time CINC attorney is the only attorney appointed to all children in CINC cases (unless a conflict arises).

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<sup>30</sup> One investigator was on a leave of absence at the time of our visit.

## Office Policies and Procedures

The Indigent Defender Office has a comprehensive personnel manual for all IDO employees. This manual is given to each new employee and covers a number of issues, including employment at will, code of conduct, office hours, outside employment, hiring procedures, job descriptions and leave policies.

The office has also created a comprehensive Attorney Desk Reference manual that sets forth performance standards for all attorneys. These performance standards are from Chapter 6 of Louisiana Standards on Indigent Defense from the Louisiana Indigent Defense Assistance Board (LIDAB).<sup>31</sup>

In addition to the policies and procedures set forth in the personnel manual, various office policies are circulated in the form of intermittent memoranda to staff. For example, five memos were distributed to all attorneys and/or staff between December 2003 and February 2005 addressing or reinforcing policies on the following topics:

- Opening new files and meeting new clients and files.
- Limitations on providing clients with copies of discovery.
- Informed pleas.
- Handling non-IDO cases.
- Post-trial motions and appeals.

As indicated in the office's personnel manual, formal IDO policy allows full-time attorneys to retain a private practice outside of the office, as long as they do not handle criminal cases within the district. However, ABA standards state that defender offices should be staffed with full-time attorneys who are prohibited from engaging in private practice.<sup>32</sup> During our site work, the absence of a new full-time staff attorney who had been hired in August was noted; we were told that he was out of the office because he was winding down his private practice.<sup>33</sup> In addition, the full-time juvenile attorney continues to keep a private practice.

## Client Contact

The jail that houses Caddo Parish inmates is located within approximately 15 minutes (driving time) of IDO. Each housing unit at the jail has private interview rooms for the attorney-client meetings, and ID attorneys are allowed access to inmates at any time. Attorneys spoke highly of their relationship with jail personnel and of the access that the jail provides them to their clients. Attorneys are also able to phone when they need to speak with an inmate, and the jail will then allow the inmate access to a free phone to call the attorney who made the request.

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<sup>31</sup> Available at <http://www.lidab.com/standards.htm>. These performance standards pre-date the new LIDAB performance standards for indigent criminal cases in trial court, adopted June 20, 2006.

<sup>32</sup> *ABA Standards for Criminal Justice Providing Defense Services*, Third Ed., Standard 5-4.2.

<sup>33</sup> Many public defender offices permit private attorneys to take a short period of time to close existing private cases, but the newly hired attorney should become full-time as soon as possible.

The Chief Counsel established an office rule that (1) secretaries must notify attorneys of new cases and to deliver the new case files to them within three days of IDO appointment; and (2) attorneys must visit new in-custody clients within 10 days of appointment (except for vacation, illness, leave or trial).<sup>34</sup> While most attorneys said that they aim to abide by this 10-day rule, they are not always successful. A senior attorney commented that while senior attorneys should be able to follow the 10-day rule, staff attorneys cannot. This senior attorney visits the jail “ideally once a week,” but sometimes only once or twice a month. Another senior attorney tries to see clients within a week of appointment and normally spends six hours each Friday at the jail. However, another senior attorney admitted to not complying with the 10-day rule, but visiting clients at the jail after the preliminary examination, which can be a month or more after the appointment to IDO at jail clearance. Still another said he usually talks to clients on the phone rather than in person as his visits to the jail are “sporadic.” One staff attorney who supports the 10-day rule, admitted that he does not get to the jail within 10 days; rather, his goal is to see the client within two weeks of the preliminary examination date so that witnesses can be subpoenaed if necessary. Another staff attorney who tries to see clients twice at the beginning of a case – more if there will be a trial – noted going to the jail on the weekends to see a large number of clients. We were also told that on occasion, inmates will file pro se subpoenas for jail visitation records to who the court that their attorney has failed to visit them. These problems with client contact suggest that many staff attorneys are operating with excessive caseloads.

At least one person working in the District Court suggested that the level of communication between ID attorneys and incarcerated clients in non-capital felony cases could be improved, as the defense is not always prepared to respond to plea offers at the time of the argument and hearing date. We were also told that in one courtroom, the judge allows three hours in the middle of the day for attorneys to interview in-custody clients. However, there does not appear to always be an opportunity for confidential meetings in the courtroom, and there is currently only one holding cell in the courthouse available for all Caddo Parish attorneys to meet with in-custody clients.

Client contact does not appear to be an issue for the capital attorneys who have more serious cases but fewer clients. At least one capital attorney sees new clients within two days of receiving the new assignment.

Out-of-custody clients are told to call the office to make an appointment for an interview, although we were told that few clients do this; as a result, attorneys are frequently speaking with out-of-custody clients for the first time in court.

In addition, support staff do not always get new files to attorneys within three days. One attorney said that although he goes to the jail once a week and tries to see new clients within seven days, it could take a week or more to receive the new case file from support staff. Another attorney estimated that it took approximately four days to receive a new file.

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<sup>34</sup> We were told that this 10-day rule is also a rule of the Caddo Parish District Court.

## Attorney Experience and Training

Although the capital attorneys and most senior attorneys in the office are very experienced criminal defense attorneys, the Indigent Defender Office has few minimum qualifications for hiring new attorneys other than being licensed to practice law in Louisiana. Although the office seeks to hire attorneys who have some exposure to criminal justice and criminal defense law, this is not a requirement. In addition, while we were told that most new attorneys are not hired directly out of law school, few appear to have any significant amount of experience in trying criminal cases. For example, the previous positions of five attorneys hired in the last five years include: law clerk; a position with the Innocence Project;<sup>35</sup> a practice telecommunications law; general private practice; and law student. We met other ID attorneys whose experience prior to coming to IDO was in civil law.

There is no formal training process for either new or experienced attorneys within the office. Some informal training occurs for new attorneys in the office. New attorneys are provided with a written attorney orientation packet. This packet includes general information on the public defender's job and duties, including the duty to investigate, being an effective advocate, and conducting preliminary examinations. Although a senior attorney or experienced staff attorney is supposed to accompany the new attorney during the first few weeks in court and at the first trial, we learned that this is not always the case (see below).

Like all attorneys practicing in Louisiana, ID attorneys are required to complete 12.5 hours of Continuing Legal Education (CLE) credits each year. To fulfill these requirements, IDO will send attorneys to criminal law seminars offered by the Louisiana Public Defender Association. Attorneys are also reportedly given periodic updates on the law. When funds are available, a senior attorney is given the opportunity to attend a national criminal defense training seminar.

Several attorneys discussed with us the lack of formal IDO training. New attorneys are normally assigned the existing caseload of the previous attorney in the position (unless hired to fill a newly-created position). In other words, rather than new attorneys beginning with a small caseload that gradually becomes larger as they become more experienced, they begin with a large felony caseload. One attorney in the office, who had civil but no criminal law experience before coming to the office, started with an open caseload of 200-250 felonies and the training as "on-the-job training." A staff attorney who came to the office out of law school started with a caseload of 270 felony drug cases. Another attorney said that when she came to the office, she did not know what a preliminary examination was; yet she received little training. Similarly, a senior attorney said that she had no training when she started at the office, but learned by asking for help.

New staff attorneys receive little to no formal training in conducting trials. One staff attorney said that he would have liked to have more training, especially for trial practice skills. He came to the office with no experience and no trial practice training in law school. In preparation for his first trial, the staff attorney met with a private attorney for advice. He admits

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<sup>35</sup> The Innocence Project is an organization that conducts factual investigations and helps to clear wrongful convictions, but does not represent criminal defendants at trial.

that he could have done better for his clients had he had more training. A senior attorney who reported that more training is needed in jury trial preparation was unable to help a staff attorney at his first trial because the senior attorney was sent to a swing judge to try his own case on the same day; the new attorney reportedly had a “bad experience” with the trial. A staff attorney commented that the new attorney training “depends on who’s around when you start;” although he felt that he had received a good amount of instruction and advice, he never had an experienced attorney sit with him during a trial. Another new staff attorney noted that the judge has provided some assistance by explaining things. This judge confirmed that he has “helped [this staff attorney] along,” and describes the attorney’s courtroom performance as too “timid.”

One staff attorney who came to the office with no experience in criminal law or conducting trials reportedly conducted six jury trials – two as second chair and four trials as first chair – within the first five months of being in the office. The trials included cases involving the following felony charges: sexual molestation of a juvenile; fourth felony drug offense; and aggravated arson. Defendants in these cases face significant jail time. In addition, two of the trials occurred in successive weeks.

Training is an essential component to a successful public defender office. ABA standards require that “effective training, professional development and continuing education of all counsel and staff” be provided through the use of public funds.<sup>36</sup> The *ABA Ten Principles of a Public Defense Delivery System* (see Appendix A) and the Louisiana Standards on Indigent Defense also require that defense counsel be provided with continuing legal education.<sup>37</sup> These principles also require that case assignments should be made on the basis of an attorney’s ability, training and experience.<sup>38</sup> Therefore, if a number of attorneys on staff lack experience and training in handling certain case types, those case types should not be assigned to those attorneys. Lack of attorney training not only affects the ability of the individual attorneys to handle certain matters, but it should also limit the ability of the office to assign those matters within the office.

Training of new attorneys is especially important when those attorneys lack experience. As Louisiana Performance Standards state, “In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the State of Louisiana.”<sup>39</sup> Further, office and state standards provide that “[d]efense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation...”<sup>40</sup>

Where formal training is sparse, training in the area of collateral consequences of criminal convictions (e.g., loss of immigration status or public benefits) has not yet occurred. We spoke with several attorneys who, although they may be generally aware of some collateral consequences, have not been trained in how to handle them in the course of their representation

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<sup>36</sup> *Id.*, Standard 5-5.1.

<sup>37</sup> See ABA Principle 9; Louisiana Standards on Indigent Defense, Standard 1-1.4. See also Louisiana Performance Standards for Criminal Defense Representation in Indigent Criminal Cases in the Trial Court [hereinafter Louisiana Performance Standards], Standard 1.B (A) (June 2006), available at [www.lidab.com](http://www.lidab.com).

<sup>38</sup> See Principle 6; see also Louisiana Performance Standards, Standard 1.B(B).

<sup>39</sup> Louisiana Performance Standards, Standard 1.B (A).

<sup>40</sup> Attorney Desk Reference, Caddo Parish Public Defender, Standard 1.2(E), also found in Louisiana Standards on Indigent Defense.

in a criminal case. Since 1997, ABA standards have stated that “to the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.”<sup>41</sup> In order to meet this obligation, ID attorneys must be properly trained in the area of collateral consequences.

## **Supervision and Evaluations**

Like training, supervision is especially important for new attorneys that lack actual criminal trial experience. Direct supervision and mentoring can not only provide new attorneys with greater skills and confidence, but can also improve the quality of representation provided to clients. Yet, like training, the supervision in the office is informal and dependent upon the willingness and availability of the experienced attorneys in the office, as well as on the willingness of the staff attorneys to seek advice. Generally, the senior attorneys informally supervise the two staff attorneys in their criminal section by answering any questions the staff attorneys may have. They will normally provide greater assistance for the first few weeks; this then tapers off, although they remain available for questions. One staff attorney had a senior attorney from another section accompany him to court for his first week, and this was the extent of his supervision. Senior attorneys may also field complaints from clients and family members of staff attorneys and will occasionally take problem cases from the staff attorneys.

IDO lacks written procedures for conducting formal evaluations of attorneys and staff, although formal IDO policy, as indicated in the personnel manual, requires that the performance of attorneys and support staff be evaluated annually. ABA Principle 10 also requires that attorneys and support staff of a defender office – as well as assigned counsel and contract defenders – be supervised and systematically reviewed for competency and efficiency. Unfortunately, formal evaluations are not occurring at IDO, largely because the Chief Counsel, capital and senior staff attorneys carry significant caseloads and lack the time. However, we were told that IDO intends to create a form for conducting annual evaluations of staff in the future.

## **Investigations**

IDO investigations are performed by one of three staff investigators or by the Chief Investigator. The Chief Investigator has been employed by IDO for over 27 years; one investigator has been employed for eight years, and two have been employed for approximately two years. The Chief Investigator supervises the investigator staff, handles all requests for photographs, and has a reduced caseload. The most senior staff investigator (who was on leave at the time of our visit) performs most of the mitigation investigations (e.g., getting client’s medical, social and family histories). In addition to conducting investigations, the staff investigators assist in the indigency screening process by attending misdemeanor arraignment sessions and escorting out-of-custody defendants back to the office where they must complete an application form to determine if they are financially eligible for IDO services. Although the investigators may visit a client at the jail in order to obtain information on locating a witness, they do not visit clients or conduct client interviews when attorneys are unable to do so.

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<sup>41</sup> *ABA Standards for Criminal Justice: Pleas of Guilty*, Third Ed., Standard 14-3.2(f).

ID attorneys must formally request investigations by completing a form with the defendant's name and charge(s), the name and contact information of witnesses to be contacted and any other relevant information or request. This form is given to the Chief Investigator who then evaluates the request, reviews the investigators' caseloads, and assigns the case accordingly.

The Attorney Desk Reference packet which is provided to all ID attorneys and which mirrors the Louisiana Standards on Indigent Defense, sets forth the attorneys' duty to promptly investigate facts relevant to the merits of a case or to the potential penalty "regardless of the accused's admissions or statements to counsel of facts constituting guilt or the accused's stated desire to plead guilty."<sup>42</sup> In addition, as part of the orientation packet, new attorneys are provided with guidelines and protocol that underline this duty to investigate "when a client disputes any material fact or witness account" or "raises any line of defense that requires corroboration." Further, attorneys are informed that this duty is "not dependent on guilt or innocence" and that they should not assume that police reports are correct. The office protocol for making investigation requests requires timely requests and submission of request forms with any relevant reports.

The Chief Investigator reported that in the first nine months of 2006 (as of the first week of October 2006), attorneys had requested 350 investigations in the calendar year, which averages approximately 39 investigation requests per month. These investigations may range from a diagram or photograph, to obtaining records, to interviewing multiple witnesses. At the time of our visit, the two staff investigators each had five or six active cases on which they were performing investigations.

## **Support Staff**

IDO's non-attorney staff consists of one office manager, eight secretaries, one chief investigator, and three staff investigators. IDO's Office Manager has been with the office for nearly 30 years. The Office Manager performs the administrative tasks for the office. She pays bills, takes care of all personnel and administrative paperwork, and fields phone calls and requests from the court, private attorneys, and IDB. She also supervises the secretarial staff and coordinates their duties and coverage. We were also told that after orienting a new secretary, the Office Manager will assign an experienced secretary to be a mentor. While the office does not currently have a formal process for conducting evaluations of support staff, we were told that the office is discussing implementing this in the future.

When new assignments come to the office, the receptionist creates the new files. These files are then given to the secretaries according to the criminal section to which they and the case are assigned. Four of the criminal sections and juvenile court are supported by one secretary, and one section is supported by two secretaries, although the second secretary also supports the Chief Counsel and has additional duties. Generally, the secretaries answer the phones for their section, speak with clients and clients' families, schedule appointments, prepare letters and motions, organize and maintain case files, track the list of clients in jail, track case files and court dockets, enter case data into the data system, and close files. In the Drug Section, which has the

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<sup>42</sup> Attorney Desk Reference, Caddo Public Defender Office, Standard 3.1.

highest volume of cases, the secretary might handle as many as 200 files in one day. The receptionist - who was on leave at the time of our site visit - answers the office phone, interacts with the public, provides defendants with application forms, receives the jail clearance list and creates new case files. The secretaries also have additional duties assigned to them when coverage is needed in the event of a secretary's absence.

A number of the secretaries have additional duties beyond their general duties. For example, the secretary for the two capital attorneys is also responsible for the paperwork associated with appeals which needs to be prepared prior to sending the case to the Louisiana Appellate Project, as well as handling outgoing mail and maintaining subscriptions and office archives/storage. The secretary that supports the Chief Counsel and one of the section's senior attorneys also has a significant amount of work that is unrelated to attorney support. She is responsible for collecting all fees and payments from out-of-custody defendants in District, City and Juvenile Courts, including application fees (\$40), partial reimbursement payments (up to \$500 in felonies and \$300 in misdemeanors), and child support and enforcement fees (\$25); the latter category of fees are not collected from IDO clients. In collecting these fees, an IDO secretary must attend City Court two mornings a week and the District Court Drug Section misdemeanor arraignment session one-to-two mornings a month. After collecting the fees, the secretary deposits them with the Caddo Parish Commission.

We were generally impressed with the attitude and professionalism of the IDO support staff, especially given their low salaries. We were also very impressed with the Office Manager who, with her experience and knowledge and positive manner, is an invaluable member of the IDO team. The duties appear to be well allocated among the secretaries, and there was a general attitude of cooperation. Unfortunately, too often we have witnessed low morale and poor attitudes among secretarial staff in public defender offices; but such was not the case at IDO. Including addition to the Office Manager, half of the support staff have remained with the office for 11 years or more. Those that were newer to the office spoke highly of their jobs and of the office environment.

The attorney-support staff ratio for the office as a whole is approximately 2:1. Among the individual sections, however, most attorney-support staff ratios are 3:1. In our experience, although this ratio is slightly higher than most offices and than our average recommended ratio (usually closer to 4:1), given the high volume of cases being handled by the office and by the individual attorneys, we feel that the current ratio is appropriate. Further, due to the case volumes and the additional time-consuming duties of the IDO support staff that are not present in most public defender offices (e.g., collecting fees and attending court sessions), we feel that the office would benefit from one additional floating secretary to assist with opening cases, coverage in the event of absences, supporting the section secretaries when they are overloaded, with other administrative duties in the office.<sup>43</sup>

## **Salaries**

At the time of our site visit, most IDO staff had not received raises for approximately five years. Between 2001 and 2003, the Indigent Defender Fund experienced a year-end deficit of

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<sup>43</sup> It is our understanding that, during the drafting of this report, IDB approved the addition of a floater secretary.

between \$21,000 and \$48,000, and no action was taken to increase IDO compensation. In 2004 and 2005, the fund experienced a year-end surplus between \$140,000 to \$152,000, and the Board approved two one-time supplements for IDO staff. In 2004, attorney staff received a one-time \$700 supplement and support staff received a \$350 supplement. In 2005, all staff received a one-time 10 percent cost-of-living adjustment (COLA). Other than these supplements, IDO salaries for the most part have remained static since 2001, although we were told that the cost of living has increased during that time by over 15 percent.

The starting salary for a staff attorney is \$31,000, and the highest paid staff attorney with seven years of experience is compensated at \$34,800. In juvenile court, the salary of the full-time staff attorney is \$37,000 and the salary of the part-time attorneys is \$30,000. The salaries of the senior attorneys, who have between three and twelve years of experience on the job, range from \$37,800 to \$46,500. Capital attorneys with 15-20 years of experience on the job make between \$53,000 and \$61,800. The salary of the Chief Counsel is \$82,482, and the salaries of the long-time Office Manager and Chief Investigator are \$50,470. Staff investigators make between \$29,000 and \$31,000. Finally, the salaries of the secretaries range from \$18,000 to \$37,035.

In an October 19, 2006 letter to IDB, we recommended immediate salary increases for IDO. We stated the following:

Specifically, we recommend that all attorneys, including staff, senior and capital attorneys, receive a 15% raise from their current salaries. This increase would result in a staff attorney starting salary of \$35,650, up from \$31,500. IDO's long-time top administrative staff – chief counsel, office manager and chief investigator – should also receive the same 15% increase.

With regard to support staff, we recommend that the staff investigators receive a slightly lower increase of 10%, which would keep the starting attorney salary slightly higher than the investigators' salaries in order to reflect the attorneys' higher level of education, case responsibilities and workload. Finally, we recommend that the starting salary of \$18,000 for the new secretaries be raised by 25% to \$22,500 in order to attract and retain quality staff. Currently, at least two of the secretaries at the starting-salary level are working second jobs in order to make ends meet. The remaining secretaries should, like most staff, receive a 15% increase in compensation.

We base these recommendations both on our years of experience in studying public defender systems at the state and local level across the country, and on salary information that we currently have from a number of public defender programs in the southern states, including Georgia, North Carolina, Tennessee, Virginia and West Virginia. It is important to note that, even with the recommended salary increases, most Caddo Parish IDO attorneys would still be making less than their counterparts in other southern states.

We also considered the salaries at the Caddo Parish District Attorney's Office. With the recommended raises, Caddo Parish IDO attorneys would still be making less than their counterparts in the Caddo Parish District Attorney's Office. According to the District Attorney's Office, the starting attorney salary is \$38,500, which increases to approximately \$50,000 after three years, and the most senior attorneys can make up to \$100,000. We received additional information that in 2005, the average salary for a misdemeanor attorney in the District Attorney's Office was approximately \$44,000, over 25% higher than the starting salary of a felony IDO attorney. The average salary for a district attorney section chief with ten years of experience was approximately \$64,000, several thousand higher than the most senior IDO capital attorney with 19 years of experience.<sup>44</sup>

In addition, the state has granted a 2006 supplemental increase in prosecutors' salaries of over \$5,700 per district attorney. Although Caddo Parish reportedly then voted to decrease funding by \$3,000 per district attorney, the result remains an increase for district attorney salaries which are already higher than those of the defenders.

Principle 8 of the American Bar Association's *Ten Principles of a Public Defense Delivery System*, by which indigent defense systems can be judged, states: "**There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense" (see [Appendix A](#)).<sup>45</sup> While we understand that the Caddo Parish District Attorney's Office and the Indigent Defender Office have different funding sources and that parity would be difficult to achieve, our recommendations do not provide full parity. Rather, our recommendations raise the IDO salaries closer to those of the District Attorney's Office.

The total cost for the recommended one-time IDO raises is \$188,499. As of the end of September 2006, the Caddo Parish Indigent Defender Fund had \$841,551 in available funds (cash balance and month-end investments), approximately four-and-a-half times the proposed cost for the raises, which would still leave \$653,052 in surplus funds.

After initial percentage increases, merit raises should be considered and granted in the future to deserving staff based upon formal performance evaluations which we will address further in our report. Finally, annual COLA increases should be made available to all IDO staff beginning in January 2007.

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<sup>44</sup> Further (although not originally stated in our October letter), we were also told by a Caddo Parish attorney that in Shreveport City, prosecutors who have no jury trials make \$42,000, and that in Bossier Parish, a part-time public defender makes \$24,000 with benefits.

<sup>45</sup> This last sentence was not completely quoted (as here) in the original October letter to IDB.

In addition to the ABA standards, LIDAB's Louisiana Standards on Indigent Defense, state, "The chief defender and staff should be compensated at the rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices."<sup>46</sup>

In our estimation, ID attorneys and staff are dedicated to their work and are indeed deserving of raises. In addition, improving IDO compensation is essential to attracting and retaining quality personnel. Many of our recommendations address the need for systemic reform in a number of areas. In our professional judgment, the problems of IDO are largely the result of an historically under-funded and overburdened system rather than the fault of individual IDO staff. That is, the burden for the systemic deficiencies should not rest on the shoulders of individual IDO personnel who are doing their best with what they have been given.

## **Office Space**

LIDAB Standards on Indigent Defense state: "Every defender office should be located in a place convenient to the courts and be furnished in a manner appropriate to the dignity of the legal profession." In addition to a sufficient library, "other necessary facilities and equipment should be provided."<sup>47</sup>

The downtown IDO office space is well-equipped with individual offices for each attorney and administrative staff, and an adequate area for the support staff. All IDO staff have desks, computers and phones. IDO also has a library. Although one attorney complained about the lack of sufficient resources in the library, each attorney in the downtown office has access to Lexis/Nexus for conducting online legal research. Finally, the downtown office is within easy walking distance to the district court.

While the juvenile unit of IDO is conveniently located within the juvenile court, which is approximately 10 minutes (driving time) from the district court and the downtown IDO, the physical space and available resources are inadequate. IDO space in the court consists of three very small rooms on the first floor of the courthouse. One office is for the secretary, one for the full-time attorney, and one for the part-time attorneys to share. Two offices have a computer and phone; however, the third room for the part-time attorneys has a desk and two chairs, but no computer and no phone. In addition, the secretary's room houses the current juvenile files, which are now being stacked on top of several full filing cabinets. The secretary does not have access to an IDO fax or copier, but uses the court's facilities on the second floor of the courthouse. While we were told that the court has very limited space available to house IDO, the current facilities and resources provided to IDO staff at the time of our site visit are inadequate.

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<sup>46</sup> Standard 1-4.1.

<sup>47</sup> Standard 1-4.3. Note that while Standard 11-2.1 states that counsel should be paid a minimum of \$30,000 and "no more than 95% of the compensation level of a similarly situated prosecutor in the district," the proposed IDO raises would remain within these guidelines.

## **IDO in Juvenile Court**

During the final drafting of this report, we were informed that IDO will be receiving a juvenile court compliance grant from LIDAB to hire additional juvenile attorneys and staff as well as renting an office space. In receiving the grant, IDO will be required to handle juvenile cases in Red River Parish as well as Caddo Parish. According to IDO's implementation plan for the grant funds, IDO will have: one senior supervising attorney; one full-time attorney to handle Red River Parish cases; four full-time delinquency attorneys – an addition of 2.5 full-time equivalent (FTE) attorney positions; one full-time CINC attorney – an addition of 0.5 FTE attorney positions (assuming the part-time position at 0.5);<sup>48</sup> two full-time secretaries – an addition of one FTE secretary; and two full-time investigators, both of which are additional positions. This staff is to be housed in a separate office location downtown. We expect such staff increases to help greatly improve the situation at juvenile court. In addition, we were told that the new supervising attorney at juvenile court is instituting new policies and procedures regarding IDO representation at juvenile court. At the time of our site visit in October 2006, however, a number of problems existed, which we discuss below.

LIDAB Standards on Indigent Defense state that “[d]efense organizations should be staffed with full-time attorneys.”<sup>49</sup> However, the juvenile unit of IDO is staffed – at the time of our site work – with two part-time attorney positions and one full-time attorney position, although the latter attorney also maintains a private practice.

One attorney represents all children in CINC cases, unless there is a conflict – which is rare - in which case private attorneys handle the case without compensation. Although the CINC attorney is designated and compensated part-time, he is retired from private practice and essentially works for IDO on a full-time basis. He came to the position two years ago with no prior experience in child welfare law. The CINC attorney is normally in court all day, five days a week, making any out-of-court work nearly impossible.

In the two delinquency sections, one court is staffed with a part-time IDO attorney and one is staffed by a full-time IDO attorney.<sup>50</sup> When IDO has a conflict, private attorneys are appointed to handle the case pro bono. While the part-time attorney has a significant private practice outside of his work with IDO, the full-time attorney also reported to maintain some level of a private practice. The two attorneys rotate a duty week that requires them to be in court between 9 a.m. and 4 p.m., Monday through Friday, to handle appearance to answer dockets and continued custody hearings. On off-duty weeks, the delinquency attorneys are required to be in court three days a week.

In both CINC and delinquency cases, client contact generally takes place in court prior to hearings. The court hearing CINC cases had previously perceived a problem with the level of

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<sup>48</sup> It is our understanding that the grant for this position is from the Louisiana Department of Social Services, Office of Community Services (OCS).

<sup>49</sup> Standard 1-4.2.

<sup>50</sup> We were told that the full-time attorney became full time two years ago, but that, with the exception of benefits, the compensation and hours remained the same. It is interesting to note that the juvenile judges were of the understanding that both delinquency attorneys remained part-time positions.

client contact, the situation reportedly improved after the court raised the issue with the attorney directly. Still, the CINC attorney reportedly does not visit child clients in their placements, as he is in court every day and lacks the time.<sup>51</sup> Rather, client contact occurs in court. The court hearing delinquency cases had mixed reviews on the level of client contact taking place. While one judge was unsure of the level of client contact, he reported that the ID attorney is always prepared. Another judge was unhappy with the level of client contact from the ID attorney in his courtroom. This attorney confirmed that client contact is “kind of nonexistent.” However, we were told that this is due to a “lack of interest” on the client’s part.

When IDO is assigned a new delinquency case, the juvenile client is not sent a letter from IDO explaining the case process or the importance of meeting with the ID attorney prior to the trial date. Rather, if a child denies the allegations at the Appearance to Answer date, then the case is set for trial, and the child is given a piece of paper entitled “Client Responsibilities.” At the top of this paper, the child is given an appointment date with the ID attorney for the following Tuesday afternoon, at the courthouse. The child is also told that he or she is “responsible for preparing a witness list identifying any individuals who you believe can testify on your behalf at the trial of this matter.” The child is instructed to provide to the ID attorney, two weeks before the trial date, the name, address and telephone number of each witness and a description of each witness’ testimony. At the bottom of the paper, the child is given the date and time for his or her trial.<sup>52</sup>

The juvenile detention center is located next to the Juvenile Court. However, it is unclear how frequently the delinquency attorneys are visiting them at the detention center. We are concerned that such meetings are not taking place as often as they should, as the attorneys are overloaded with cases in addition to maintaining private practices. Further, one attorney admitted that he does review list of in-custody clients each day in order to determine who needs to be visited. Rather, he will visit a client when the detention center calls to tell him that a client wants to see him, placing the onus is on the child client to initiate the contact.

Some of our concerns, especially those regarding client contact, were recently reported in report by the National Juvenile Defender Center.<sup>53</sup> In addition, the court reported client contact problems with one delinquency attorney dating back to 2003, when the court issued a memo to express concern over the attorney not requesting a continuance of a trial for serious charges when the attorney had not spoken with the client. The attorney responded by saying that neither the client nor the client’s parent had contacted him.<sup>54</sup> The court was additionally concerned that this attorney had not filed any motions to suppress or any appeals. The attorney reported to us

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<sup>51</sup> See *ABA Standards of Practice For Lawyers Representing a Child in Abuse and Neglects Cases*, Standard C-1 (“Establishing and maintaining a relationship with a child is foundational to representing a child. Therefore, irrespective of the child’s age, the child’s attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child.”) Standards and commentary available at [www.abanet.org/child/rep-actions.html](http://www.abanet.org/child/rep-actions.html).

<sup>52</sup> On this same paper, the client is informed that there will be an Order for Partial Reimbursement for the cost of IDO representation that must be paid within 60 days.

<sup>53</sup> National Juvenile Defender Center, *Caddo Parish, Louisiana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, conducted for the Caddo Parish Children and Youth Planning Board (August 2006).

<sup>54</sup> The Client Responsibilities sheet was likely created – at least in part - to help prevent such situations.

that he files “very few” motions and did not know whether or not his computer had Lexis/Nexus access for performing online legal research. Concerns regarding this attorney have reportedly been raised with IDO by the court on more than one occasion. Unfortunately, we were told that little had changed. IDO’s Chief Counsel was addressing the situation at the time of our site visit by swapping the juvenile attorney with an attorney in the adult felony drug section in District Court.

We are also concerned that few if any juvenile cases are being investigated. In CINC cases, we are concerned that the “part-time” attorney is unable to visit child clients in their placements to conduct thorough investigations. In CINC cases, the duty of the child’s attorney to investigate includes not only reviewing social service records and court files, but also contacting and meeting with the parents of the child and visiting the home.<sup>55</sup> Similarly, in delinquency cases, attorneys have a duty to conduct investigations.<sup>56</sup> Although the IDO investigators in the downtown office are available for use on juvenile cases, it does not appear that they are being utilized. While one delinquency attorney acknowledged that he could use the downtown investigators if he needed to, he generally relies on the client’s story and does not see a need for further investigation. The other delinquency attorney reported using an investigator “once or twice.”<sup>57</sup> Rather than the attorneys eliciting information regarding witnesses and potential investigations, the responsibility for providing such information and requesting investigations appears to be placed on the child clients as set out on the Client Responsibilities sheet. By contrast, in adult cases, the ID attorneys are responsible for getting such information from clients during client interviews and giving it to staff investigators with their investigation requests.

Unfortunately, as is often the case in our work, juvenile representation is a low priority of a public defender office in comparison to adult representation. Many defenders view juvenile law as less important, with less serious consequences to the clients, and therefore deserving of less attention and fewer resources. However, representation of children is of critical importance in any indigent defense system and should be treated as such.<sup>58</sup> In Juvenile Court, ID attorneys do not receive specialized juvenile training, nor is there any supervision or oversight of the attorneys’ performances in Juvenile Court. The attorneys are compensated as part-time attorneys and are overburdened with cases.

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<sup>55</sup> *ABA Standards of Practice For Lawyers Representing a Child in Abuse and Neglects Cases*, Standard C-2 and commentary, available at [www.abanet.org/child/rep-actions.html](http://www.abanet.org/child/rep-actions.html).

<sup>56</sup> *IJA-ABA Juvenile Justice Standards Relating to Counsel for Private Parties*, Standard 4.3 (“It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or conditions alleged and social or legal dispositional alternatives... The duty to investigate exists regardless of the client’s admissions or statements of facts establishing responsibility for the alleged facts and conditions or of any stated desire by the client to admit responsibility for those acts and conditions.”)

<sup>57</sup> This attorney has been practicing in Juvenile Court for approximately 30 years.

<sup>58</sup> *IJA-ABA Juvenile Justice Standards Relating to Counsel for Private Parties*, Standard 2.1 (“Provision of satisfactory legal representation in juvenile and family court cases is the proper concern of all segments of the legal community...”); American Council of Chief Defenders, National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery System*, Preamble, Principles 1-3.

Finally, as noted by the Juvenile Court judges themselves, in comparison to the District Attorney's Office, IDO in Juvenile Court is extremely under-resourced. While IDO is essentially staffed with three part-time attorneys (including the designated full-time attorney who is paid part-time and maintains a private practice), the District Attorney's Office has four full-time attorneys in Juvenile Court. Further, although the District Attorney's Office handles CINC cases up to the point of disposition, the cases are transferred to in-house counsel for the Department of Social Services (DSS) to handle the long-term post-disposition phase of the case; the ID attorney, on the other hand, handles CINC cases up to and post-disposition.

### **IDO Reputation and Leadership**

IDO has a positive reputation in the Caddo Parish criminal justice community. During our site visit, the judges and prosecutors confirmed that IDO is a well-respected office that generally provides adequate representation to indigent defendants. However, some views differed in relation to the experience level of the attorneys. While many spoke highly of the quality of representation provided by capital attorneys and some senior attorney staff, some noted – as one would expect – that this quality drops with some less-experienced staff attorneys. Again, this speaks to the lack of criminal law experience and training discussed earlier, as well as to the simple lack of time on the job.

IDO's Chief Counsel has been an ID attorney for 16 years and Chief Counsel for nearly nine years. He has a reputation in the legal community as being a skilled litigator and good leader. As Chief Counsel, he is responsible for the overall administration of the office, the hiring and firing of personnel, overseeing and advocating for the budget, and overseeing and administering the conflict attorneys. In addition, the Chief Counsel is a capital attorney with a full caseload of serious felonies. In 2005, for example, the Chief Counsel was assigned to five homicides, two sexual assault, one robbery and one other felony case (see Table 1-A in Appendix B). This is a significant caseload for any attorney, and for the Chief Counsel, it is simply too high. Because the Chief Counsel is handling so many serious cases, he has less time to run the office and perform other duties such as training and supervision. We believe that the historic lack of resources, culture of practice (as discussed in Chapter 3), and the Chief Counsel's significant caseload have hampered IDO reform.

## CHAPTER 3: CASELOADS

### Case Management System and Data

In order to assess IDO caseloads, we needed to review not only IDO data, but also data from the District Attorney's Office. IDO's current case management system has several areas in need of improvement, although most will be moot when new LIDAB case management system is implemented. The current IDO data, however, is not by itself sufficiently reliable and is not adequately and uniformly tracking relevant case data. For instance, although the case management system tracks the specific charge(s) associated with each case, there is no case type grouping, such as arson, burglary, sex crime, etc., to help determine the seriousness of cases in an attorney's caseload. Also, there is no field for the disposition of a case. At best, the case activity information, which is kept inconsistently or not at all, refers to the disposition of the case in a comments field, and this precludes any statistical analysis of case results. The office transfers all cases from a departing attorney to a new attorney by changing the name of the attorney on the case, because the system is not capable of transferring cases. The system may also assign cases to attorney names, rather than the actual attorney in the courtroom. For example, a juvenile attorney who was to be transferred to criminal section 5 had received 121 open drug cases as of September 2006; however, as of the first week of October when we visited Caddo Parish, this attorney was still working in the juvenile court. This is the method the office uses to transfer cases from an outgoing to an incoming attorney, and all information as to who was handling the case at a given point in time is lost.

Another problem we encountered is that a number of entries have opening or closing dates in the future, or logical inconsistencies in the data, such as case closing dates that occur prior to the date the case was assigned. We also found 262 cases in the system in which a bench warrant had been filed and which had case open dates in the distant past but that are still counted as open; because these cases are no longer active, they are skewing the open cases report. Many jurisdictions perform an administrative closure of outstanding bench warrants after a given period of time, anywhere from one month to one year after issuance of the warrant.

In addition, each of the IDO secretaries are entering case data, and they do not appear to be doing so uniformly or consistently. For example, the arrest date in each case is not consistently entered, making it difficult to determine time to appointment and time to disposition and whether any right to counsel or speedy trial issues need to be addressed. Case opening and case closing dates are not consistent with the information recorded by the District Attorney and may reflect different events.

The District Attorney's Office records a number of elements associated with each case that are also or should be recorded in IDO's system, such as filing date, attorney appointment date, charge and case type grouping. Implementing a system that would select case data from the prosecutor's system for transfer to the IDO system would be a wise investment of resources, and would save a significant amount of data entry time. Even when the LIDAB system is in place, this routine would be able to populate the LIDAB system. This procedure would also ensure consistency between the District Attorney and IDO systems, and could serve as a model for other

jurisdictions within the state. While this may take some effort to accomplish, the benefits clearly are worth the time.

In preparation for the transfer of data to the LIDAB system, a number of improvements to the data should be made to facilitate the conversion. Specifically, there are a number of entries which have opening or closing dates in the future, or logical inconsistencies in the data, such as case closing dates that occur prior to the date the case was assigned. Also, most of the charges entered in the system have no entries in the date field, making it impossible to determine whether there are right to counsel or speedy trial issues which need to be addressed.

A number of other problems make it difficult to determine the number of cases that represent probation violations, the cases in which attorneys are relieved for conflict, the bond amount for each case, and the disposition of the case. Additional data fields should be created to track the disposition (e.g., trial, plea, dismissal) and outcome (e.g., guilty, not guilty, diversion) rather than tracking this information in the activities section of the system. Again, the LIDAB system could resolve such problems.

Currently, information regarding the contracts that defendants sign agreeing to reimburse IDO is stored in three locations: the case management system stores the original amount of the contract, data is entered in QuickBooks to generate statements, and a Word document is used to keep a tally of contract payments made. We highly recommend that adjustments be made to the case management system to enable it to perform all of these functions. Even when case information is entered in the upcoming LIDAB system, the contract data can be linked to the LIDAB system to continue to perform these functions.

IDO would greatly benefit in a number of areas if one or more support staff received training in Microsoft Office applications. The current case management system and the LIDAB system both contain data elements that would allow attorneys and support staff to benefit from automated document generation. The user would be able to open a word processing template and generate the document using data already in the case management system. Training in Excel would allow staff to generate reports and tabulate data on a regular basis, without relying on outside sources to interpret information in the case management system.

Finally, it is important to note that a critical step in assessing caseload data is determining how an organization is counting their cases. While IDO is tracking a number of relevant data categories (e.g., defendant name, case docket number, and all charges), and therefore is able to generate a number of reports regarding workload (e.g., clients, charges, or docket numbers being handled), the most meaningful report is that which counts and reports their cases according to docket number. The District Attorney's Office also counts cases according to docket number. One docket number is attributed to one defendant, but can include multiple charges arising out of the same incident. This appears to follow not only the recommended case definition issued by the National Center for State Courts,<sup>59</sup> but also the case definition that, as of 2006, is required by

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<sup>59</sup> This definition is commonly referred to as "one defendant, one incident." For example, if it is alleged that one defendant committed a burglary, then drove while under the influence of drugs, was pulled over and assaulted the police officer, the three charges arising from this incident would be counted as a single case. If another person was alleged to have been involved in the incident and is charged, this would result in a second case.

Louisiana law to be used when reporting case data to LIDAB.<sup>60</sup> It is this definition that we used in assessing and reporting IDO caseloads.

### **Caseload Standards**

The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC) on Criminal Justice Standards and Goals, which published its standards in 1973. In its report, NAC set the following maximum annual caseload standards per *full-time* public defender attorney: 150 felonies; 400 misdemeanors (excluding traffic); 200 juvenile court cases; 200 mental health cases; or 25 appeals.<sup>61</sup> (Because these standards have been cited with support by the ABA, they are sometimes referred to as the “ABA standards.”) The NAC standards refer to the maximum number of cases an attorney should handle if handling only that one case type. In other words, the caseloads are exclusive and not inclusive of each other. If, as is often the case, an attorney is handling a more than once case type (e.g., felonies and misdemeanors), the percentage of the maximum caseload for each category should be assessed and the combined total should not exceed 100 percent.

The NAC caseload standards refer only to the number of assigned cases over the course of a year and do not refer to open or pending caseloads. Because an attorney’s open caseload is constantly fluctuating over the course of a year, the number of open cases is not a good measuring point for a caseload standard. Further, we know of no caseload standard that refers to or requires a set number of open cases; rather, the standards refer to assigned cases. In general, annual caseload standards assume that an attorney begins the year handling a reasonable number of cases at which point he or she should be assigned no more than X number of new cases during the course of one year. Open or pending caseloads per attorney should be far fewer than the number of assigned cases annually.<sup>62</sup>

In addition, Louisiana Standards on Indigent Defense set forth maximum annual caseload ranges per staff, contracted or appointed counsel that “district indigent defender boards and individual attorneys should strive over time to achieve.”<sup>63</sup> Like the NAC standards, these annual standards refer to maximum caseload ranges for individual attorneys exclusively handling one case type, and although not specified in the standards themselves, it is safe to say that they also refer to assigned cases. According to the Louisiana standards, over the course of one year, an indigent defender attorney, handling one of the following case types exclusively, ideally should not be assigned more than:

#### **Louisiana Standards on Indigent Defense – Caseload Standards**

<b>Charges</b>	<b>Caseload Limit</b>
Capital	3 - 5
Automatic Life	15 - 25
Non-Capital Felonies	150 - 200

<sup>60</sup> La. RS 15:145.1(A), (C) (“a charge or set of charges contained in a charging instrument or petition against a single accused arising out of one or more events, transactions, or occurrences, which are joined, or which may be joined...”) Cases with multiple charges are to be recorded according to the highest charge.)

<sup>61</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts* at 186 (Washington, D.C. 1973), Standard 13.12 on courts.

<sup>62</sup> For IDO open cases per attorney, see Table 3 in [Appendix B](#).

<sup>63</sup> Louisiana Standards on Indigent Defense, Part II, Standard 12-2.1.

Misdemeanors	400 - 450
Traffic	400 - 450
Juvenile	200 - 250
Mental Health	200 - 250
Other Trial Cases	200 - 250
Capital Appeals	3 - 5
Non-Capital Felony Appeals	40 - 50

The U.S. Department of Health and Human Services (DHHS) recommends that states should also set caseload standards for child welfare (CINC) cases, as “[n]o standards or training or professional devotion to duty will produce optimal results if caseloads are too high.” Commentary to DHHS guidelines states, “Depending on the level of support, the complexity of the case, and whether or not a lawyer’s full-time interest is in child welfare cases, the caseload cap for a staff lawyer should be set at *100 children*” (emphasis added).<sup>64</sup> Again, to our knowledge, this standard refers to annual, assigned cases and is not an open caseload.

While the NAC standards – now over 30 years old – and Louisiana indigent defense standards can be helpful guideposts when assessing actual caseloads, they are seriously limited in two ways. First, the standards can only serve as rough “guesstimates” as they are not tied to any empirical data and do not take into consideration the practices of a particular jurisdiction which can significantly affect an attorney’s workload and the number of cases s/he is able to handle. For instance, the following practice variables can affect the amount of time and effort required of an indigent defense attorney: the charging and plea offer practices of the prosecutor; habitual offender and other mandatory sentencing laws; how far and how often an attorney is required to travel; how many clients are in custody; the efficiency of the court’s docket – that is, whether the attorney spends significant time waiting in court; and the level of client contact required and conducted; and rules of court procedure (e.g., time limits for filing motions). The NAC itself recognized such limitations to national standards.<sup>65</sup> Second, the standards are of limited use for attorneys who provide representation in more than one case type.

Recognizing these limitations, a number of states and counties have developed public defender caseload standards that are specifically tailored to their jurisdiction’s practice. The Spangenberg Group has conducted studies to develop weighted caseload standards for public defender and contract attorney programs in five states and four counties.<sup>66</sup> A table with caseload

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<sup>64</sup> Jennifer L. Renne, *Legal Ethics in Child Welfare Cases*, ABA Center on Children and the Law (2004), citing U.S. Department of Health and Human Services, Administration for Children and Families, *Standards for Legal Representation of Children, Parents and the Child Welfare Agency*, Commentary to Guideline #3.

<sup>65</sup> Commentary to NAC Standard 13.12 acknowledges difficulties in developing the standards, such as the differences among local jurisdictions, even in the same type of case – “[f]or example, juvenile, mental health, and traffic cases embrace a right of jury trial in some States and not in others” - and the geographic area covered by an office which would affect travel time. The Commission accepted the standards “with the caveat that particular local conditions - such as travel time – may mean that lower limits are essential to adequate provision of defense services in any specific jurisdiction.”

<sup>66</sup> The case-weighting model employed by TSG requires public defenders or contract attorneys to keep detailed time records of their work over a given period of time, typically ranging from ten to thirteen weeks, on specially designed time sheets. The time records provide a means by which caseload (the number of cases handled) can be translated into workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). The ability to weight cases allows thorough consideration of not just the raw number of cases assigned to a criminal justice agency annually, but also the

standards from 14 states and one city can be found at [Appendix C](#). The standards address the maximum number of cases that a full-time lawyer should be appointed to in a 12-month period. In addition, with regard to child welfare or CINC cases, we know of at least two states that have caseload standards for attorneys providing representation in child welfare cases. In California, the maximum caseload per full-time attorney is 141 clients (although they are still working to comply with this standard). In Washington, the Washington Defender Association developed an annual maximum caseload per attorney of 60 clients. Again, the standards refer to the number of appointments, not open cases.

Workload standards, when properly applied, are best used to measure the performance of an office or of a group of attorneys and not any individual attorney, and to justify staffing and budget needs. Even if sufficient information existed to assess the current workload of different types of attorneys within the office (e.g., capital, felony, misdemeanor, juvenile), the wide variance of work required to dispose of different types of cases as well as the different amount of work required to dispose of different cases of the same type make it problematic to assess an individual attorney's performance by numbers alone, especially in the more serious case types.

IDO's Chief Counsel has also recognized the limitation of existing caseload standards. In 2005, he correctly states in a memo to IDB that there are "no caseload limits for our tiered allocation scheme, and none exist elsewhere." The Chief Counsel proposed the following aspirational guidelines for his office in terms of open or pending cases per attorney, by attorney type:

- Capital attorneys: 15-20 cases (including 1-3 cases with notice to seek death)
- Senior attorneys: 30-50 cases (including 10-15 cases facing automatic life)
- Section attorneys: 180-230 moderate to light felonies

While we believe the Chief Counsel should be commended for attempting to create these guidelines for IDO, we feel that, as pending cases, the suggested caseload guidelines for IDO attorneys are too high.

### **Caseload/Workload Assessment**

At the outset of this study, the Indigent Defender Board expressed a desire for the creation of acceptable caseload ranges for IDO. Below we provide a caseload range for the staff attorneys with the caveats that such caseload ranges are not empirically based, represent averages only, and are dependent upon the quality of existing data that is produced under certain systemic conditions that we find need to be improved (as discussed). The caseload ranges provided are based on: existing data, our assessment of Caddo Parish workload factors, comparison with results from empirical case-weighting studies in other jurisdictions, and our professional experience and judgment. However, as discussed below, we are unable to provide caseload

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severity of various case types handled by the program. In the broadest context, weights can be given to the total annual caseload of a defender organization to compare to the next year's anticipated volume of cases. Assuming that accurate records are kept of attorney time expended in each case during the study period, the development of workload standards and the determination of staffing needs for the projected caseload can be accomplished with some assurance of precision. (Such a study was not performed in this case due to the unknown factor of IDO data and a concern for the current level of representation that IDO is able to provide.)

ranges for the other IDO attorneys because we do not have sufficient data for those attorneys from which to develop a range such as the one developed for staff attorneys.

### The Data

In considering IDO caseloads, we first analyzed the Caddo Parish data for IDO. In addition to the issues discussed above under “Case Management System and Data,” the data system is limited in that it does not provide accurate and complete data on the type of work being performed on each case type or on the amount of time attorneys are spending on their cases. Having said this, we have attached to this report in Appendix B, the following tables displaying IDO data, by individual attorneys: 2005 appointments; 2005 dispositions; 2006 appointments, through September 1 and annualized; 2006 dispositions, through September 1 and annualized; pending caseload as of October 1, 2006; and juvenile appointments from October 2005 through September 2006.<sup>67</sup> In order to perform these analyses, we combined appointment and case closing date information from the IDO with case type and case disposition information from the District Attorney’s Office, using the docket number common to both systems. This way, we were able to perform a more complete analysis than by using either of these data sets alone. As explained below, we used these data to assess practice factors and to develop caseload ranges.

### Practice Factors

One cannot assess the workload of the attorneys from the data alone. One must consider the practice factors in the jurisdiction in which the attorneys practice that affect workload, or the amount of time and effort required to handle their caseload.

In Caddo Parish, a number of practice factors such as those discussed throughout this report, and further discussed below, result in high caseloads, especially for staff attorneys and even more so for juvenile attorneys. The table displaying juvenile appointments was the most startling to us. The number of appointments for the individual juvenile attorneys are among the highest we have seen: 498, including 136 felony cases and 277 misdemeanor cases; 645, including 119 felony cases and 495 misdemeanor cases; and 234, including 219 CINC cases.<sup>68</sup> These numbers are more troublesome in light of the fact that two of the attorneys are “part-time” and the full-time attorney has a private practice. Although we were told that the delinquency data include those cases that are assigned and disposed of the same day at the appearance to answer docket, we were unable to determine how many of these appointments constitute those same-day plea cases, since the juvenile data does not include dates of disposition. However, we would be concerned if a high volume of delinquency cases, especially those involving felony and serious misdemeanor charges, were being disposed of without the necessary client contact and investigation taking place; but we were simply unable to assess this from the existing data. The CINC caseload is also very high for one attorney to handle, even if that attorney were designated

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<sup>67</sup> We used these dates because of the timing of our visit and because of the availability of information from the District Attorney’s Office which we used to supplement the IDO data.

<sup>68</sup> According to the data, CINC case numbers reflect the number of child *clients* as opposed to docket numbers; for example, one CINC filing may involve multiple children or siblings needing representation.

full-time, which the CINC attorney is not. While the CINC attorney is retired from private practice and is therefore able to work full-time, he is compensated on a part-time basis.

In assessing IDO workload, we were faced with considering a number of factors surrounding the accepted norm of practice in Caddo Parish and at IDO that, as previously described, affect the number of cases the attorneys are able to handle. We considered factors such as the local trial rate, the level of client contact, the operations of the court, and motion and plea practices. In reviewing Caddo Parish data from IDO and the DA, we determined that in 2005, out of 2,928 case dispositions, 37 resulted in a trial (jury or bench), which creates a low trial rate of 1.3%. If narcotics or drug cases are excluded – as these cases reportedly often result in very favorable pleas – the 2005 trial rate is 1.6%. In 2006, out of 1,914 dispositions through October 1, 2006, 19, or 1.5%, resulted in a trial. If drug cases are excluded, the trial rate increases to 2.0%. (See Tables 6-A and 6-B in Appendix B). The Supreme Court of Louisiana reported 64 criminal jury trials in Caddo Parish in 2005, out of a total of 7,716 criminal filings,<sup>69</sup> which results in an extremely low trial rate of 0.8%. In our experience across the country, we have found that most jurisdictions have a trial rate of 3% - 5%. In addition, in the 75 largest counties in the country in 2002, 4% of felony defendants' cases went to trial.<sup>70</sup>

During our site work, we learned that it is not uncommon for a felony case to be disposed of by a plea early in a case, such as at the preliminary examination hearing, even prior to IDO receiving any discovery material. The data displayed in Table 5-D in Appendix B seems to support this statement, as it shows that in 2006 (through September), 16% of felony cases were disposed of within 30 days, and another 28% of the felony cases were disposed of within 60 days, for a total of 44% of the cases disposed of within 60 days. Again, if drug cases are excluded, then this total percentage drops to 39%. However, because attorneys are under a duty to recommend a plea to a client “unless appropriate investigation and study of the case has been completed,”<sup>71</sup> attorneys relay the offer to the client but are unable to provide advice to them regarding the plea.<sup>72</sup> We are unable to say from the available data whether such pleas occur because they result in favorable dispositions for the client. However, if a defendant remains in custody at the preliminary examination, which is 30-60 days after the jail clearance docket, and a guilty plea would result in release, there is a good chance that that defendant will plead, even without his/her attorney having fully examined the case.

As discussed above, the level of client contact at IDO appears to be somewhat lacking. That is, attorneys – especially staff attorneys who have the highest caseloads – are having a

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<sup>69</sup> *Annual Report 2005 of the Judicial Council of the Supreme Court of Louisiana*, Statistical Data (p. 36). Note that this data is not limited to indigent criminal cases.

<sup>70</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 2002*, Table 23 (including 3% convicted at trial and 1% acquitted).

<sup>71</sup> Caddo Parish Public Defender Office Attorney Desk Reference, Performance Standard 5.1(B), also found in Louisiana Standards on Indigent Defense, Chapter 6.

<sup>72</sup> In a 2005 memo from the Chief Counsel, all staff attorneys were reminded of their “duty to ensure that [a client’s plea decision] is a well informed one.” This memo stated that all IDO attorneys are required to ensure that the client understands the advantages and disadvantages of taking a case to trial, including possible verdicts, availability of defenses and probability of success. Attorneys are also required to ensure that the client understands the statutory penalty for the crimes charged and “any other ancillary costs, obligations and ramifications which may apply to him or her...”

difficult time following the 10-day rule for visiting in-custody clients, and out-of-custody clients are not met outside the court unless the client initiates the meeting. Similarly, bail motions are reportedly rarely filed and argued prior to the preliminary examination date, which is over one month after the jail clearance docket.<sup>73</sup> These problems are not surprising given the caseloads of the attorneys. Another explanation given for the lack of bail arguments now being made is the installation of the video-conferencing system in which defendants remain at the jail and attend the jail clearance docket via video, while the ID attorney remains in the courtroom. Since this system began several years ago, the ID attorney has been unable to communicate with defendants at jail clearance. We were told that prior to the video system, however, ID attorneys would be able to get bail facts from defendants at the jail clearance docket and argue bail once IDO is appointed; in addition, the same day as the jail clearance docket, ID attorneys would be able to conduct initial interviews with the new in-custody clients at the courthouse. We recommend that IDO consider placing the ID attorneys at the jail with the defendants for the jail clearance docket and that IDO take the steps necessary to be heard on bond reduction motions prior to preliminary examinations.<sup>74</sup>

A number of systemic norms in Caddo Parish may serve to delay the provision of attorney services. Especially for in-custody defendants, the combination of the following factors appear to provide systemic incentive for defendants to plead without regard to the merits of a case if it would result in release from jail: the preliminary examination is not scheduled for 30-60 days after the jail clearance docket; IDO attorneys do not always receive discovery prior to the preliminary examination date; and, as mentioned above, IDO attorneys rarely file bail reduction motions prior to the PE hearing. We do not fault this problem on individual attorneys, but rather on the established system that operates in a manner that allows it to handle such a high volume of criminal cases. However, with additional IDO resources, IDO should work with the courts and prosecutors to challenge the current system to ensure that attorneys are able to receive and review discovery, have meaningful attorney-client meetings, and have bail motions heard prior to entering pleas.

IDO staff attorneys spend a considerable number of days in court which decreases the amount of time attorneys have available to perform work outside of court. Most staff attorneys are in court four full mornings a week, plus a couple of afternoons a week. Further, as reported by a few ID attorneys and as observed in court, many ID attorneys spend a considerable amount of their time in court waiting to handle their cases.

Similarly, all three juvenile attorneys are required to spend significant time in court. The juvenile delinquency attorneys - one of whom is part-time and one who is designated full-time

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<sup>73</sup> Caddo Parish Public Defender Attorney Desk Reference, Performance Standard 2.4, requires “prompt action to protect the accused,” including consideration of motions for pretrial release. This standard is also found in Louisiana Standards on Indigent Defense, Chapter 6. But see footnote 73 for IDO’s updated procedure.

<sup>74</sup> Prior to finalizing this report, we were informed that while IDO proposed placing its attorneys at the jail during jail clearance, the judges did not want the jail clearance dockets to be slowed down by this. IDO then instituted a new procedure to help ensure that clients are met within 72 hours of appointment. The two staff attorneys assigned to the jail clearance docket for the week are now required to meet with all newly-appointed IDO clients on Mondays and Wednesdays for initial interviews that involve a discussion of their basic rights and facts related to pre-trial release. Attorneys from the drug section are required to do the same on Fridays. These interviews result in a written form that is given to a secretary for preparation of a bond reduction motion where appropriate.

but who also has a private practice – spend five days in court one week, and three days in court the next week; some of these days are full in-court days. The “part-time” CINC attorney is in court five full days a week. As earlier mentioned, the practice factors in juvenile court are similar to those in district court, including lack of client contact, representation for pleas at appearance to answer dockets, and lack of investigation.

### Estimating Caseload Ranges and Staffing Needs

#### 1. *Staff Attorneys*

In assessing staff attorney caseloads, we began with Table 1-A of Appendix B which provides an entire year of data on the number of appointments for each IDO attorney. Although 11 staff attorneys received felony appointments in 2005, because we are working with averages, we remove four attorneys that are clearly the outliers, two of whom did not clearly handle a full-time caseload for the entire year (Brown at 43, and Kelly at 65) and two of whom worked in the drug section and handled far more cases than other attorneys (Barkemeyer at 426, and Lockard at 398). The total number of cases handled by the remaining seven staff attorneys for the year was 2,252, for an average of 322 felony appointments per staff attorney.

In order to determine the average number of hours being spent by the staff attorneys, we needed to determine the attorneys’ “billable hours,” or the average number of hours available to them to perform work on cases during the course of a work year in Caddo Parish, factoring in holidays and vacation time. In our case-weighting studies, we use this billable hour figure with the number of attorney hours spent per disposition (determined from the empirical data) to determine workload.

$\frac{\text{Total Available Attorney Hours Per Year}}{\text{Attorney Hours Per Dispositions}} = \text{Workload}$
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In this case, without the empirical data, we begin with the average workload of 322, and divide that into the annual billable hours, to determine the average number of hours spent by the staff attorneys. For Caddo Parish, we have chosen a billable hour figure of 1,800 hours, which is slightly higher than the figure we have calculated in our case-weighting studies. If staff attorneys have 1,800 hours available to them in a year, and they are handling on average 322 felony cases, then they are spending on average 5.6 hours per case.

Next, we consider the practice factors discussed above. In order to address the systemic deficiencies and to increase the level of representation being provided in areas such as client contact, motion practice and trial practice, the attorneys need additional time. Given our experience and our knowledge of the Caddo Parish practices, we estimate that the staff attorneys should spend *on average* 3-4 additional hours per case on tasks such as client contact, motion practice and trial practice. This would result in between 8.6 and 9.6 hours per case, or rounding these figures off, an average total of 9-10 hours per case. Dividing these per-case hours into 1,800 annual billable hours, the annual caseload range for the **staff attorneys** becomes: **180 – 200 cases**.

For staff attorney felony cases, which are generally all felonies except armed robbery, rape, kidnapping and non-capital murder (handled by the senior attorneys), we were able to compare the recommended number of hours per case with the average number of hours spent by public defenders in other jurisdictions for similar case types. In doing so, we found that the recommended 9-10 hours that results from the recommended caseload range falls within a range similar to other jurisdictions. From our prior case-weighting studies, empirical data showed the following average number of hours per felony case, excluding capital, homicide and the most serious felony case types: 15 hours in King County (Seattle), Washington; 11.5 hours in Pima County (Tucson), Arizona; 11 hours in Tennessee; and 8.5 hours in Maricopa County (Phoenix), Arizona. Of course, as with the use of national standards, comparison to these other jurisdictions is necessarily limited due to large variations in the penalties and practices of each jurisdiction. Despite this caveat, the time-based empirical studies that we have performed over the years have resulted in a generally small range of hours per case among the different jurisdictions. It is further relevant to note that the recommended caseload range for staff attorneys happens to fall within the LIDAB caseload standard range of 150-200.

Next, we apply the staff attorney caseload range of 180-200 felony appointments per year to the 2005 data of 2,252 appointments. Dividing the number of appointments by 180 cases per attorney, the resulting staffing need to handle such appointments is approximately 12 staff attorney positions. Dividing the number of appointments by 200 cases per attorney, the resulting staffing need is 11 staff attorney positions. Thus, where only seven staff attorneys handled 2,252 appointments in 2005, **IDO is in need of 4-5 additional staff attorneys** in order for attorneys to handle the recommended caseload range.

## 2. *Senior Attorneys*

In looking at senior attorney caseloads, we were limited to IDO data for only four senior attorneys. This did not provide a sufficient amount of data to create a reliable average caseload and average hours per case for the senior attorneys. We were therefore unable to follow the same methodology as we did for the staff attorneys, and we were unable to create similar caseload ranges for the senior IDO attorneys.

We are also unable to provide specific case-weighting results from other jurisdictions for any comparison purposes, for two reasons. First, the serious case types such as those handled by the senior attorneys often do not result in enough dispositions during the case-weighting study to produce statistically sound average hours per disposition. Second, the case-weighting studies have not resulted in average hours per disposition for specific case types that we can say are equitable to the case types handled by the Caddo Parish senior attorneys.

What we *can* say is that, based on over 25 years of experience in assessing public defender programs and our knowledge of Caddo Parish practices and IDO, it is our professional opinion that IDO is in much greater need of staff attorneys than senior attorneys. However, given the practice factors and the serious need for greater mentoring and supervision, we recommend the addition of one senior attorney floater position.

### 3. *Juvenile Attorneys*

Due to the limited data set of only two delinquency attorneys and one CINC attorney, as with the senior attorneys, we were unable to estimate delinquency and CINC caseload ranges based on sufficient and reliable data.

As indicated earlier in this report, at the time of our site work we found some major systemic deficiencies in juvenile court were in need of attention, including a serious lack of client contact, lack of investigation and lack of legal research and motion practice. In our professional opinion, based on our experience and the limited data set - revealing annual delinquency caseloads (felony and misdemeanor) of 413 for a full-time position, 614 for a part-time position and a CINC caseload of 219 for a part-time position - juvenile caseloads are extremely high.

While we are unable to follow the methodology used above with regard to staff attorney caseloads, we are able to provide the average number of hours per juvenile delinquency case that resulted from our prior case-weighting studies in other jurisdictions. Many of our case-weighting studies have resulted in an average time-per-disposition for all delinquency cases combined, from minor misdemeanors to serious felonies; and unlike the cases handled by IDO senior attorneys, those handled by delinquency attorneys are more apparently equitable to delinquency cases in other jurisdictions. Therefore, for informational purposes, we provide the following average hours per disposition resulting from our empirical workload studies, for all juvenile delinquency cases combined (e.g., felony, misdemeanor and other): 8.75 hours in King County, Washington; 8 hours in Maricopa County, Arizona; 7 hours in Pima County, Arizona; 7 hours in Colorado; and 6 hours in Tennessee. We are unable to provide any such equitable hours-per-disposition based on our quantitative studies for CINC cases.

As earlier mentioned, we understand that IDO is to be receiving 2.5 additional FTE positions to handle delinquency cases for a total of four full-time delinquency attorneys, an addition 0.5 FTE to handle CINC cases for a total of one full-time CINC attorney (assuming 0.5 full-time equivalent positions for the part-time positions), and one senior supervising juvenile attorney. We are extremely encouraged by this additional staffing, although we recommend that another full-time CINC attorney position be added, for a total of two full-time CINC attorneys.

### 4. *Capital Attorneys*

We are unable to produce a caseload range for the capital attorneys based on existing data, and we are unaware of any quantitatively-based caseload standards for capital cases. When we conduct empirical case-weighting studies, the lack of data prevents us from producing quantitative caseload standards. The small number of capital cases and case dispositions does not produce a sufficient amount of data to produce statistically sound caseload standards. However, other public defender programs have set guidelines of in the range of 2-5 capital cases per attorney per year. Colorado, Florida and Tennessee have developed annual quantitative maximum caseload standards (based on appointments) for their public defenders handling capital cases. In Colorado, the standard is 2-3 capital cases per attorney. In Florida, the standard is three capital felonies per attorney; capital felonies include first degree murder and capital sexual

battery cases. In Tennessee, the standard is a maximum of 5 capital cases per attorney. Other jurisdictions with capital caseload standards are Oregon and Maricopa County, Arizona. In Oregon, a public defender should handle no more than 2-3 capital cases at any one time. In Maricopa County, Arizona, each capital case must be handled by two attorneys, and each attorney should handle no more than 3-5 capital cases at any one time.

## Case Overload

In our professional judgment, the problematic practices that we found exist as a result of systemic procedures and IDO's burden of handling too many cases rather than a lack of effort on the part of the attorneys. We believe that most ID attorneys are dedicated to their work and are performing as best they can, given their caseloads and limited resources, including a lack of training and experience for many attorneys.

IDO does not have any procedure in place for handling overload. That is, if the office is assigned too many cases, there is no procedure for shutting off the courts or declining additional cases. Instead, cases may be shifted within the office; staff attorney cases may shift to senior attorneys and senior attorney cases may shift to capital attorneys. Given the caseload and funding history of IDO, it is clear that IDO has grown accustomed to handling high caseloads, and we believe that it has adapted to doing so with practices such as those described above. Prior to the addition of new attorney positions a few years ago, attorneys' caseloads were significantly higher than they are now. One attorney candidly said that when they have too many cases, they simply have to "fly by the seat of [their] pants;" clients are not visited and research is not adequately performed. Regrettably, this manner of coping with case overload is not uncommon among public defenders across the country who constantly struggle with under-funding and high caseloads.

However, existing standards suggest the need for more. In Louisiana, Standards on Indigent Defense and the Caddo Parish Public Defender Attorney Desk Reference which follows these standards, state: "Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations..."<sup>75</sup> The 2006 Louisiana Performance Standards also state that defense counsel has a duty to not accept, or to withdraw from, a case and to inform the Public Defender and the courts when workload prevents counsel from meeting performance standards.<sup>76</sup> Louisiana law also supports case overload procedures for Louisiana public defenders: "The chief defender may in the event of conflicts of interest, *inadequate personnel* or for any other reason approved by the board request that the court appoint counsel to represent indigent defendants..." (emphasis added).<sup>77</sup>

In addition, the ABA has numerous standards that require the problem of case overload to be addressed. Principle 5 of the Ten Principles, for instance, requires a defender's workload to be "controlled to permit the rendering of quality representation." More recently, the ABA issued

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<sup>75</sup> Louisiana Standards on Indigent Defense, Standard 1.2(E).

<sup>76</sup> Louisiana Performance Standards, Standards 1.C (A), (E).

<sup>77</sup> La. RS 15: §145(B)(2)(b).

a formal ethics opinion that addresses the ethical responsibilities of indigent defense lawyers and supervisors “when the lawyers’ workloads prevent them from providing competent and diligent representation to all their clients.”<sup>78</sup> Like the Louisiana standards, these actions include monitoring caseloads and moving to withdraw when necessary.

The practice factors discussed throughout this report and in this section result in systemic deficiencies that, coupled with our knowledge of caseloads in other jurisdictions and our experience, lead us to the conclusion that more time should be spent on cases. This may be difficult to achieve given the burden of factors that are beyond the control of either the Caddo Parish Indigent Defender Board or IDO – namely, indigent defense caseloads and the lack of guaranteed and predictable indigent defense funding. While we do not suggest that IDO attorneys are failing to provide effective assistance of counsel under the law,<sup>79</sup> we believe that more can and should be done to attempt to meet the ABA and Louisiana performance standards cited throughout this report.

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<sup>78</sup> ABA Standing Committee on Ethics and Professional Responsibility, *Formal Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation* (May 13, 2006).

<sup>79</sup> See *Strickland v. Washington*, 466 U.S. 668 (1984).

## CHAPTER 4: OTHER ISSUES

### Indigent Defender Board

The Caddo Parish Indigent Defender Board (IDB) is the oversight entity of the Caddo Parish Indigent Defender Office and of the Indigent Defender Fund. The seven members are appointed by the judges of the First Judicial District (Caddo Parish) following recommendations from several local bar associations<sup>80</sup> to one-year terms.<sup>81</sup> Four of the current board members have been on the board for three years, two for one year, and one for many years. With the exception of one member, all are lawyers, although they do not concentrate in the area of criminal law.

Previously, IDB members were appointed to three-year staggered terms. However, several years ago, a serious conflict arose between IDB and the judges. IDB members had voted to eliminate the conflicts panel and no longer compensate attorneys for handling the cases in which IDO had a conflict. As a result, the court had to appoint non-volunteer private attorneys who were required to provide *pro bono* representation in conflict cases. The court disagreed with the action of IDB and had been put in a difficult position with making mandatory, uncompensated appointments. In response to the situation, the judges – who by state statute can establish the rules regarding the appointment of board members<sup>82</sup> - chose to exert greater control over IDB membership by changing the terms of appointment to one year. In further effort to avoid future conflicts, the court also chose to appoint more IDB members who do not focus their practice in criminal law.

IDB members are volunteer members who meet approximately once a month. IDB has no staff, and IDO's Chief Counsel and Office Manager handle the day-to-day administration of the system and of the Indigent Defender Fund.

In meeting with IDB, we found that the members are sincerely concerned about the Caddo Parish indigent defense system and want to help improve the system, while remaining very cognizant of IDF spending. The Board is an active body that meets regularly and requests and reviews regular reports from the Chief Counsel. We understand that the Board is concerned about the caseloads of IDO and of individual attorneys, and that they periodically review and question the Chief Counsel on IDO caseload reports. However, the extent of IDB's oversight is necessarily limited by the inability to independently assess many of the needs of IDO.

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<sup>80</sup> These include the Shreveport and Black Lawyers Bar Associations; we were also told that the Caddo Parish and Republican Bar Associations are included in this list.

<sup>81</sup> In 2004, a former IDB member filed a lawsuit in response to the failure of the Caddo Parish District Court judges to appoint three board members who were nominated by the Shreveport Bar Association. *Henry Walker v. State of Louisiana*, First Judicial District Court, Caddo Parish, Louisiana, No. 481,701-B (filed Jan. 2, 2004). Although Louisiana statute (R.S. 15:14) requires the court to appoint IDB members who have been nominated by the local bar association, the judges appointed three members who had not been so nominated. The suit is reportedly still pending.

<sup>82</sup> See La. R.S. 14:144(D).

We commend the Board for being active in its oversight role, for being careful with the Indigent Defender Fund, and for truly wishing to improve indigent defense representation in Caddo Parish. Further, they clearly recognized the need for an independent assessment of IDO in seeking us to conduct this study on their behalf. It is our hope that after this study is complete, the Board will better understand the needs of IDO in assessing the allocation of additional resources.

## **Indigent Defender Fund**

IDO is funded entirely by the Indigent Defender Fund (IDF). IDF is maintained by the parish and consists of 17 separate revenue sources (plus one miscellaneous account).<sup>83</sup> Although IDB does not control IDF revenues, it has the ultimate authority over IDF expenditures which must be approved by the Board.

Each year, IDO's Chief Counsel and Office Manager prepare an initial budget for the Board to review.<sup>84</sup> IDB approves the final budget that is then submitted to the Caddo Parish Commission's Director of Finance. The parish receives the IDF revenues from the various revenue sources (see below), and the Director of Finance enters them into one of the 18 individual line items into the parish's accounting system from which IDO receives the IDF disbursements.

With IDF monies kept by the parish in individual revenue accounts, IDO has only petty cash available to it. IDO's Office Manager and the Director of Finance communicate on a weekly basis regarding the fund, which has 30 separate line items for expenditures. Because IDO sends weekly vouchers for payment of expenses to the Director of Finance who determines to which line item the payment should be debited. Personnel salaries are also paid on a monthly basis out of IDF by the parish. Although the annual budget is submitted to the Caddo Parish Commission, only IDB has actual authority over the budget.

IDF revenues, as well as expenditures, fluctuate monthly and are reported each month by line item. As earlier mentioned, IDF is primarily funded by the \$35 fee that must be paid by all persons convicted of any state or local violation.<sup>85</sup> In addition, a partial reimbursement or attorney fee is frequently ordered by the court to be paid by IDO clients at the close of their case.<sup>86</sup> In felony cases, this fee can be up to \$500; in misdemeanor cases, the fee can be up to \$300. These fees are collected at the Caddo Parish District Court, Juvenile Court, City Court, and the Vivian Court, and each court constitutes its own revenue source. Of the 18 revenue sources, the largest by far is City Court, with annual revenue in 2005 of \$945,901. The District Court has been the third largest source of revenue, with 2005 annual revenue of \$227,226. Another source of revenue is the \$40 application fee for out-of-custody defendants applying for

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<sup>83</sup> Louisiana's parishes are no longer required by law to contribute to funding their indigent defense programs, and Caddo Parish no longer contributes parish funds in support of the Indigent Defender Office.

<sup>84</sup> Note that a 2005 CPA audit of the Indigent Defender Office found "no material weaknesses or reportable conditions."

<sup>85</sup> La. R.S. 15:146. (In 2005 legislative session, Senate Bill No. 323 changed the per-case fee to be paid to district indigent defender boards from between \$17.50 and \$35.00 to a \$35.00 set fee.)

<sup>86</sup> La. R.S. 15:148.

IDO representation.<sup>87</sup> In 2005, \$53,128 was collected in application fees. In addition, defendants on probation pay a \$20 monthly fee that goes to the IDF.<sup>88</sup> In 2005, probation fees provided \$104,403 in annual revenue.

The second largest source of revenue for the IDF is the annual contribution from the Louisiana Indigent Defender Assistance Board (LIDAB), with 2005 annual revenue of \$330,147. In 2005, the state, through LIDAB distributions, provided approximately \$10 million to the parishes for indigent defense, as compared to nearly \$25 million spent by the parishes. These state funds are distributed by LIDAB according to the parish's felony caseload, felony trials, and amount of local funds available for indigent defense - that is, the more funds a parish has available to it, the less the parish will receive from LIDAB.

In 2005, the annual indigent defense expenditures were the highest in recent history at nearly two million dollars. However, IDF has also had significant excess monies since 2003, and by far has had the greatest excess in 2006. Each month, the total revenues are matched with the total expenditures resulting in either an excess or deficiency of revenues over expenditures. An investment account and a cash balance account are maintained as part of IDF and are reported on a monthly basis. The latest IDF report we received shows that as of the end of September 2006, IDF had an excess of revenues over expenditures of \$153,069. The month-end cash balance was \$183,009 and month-end investments were \$658,542, making a total surplus of \$811,611. This is a significantly high surplus and one that we feel should be used towards salaries, staffing and other IDO improvements.

### **Contract Attorneys**

While not a focus of this study, we generally reviewed the Caddo Parish contract attorney panels during our site work through discussions with the Chief Counsel and several contract attorneys. Currently, IDO's Chief Counsel oversees three panels of five attorneys each: a misdemeanor panel in Shreveport City Court; a misdemeanor panel in District Court; and a non-capital felony panel in District Court.

The Chief Counsel decides who receives a contract after interviewing the attorneys. The contract attorneys with whom we spoke all had criminal law experience prior to receiving a contract. The attorneys' contract work is part-time, although one attorney has both a misdemeanor and a felony contract in the drug section, and he estimated his contract work to be 80 percent of his practice.

All IDO contracts require attorneys to provide representation to an unlimited number of defendants for a flat annual fee, paid in equal monthly installments. Felony contracts provide for \$30,000 in annual compensation, and misdemeanor contracts provide for \$6,000 in annual compensation. The Chief Counsel reported to have experienced trouble finding attorneys to agree to the misdemeanor contract at a previous rate of \$4,000, and although he sought an increase to \$8,000, the Board approved an increase to \$6,000. In addition to the annual compensation, an informal policy exists in Caddo Parish in which IDO contractors are to be

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<sup>87</sup> La. R.S. 15:147(A)(1)(f).

<sup>88</sup> This probation fee is reportedly a way to help collect the partial reimbursement fee.

assigned curator cases by the judges for which they receive \$150 per case.<sup>89</sup> However, we received mixed reviews as to the implementation of this policy by the court; we were told that some attorneys who do not have an IDO contract receive some of the curator cases, and some contract attorneys feel that they should receive more of them.

We were told that, over time, attorneys on the felony contract have a difficult time justifying the time commitment as it relates to the compensation. For instance, when a felony case is going to trial, the attorney must sacrifice a significant amount of time away from his or her private practice to prepare and conduct the trial for which no additional compensation is received. In addition, the more serious cases the contract attorney receives, the greater the likelihood that more cases will go to trial. One attorney reported that attorneys generally remain on the felony contract for no more than five years because of the low compensation which does not account for the workload. At the same time, although this attorney enjoys ID work, he did not seek to become a staff attorney because of the low IDO salaries.

Attorneys on the misdemeanor contracts handle very large caseloads, and we are concerned over the number of cases that plead at arraignment. However, in addition to the lower penalty, most misdemeanor cases are resolved at arraignment. In fact, most work performed by the misdemeanor contract attorneys appears to occur in the courtroom. One attorney was unable to estimate misdemeanor caseload since the cases are normally resolved so quickly, but estimated to handle between 50 and 60 misdemeanor cases at arraignment sessions, which occur twice a month. Using the estimate of 55 cases twice a month, this attorney handles approximately 1,320 misdemeanor cases in a year. Last year, three of this attorney's cases went to trial, which is a trial rate of 0.2%. Similarly, another misdemeanor attorney reported to handle approximately 60 cases at each arraignment session – which takes place once or twice a month - of which approximately 50 plead that day. The rest are set for trial, but may be dismissed or later plead.

We should note that, although the contracts require the attorneys to keep caseload records and to submit such records to the Board, contract data does not exist appear to exist in any data base, or at least those that we were shown and reviewed. For this reason, we are unable to assess any actual data concerning the caseloads of the contractors.

The concern that we have regarding attorney-client contact with ID staff also exists for the contract attorneys. A felony attorney tries to see in-custody clients within two weeks, but does not try to meet with out-of-custody clients. In addition, the misdemeanor attorneys handle and dispose of so many cases in one court session, that there can be little to no time for meaningful attorney-client contact. Most sentences are in a range predetermined by the court, and one attorney reported to give these ranges to clients who decide to plead - as most do that day; if the client does not appear to have a good reason for not pleading, the attorney tells them why they should plead. We also observed one defendant tell the court that he did not have an attorney, although his contract attorney was standing next to him. This attorney reported that there is usually no need to visit the jail or meet with clients outside of court and that no investigations are performed in misdemeanor cases.

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<sup>89</sup> A curator case arises when a party in a civil case cannot be located, and the court must assign an attorney to send the party a certified letter in an attempt to locate the party.

Finally, the Caddo Parish contracts with panel attorneys provisions recommended by the Louisiana Standards on Indigent Defense regarding: “allowable workloads for individual attorneys, and measures to address excessive workloads...;” “minimum levels of experience and specific qualification standards...;” and “supervision, evaluation, training and professional development”<sup>90</sup>.

## **Indigency Determinations**

Louisiana statute sets forth a number of guidelines for proceedings to determine indigency.<sup>91</sup> The court must make a preliminary inquiry and determination of indigency prior to or at the arraignment stage and must follow a the general uniform definition of “indigent” and other guidelines for the screening process. By statute, a person is indigent if he or she “is unable, without substantial financial hardship to himself or to his dependents, to obtain competent, qualified legal representation on his own. ‘Substantial financial hardship’ is presumptively determined to include all defendants who receive public assistance” or who are “currently serving a sentence” or “housed in a mental health facility.”<sup>92</sup> Defendants who do not meet this presumptive threshold are to be “subjected to a more rigorous screening process” to determine whether a substantial hardship exists for them.<sup>93</sup> If a defendant is found to presumptively qualify by the court, the defendant must then apply to the indigent defender office or to the appointed attorney; at this time, additional inquiry is to be made into the defendant’s financial status.<sup>94</sup>

In Caddo Parish, the court makes an initial determination of indigency at the defendant’s first appearance. If the defendant is in custody, the inquiry by the court to make this initial determination is quite brief. Although we were told that different judges ask different questions to make the initial determination, we observed two jail clearance dockets in which the inquiry by the court consisted of asking the defendant if he or she had a lawyer and could afford one. If the answers were no, the court made the initial appointment to IDO. If the defendant remains in custody after the initial appointment, the IDO appointment is continued, and further inquiry into the defendant’s financial status does not normally occur.

If the defendant is out of custody at first appearance, he or she must go to IDO after initial appointment by the court, at which time the defendant is given a written application form that seeks information on employment, income and monthly expenses. No financial records are required, and no verification is performed. In several criminal sections, staff investigators escort the misdemeanor defendants from court to IDO for the application process. In City Court, the misdemeanor contract attorneys make the determinations in court. IDO staff make a determination of indigency following formal guidelines that the Chief Counsel issued in the form of a memo to all staff and contract counsel (who may also determine indigency in court). In November 2006, the Chief Counsel issued the 2006 revised standards for determining indigency.

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<sup>90</sup> Standard 1-3.2 (E), (F), (K).

<sup>91</sup> La. R.S. 15:147.

<sup>92</sup> La. R.S. 15:147(A)(1)(b).

<sup>93</sup> La. R.S. 15:147(A)(1)(c).

<sup>94</sup> La. R.S. 15:147(A)(1)(d).

Generally, a person is presumed indigent if his or her income is below 200% of the Federal Poverty Guidelines.<sup>95</sup>

As previously mentioned, defendants applying for counsel must pay a \$40 application fee. The fee is to be paid at the time of application or within seven days.<sup>96</sup> This fee can be waived or reduced<sup>97</sup> and is generally not required of in-custody defendants. In addition, defendants who are found to be quasi-indigent, or capable of paying part of the cost of attorney fees, must sign an agreement to partially reimburse IDO.

We were told that, although infrequent, a defendant may be sent to jail for nonpayment of IDO fees. If any such incarceration is occurring, it is a serious cause for concern unless preceded by a hearing on a defendant's ability to pay; otherwise, any incarceration would appear to violate the requirements of federal law.<sup>98</sup>

We received several complaints about defendants abusing the system by falsely claiming indigence in order to avoid paying for a private attorney. Two persons reported that a practice exists in Caddo Parish in which some defendants claim indigence so that an ID attorney will prepare their case for trial at little to no cost; then they will later hire a private attorney to handle the trial. Several attorneys believe that some of their clients are able to afford private counsel. One reported to have represented clients making a salary of \$60,000 a year or more. We were also told that occasionally, when IDO determines that a defendant is not indigent and asks to be relieved from the case, the court will simply order the defendant to pay more in partial reimbursement. However, one judge noted that few motions to withdraw for lack of indigency are filed by IDO.

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<sup>95</sup> In 2006, this income level is \$19,600 for a single person and \$40,000 for a family of four.

<sup>96</sup> See Rules for Louisiana District Courts, First Judicial District Court, Parish of Caddo, Rule 15.2(3).

<sup>97</sup> La. R.S. 15:147(A)(1)(f).

<sup>98</sup> In *Bearden v. Georgia*, 461 U.S. 660 (1983), the United States Supreme Court held that when a defendant is facing imprisonment for failure to pay a fine or restitution, the court "must inquire into the reasons for the failure to pay." Thus, there must be a hearing on the defendant's ability to pay. The Supreme Court held, "Only if alternative measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. ... [Otherwise] such a deprivation [of liberty] would be contrary to the fundamental fairness required by the Fourteenth Amendment." *Id.* at 672-3.

## **CHAPTER 5: FINDINGS AND RECOMMENDATIONS**

### **IDO**

1. The Indigent Defender Office generally has a positive reputation in the Caddo Parish criminal justice community. Overall, it is a well-respected office that is performing well given its resources and the system in which it operates. Further, in comparison to the indigent defense providers in other Louisiana parishes that we have either visited or learned about through reviewing reports or other available information, Caddo Parish IDO appears to be among the better indigent defense programs.
2. IDO's Chief Counsel has a reputation in the legal community as being a skilled litigator and good leader. However, because the Chief Counsel is handling so many serious cases, he has less time to run the office and perform other duties such as training and supervision. The Chief Counsel's caseload should be reduced so that he may concentrate more on the administration of the office and effectuating positive reform for IDO and in the Caddo Parish criminal justice system as a whole.
3. IDO should be commended for its comprehensive personnel manual and written attorney performance standards. This material provides an excellent resource for all staff and can serve as the starting point for performance evaluations. Further, such material is frequently not available in public defender offices, including those with greater resources than IDO.
4. IDO lacks any formal in-house attorney training or supervision. Such training and supervision is especially critical for new attorneys, many of whom begin the job with substantial felony caseloads but without criminal litigation experience. New attorneys should be eased into the job gradually, should not begin with large felony caseloads, and should receive formal training and supervision. IDO needs a senior attorney with a reduced caseload who can devote time and effort to establishing a formal training program for the office and to oversee mentoring and supervision (see staffing recommendations below). All attorneys should receive formal training that includes the collateral consequences of criminal convictions.
5. The office does not currently have a formal process for conducting evaluations of its staff. However, we were told that the office is planning for evaluations in the future, and we recommend that these plans continue to go forward, as all staff should be formally evaluated at least on an annual basis.
6. In addition to the current system of assigning cases between staff attorneys in the same criminal section according to even or odd docket numbers, we recommend that an attorney supervisor periodically review the attorneys' pending caseloads in order to better allocate the cases between staff attorneys.

7. IDO should strive to improve the level of attorney-client contact. While IDO has a clear 10-day rule for meeting clients in custody, due to systemic factors such as caseloads and court time, attorneys are struggling to comply. In addition, IDO should make an effort to meet with out-of-custody clients by at least attempting to contact them. For out-of-custody adult clients and for juvenile clients, the contact is largely occurring in court prior to hearings; the onus is on the client to initiate any contact other than this. Especially in juvenile court, attorneys should be more proactive in initiating client contact.
8. IDO support staff are generally a professional and well-organized team with a positive attitude, which is considerable in light of their low salaries. In addition, the long-time Office Manager is a particularly valuable member of the IDO team. Although the number of support staff as compared to attorneys is slightly higher than most offices, given the high volume of cases being handled by the office and by the individual attorneys, we feel that the current ratio is appropriate. Further, due to the case volumes and the additional time-consuming duties of the IDO support staff that are not present in most public defender offices (e.g., collecting fees and attending court sessions), we recommend one additional floating secretary to assist with opening cases, support the other secretaries, provide coverage in the event of absences, and perform other administrative duties as needed.
9. Improving IDO compensation is essential to attracting and retaining quality personnel. IDO attorneys and staff, most of whom have not received any raises since 2001, are considerably under-funded but are dedicated to their work and deserving of raises. Further, their counterparts in the District Attorney's Office are making significantly more, as are most public defenders in other southern states (including Georgia, North Carolina, Tennessee and West Virginia). While one-time supplements were approved in 2004 and 2005 when the Indigent Defender Fund had excess year-end funds (after at least several years of experiencing a deficit), the time has come to implement raises. We recommend that all IDO attorneys and top administrative staff receive a 15% raise from their current salaries. We recommend that the staff investigators receive a slightly lower increase of 10% in order to keep the starting attorney salary slightly higher than the investigators' salaries (reflecting the attorneys' higher level of education, case responsibilities and workload). We further recommend that the secretaries' starting salary be raised by 25% and the remaining secretaries should receive a 15% raise. The estimated cost of the recommended salary increases is \$188,499.
10. The burden for the systemic deficiencies discussed in this report should not rest on the shoulders of individual IDO personnel who are doing their best in a difficult system.
11. IDO's downtown office space is currently sufficient to meet IDO's needs. However, the needs of the juvenile division are not being met at the juvenile court. Each attorney should have a desk with a computer and a telephone and available space for confidential meetings with clients. Given the amount of time even the part-time attorneys are spending in juvenile court, they should have sufficient access to computers, telephones,

and research tools. In addition, the office currently lacks sufficient space for storing attorney files and lacks its own fax and copier machine.

### **IDO in Juvenile Court**

12. We were very pleased to hear during the drafting of this report that IDO is to be receiving significant additional staffing in juvenile court, including additions of one senior supervising attorney, 2.5 delinquency attorney positions, 0.5 CINC attorney positions, one full-time secretary, and two full-time investigators. During this study, our observations of IDO in juvenile court were that the caseloads were too high and the staffing seriously inadequate. Client contact outside of court and investigations are nearly non-existent. We expect that the additional juvenile positions will greatly help to ease caseloads and improve juvenile representation. Further, while we previously recommended strongly that sufficient space be secured to house the full-time staff that is needed, it is our understanding that sufficient office space will be provided.
13. Currently, IDO conflict cases in delinquency and in CINC are represented by private attorneys who are not compensated for their work. Such representation is necessary and is a responsibility of the Caddo Parish indigent defense system. Formal conflict panels should be created and compensated from the Indigent Defender Fund for both delinquency and CINC cases. (Note that we were informed that IDO will soon be representing parents, not children, in CINC cases. In such event, IDO may need more than two full-time CINC attorneys; in addition, conflict parents' representation will be provided for by the state.)

### **Data Management**

14. A number of problems exist in IDO's data system. For instance, relevant data fields need to be entered consistently and additional data fields should be created to track the disposition (e.g., trial, plea, dismissal) and outcome (e.g., guilty, not guilty, diversion) rather than tracking this information in the activities section of the system. Fortunately, we believe that many of the problems will be solved with the implementation of the new LIDAB data system, although immediate improvements could help to smooth the transition to the LIDAB system. In addition, all IDO staff who input data should receive training to help ensure the accuracy and consistency of the data entry.
15. We strongly recommend that the case management system be adjusted to enable it to store all information on the defendants' reimbursement contracts which is currently stored in three locations: the case management system stores the original amount of the contract, data is entered in QuickBooks to generate statements, and a Word document is used to keep a tally of contract payments made. Once in place, this data can be linked to the LIDAB system to continue to perform these functions.
16. The current case management system and the LIDAB system both contain data elements that allow for automated document generation so that users could open a word processing template and generate the document using data already in the case management system.

One or more support staff should be trained in Microsoft Office applications, such as the Excel program, which would allow staff to generate reports and tabulate data on a regular basis without relying on outside sources to interpret information in the case management system.

### **Caseload/Workload**

17. In assessing IDO workload, we found that data limitations, coupled with the practice factors discussed throughout the report, result in systemic deficiencies that would render the creation of specific caseload standards at this point both inaccurate and unwise, as they would serve to institutionalize the current system and its deficiencies.
18. In our judgment, a number of systemic factors which appear to be the acceptable practice norm in Caddo Parish, serve to impede IDO representation. For instance, a number of these norms may serve to delay the provision of attorney services, such as late preliminary examination dates (30-60 days) without prior bail hearings; some delay in IDO attorneys receiving discovery; and delay in some ID attorneys meeting with clients. Data in 2006 shows that 16% of IDO felonies are disposed of within 30 days, and an additional 28% are disposed of within 60 days, for a total of 44% (39% if drug cases are excluded) that are likely pleading at or around the PE date. Similarly, the local trial rate of 1.3% (or 1.6% if drug cases are excluded) is low. We do not fault the systemic problems on individual attorneys, but rather on an established system that operates in a manner that allows it to handle a large volume of criminal cases.
19. ID attorneys are required to spend a significant amount of time in court; some of this time is unproductive waiting time due to court operations. As a result, attorneys have less time to perform out-of-court work such as meeting with clients and preparing their cases.
20. With additional IDO resources, IDO should work with the courts and prosecutors to challenge the current system to ensure that attorneys are able to receive and review discovery, have meaningful attorney-client meetings, and file bail motions prior to entering pleas. We recommend that IDO consider placing the ID attorneys with the defendants at the jail for the jail clearance docket and that IDO take the steps necessary to be heard on bond reduction motions prior to preliminary examinations.
21. In order to address these and other systemic issues, Caddo Parish should consider creating a criminal justice coordinating committee, consisting of IDO, the District Attorney's Office, the courts, the jail, and other interested criminal justice entities. Representatives from each entity should meet and discuss ways in which the criminal justice system can be improved.
22. In our professional judgment, the problematic practices that we found exist as a result of IDO's burden of handling too many cases over a long period of time rather than a lack of effort on the part of the attorneys. We believe that most ID attorneys are dedicated to their work and are performing as best as they can, given their caseloads and limited resources, including a lack of training and experience for many attorneys.

23. IDO should establish written policy and procedure for handling case overload. That is, when IDO determines that it has been assigned too many cases, a procedure should be in place for assigning cases to attorneys outside of the office.
24. Until such time as the systemic deficiencies that prevent the attorneys from providing full and timely representation are addressed, it is premature to provide caseload standards, either based on the current practices or on the currently-available empirical data. Instead, more attorneys and staff are needed to reduce caseloads and allow attorneys to spend more time on cases and to challenge these systemic norms.

### **Staffing Needs**

25. With regard to additional staffing, we recommend the following, in general order of importance:
  - a. A new senior attorney position should be added and designated as a training director who should immediately create a formal in-house training program with a focus on training staff attorneys. The training director should have a significantly reduced caseload in order to focus on needed training, mentoring and supervision.
  - b. While we are extremely pleased with the additional attorney and non-attorney staffing to be added in juvenile court, we recommend one additional attorney position to handle CINC cases.
  - c. Using 2005 IDO caseload data, a modified case-weighting formula and our knowledge of Caddo Parish practice factors, we estimated an annual caseload range per staff attorney of 180-200 cases or appointments. In order to meet this standard (using 2005 staff attorney appointments), IDO would need an additional 4-5 staff attorney positions. These additional positions are needed to reduce current staff attorney caseloads and allow attorneys additional time to receive needed training, meet with clients more quickly and more often, prepare cases and litigate. Significant training and fewer cases should allow the staff attorneys to improve the overall quality of their representation.
  - d. A new senior attorney floater position should be added in order for senior attorneys' caseloads to be reduced to allow senior attorneys to perform more work on their cases and to supervise and mentor staff attys. This senior floater or the training director should also be designated as the attorney in charge of filing impact litigation when necessary to challenge Caddo Parish criminal justice system norms when such norms negatively affect the rights of IDO clients.
  - e. IDO is in need of two full-time social workers, one for the downtown office who would focus his/her work on capital cases, but would also assist on non-capital felony cases, and one for the juvenile office to assist on both delinquency and CINC cases.

- f. One floater secretary should be added, and it is our understanding that this has already been approved.

Using salary estimates, and assuming 4 additional staff attorney positions, the above staffing recommendations would cost an estimated \$344,250 (not including those additional positions that have already been approved.) The total estimated cost can be broken down as follows:

1 senior attorney/training director @ \$52,000	=	\$52,000
1 full-time CINC attorney @ \$35,650	=	\$35,650
4 staff attorneys @ \$35,650	=	\$142,600
1 senior attorney (floater) @ \$48,000	=	\$48,000
<u>2 social workers @ \$33,000</u>	=	<u>\$66,000</u>
		\$344,250

- 26. We also recommend that all attorney positions be full-time positions without any outside private practice.

**IDB, IDF**

27. Indigent Defender Board (IDB) members sincerely want to help improve the Caddo Parish indigent defense system but are also very cognizant of IDF spending. We commend the Board for being active in its oversight role, for being careful with the Indigent Defender Fund, and for truly wishing to improve indigent defense representation in Caddo Parish. It is our hope that after this study is complete, the Board will feel comfortable in approving additional resources of which IDO is in need.

28. As of September 30, 2006, the Indigent Defender Fund’s (IDF) month-end cash balance was \$183,009 and month-end investments were \$658,542, making a total surplus of \$811,611. This is a significantly high surplus that should be used immediately towards salaries and additional staffing. While we understand the desire to keep a balanced budget, we strongly recommend that the surplus funds be used while available, not only because they are needed, but also because LIDAB funds to Caddo Parish will be reduced should such a surplus not be spent. We believe it makes good sense to spend available funds now both to improve IDO and the representation received by Caddo Parish indigent defendants, and to ensure that Caddo Parish receives a greater share of LIDAB funds. As earlier mentioned, we estimate that the recommended salary increases would cost \$188,499 and the additional staffing would cost \$344,250; this totals \$532,749, which would still leave a surplus of \$278,862.

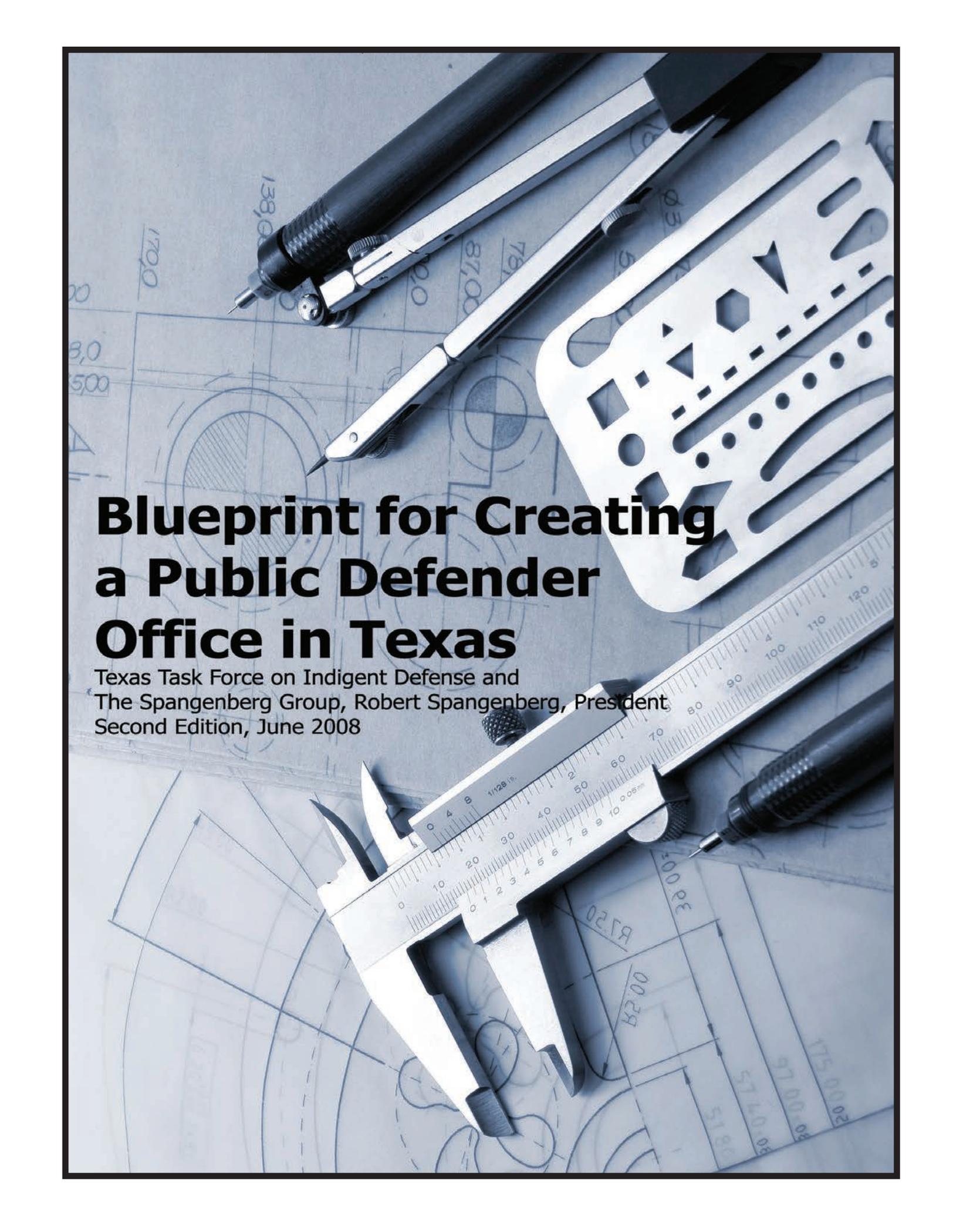
29. Overall, IDO attorneys and staff are performing well under the current systemic conditions. For reasons earlier mentioned, we strongly recommend that the Board first approve IDO raises and then approve the additional staff. We believe that both recommendations can be implemented with the large amount of IDF surplus funds.

## **Contract Attorneys**

30. Data on contract cases does not currently appear to exist in any data base. We strongly recommend that this data be tracked, and it is our understanding that this will occur under the new LIDAB data system.
31. While the contract attorney system was not a focus of our study, we reviewed it generally. The concern that we have regarding attorney-client contact with ID staff also exists for the contract attorneys. In addition, with regard to the misdemeanor contracts, we are concerned about the lack of investigations and the volume of cases that the attorneys appear to be handling and quickly pleading.
32. The Caddo Parish contracts with panel attorneys should have provisions regarding individual attorney caseloads, excessive caseloads measures, minimum levels of experience, performance standards, supervision, evaluation, training and professional development.

## **Indigency**

33. We received several complaints regarding abuses of ineligible defendants receiving IDO services. While we were unable to verify these reports, we did note that the initial indigency screening process performed by the court is very brief and that all in-custody defendants appear to be presumed indigent. We believe this initial screening process could be improved by the creation of more thorough and uniform guidelines and procedures for all judges.
34. Significant IDO time and resources are spent in processing applications for counsel, making indigency determinations, and collecting application and reimbursement fees. IDO staffing should reflect these additional duties. In most jurisdictions, these tasks are performed either by the courts or by an independent pre-trial services agency. If such an agency existed, we would recommend that some verification be performed, but IDO is simply unable to perform such procedures with its current staffing.



# **Blueprint for Creating a Public Defender Office in Texas**

Texas Task Force on Indigent Defense and  
The Spangenberg Group, Robert Spangenberg, President  
Second Edition, June 2008

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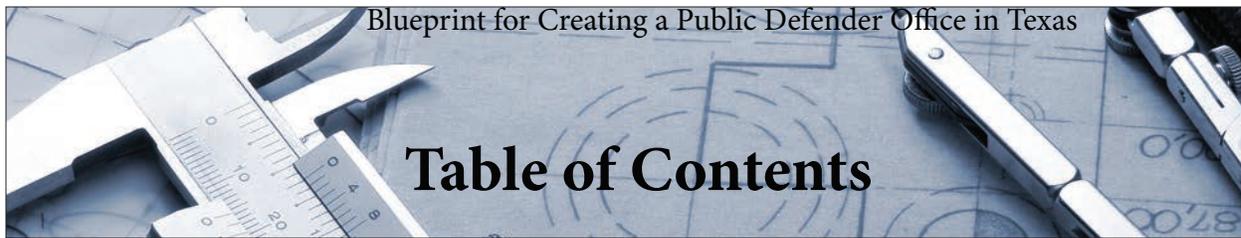
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Julie Hernandez, Cameron County Chief Public Defender  
Kameron Johnson, Travis County Chief Juvenile Public Defender  
Andrew Jordan, Kaufman County Chief Public Defender  
Jeanette Kinard, Travis County Mental Health Public Defender  
Brad Lollar, Dallas County Chief Public Defender  
Hugo Martinez, Webb County Chief Public Defender  
Angela Moore, Bexar County Chief Appellate Public Defender  
Anthony Odiorne, Wichita County Chief Public Defender  
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The *Blueprint for Creating a Public Defender Office in Texas* is intended to be a tool for Texas local and state officials who seek a deeper understanding of what a “public defender” is and whether creating one makes sense for their county or region. Texas jurisdictions vary widely in population, resources, and legal culture. Officials in each jurisdiction must independently weigh the advantages and disadvantages of creating a public defender for their country or region.

Since the original *Blueprint* was published in 2004, eight new public defender offices have opened in Texas bringing the total to fifteen. The new offices provide representation in a variety of case types, including misdemeanor trials, capital cases, appeals, and criminal defense for defendants with mental health issues. Expanded profiles of the existing offices can be found in Chapter 5.

This *Blueprint* is comprised of five chapters to accommodate Texas officials who are at varying stages of exploring their public defender options: Chapter One: Indigent Defense Overview; Chapter Two: Advantages and Disadvantages of a Public Defender; Chapter Three: Feasibility Study; Chapter Four: How to Create a Public Defender; and Chapter Five: Public Defenders in Operation.

Special appreciation is extended to the people acknowledged on the previous page who provided extensive input and guidance in the creation of this *Blueprint*. The Task Force believes, through the collective and collaborative efforts of many, that this publication should prove to be a valuable tool in determining whether a public defender office is right for your community.

Sharon Keller  
Chair, Task Force on Indigent Defense



## Executive Summary

Local officials in each Texas county decide how to comply with the constitutional and statutory requirements that lawyers be provided to indigent criminal defendants. These laws promote fairness and public confidence in criminal justice. Local governments pay most indigent defense costs, and these costs increased after the implementation of the Texas Fair Defense Act in 2002. As more money and attention are focused on indigent defense, however, a broad array of officials—from prosecutors to judges to county executives—have found that indigent defense is a critical tool for promoting efficiency throughout the entire criminal justice system. This efficiency matters because law enforcement consumes the largest share of county budgets.

Establishing a public defender is but one indigent defense option that is available to local officials. Where officials are satisfied with the quality and cost of another indigent defense method, there is no reason to consider switching to a public defender. Many officials, however, wish to explore whether a public defender can provide adequate quality for less cost than alternative methods. The number of Texas public defender offices (PDOs) has grown from five to fifteen over the past six years, and public defenders now serve in at least some types of cases in roughly 134 of Texas's 254 counties. Public defenders require effort to create, but once in operation, they offer quality, cost, and administrative advantages over the alternatives. The Texas Task Force on Indigent Defense offers this *Blueprint* to help local judges and county officials make informed decisions about whether a PDO makes sense for a particular Texas jurisdiction.

Help is available. Help is available free of charge. In addition to this *Blueprint*, site specific information from the Task Force, consultants who work with the Task Force, and experienced public defenders throughout Texas, are available for assistance. The Task Force also makes grant money available to help counties create and operate new PDOs.

The public defender option merits consideration. The key choice to be made by local officials is what methods will be used to select counsel for indigent criminal defendants. All other decisions required by the Fair Defense Act follow from this choice. Three appointment methods are used throughout Texas and the United States: (1) assigned counsel, where a judge assigns a private lawyer to each case involving an indigent defendant, usually on a rotating basis from a list maintained by each group of courts; (2) contract counsel, where a judge assigns groups of cases to one or more private lawyers who have signed contracts covering payment and scope of representation; and (3) public defender, where a judge assigns cases to a unit of local government or a non-profit office which employs attorneys whose only job is to serve indigent defendants.

Where public defenders operate in Texas and elsewhere, they operate in conjunction with one of the other appointment methods, so that the private bar is assigned a share of the same kinds of cases that the public defender handles. This is necessary to avoid conflicts of interest in multi-

defendant cases, but it also fosters cooperation between the public and private defense bars, and it allows cost comparisons between two appointment methods used in the same place.

Public defenders serve almost all urban jurisdictions in the United States outside Texas. Fewer public defenders serve in Texas than elsewhere in the nation. The reasons have not been clearly documented, but the Task Force has observed that the time and cost of changing appointment systems presents a barrier. Accordingly, the Task Force is making information and grants available so that the costs of change alone do not prevent counties from selecting the best appointment method available to them.

Public defenders offer quality, cost, and administrative advantages. Public defender offices operate for the defense in the same way that district and county attorney offices operate in every Texas county for the prosecution, and they do so for the same reason: proficiency. This proficiency explains why most civil lawyers work in law firms rather than operate individual offices. Group law practice not only allows attorneys to share office and library space and administrative functions like billing, but it also improves their ability to learn from one another, match staff experience to work demands, develop and preserve institutional methods of performing work, and avoid “reinventing the wheel” for each new case.

As institutions, public defenders can attract additional resources that private attorneys cannot, including grants, fellowships and law-student assistance. Some non-profit public defenders can also offer indigent defendants civil legal services, particularly on mental health issues, that can minimize the costs of involvement in the criminal justice system. PDOs also enable judges, county executives, law enforcement officers, and the bar to access a single point of contact to secure the cooperation and input of defense counsel when improvements to operation of the criminal justice system are considered, making improvements easier to identify and implement. Finally, public defender budgeting is simpler and more predictable than budgeting for payment of private attorneys whose identity, work practices, billing practices, and caseloads fluctuate every month of every year. All of this is equally true of prosecution offices in Texas counties. It is so true that a move from centralized prosecution offices to hiring individual private attorneys to prosecute cases would be unthinkable.

Disadvantages of public defender offices include start-up costs and minimum caseload requirements. Switching from an assigned or contract counsel system to a public defender may require significant start-up costs (hiring staff, securing office space and equipment, establishing the public defender’s internal office practices and procedures, and modifying administrative procedures to transition from the existing appointment method to a public defender). The Task Force aims to minimize the barrier presented by start-up costs through its discretionary grant program, which enables counties to apply for state reimbursement of at least a portion of the costs in the first years of operation. Although its funding methodology may change, at least through FY 2009 grant program the Task Force will pay 80% of grantee county’s entire public defender costs for the first year, 60% in the second, 40% in the third, and 20% in the fourth. The Task Force also offers free ongoing advice to those who seek information on the details of planning a public defender office.

Counties with fewer than 750 felony and misdemeanor cases combined annually are unlikely to realize the efficiencies of a PDO unless they participate in a regional effort that includes an urban area or a group of nearby rural counties. Texas law specifically allows regional public defenders, and the Task Force has

experience in creating them (Bexar’s appellate PDO serves the 4th appellate region, one operates in Val Verde and surrounding counties, one in Bowie and Red River counties, and a capital PDO operates in Lubbock spanning 85 surrounding counties). At least one non-profit organization has shown its ability to operate a rural, regional public defender, and will consider expanding its efforts. The circumstances of each local jurisdiction vary, however, and each merits individual examination.

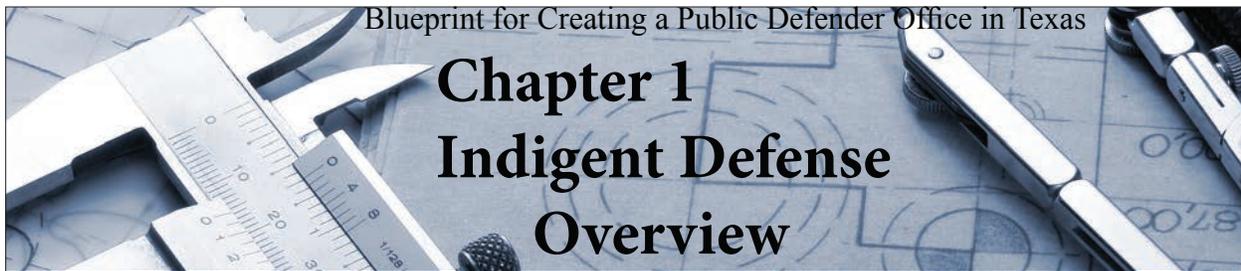
A simple feasibility study indicates whether a public defender is viable. The rough cost per case of a public defender can be easily compared to the actual cost per case under existing practices. This comparison will enable officials to decide what cost and caseload numbers will be necessary to justify serious exploration of whether to create a PDO. A sample feasibility worksheet is provided in Appendix B.

The Task Force offers this guide to creating a public defender. For those who want to know what is required to create a public defender, this Blueprint discusses the recommended steps. These include: (1) convening stakeholders to discuss options, methods and impact; (2) decide what categories of cases the public defender will be assigned; (3) write a Request for Proposals (examples abound); (4) evaluate RFP responses and select a governmental or non-profit organization to operate the public defender; (5) negotiate a contract or establish a budget; (6) hire or approve the chief public defender; and (7) modify procedures to transition from the existing system to the public defender. Chief public defenders in every region of Texas, Task Force staff, and indigent defense consultants are available to assist judges and county officials who are interested in exploring the public defender option.

The Public Defenders Model is working in Texas. Task Force staff and consultants have studied Texas public defenders that have operated for decades, and have helped create new public defender offices during every one of the past few years. This experience enables the Task Force to offer several important generalizations about public defender offices:

1. Cost per case for public defenders is almost always lower (by roughly 5%) than costs for assigned counsel in the same county.
2. The most significant cost savings resulting from PDOs are found in decreased pretrial incarceration costs.
3. Judges and county administrators find that less administrative work is necessary to oversee indigent defense under a public defender model than under their previous models.
4. Stakeholders find that significant work is required to create a PDO, but they are generally satisfied, and dissent is quite limited, once the offices are in operation.
5. Public defenders are willing to share their ideas and experiences with interested members of the bench, bar, executive branch of county government, and public. Over time, public defenders emerge as an institutional voice that public officials and the defense bar view as a resource, not an adversary.

In sum, the public defender option is worth exploring even though it is not a silver bullet that will automatically solve every county’s indigent defense challenges.



The U.S. Constitution’s Sixth Amendment provides:

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial... and to have the assistance of counsel for his defense.*

Texas’s Constitution mirrors this language: “In all criminal prosecutions the accused ... shall have the right of being heard by himself or counsel.”<sup>1</sup> Prior to the 1963 landmark case of *Gideon v. Wainwright*,<sup>2</sup> counsel was only constitutionally guaranteed to criminal defendants who had enough money to hire an attorney. Indigent defendants could only access legal representation if a state law created a right to appointed counsel, or if a court ordered an attorney to provide representation.

In *Gideon*, the U.S. Supreme Court required states to provide attorneys to indigent defendants accused of a crime. The Court emphasized that increased accuracy and public safety result from adequate legal representation. The Court also recognized that the public perception of fairness in the criminal justice system is promoted when access to representation does not depend on a defendant’s ability to pay a lawyer. The Court also relied on the fact that the Sixth Amendment’s text provides a right to counsel “[i]n all criminal prosecutions.” In several cases after *Gideon*, the Court has clarified that no indigent defendant can be sentenced to jail for any criminal offense, or be denied an appeal, unless appointed counsel was available to the defendant.<sup>3</sup> Texas’s Court of Criminal Appeals has embraced *Gideon* and its rationale as a matter of Texas constitutional law.<sup>4</sup>

During the past 40 years, *Gideon* and its progeny<sup>5</sup> have caused officials in all branches at all levels of state and federal government to explore how best to make attorneys available to indigent criminal defendants. “Indigent defense” has grown into its own specialized area of legal practice and generated its own body of case law throughout the United States.

In Texas the financial burden of paying the costs associated with indigent representation has historically been carried exclusively by the county in which each criminal case is filed. Today, the responsibility for providing counsel to represent indigent defendants in criminal proceedings is still primarily a local responsibility.<sup>6</sup> Each county is free to select the type of system it will use to represent indigent defendants. Three primary models have evolved:

- The *assigned counsel model* involves the assignment of indigent criminal cases to qualified private attorneys on a neutral basis, such as a rotation system.
- The *contract model* involves a contract with an attorney or a group of attorneys who

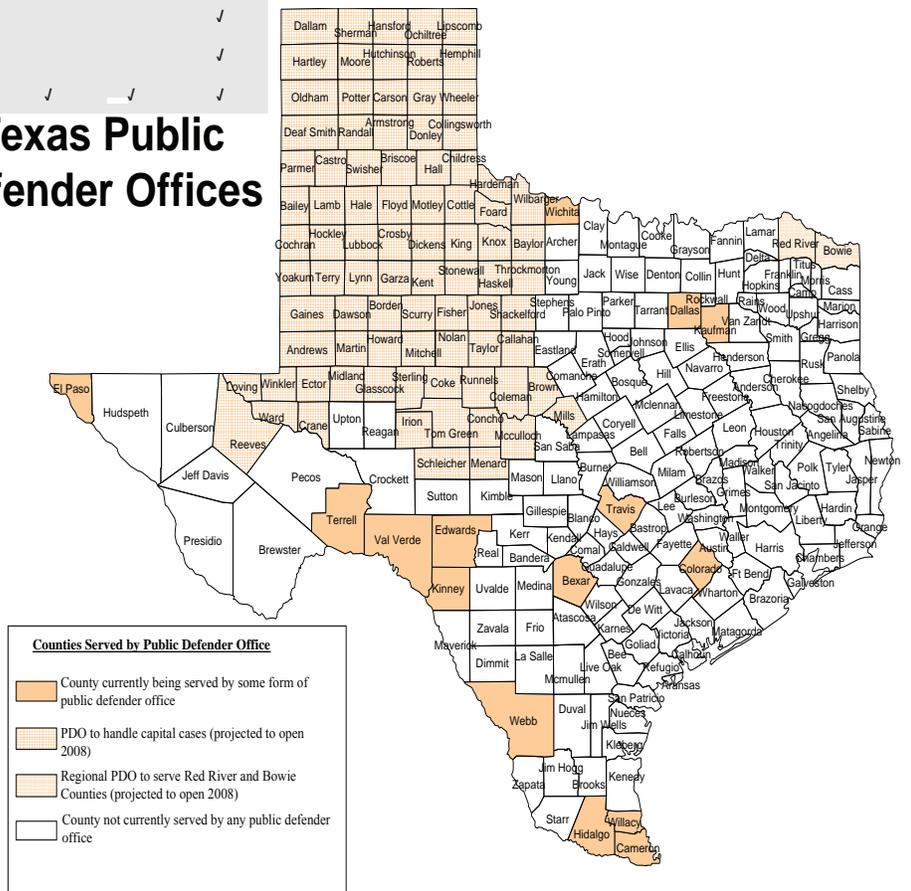
provide representation in some or all of the indigent cases in the jurisdiction.

- The *public defender model* involves a public or private non-profit organization with full or part-time salaried staff attorneys and support personnel.

The vast majority of Texas counties use assigned counsel as the primary service delivery method. But the number of individual and regional public defenders is growing in Texas, as shown in Figure 1.1 below.<sup>7</sup>

Figure 1.1	Year Operations Began	Capital Trial	Felony Trial	Misdemeanor Trial	Juvenile Trial	Mental Health	Appellate
Bexar Regional	2005					✓	✓
Bowie Regional	2008		✓	✓	✓		✓
Cameron	1999				✓		
Colorado	1987	✓	✓	✓	✓		
Dallas	1983	✓	✓	✓	✓	✓	✓
El Paso	1987	✓	✓	✓	✓	✓	✓
Hidalgo	2006			✓			
Kaufman	2007		✓	✓			
Lubbock Regional	2008	✓					
Travis	Juvenile 1971 Mental Health 2007				✓	✓	
Val Verde Regional	2006	✓	✓	✓	✓	✓	✓
Webb	1988	✓	✓	✓			✓
Wichita	Late 1980's	✓	✓	✓			✓
Willacy	2007	✓	✓	✓	✓	✓	✓

## Texas Public Defender Offices



# Texas Fair Defense Act

The Texas Fair Defense Act of 2001 continues to change the indigent defense landscape across Texas. The Act is still criticized for the increased costs, but its efficacy and value are now more widely accepted. County indigent defense costs increased in the wake of the Act from approximately \$91 million in FY 2001 to nearly \$161 million in FY 2007. However, state funds have offset a significant share of the cost increase, and state funding has increased every biennium. Also, many local officials acknowledge that new practices under the Fair Defense Act have promoted efficiency in the administration of criminal justice, notably by saving jail costs. The Fair Defense Act contains six basic requirements:

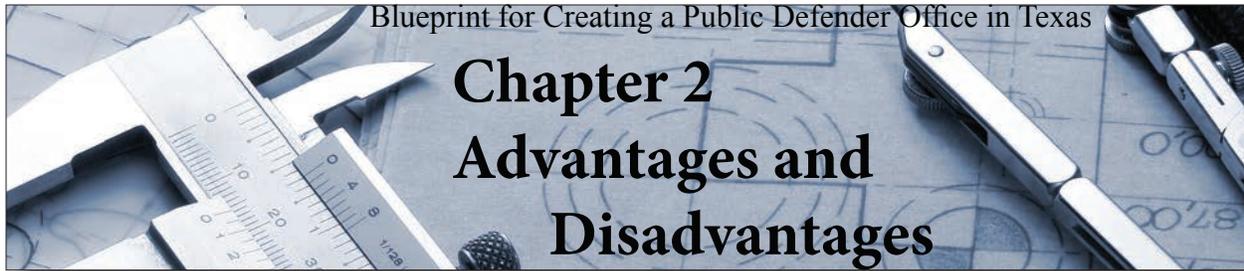
1. Conduct prompt magistration proceedings:
  - Inform and explain right to counsel to accused;
  - Provide reasonable assistance to accused in completing necessary forms to request counsel;
  - Maintain magistrate processing records.
2. Determine indigence according to standard in local indigent defense plan.
3. Establish minimum attorney qualifications.
4. Appoint counsel promptly.
5. Institute a fair, neutral, and non-discriminatory attorney selection process.
6. Promulgate standard attorney fee schedule and payment process.

The Fair Defense Act also established the Task Force on Indigent Defense as a standing committee of the Texas Judicial Council with administrative support from the Office of Court Administration. The Task Force is charged with administering state grants to the counties for indigent defense services. It ensures compliance with the standards set out in the Fair Defense Act through fiscal and program monitoring. In addition, each county is required to submit its plan for delivering indigent defense services and its indigent defense expenditures. The Task Force publishes each plan and expenditure data on its website.

The Task Force promotes evidence based practices to develop the most proficient delivery of indigent defense services. For instance, publishing indigent defense plans for each county, as well as publishing the resulting data, serves to promote the promulgation of uniform indigent defense policies. The Task Force also funds various research projects regarding indigent defense policies, and conducts workshops for those responsible for delivering defense services. See Figure 1.2 for some of the online resources provided by the Task Force.

Figure 1.2: Online Resources

- Public Access to county expenditures and county plans
- Evidence for Feasibility of Public Defender Offices in Texas
- A Strategic Plan for Improving Texas Indigent Defense Criminal Justice Systems
- Discretionary Grant Request for Application
- Texas Administrative Code Standards for Grant Administration
- Uniform Grant Management Standards



Although the number is growing, public defenders serve in fewer than 10% of Texas counties (excluding the regional capital murder public defender serving the 7th and 9th judicial regions and the appellate defender serving the 4th Court of Appeals), and their work is often limited, i.e. to juvenile, appellate, or misdemeanor cases. Figure 1.1 contains summary information on each public defender in Texas.

While a scientific study has not been conducted to determine why more counties in Texas have not established PDOs a likely explanation based on Task Force experience is that change requires work and money. Officials have neither the time nor the resources needed to seriously explore the public defender option, even though many may wish to do so.

The Task Force regularly fields questions from court and county officials across the state including:

- What effect would a public defender have on the quality of criminal justice delivered?
- Would a public defender be as good, better, or worse than a privately assigned counsel?
- Would the local criminal defense bar support a PDO or rebel against the establishment of such an office?
- How much would a PDO cost?
- How would the cost of a PDO compare to current expenditures?
- What will be the long-term financial impact to the county?
- Would the judiciary utilize the PDO so that economies of scale can be realized?
- Does the county have the resources to adequately fund such an office?
- Why change if the current system appears to be functioning adequately?
- How much effort and time will be needed to obtain the local political buy-in to put in place an effective and efficient PDO?

Prior to the Fair Defense Act, local officials were left entirely to their own devices to address these questions and to fund such systems. No longer must local court and county officials work in isolation. Local officials may now turn to the Task Force and its staff to assist in answering these questions as well as the possibility of state financial assistance to fund such a program.

The Task Force has awarded numerous multi-year grants to counties who sought to create public defender offices, including Bexar, Bowie, Hidalgo, Kaufman, Lubbock, Travis, Val Verde, and Willacy Counties. Task Force staff and consultants have carefully studied PDOs that were created

in Texas prior to the Fair Defense Act. Details on all public defenders in the state and in other parts of the nation are included in Chapter Five. Part of the increased local interest in PDOs results from the fact that many indigent defense services in other state and federal courts throughout the United States are delivered through urban and rural public defenders.<sup>8</sup> These jurisdictions outside Texas have grappled with the same questions and concerns now facing Texas local court and county officials. Having examined all of the public defender information over the past six years, the Task Force can offer several important generalizations about PDOs, including what benefits may be gained by expanding the use of public defenders, and also what the pitfalls may be.

While public defenders are by no means the instant solution to any budget or quality difficulties that a county has with its indigent defense system, when carefully implemented in a PDO, they may prove to be the most effective use of limited resources for indigent defense.

## Advantages of Switching to a Public Defender

State and local governments choose public defenders for a mix of three basic reasons: to be more cost-effective, to improve the reliability of indigent defense services, and to create an institutional resource that is valuable to the bench, the bar, county officials, and the community.

### *Cost*

When considering cost advantages, officials must recognize that the choice of appointment method, whether public defender or assigned counsel or contract counsel, is only one of many factors that affect cost. The factor that affects cost the most is not the appointment method, but rather the number of cases in which counsel is appointed and how much is charged per case. Thus, of course, large urban counties spend more on indigent defense than do small rural counties. Historical practice in many Texas counties has been that counsel is rarely appointed in misdemeanor cases, which always vastly outnumber the felony cases in which counsel are appointed. To the extent that the Fair Defense Act makes clear that counsel will have to be appointed for indigent defendants in all Class A and B misdemeanor cases<sup>9</sup>, this will increase indigent defense costs regardless of whether those services are provided by a public defender or by assigned counsel. These kinds of cost increases do not result from selection of the public defender option. To the contrary, inevitable cost increases such as these may best be minimized by use of the public defender option.

Public defenders can provide comparable quality legal services at less cost than any other indigent defense delivery method. While individual private attorneys are certainly capable of performing the same or better quality work as public defenders, they ordinarily cost more to do so. Public defenders cost less to operate because of the same basic economic factors that lead most attorneys to work in law firms rather than operate individual offices, and the same factors which enable prosecutor offices to operate more efficiently as a cohesive unit.

## *1. Economies of Scale*

Consider a small public defender office consisting of five attorneys. These attorneys share an office in or near the courthouse, which eliminates inefficient travel expenses. They also share support staff who quickly gain experience in working on specific types of cases. They divide their work on cases so that the work done by each attorney best matches that attorney's experience and abilities. Over time, the staff of a PDO learns to efficiently provide quality indigent defense services, to systematically train and supervise newer attorneys and staff, to implement new technology that improves quality and efficiency, and to share information and skills among more experienced attorneys and staff. They develop model forms, pleadings, and briefs that can be shared and reused by other attorneys.

By contrast, if these same five attorneys worked on the same cases as individual private attorneys, the county would have to fund part of the overhead of five smaller offices. Also, the individual attorneys would not reap the benefits of division of labor, as each attorney must handle every type of case to which he is appointed. Further, should a private attorney build up a retained practice and stop accepting indigent defense cases, all benefit of institutional knowledge regarding how to efficiently perform this work is lost. Thus, counties that primarily rely on private attorneys under an appointment system expend a lot of resources paying new attorneys to reinvent the same wheel time and time again.

## *2. Institutionalization*

Beyond economies of scale, the institutional nature of public defender offices itself can save money. A simple example is that public defenders can seek grants from the federal and Texas governments, legal organizations, and private foundations, grants that are not available to private assigned counsel. Public defenders are also much more likely to attract free or low-cost assistance from law students, paralegal students, and retiree volunteers. Another critical institutional cost advantage of public defenders is that they reliably help find efficiencies in each county's criminal justice process. Over time, officials who establish PDOs usually choose to explore a range of new cost-saving measures, including evaluation of incarceration alternatives for non-violent misdemeanor defendants, periodic case review of jailed defendants, payments by partially indigent defendants, and indigence verifications. Defense counsel may be assigned an appropriate role in implementing these ideas, and the standardization that is available through public defenders makes them the most reliable and cost-effective choice for doing so.<sup>10</sup> Public defenders often present judges and county officials with new ideas for promoting efficiency throughout the criminal justice system. For example, public defenders may make attorneys dependably available at the time that they are most needed in court, whether on the court's schedule or whenever a need for emergency coverage arises (e.g., an unrepresented indigent defendant walks into court on a warrant). Public defenders may also staff a full docket, such as arraignments, as opposed to multiple private attorneys who are more likely to have conflicting schedules, which can lead to greater court efficiency.

### *3. Decreased Administrative Costs*

Public defenders save administrative time for judges, numerous other court personnel, and the county auditor. For example, having a public defender dramatically reduces the number of decisions judges have to make about attorney appointments, training and experience qualifications, caseload management, and fee vouchers. It reduces the time court personnel have to spend notifying individual attorneys of their appointment, following up on attorneys who fail to appear, and dealing with attorney scheduling conflicts. The number of individual checks that must be prepared and tracked by the county auditor is reduced. This translates into cost savings for the county.

### *4. Budget Predictability*

Public defenders can improve the dependability and efficiency of indigent defense budgeting. Judges and commissioners can focus once annually on the public defender budget rather than returning to the subject each time a case or group of cases is concluded. The public defender may be required to report all information that judges and commissioners believe is necessary to decide upon a budget, and that information can be explored in detail as the matter is decided once each year. Public defender budgeting becomes easier over time as a performance and cost history develops, and the matters to be decided concern adjustments to an existing system.

A study regarding the feasibility of a public defender system was conducted in 2006 by the Task Force on Indigent Defense, and the Public Policy Research Institute at Texas A&M University (PPRI), which may be viewed at [http://www.courts.state.tx.us/tfid/pdf/PD%20Feasibility\\_Final.pdf](http://www.courts.state.tx.us/tfid/pdf/PD%20Feasibility_Final.pdf). This study noted that with the economies of scale and institutional advantages of a public defender office taken into consideration, workload in a PDO should be able to fluctuate considerably without causing tremendous shifts in cost. Obviously, such stability is beneficial to a county which can not predict caseloads in a given year. In fact, the study found that when the number of misdemeanor cases rose 23 percent between 2003 and 2004, associated public defender attorney costs went up only 7 percent. Similarly, a 14 percent decline in cases in 2005 resulted in a four percent budgetary response.

The PPRI study also reflects the cost saving qualities of a PDO. According to the study, in 2005, misdemeanor cases handled by PDO in the state of Texas were on average \$35 cheaper than misdemeanor cases handled by an appointed private counsel. Similarly, felony cases were on average \$38 cheaper. Such savings could save millions of dollars across the state in spending on indigent defense. It should be noted that the difference in average cost per case between a PDO and an assigned counsel system has been dropping over the last three years. However, the narrowing of the cost gap may be attributed to counties improving indigent defense systems in the wake of requirements and standards stated in the Fair Defense Act. Another study by the Texas Comptroller concluded that El Paso's public defender was more cost effective than assigned counsel, and recommended expansion of public defender offices in Texas.<sup>11</sup>

## *5. Reduced Jail Populations*

Public defender offices are often able to make significant impacts on pretrial misdemeanor jail populations. By having strong communication links with the jail and respective inmates, the public defender can identify persons needing bond reduction hearings and can identify persons awaiting case filings. The experience of Hidalgo County is illustrative of the sort of savings that a county may see as a result of opening a PDO. The office has placed a special emphasis on removing case filing and disposition road blocks. If an arrestee has been in jail for six days without a case filing, the public defender calls to find out if the offense report has been handed over to the prosecution. This extra follow-up helps to speed the average time from arrest to disposition for jailed clients from 15.1 days for private assigned counsel to 11.0 days for the public defender. These extra four days of incarceration would otherwise be paid at the county's expense.<sup>12</sup> These efforts by the public defender have reduced the Hidalgo pretrial misdemeanor jail population from an average of 288 to an average of 176. Kaufman County has had a similar experience with reducing the local pretrial misdemeanor jail population and has cut this population from an average of 40 to an average of 30.

<sup>13</sup>

Total incarcerated jail populations may be reduced in addition to the pretrial misdemeanor population. The Kaufman County Public Defender was able to dispose of cases at a much faster rate than assigned counsel and has reduced the local jail population from an average of 306 to an average of 245. The Val Verde Regional Public Defender has been able to make its mark on the Val Verde County jail population by cutting the number of inmates from an average of 78 to an average of 61.<sup>14</sup> The sheriff attributes most of that decrease to the operational efficiencies brought by the new public defender system. Public defenders are often able to dispose of cases faster than the private bar by having an active presence at the jail. Quick disposition of incarcerated persons' cases then directly lowers the local jail population. See chapter 5 for analysis of the effects on the Hidalgo, Kaufman, and Val Verde jail populations from the presence of a public defender office.

### *Quality*

An adequately funded public defender system should result in the same or better quality representation, better dependability, and less cost for the same scope of indigent defense representation. This improvement results from the economies of scale and institutional nature of public defender institutions, not because public defenders are better attorneys than private assigned counsel.

Individual private attorneys may be more or less competent and committed than individual public defenders. Further, the average skill level of indigent defense counsel under either appointment method will vary from time to time and place to place. However, the performance of private attorneys is more difficult to assess, control, and maintain. Even if the appointed caseloads of private assigned counsel could be reliably tracked, these lawyers also have a retained caseload that is even more difficult, if not impossible, to measure. High caseloads are inextricably linked to poor performance, so inability to accurately track caseloads of private counsel compromises the ability to objectively gauge quality. One of the main advantages of public defenders is that their caseloads are readily known, and it is much easier to oversee the quality of each attorney's work.

Public defenders provide judges with a single point of contact for any quality issues that arise. The chief public defender has direct supervisory authority over each public defender. If a judge has questions about whether a public defender has the necessary skills to adequately represent a client, for example, the judge can simply contact regarding these concerns and ask the chief public defender to address the problem.

Public defender offices also offer important quality controls that assigned counsel and contract programs do not have, including office policies, in house training, and supervision. These three key tools assure officials that decisions about how to perform the work of indigent defense are deliberately considered and refined over time, effectively communicated to staff, and properly implemented by the office. Thus, when a new legal standard is handed down by courts or by the legislature, it is more likely to be promptly and accurately applied by a team of criminal law specialists than by a cross-section of individual private attorneys who practice criminal law with varying levels of frequency and ability.

A critical quality advantage of PDOs is that their caseload volume usually enables them to hire the necessary number of full-time investigators and social workers. The work of these non-attorney professionals is often as essential to the results of criminal cases as is the work of the attorneys. Yet individual private lawyers often lack the caseload volume that would enable them to hire investigators and other professionals in every necessary instance. The PPRI study referenced above concludes that average investigation expenditures are more than two times higher per case for felony public defender cases. This shows that public defenders have the capacity to put resources where they are most needed in each case, whether in investigation or in advocacy. Skeptics who wonder whether criminals deserve the help of investigators to escape responsibility must consider that prosecutors rely heavily on a well-trained and funded police force to present their cases in court. Also, if an investigator can find a serious flaw in a criminal case, public money will not be wasted in pursuing a bad case, and public safety may be aided by timely focusing police resources on a new and more promising target.

Finally, Public Defender offices allow counties to maintain better and more accurate metrics of indigent defense, such as knowing the precise number of cases assigned to each attorney and knowing how much time each client has spent in jail.

### *Institutional Resource*

Particularly at the outset, public defenders may be perceived as a threat to the private criminal defense bar. This perception may even present an insurmountable barrier to creation of a public defender, as discussed below. Candid, complete discussions with members of the organized or informal criminal defense bar are essential to the success of any public defender proposal. These discussions should include the concrete benefits that public defenders offer to the private criminal defense bar, and to the overall quality of criminal justice in the community.

Existing Texas public defenders and local bar associations describe the important benefits that become available when the indigent defense function is institutionalized in a public defender. PDOs provide new attorneys a place to gain the mentoring and experience needed before joining or beginning a private practice. They develop and make available to the private bar forms, pleadings, and substantive briefs. Public defenders often make available free CLE to members of the private bar. They consult with the private bar on special issues as they arise in cases, even to the point of second-chairing complex trials. They are reliable sources of up-to-date courthouse information. Generally, the institutional knowledge that is gained by a PDO is available to private appointed counsel, which improves the cost efficiency of private counsel and the quality of justice. For judges, commissioners, and the community at large, a PDO provides a unique institutional voice for indigent defense that is comparable to the necessary voice that a district attorney provides for the prosecution. Through the public defender, judges, commissioners, and the community may learn of specific facts that they seek, of criminal justice trends and their impact on various members of the community, of ideas for procedural improvements, and of the many ways in which the criminal justice system interacts with other government functions.

## Disadvantages of Switching to a Public Defender

Public defenders may be cost-effective, but there are relatively few of them in Texas. This is an important fact, particularly considering the budget pressure that counties face in many areas including indigent defense. Three likely explanations are: 1) natural resistance to change; 2) start-up costs; and 3) absence of the caseloads large enough to make a public defender cost effective.

### *Resistance to Change*

Satisfaction with the status quo can be a powerful and perfectly appropriate reason for declining to invest the work that is necessary to switch to a public defender. In evaluating the status quo, two considerations are paramount: what are the reasons for satisfaction with the status quo, and what options (short of switching to a public defender) are available to address any concerns with the current system?

If, upon examining a county's actual indigent defense practices, the judges and commissioners are satisfied with the quality and cost of indigent defense in their county, there is little reason to consider a public defender at this time. Minor concerns about quality may be addressed by upgrading the attorney qualifications in the county's indigent defense plan, closer screening of attorney qualifications by judges, and placing reporting requirements upon appointed counsel. Options for addressing minor cost concerns without a public defender are limited and largely untested, but they include creating a pretrial services office or designate other staff to conduct indigence verifications, bond evaluations, and partial-indigence copayments. Another option may be to expand the use of misdemeanor pre-trial diversion programs.

The impact that a public defender would have on the work currently made available to the private bar merits candid discussion in every county. Officials may reasonably conclude that the demonstrated

quality of service currently provided by the private bar justifies increased costs when compared to cost estimates for a public defender. Before doing so, however, an attempt should be made to gauge the realistic share of any type of case that would be assigned to the public defender, the extent to which members of the private bar would seek employment in the PDO, and the extent to which creation of a public defender would provide an opportunity for officials to exclude the most unproductive and least competent attorneys from representing indigent defendants.<sup>15</sup> Only after exploring these numbers can the actual impact of a public defender on legitimate indigent defense providers be estimated.

## *Start-up Costs*

Creating a public defender requires a significant one-time start-up investment to cover costs for planning the operation of the office, conducting a bidding and hiring process, purchasing furniture and electronic equipment, and preparing office space. Unavailability of start-up resources may pose an absolute barrier to counties that would otherwise benefit from a public defender. Grant resources have been available from the Task Force to assist some counties with necessary public defender start-up costs. The Task Force's multi-year public defender grants have historically been designed to more than offset public defender start-up costs, and ensure that counties do not incur financial risk by beginning a PDO. To learn more about the Task Force Grant Process see Fig. 2.1 below.

Figure 2.1: Online Resources

- Discretionary Grant Request for Application
- Texas Administrative Code Standards for Grant Administration
- Uniform Grant Management Standards

## *Small Caseloads*

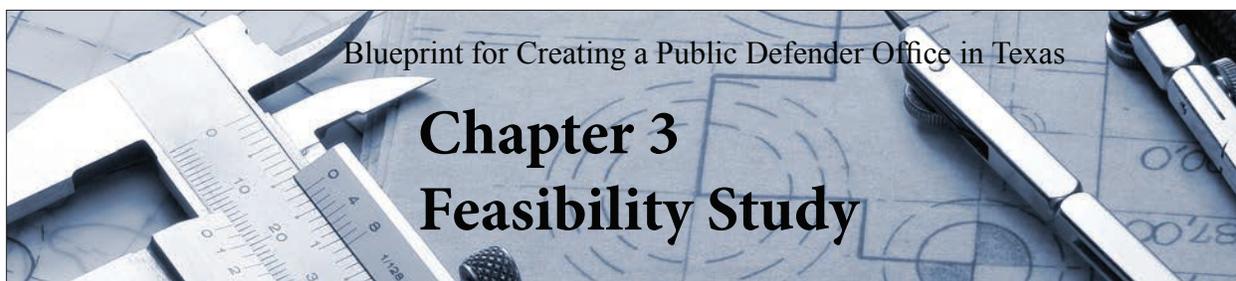
A public defender may not cost less to operate than an assigned counsel system when caseloads are small. This is because the economies of scale described above do not apply to public defenders with small caseloads. The other cost savings available from public defender offices--- institutional savings (particularly jail costs), grant opportunities, and decreased county administrative expenses--may still make small PDOs cost-effective, even without economies of scale. This is why each jurisdiction's cost factors deserve individual examination.

There are two primary reasons for small public defender caseloads. First, many rural counties do not have enough criminal cases to support a PDO. Roughly 1,000 misdemeanors and 200 non-capital felonies per year are the minimum number of cases needed to realize economies of scale in a three or four-lawyer PDO. Over half of Texas counties lack this case volume, but widespread and carefully planned use of regional public defenders could enable almost all counties to experience the cost, quality, and institutional advantages of public defenders. This is why the Fair Defense Act specifically allows smaller counties to join together in operating a regional PDO that serves two or more counties.

The counties that may benefit the most from a regional solution are those where too few qualified lawyers are available to represent indigent defendants. Local officials are most likely to know which of their neighbors may consider joining in a regional effort, but local community leaders, including local bar associations and providers of free civil legal services to indigent citizens, may also have contacts that can help groups of counties explore regional solutions. Two regional public defenders have been created to offer general services in misdemeanor and felony cases, one in Val Verde County that also serves the three surrounding counties of Terrell, Kinney, and Edwards, and one in Bowie County that also serves Red River. The Val Verde PDO is Texas's first public defender to be operated by a private non-profit corporation, Texas RioGrande Legal Aid (TRLA at [www.trla.org](http://www.trla.org)). TRLA also operates a public defender program for Willacy County in the Lower Rio Grande Valley, where it has experimented with the use of its civil legal services staff with criminal law experience to cover a full range of cases, from misdemeanors to capital felonies, in a small county with a limited caseload. That model may prove to be an alternative to a regional defender program where suitable partnering counties are not available.

A regional option that has proved promising elsewhere in the nation but has not yet been implemented in Texas is that of an urban public defender serving surrounding rural counties. Not only would urban-rural regional public defenders offer cost-effective representation, they would provide a level of stability and experience that would enable smaller jurisdictions to transition to a regional public defender with a simple “turnkey” decision.

The second reason for small caseloads applies equally to urban and rural jurisdictions. Specialized public defenders may be created to address special needs identified in a particular area, even when caseloads are small. For example, a public defender office operates in Bexar County to exclusively handle appeals from indigent defendants and was expanded in 2007 to cover the 31 other counties served by the Fourth Court of Appeals. Additionally, a public defender office operates in Travis County exclusively to handle misdemeanor criminal cases against indigent defendants with severe mental disabilities, specialized juvenile PDOs operate in Cameron and Travis Counties, and a regional PDO has been created in Lubbock County to handle capital cases that arise throughout an 85-county area in the Panhandle and West Texas. These cases are often more labor intensive than ordinary misdemeanor or felony cases; they also require special qualifications for defense counsel, and special teams of support staff, such as investigators and social workers. Specialized public defenders are created to improve a county's ability to provide specialized services when other appointment methods have not attracted an adequate number of qualified counsel. Unmet needs often drive the decision to create a specialized public defender, as much as the desire to achieve economies of scale. Many officials have explained that a specialized public defender is a good way for leaders throughout a county to become familiar with a PDO, and consider expansions based on experience with a smaller office.



## Should you explore creating a Public Defender in your County?

A public defender should not be forced on judges and commissioners in a county, but instead must be the product of consensus on the direction that indigent defense should take in the jurisdiction. The first step is to discern whether a majority of judges and county commissioners are at least open to the idea. Their openness will likely depend on the difference in cost between a public defender and the current method of providing counsel, as well as any expected changes in the quality of counsel provided.

So anyone who wants to explore the public defender option may begin by preparing an estimate of the cost difference between a public defender and the alternative selection method, which is usually the existing selection method. This difference is expressed on a “cost-per-case” basis that is calculated by subtracting the current cost per case (typically available from the county auditor) from the public defender cost per case (entire budget estimate divided by the number of cases to be assigned to the public defender). This work can ordinarily be completed in a few hours. The Task Force has attached a feasibility worksheet for this purpose as Appendix B, and its staff are always available to help any local official prepare the calculation.

The calculation can be prepared multiple times for a variety of different possible public defender configurations (e.g. public defender representation in 25% of all non-capital cases, 50% of misdemeanors, or 75% of all trials and appeals). This exercise may provide important information about the optimum size and scope of a public defender office in a particular area.

The Task Force offers a few critical observations about the calculation:

The calculation only makes sense, and can only be useful, if it compares apples to apples, i.e. the cost of the same number, type, and quality of indigent defense services under a public defender as compared to another appointment method. Thus, indigent defense costs in 100 felony cases cannot usefully be compared to indigent defense costs in 100 misdemeanor cases. Similarly, if a public defender is expected to handle five times the number of misdemeanor cases currently paid by the county, the public defender may not usefully be expected to do so within the county’s existing misdemeanor defense budget.

To calculate the existing cost per case, do not forget to include expert and investigator costs, which county auditors should track in a line item that is separate from attorney costs. Also, existing costs per case are most reliable if they are based on a large pool of cases that are concluded over the two most recent years.

Public defender staffing/caseload numbers are necessary to perform the calculation. The commonly referred to National Advisory Commission maximum caseload standards are 150 felony cases per public defender attorney per year or 400 misdemeanor cases per public defender attorney. One investigator and one support staff for the first three attorneys, and one more for every five more attorneys, are also common numbers.

Salaries for public defenders are necessary to perform the calculation, and these vary by area. Use any salary guide that you find realistic for your county, such as those for county employees including prosecutors with like responsibilities.

The quality of public defender staff is the most important predictor of the office's efficacy. This is why special care is required in recruiting each chief public defender. It is also why salaries of the chief and staff should be commensurate with those of their counterparts in the prosecutor's office. In fact, a goal of any public defender should be to not only make the salaries commensurate, but the workloads, resources and support staff as well. In fact the American Bar Association lists this parity of resources as one of its Ten Principles of a Public Defender System, which may be viewed at: <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf>

Once the cost study is complete, it should be discussed with local leaders as part of a broader discussion of whether to invest more effort in exploring the public defender option. As this examination proceeds, the cost figures may be refined either to reduce costs or to expand coverage or quality, as each individual circumstance indicates is appropriate. The initial cost figures are only necessary to begin the discussion.

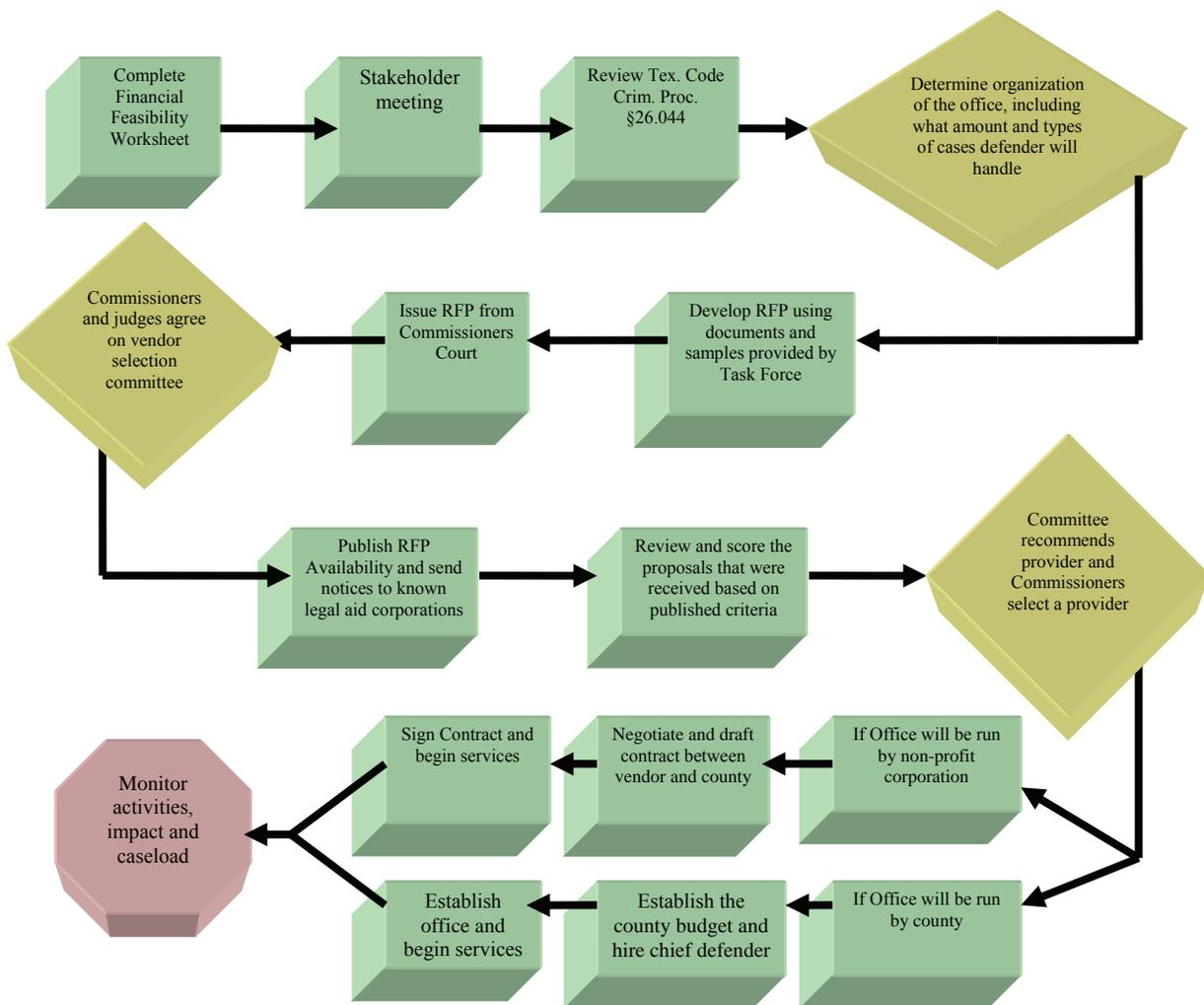
Blueprint for Creating a Public Defender Office in Texas

# Chapter 4

## How to Create a Public Defender

Once officials decide to create a public defender office, the following flowchart shows the steps necessary to do so. Task Force staff will also be available to offer support and guidance along the way.

Figure 4.1: Flowchart for Creating a Public Defender



## *Stakeholder Meeting*

While decision-making authority on all features of a public defender plan rests exclusively with judges and commissioners, the creation of a PDO has a broad impact on the functioning of the overall criminal justice system. Thus, it is recommended that after the feasibility study, the county hold a meeting with all affected stakeholders. These stakeholders may include defense attorneys, prosecutors, court administrators and coordinators, indigent defense coordinators, district and county clerks, pre-trial services officers, the county auditor, the county treasurer, heads of law enforcement agencies, magistrates, and local providers of civil legal services to the poor. The object of involving all of these stakeholders is not to find consensus on every issue that needs to be decided, but to provide a forum to be heard so that they may make constructive suggestions and criticisms that will improve the end product. Also, by participating in the planning process all stakeholders may gain a better understanding of how a public defender may impact the efficiency and effectiveness of their work.

In addition to stakeholders, you may wish to involve others who have gained expertise on public defender issues. These individuals include the federal public defender in your jurisdiction, the chief public defenders from Texas, Task Force staff, the Texas Criminal Defense Lawyers Association, Texas Association of Counties, and the County Judges and Commissioners Association of Texas, Conference of Urban Counties, and various public interest groups or other associations in Texas and throughout the nation who consult with jurisdictions on public defender implementation issues.<sup>16</sup>

From this initial meeting, a core group of interested individuals will emerge, who may meet as one group or by committees once or more to assemble a plan that will serve as the basis for a proposal.

## *Review Texas Public Defender Statute and Other Resources*

Texas has a single statute that governs public defenders: Texas Code of Criminal Procedure Art. 26.044. A working knowledge of this statute is necessary for all members of a public defender planning team. Appendix A provides the text of the statute.

A number of national standards and guidelines have been developed over the past 15 years to assist in establishing indigent defense organizations and in evaluating the quality of services provided. There are national and state standards and guidelines in the areas of attorney performance, attorney eligibility, caseloads, conflict of interest, indigency screening, and administration of indigent defense systems. When developing a public defender system from scratch, these standards and guidelines can serve as useful reference resources not only for planning the PDO, but also for evaluating the adequacy of other indigent defense delivery methods used in your jurisdiction. While these standards and guidelines are not binding on any local program, they can serve as a benchmark and facilitate compliance with the Fair Defense Act.<sup>17</sup> See Figure 4.2 below for helpful online resources.

Figure 4.2: Online Resources

- ABA Ten Principles of a Public Defender System
- National Advisory Commission on Criminal Justice Standards and Goals
- Information from counties and county indigent defense plans

## *Determine Organization of the Public Defender Office*

Next, the group must decide on the organization of the public defender office and its role in the county. The issues described below should provide a framework for the office.

- ***What type and number of cases will be assigned to the public defender?***

The core decision to be made in creating a public defender is what type and number of cases it will be assigned. The Fair Defense Act allows a public defender to be assigned any combination of any types of cases, including cases assigned to a particular court or courts, appeals, felonies, state jail felonies, capital felonies, sex offenses, murders, Class A and B misdemeanors, DWI's, juvenile delinquency cases, multiple-defendant cases, and cases involving a defendant with a severe mental disability. See Figure 1.1 for a chart of existing public defender offices and what types of cases each office handles and when the office was formed.

Case numbers assigned to the public defender can realistically range from about 50 percent to 80 percent of the county's caseload in each case type selected for public defender assignment.<sup>18</sup> Those counties who choose to run more specialized offices (such as an appellate or juvenile public defender) will likely be able to handle a larger percentage of cases.

Begin the planning process for a public defender office by selecting case types and numbers that result in a modest-sized office for your jurisdiction. Presumably all rural offices would be modest. In urban areas, a public defender consisting of roughly ten to fifteen attorneys would enable you to compare the cost and performance of a public defender to your alternative system over time. Gradual expansion of the public defender can be accomplished as cost and performance justify it, and as the office overcomes the challenges of start-up, initial recruiting, standardization of its indigent defense practices, and acceptance and respect in your community.

Below are some common questions that should be considered regarding the type and number of cases being assigned to the public defender:

- What case types and numbers are most supported by the district judges?
- What percentage of cases will be assigned the public defender?<sup>19</sup>
- How will conflict cases be handled?
- If your county does not have sufficient caseload to warrant the establishment of a public defender office, are there contiguous counties where efforts and resources could be combined to create regional PDO?

After deciding what type and number of cases you plan to assign to the public defender, consider specifying what other responsibilities you want to place with the public defender, including administrative duties like collecting, reporting and publishing facts and policies concerning office operations. You may also wish to consider having the public defender determine indigence, although some believe this creates at least the appearance of a conflict of interest.

- *What staff will be necessary to cover the public defender's caseload?*

Next, consider what staff is realistically necessary to do the work that you expect the public defender to perform. The size and type of staff that is necessary can be gauged by considering the experiences of other jurisdictions.

Throughout the United States, state and county public defender programs have developed caseload and workload standards for their public defender attorneys to assure that they are working at maximum capacity but are not undertaking a workload that jeopardizes their ability to provide adequate representation to each of their clients. In developing caseload standards, reference should be made to this document and other national standards developed by the National Advisory Commission, the American Bar Association and the National Legal Aid and Defender Association.

Most of caseload standards adopted by individual jurisdictions are similar to the caseload limits developed by the National Advisory Commission in 1973:

- 150 Felonies per attorney per year (excluding capital cases), or
- 400 Misdemeanor cases (excluding traffic) per attorney per year, or
- 200 Juvenile cases per attorney per year, or
- 200 Civil Commitment Cases per attorney per year, or
- 25 Appeals per attorney per year.

The above standards address the maximum number of cases that a full time attorney should handle in a 12 month period. So at any one point in the year, a public defender's open caseload should include fewer cases than the annual numbers set out in the standards. The standards are disjunctive, thus, if a public defender is assigned cases from more than one category, the percent of the maximum caseload for each category should be assessed and the combined total should not exceed 100 percent.

At this point a county may seek funding from the Task Force. Please see the Task Force website or call staff to explore this option.

### *Selecting a Provider*

Texas law affords local officials complete freedom in choosing whether to create a public defender "in house" as a new county agency, or by contracting with a non-profit legal services corporation. Texas law simply requires counties to consider bids from non-profits that wish to provide public defender services. So far most counties have created public defenders as new county departments. Each type of model has advantages.

A public defender office operated as a county department eliminates the need to negotiate a contract for services with a non-profit corporation. Such an office may also enjoy more immediate access to

the other county departments and officials and to be considered part of the local criminal justice system. County departments would also be on par with the prosecutor's offices in the county when it comes to budget review, rather than being treated as a contract service provider.

Non-profit corporations also offer possible advantages, such as turnkey operation by offering counties a complete solution to its requirements through recruitment and hiring of staff, locating and furnishing suitable office space, providing caseload and reporting software, furnishing efficient technology, established management, personnel and accounting systems, and broad institutional knowledge. An established non-profit legal services provider may also be able to initiate operations more quickly than the county could establish a new department, for (TRLA began operations in Val Verde County 30 days after signing a defender contract and in only 5 days in Willacy County). Depending on its structure, a non-profit may agree to coordinate public defender and existing civil legal services in a way that promotes efficient resolution of criminal cases, for example, by ensuring that people with serious mental illness have access to treatment options outside jail. Non-profits may also have more reliable and extensive recruiting networks that are not available to counties.

While it is not uncommon for non-profit organizations to provide public defender services in other parts of the country, so far Texas RioGrande Legal Aid ("TRLA"), which is the principal provider of civil legal services in 68 counties in southwest Texas, is the only non-profit in Texas that has done so in Texas. TRLA serves Willacy County under one contract, and Val Verde, Edwards, Terrell, and Kinney counties under another contract. TRLA staff is available to answer questions about its operations and to provide the documents and software that it uses to operate its public defender offices. See [www.trla.org](http://www.trla.org).

When selecting a provider, the commissioners court must follow the Texas Code of Criminal Procedure article 26.044. First, a Request for Proposal must be issued by the commissioners court. This RFP should be published and distributed to known legal aid corporations who may be interested in handling the office. This process must be completed regardless of whether the stakeholders and the commissioners court favor an office operated by the county.

Providers should consult National Legal Aid and Defender Association guidelines prior to formulating their proposal. Any proposal should include at a minimum the following:

- A budget for the Office (with special care not to underestimate)
- A description of personnel positions, including chief defender
- Caseloads for each attorney
- Training provisions
- Anticipated overhead
- Policies regarding the use of investigators and expert witnesses

Once all proposals are submitted, the selection committee must review and make a recommendation to the commissioners. The commissioners will then choose a provider.

### *Establishing the Office*

If the office is to be run by the county, the county must establish the budget for the office. Next, the County must hire a chief public defender. The chief should then hire staff for the office with guidance from the commissioners court.

If the office is to be run by a non-profit corporation, the county must first negotiate and draft the contract between the vendor and the county. The contract should include the caseload of the office, the cost of the office, and the method of funding. Once the contract is signed, the office may begin services.

Regardless of who runs the office, the county's indigent services plan must be amended to reflect the changes brought by the public defender office.

# Checklist: Actions Needed to Establish a Public Defender Office

The following checklist is designed to further assist the planning group in forming an action plan. This is by no means an exhaustive list. No doubt it will be expanded with use and experience. The Task Force is always available as a resource for counties, judges, and members of the defense bar seeking assistance in developing a public defender office. The items in the checklist are recommended to be part of any developmental process for a public defender in Texas.

## *Stakeholder Meeting*

- Consensus building begins with the commissioner's court, an interested judge or judges, or jointly, but enlarge the group to include attorneys practicing criminal law in the county or district, and the local elected prosecutor.
- Determine if there is general consensus to consider a public defender as a local alternative. If there is consensus then continue the process.

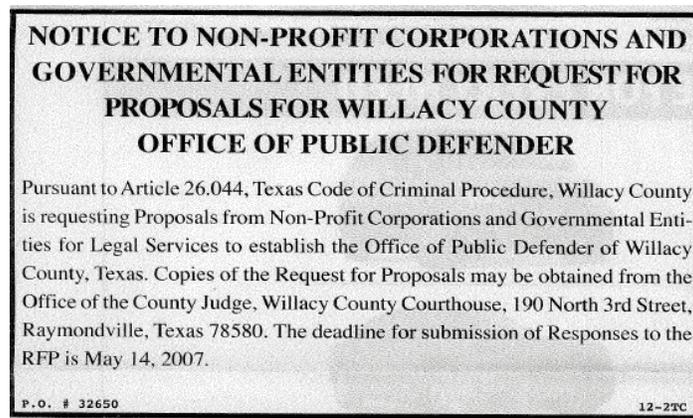
## *Organization of Defender Office*

- What type(s) of cases will be assigned to the public defender?
- In which courts will the public defender be required to appear?
- What will the duties of the public defender be?
- What is the case appointment mechanism?
- Using prior reports prepared for the Task Force and any other local records, determine how many cases of the type that will be handled by the public defender were disposed of in the previous three years.<sup>20</sup>
- Were attorneys appointed in those cases? If not, estimate how many cases will be eligible to be served by a public defender.
- What was the cost per case, and is this cost rising?
- Is the trend in filings increasing? If so, project the number of cases that will be filed in the first year the public defender will be in operation.

- Evaluate overhead, costs for assigned counsel in conflict cases and other litigation costs.
- Based on estimated caseloads, determine how many attorneys will be needed.
- Determine compensation of attorneys.
  - Parity with similarly qualified assistant district attorneys is a recommended benchmark.
  - Basis of compensation should be an objective standard of some kind.
- Determine job descriptions for other positions in the office
- Determine training program development and costs of the program
- Add the amount expended by the county for the type(s) of cases to be handled by the public defender and the related amount of the general grant from the Task Force for the last reporting year, and then compare the total with the draft budget for the public defender.
- Evaluate the cost effectiveness of creating a public defender program.
- Consider applying for grant funds from the Task Force for the purpose of starting a public defender program

### *Request for Proposals*

- Prepare a Request for Proposals
  - Run a Notice of Request for Proposals in locally circulated newspaper such as the one shown below
  - Request for Proposals should also be sent to any potential interested parties



Determine Whether Applicants are Eligible to Bid to Operate the Public Defender Office.

- government entity; or
- non-profit corporation organized under Texas law.

What a Proposal Must Contain

- a detailed budget for operation of the Public Defender Office for a specified two year period, including all salaries;
- a description of the responsibilities for each personnel position, including the position of Chief Public Defender;
- a detailed description of the policies and methods the applicant will use to ensure that defendants whom the PDO is appointed to represent receive good quality legal representation provided by qualified attorneys in a cost-effective manner;
- the maximum allowable caseloads for each attorney who will provide indigent defense services through the applicant;
- a description of all training that will be available to attorneys and other personnel employed by the applicant;
- a description of anticipated overhead costs for the PDO; and
- proposed policies regarding use of licensed investigators and expert witnesses.

Qualifications of the Proposed Chief Public Defender

- member of the State Bar of Texas;
- practiced law for at least three years;
- substantial experience in the practice of criminal law;
- will not engage in the private practice of criminal law outside service with the Public Defender Office, nor allow any employee to do so; and
- will not accept anything of value not authorized by law for providing indigent defense services, nor allow any employee to do so.

### *Selecting a Provider*

Should the public defender be a government entity or a non-profit corporation?

Should more than the minimum statutory chief public defender qualifications be adopted? If yes, what additional qualifications should the person possess?

- A specific and clearly defined history of experience.
- Attorney of record in a given number of cases?
- Board certified in criminal law?
- Administrative experience?
- Prior government experience?
- Budgetary experience?

Should the public defender be appointed to serve a term or serve at the pleasure of the commissioner's court, the courts, or some other entity?

- If a term, for how long?
- Method of removal?
- Grounds for removal

### *Establishing the Office*

If Office will be run by a non-profit corporation:

- Negotiate terms of contract
  - Caseload: What types and number of cases the office will accept
  - Price: What will the total annual cost of the program be
  - Payment Method: How will the moneys be distributed to the office
- draft a contract detailing the obligations of the county and the non-profit corporation which will be operating the PDO
- Sign contract and begin services

If Office will be run by county:

- Establish the county budget authority in line item of county budget
- Determine to whom the office will report
- Hire chief public defender
- Establish office and begin services

### *Amending the County Plan for Indigent Defense*

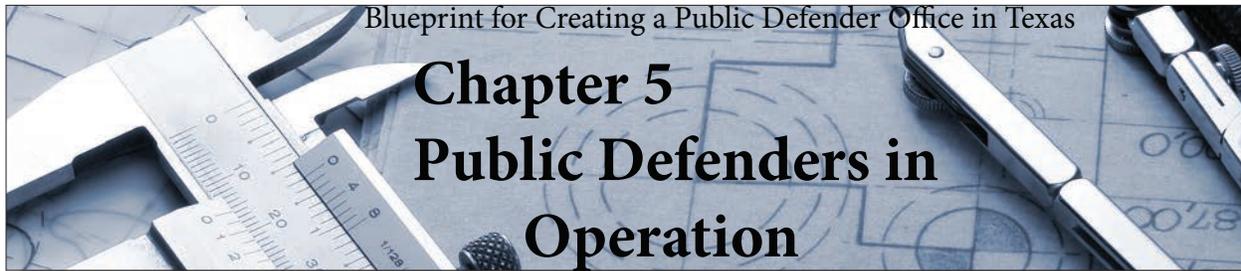
In order to comply with state law a county must reflect any changes to their indigent defense program in their county plans on record with the Task Force.

Does your plan supplement adequately reflect your new program?

### *Monitoring*

Develop standard procedures and methods for handling cases and training attorneys and see that these procedures and methods are followed.

Counties should also monitor the caseload of the office so that it does not become overloaded and ineffective.



Below is a brief summary of the public defender offices in Texas currently in operation as of this writing. Also included for reference are a few selected offices from around the country. For the Texas public defender offices, we have listed program overviews, highlights, as well as caseload and funding data for FY07. Please note that contact information for all Texas offices may be found on the Task Force website at: [www.courts.state.tx.us/tfid/pdoffices.asp](http://www.courts.state.tx.us/tfid/pdoffices.asp), or may be found on each individual office's website. For the out of state public defender offices, we have included program highlights and contact information. We have also included brief descriptions and online resources for other state systems in the region.

*Public Defender Offices in Texas*

**Bexar County** has an estimated population of 1,522,142 and a poverty rate of 20.14%. The appeals caseload for the county in FY07 was 168. The following chart shows a breakdown of how appealed cases were handled by the county.

	Cases Paid	Briefs Filed by Public Defender
Adult Appeals	150	126
Juvenile Appeals	18	14
Totals	168	140

The Bexar County Appellate Public Defender Office (APDO) through a grant from the Task Force on Indigent Defense opened in late 2005. The County saw the APDO as an answer to increasing costs and delays in the appellate system. The APDO was also seen as an opportunity to improve the quality of appellate briefs submitted on behalf of indigent defendants. Previously, the County had assigned all appellate cases to a handful of private attorneys. The APDO would help to relieve any appearance of impropriety in such a closed loop appointment system.

The APDO handles a caseload of approximately 150 cases per year. It is staffed by 4 attorneys, and 2 full-time support staff. In addition, the APDO has sponsored several clerks and interns from the local schools. The office is also supported by the local community.

The APDO caseload represents about 83% of indigent criminal and juvenile direct appeals. The remaining appeals are assigned to private attorneys that have met the required qualifications as outlined by their plan. Appointments to the APDO are made by the trial judge, but the Chief Public Defender determines which attorney in the office will handle an incoming case.

The APDO has implemented several policies designed to improve the quality of their work product. First, the office has established policy and procedural manuals in order to guide attorney procedures. The manuals lay out in detail work standards, including client contact, preparation of appellate briefs, and the scope of representation. The office has a training budget, and the plan requires that each attorney must have completed 10 hours of continuing legal education. In addition, the office asks that all attorneys in the office read a particular brief before it is submitted. Such practices have led to praise from the fourth court of appeals for the quality of the work being produced, and for the already evident reduction in delays on appellate cases.

The office has also implemented several policies to help control costs. The office benefits from the help of unpaid volunteers, clerks and interns from the local schools. The APDO's relationship with the county has also allowed the office to tap other free resources such as technical support and budget specialists. Such practices have allowed the office to get by on a limited budget.

The Chief Appellate Defender ensures that the caseload and workload are evenly spread throughout the office. Cases are evenly distributed amongst the attorneys. The APDO has regular meetings where caseloads may be adjusted according to the complexity of cases.

In 2007 the Task Force awarded Technical Assistance funds to Bexar County to expand the APDO to cover the entire 4th Court of Appeals region.

In March 2008 the office expanded further to include a new mental health unit staffed with two attorneys. The unit represents defendants with mental health issues charged with misdemeanor offenses and was created to staff the new mental health court started by the county with a grant from the Bureau of Justice Assistance. The public defender office was also expanded in March 2008 to add two attorneys who represent persons involuntarily detained pending civil commitment hearings because of behaviors alleged to constitute a danger to themselves or others based in serious mental illness. Previously, these functions were performed by appointment of ad litem attorneys from a rotating list of attorneys in private practice.

Bexar County Appellate Public Defender  
Heritage Plaza  
410 South Main Street, Suite 214  
San Antonio, TX 78204  
Website: <http://www.courts.state.tx.us/tfid/BexarPD.asp>

**Bowie and Red River Counties** Bowie County has an estimated population of 92,735 people and a poverty rate of 17.4%. Red River County has an estimated population of 13,944 and a poverty rate of 18.4%. These two counties joined together to create a regional public defender's office. The overall new cases added for the county in FY07 (prior to the establishment of the public defender) was 4504 cases. The following chart shows a breakdown of how these cases were handled by the two counties.

	Cases Added	Cases Paid
Felonies	1247	758
Misdemeanors	3194	829
Juvenile	63	197
Totals	4504	1784

The Bowie and Red River County Public Defender's Office (PDO) through a grant from the Task Force on Indigent Defense officially opened January 1, 2008. The staff of the PDO consists of the Chief Public Defender, six Assistant Public Defenders, two Administrative Assistants and one Investigator. The PDO has two offices, one located in Texarkana and another located in Clarksville.

The PDO represents indigent defendants who are charged with a felony or a misdemeanor punishable by confinement, both adults and juveniles. Daily jail visits are made by PDO staff to interview defendants appointed to the PDO. A letter is mailed to defendants who make bond before they can be interviewed. Through early contact and interviews the PDO ensures that indigent defendants are properly represented and afforded their constitutional rights.

Overall the PDO is providing competent and effective defense in an ethical, timely, and cost-efficient manner to indigent clients. Jail rosters are being reviewed and motions to reduce bond are being filed regularly. The PDO is also filing motions to dismiss charges, as well as waivers of grand jury indictment in cases where defendants express a desire to waive indictment and enter a plea of guilty.

Bowie/Red River County Public Defender  
 424 W. Broad Street  
 Texarkana, Texas 75501  
 Phone: (903) 794-2224

**Cameron County** has an estimated population of 380,992 and a poverty rate of 35.25%. The juvenile caseload for the county in FY07 was 2020 cases.

	Cases Added	Cases Paid	Cases Appointed to Public Defender*
Juvenile	812	2020	1941

**\*Note:** the number of cases paid exceeds the number of cases added in juvenile cases because many attorneys are appointed to represent youth at detention hearings where no petition (i.e. case) is ultimately filed by the prosecutor.

Cameron County established a juvenile public defender’s office (PDO) in 1999 in response to a number of challenges that the county was facing in providing counsel to indigent juvenile offenders. Previously, the county contracted with private attorneys to provide indigent juveniles with representation, but due to conflicts with the attorneys’ other clients and schedules, court appointments were often rescheduled. In addition, indigent clients were often shifted to different attorneys, hampering relationship-building and continuity of representation. The PDO currently employs one part-time administrative support staff, no investigators, and two full-time attorneys.

Through the PDO, clients are more likely to be represented in a timely manner by one attorney throughout the case. Through the dedication of the PDO attorneys, indigent juveniles are provided with fair and professional legal services. The PDO currently represents juvenile indigent defendants who are arrested for or charged with a felony or a misdemeanor punishable by confinement.

Cameron County Juvenile Public Defender  
 Post Office Box 1690  
 San Benito, TX 78566  
 Phone: (956) 399-3075

**Colorado County** has an estimated population of 20,935 people and a poverty rate of 20.07%. The overall indigent caseload for the county in FY07 was 190 cases. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	390	123	115
Misdemeanors	791	56	53
Juvenile	30	11	11
Totals	1211	190	179

Colorado County established a public defender’s office (PDO) in 1987 because local attorneys in the county were reluctant to handle cases through court appointments. The PDO currently represents

most indigent defendants, adult and juvenile, who are arrested for or charged with a felony or a misdemeanor punishable by confinement.

The PDO may not represent a client if there is a conflict of interest, insufficient resources, or other good cause. If a public defender is unavailable, the district or county court judge may appoint private counsel from an approved list who is in good standing with the State Bar of Texas and who has practiced in the area of criminal law for at least one year. An appointed attorney is required to make reasonable effort to contact the defendant for an interview in person or by phone.

The PDO currently employs one full-time administrator, no investigators and two part-time attorneys. Colorado County is unique in its use of part-time attorneys, which are no longer permitted under the Fair Defense Act. The PDO was established under a statute that has since been repealed; however the county is permitted by the Fair Defense Act to continue the existence and operation of the PDO under its original terms.

The Colorado County Public Defender strives to deliver their defense services in a prompt and timely manner in accordance with standards outlined in the Fair Defense Act. In the vast majority of cases, the defender will contact the defendant on the same day they were notified. To facilitate this meeting, the jail is very flexible in taking telephone calls from the public defender to jailed arrestees. Without the telephone arrangement with the jail, timely contact would be difficult as the public defenders each have residences about 100 miles from the jail. After appointment, counsel is to represent clients until final disposition of the case.

Colorado County Public Defender  
316 Spring Street  
Columbus, Texas 78934  
Website: <http://www.co.colorado.tx.us/ips/cms/othercountyoffices/PublicDefender.html>

**Dallas County** has an estimated population of 2,304,909 and a poverty rate of 11.30%. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	32,791	24,149	11,641
Misdemeanors	72,703	27,966	18,671
Juvenile	4,013	13,338	10,498
Adult Appeals		502	112
Totals	109,507	65,955	40,922

Dallas established a public defender’s office (PDO) in 1983. The county administrator submitted the idea in a “working paper” to the county judge and the commissioner’s court. The original proposal suggested that the chief public defender be a non-lawyer. The commissioner’s court liked the idea but insisted that the chief PD be an attorney. From there, the PDO has grown to handle

some misdemeanor and juvenile cases. The PDO currently employs 90 attorneys, 9 administrative staff and 7 investigators.

The PDO has attorneys assigned to 37 courts in Dallas County. There are public defenders assigned to each of the 15 Criminal District Courts with felony jurisdiction, in 12 out of 13 County Criminal Courts with misdemeanor jurisdiction, two District Juvenile Courts handling both delinquency and child welfare cases, seven District Family Courts hearing child welfare cases and IV-D child support issues, and one Probate Court that hears civil commitments of mentally ill patients.

The PDO is focused on the use of cost effective means to provide zealous legal defense to individuals who cannot afford representation. The PDO accomplishes this through hiring and training competent attorneys and providing meaningful investigation of cases. The PDO aims to provide effective representation to clients at all levels of the trial proceedings. In addition to these goals, the chief PD is responsible for expanding the scope of the office by convincing judges that the PDO is more cost-effective than other forms of representation.

It is within the discretion of each individual judge as to whether they will have a public defender in their courtroom. Once a judge determines that he or she would like to utilize a public defender, a request is made to the County Budget Office. The Budget Office then informs the commissioners court whether the addition of a public defender will be cost effective, including how many cases the new court must appoint to be cost effective. In making this assessment, the Budget Office considers the number of cases the requesting judge intends to assign and calculates a cost-per-case based on this projected number of cases.

The PDO operates at a higher level of efficiency when it is handling larger numbers of cases. In recognition of this, judges tend to assign lower level felonies to the public defenders in their courtrooms so that the public defenders can move cases along more quickly. By providing the PDO with simpler cases and appointing more complex cases, the PDO does not get bogged down in complex litigation, and can focus on resolving a high number of cases.

The PDO can handle larger caseloads than appointed counsel in part because in general they have a better working relationship with both the District Attorneys office and with judges. Thus, the PDO will typically write fewer motions and be less likely to be hampered in complex litigation. The attorneys from the PDO are assigned to a specific court room, so they become quite familiar with the judge, the prosecutor and the operations of the court.

Dallas County Public Defender  
133 N. Industrial Blvd, 9th Floor  
Dallas, Texas 75207

Website: [http://www.dallascounty.org/department/pubdefender/pd\\_index.html](http://www.dallascounty.org/department/pubdefender/pd_index.html)

**El Paso County** has an estimated population of 731,534 people and a poverty rate of 27.89%. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	6,139	5,591	3,319
Misdemeanors	17,212	7,166	3,458
Juvenile	1,318	2,802	2,106
Adult Appeals		61	16
Juvenile Appeals		2	2
Totals	24,669	15,622	8,901

In 1987, El Paso County established a Public Defender’s Office (PDO) as a direct result of the settlement of a suit in which jail inmates claimed to have been incarcerated too long before obtaining counsel. The PDO handles felony, misdemeanor, juvenile, capital murder and appeals cases. The PDO and private attorneys share representation of indigent defendants in El Paso County through the El Paso Plan.<sup>21</sup>

Some of the PDO’s objectives in providing quality legal representation to clients are to assist members of the private bar with complex cases, be available on short notice to enforce and protect an individual’s rights, and help to speed up the criminal justice process and keep the jail population down.

The PDO currently employs 32 attorneys with two division chiefs specializing in litigation and capital murder. Staff attorneys are assigned to cases in teams of three or four, then each team is assigned to specific courts. There are four felony units (although they also handle misdemeanors), a juvenile unit, an appellate unit, a child support unit (criminal non-support), a capital murder unit, and a mental health unit. In 2004, the PDO was awarded a grant from the Task Force to develop and staff its Mental Health Unit. This unit consists of two full-time attorneys and two full-time social workers. The PDO has 20 full-time support staff, which includes three social workers, and a number of legal secretaries and data entry clerks. There are also two caseworkers, two investigators, and one mitigation specialist who assist in collecting records, evidence and witnesses.

The PDO primarily engages in the practice of a hybrid vertical representation system. This practice is good for managing a case (i.e. one attorney is assigned to a case at its inception, and that attorney handles the case to its conclusion). The PDO adheres to this philosophy, though not completely. During the first years after the creation of the office, all of its cases were handled in this vertical manner. Though this may be the best method of handling each case, vertical representation has logistical and monetary drawbacks.

When the PDO was completely vertical, every attorney in the office practiced in every court in the courthouse. The office would then find itself with three attorneys (or more) sitting in one courtroom waiting for arraignments, motion hearings, or any other proceeding. Meanwhile, another court would call to advise that nobody was in their court for some other scheduled event. Thus, the PDO sought to convert to a hybrid system.

This hybrid involved creating units who would handle all of the cases passing through their assigned courts. Though the unit system is much more manageable and cost effective, the PDO did not want to stray too far from the concept of vertical representation. Thus, the office decided to make one of the units the “Pre-indictment Unit.” This unit would handle all cases until such time as there is an indictment or other charging instrument. Once a defendant is charged, the case is transferred within the office to another unit, which handles it vertically. On appeal, a case would then transfer to the appellate unit.

The PDO initially handled only felonies pursuant to a federal lawsuit which was the basis for its establishment only mandated as much. Today, in response to various requests from the different courts (as well as the commissioners court) the office handles misdemeanor cases, juvenile cases, Capital-death penalty cases, and criminal non-support/child support cases.

El Paso County Public Defender  
 500 E. San Antonio, Suite 501  
 El Paso, Texas 79901  
 Website: <http://www.co.el-paso.tx.us/pdefender/>

**Hidalgo County** has an estimated population of 688,029 people and a poverty rate of 37.70%. The following chart shows a breakdown of how misdemeanor cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Misdemeanors	13,888	7,020	1,406

The Hidalgo County Public Defender Office (PDO) was opened through a grant from the Task Force on Indigent Defense in October of 2005. The county saw the PDO as an answer to delivering legal services more promptly. A direct collateral benefit to the county establishing the PDO is the office’s ability to reduce overcrowding in the county jail. The county also sought to improve the quality of the defense provided to indigent defendants, and to ensure that all defendants who need assistance receive the same in a timely manner.

In its first year, the PDO handled approximately 1600 cases, and anticipates this number to grow. It is staffed by 5 attorneys, and 4 full-time support staff, including an administrative assistant and an investigator. The administrative assistant has assisted in establishing the infrastructure of the office, maintains the computer system, and tracks defendants who have been in jail for longer than 6 days so that the office may contact the prosecutor and determine why charges have not been filed. The investigator assists the attorneys in obtaining police reports, witnesses, and prior records of new clients. The PDO is supposed to handle about every fourth case from the wheel, or 25% of all misdemeanors paid for by the county. However, some judges have also been appointing cases directly from the bench. The remaining misdemeanors are assigned to private attorneys.

Each new attorney in the Hidalgo PDO is assigned to a senior attorney to act as a mentor during the training process. The mentor will serve to introduce the new attorney to the judges, prosecutors and court personnel. The mentor helps the new attorney with hearings and proceedings, and assists them in managing new cases. All attorneys in the Hidalgo PDO are required to average 10 hours annually of continuing legal education.

The specialization of the office on misdemeanors allows the office to quickly turn over cases. Not only are the cases more simple than felony cases, but many clients who post bond will not appear for arraignment. Thus, attorneys are able to handle more cases. The PDO seeks to manage the caseload per the guidelines set forth by the National Advisory Commission (NAC).

As noted above one goal of the office was to reduce jail overcrowding. This has largely been accomplished by filing motions for bond reduction and by speeding case dispositions. Prior to establishment of the public defender, cases were being filed at a higher rate than they were being disposed by the courts. During this period, defendants would often initially consult with attorneys just prior to a court appearance.<sup>22</sup> Under the former system, appointed attorneys could do little to reduce the pretrial misdemeanor jail population. The public defender, however, has been able to focus on the jail population by finding persons with a delayed case filing and then making calls to determine causes for the delayed filing and by filing motions for bond reductions. The public defender's efforts began to have a noticeable impact by September of 2006. From September, 2006 through September, 2007, the average pretrial misdemeanor jail population dropped from 288 in the 18 months prior to September, 2006 to 176 in the 12 following months.<sup>23</sup>

Hidalgo County Public Defender  
100 E. Cano, Ste. 206  
Edinburg, Texas 78539  
Website: <http://www.co.hidalgo.tx.us/template.asp?Key=10091>

**Kaufman County** has an estimated population of 91,610 people and a poverty rate of 14.07%. The overall adult indigent caseload for the county in FY07 was 1,819 cases. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	1,319	1,170	404
Misdemeanors	2,382	649	334
Totals	3,701	1,819	738

The Kaufman County Public Defender Office (PDO) opened through a grant from the Task Force on Indigent Defense in November of 2006. Kaufman County has experienced rapid growth in both population and the number of indigent defendants (which has jumped from 630 in 2002 to 1,533 in 2005). In response, the county seeks to establish a public defender system in order to ensure that indigent defendants are properly represented and afforded their constitutional rights. Further, costs for indigent defense services have escalated from \$300,000 in 2002 to \$757,000 in 2005. A public defender system was also sought to augment the current system in a cost effective manner while still protecting the rights of indigent defendants.

The PDO is staffed by the Chief Public Defender and three additional full-time attorneys. The support staff consists of a secretary, a paralegal and an investigator. The secretary handles all the administrative duties in the office and the paralegal provides legal research, records client information and drafts legal documents. The investigator conducts all investigations required by the public defenders and to assist in the preparation of motions, orders and any other documents required by the courts.

Like other public defenders, the Kaufman County Public Defender has been successful at reducing pretrial misdemeanor jail populations. The pretrial misdemeanor jail population began a noticeable reduction in February of 2007. In the 12 months prior to February, 2007, this population averaged 40 persons, and in the 8 following months, the population averaged 30 persons.<sup>24</sup>

The Kaufman County Public Defender serves felony arrestees as well as misdemeanor arrestees. This allows the public defender to drastically affect the total jail population. The introduction of the public defender had an immediate impact on the total county jail population, but a more apparent impact began in February of 2007. In the 12 months prior to February, 2007, the county jail population averaged 306 persons, and in the 8 following months averaged 245 persons.<sup>25</sup>

Kaufman County Public Defender  
 205 South Jackson  
 Kaufman, Texas 75142  
 Phone: (972) 932-0248

**Lubbock County** The West Texas Regional Public Defender for Capital Cases office opened through a grant from the Task Force on Indigent Defense November 13, 2007. The office was conceived to provide an effective capital defense team (two attorneys, a mitigation specialist and an investigator) to indigent capital defendants where the district attorney is seeking the death penalty. The office will cover up to 85 counties in the Seventh and Ninth Administrative Judicial Regions (with a combined population estimate of 1,592,037). It was created partially in response to a shortage of qualified attorneys available to represent indigent capital defendants throughout the area covered by the West Texas Regional Public Defender. The following chart shows the number of capital murder cases added across the region over the past three years.

	FY 2005	FY 2006	FY 2007
Capital Murder Cases Added	23	21	18

The West Texas Regional Public Defender office will, when fully operational, be staffed by the Chief Public Defender, four assistant Public Defenders, two mitigation specialists, two fact investigators, and two legal assistants. The main office is centrally located in Lubbock, Texas, with satellite offices to be opened in the Amarillo and Midland/Odessa areas.

West Texas Regional Public Defender for Capital Cases  
 P. O. Box 10536  
 Lubbock, Texas 79408  
 Phone: (806) 775-5650

**Travis County** has an estimated population of 907,922 and a poverty rate of 13.09%. The juvenile indigent caseload for the county in FY07 was 3,332 cases.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Juvenile	2,402	3,312	3,164
Juvenile Appeals		20	5

Travis County is served by a juvenile public defender office and a mental health public defender office.

The Travis County Juvenile Public Defender’s Office (JPDO) became the first juvenile defender office in the United States in 1971. The JPDO currently employs four full-time administrative staffers, one full-time investigator, and eight attorneys. The office strives for excellence through vigorous and zealous representation of its clients. The attorneys and staff pride themselves on providing clients with superior representation while maintaining high ethical standards to ensure that no client is ever wrongfully adjudicated or incarcerated. With experienced attorneys, most of whom are board certified specialists, the office is able to handle every aspect of juvenile representation from the trial to appellate level.

In 2007, Travis County through a grant from the Task Force on Indigent Defense established a mental health public defender devoted solely to indigent defendants charged with misdemeanor offenses with serious mental illnesses. The office handles approximately 500 cases a year, and is staffed by two attorneys, two social workers, two case workers, and two support staff.

Travis County Juvenile Public Defender  
 2201 Post Road, Suite 201  
 Austin, Texas 78704  
 Phone: (512) 854-4128  
 Website: [http://www.co.travis.tx.us/juvenile\\_public\\_defender/default.asp](http://www.co.travis.tx.us/juvenile_public_defender/default.asp)

Mental Health Public Defender  
 2201 Post Road, Suite 200  
 Austin, Texas 78704  
 Phone: (512) 854-3030  
 Website: <http://www.courts.state.tx.us/tfid/TravisMHPD.htm>

**Val Verde County** has an estimated population of 47,255 and a poverty rate of 30.86%. The overall indigent caseload for the county in FY07 was 687 cases. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	390	119	71
Misdemeanors	1,118	455	334
Juvenile	98	113	29
Totals	1,606	687	434

Val Verde County was paying for a larger number of cases than other counties of comparable size. In addition, the county was also seeing an increase in the average cost per indigent defense case. In response to these concerns, Val Verde County opened the first privately run public defender office (PDO) in the State of Texas in 2006. The county sought bids for the program, and eventually contracted with Texas Rio Grande Legal Aid (TRLA) a non-profit organization. In addition to Val Verde County, the PDO serves Edwards, Terrell and Kinney counties as well. Previously, the county had assigned all indigent defense cases to private attorneys.

The PDO is staffed by 5 attorneys, and 2 full-time support staff. In addition, the PDO has sponsored several clerks and interns from the local schools. The office will also benefit from the knowledge of the network of over 105 lawyers who work for TRLA across the entire state of Texas.

As the PDO continues to establish itself in the community its caseload continues to represent a larger portion of cases paid in the region. Cases not assigned to the PDO are assigned to private

attorneys in the community. Appointments to the PDO are made by the trial judge, but the Chief Public Defender determines which attorney in the office will handle an incoming case. In addition to trial representation, the office is also now handling some appeals, several post-conviction writs, and requests for DNA testing.

As noted above, the Val Verde PDO is the first regional PDO in the state of Texas which is run by a non-profit private entity. The regional nature of the program should help smaller counties provide adequate services to their indigent population, as individually they would be unable to open a public defender office. The TRLA contract should help stabilize costs and efficiency. In addition, the private organization can take advantage of the experience of the other attorneys in the organization who have served indigent defendants in Texas for decades.

The PDO plans to implement several policies designed to improve the quality of the defense services they offer to indigent clients. First, the office has committed to daily investigative attorney client privilege interviews with newly incarcerated defendants. To further assist in communication with defendants, the PDO plans to use video teleconference equipment between the office and the county jails. With the assistance of this technology, the office plans to communicate with each incarcerated defendant every day. After the interviews, incarcerated defendants will be classified into one of four categories: indigent, indigent with conflict, not indigent, or in need of hearing to determine indigence. The office will then draft and provide to the court orders of appointment for those defendants deemed to be indigent and in need of counsel from the PDO.

As the office is contracted to a private entity, the cost for the office will be fixed over the life of the contract. TRLA was selected in part because they believed they could improve the quality of defense provided to indigent defendants, while at the same time decreasing the average cost per case. The financial efficiency of the program will be closely monitored during its nascent stages.

The case load has steadily increased during the tenure of the PDO. At present, attorneys in the office are handling approximately 60 cases each at any one time. As of now, no caseload issues are apparent.

The Val Verde Regional Public Defender had an immediate impact on the total county jail population, but a more apparent impact began in December of 2006. In the 12 months prior to December, 2006, the county jail population averaged 78 persons, and in the 11 months following the date averaged 61 persons.<sup>26</sup>

Val Verde County Public Defender  
902 E. 11th Street  
Del Rio, Texas 78841-0964  
Website: <http://www.trla.org/office/?of=11>

**Webb County** has an estimated population of 231,643 and a poverty rate of 35.17%. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	1,244	934	748
Misdemeanors	2,058	1,496	1,054
Adult Appeals		6	3
Totals	3,302	2,436	1,805

Webb County established a public defender’s office (PDO) in 1988. The PDO is confident that when an indigent person is arrested and hears these words of the Miranda warning, “...you have the right to an attorney, if you cannot afford an attorney, one will be appointed to you...” he can be assured a quality defense. The PDO currently employs 15 attorneys, 8 administrative staff, and 2 investigators.

The PDO maintains staff persons to meet with clients promptly at the county jail. These staff persons monitor their jailed clients, and if a client is in jail for more than a few days, the public defender makes a motion for bond reduction. Moreover, the office will routinely file Writs of Habeas Corpus when the bonds are excessive or when the client’s time in jail exceeds the statutory time limits. Typically, private attorneys do not give jailed clients the same attention as the public defender staff and do not regularly file motions for bond reductions.

The PDO is currently assigned to represent 75% of all misdemeanor and felony cases filed in Webb County. Normally, the representation will commence as soon as the client is booked. The PDO staff is committed to rendering good, competent legal representation to all of its clients from the day of appointment to final disposition.

Webb County Public Defender  
 1110 Victoria Ste 208  
 Laredo, Texas 78040-4439

Website:

[http://www.webbcountytexas.gov/OtherDepartments/Public\\_Defender/public\\_defender.html](http://www.webbcountytexas.gov/OtherDepartments/Public_Defender/public_defender.html)

**Wichita County** has a population estimate of 129,069 and a poverty rate of 16%. The following chart shows a breakdown of how indigent defense cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	1,712	1,382	765
Misdemeanors	4,492	1,184	773
Adult Appeals		16	4
Totals	6,204	2,582	1,542

Wichita County created a public defender's office (PDO) in the late 1980's to handle all indigent criminal and juvenile delinquency cases, except those in which there was a conflict of interest. The PDO replaced the previous system in which all practicing attorneys in Wichita County accepted appointments to indigent defendants, regardless of the attorney's area of practice. The PDO currently employs six attorneys, six administrative staff and two investigators.

The PDO's mission is to provide effective and competent defense in an ethical, timely, and cost-efficient manner to indigent citizens accused of crimes, regardless of the cost. Some important concerns and objects for the PDO include: improving availability of counsel on short notice; providing assistance to the private bar with complex case issues; locating and correcting situations where a client's rights are in jeopardy; ensuring that the client does not spend unnecessary time in jail; working with other groups to develop programs to reduce overall indigent defense expenditures.

Wichita County Public Defender  
900 7th Street Rm. 405  
Wichita Falls, Texas 76301

Website: [http://www.co.wichita.tx.us/pub\\_def.htm](http://www.co.wichita.tx.us/pub_def.htm)

**Willacy County** has an estimated population of 20,610 people and a poverty rate of 41.01%. The overall caseload for the county in FY07 was 317 cases. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid
Felonies	148	85
Misdemeanors	142	12
Juvenile	27	31
Totals	317	128

The Willacy County Public Defender Office (PDO) opened near the end of fiscal year 2007, accepting its first cases only three days after TRLA signed a contract with the county to provide indigent defense services. The Willacy County PDO is only the second program in the state operated by a non-profit corporation, Texas RioGrande Legal Aid. TRLA is the largest civil legal services provider in the state, and uses several of its civil lawyers who also have criminal litigation experience to supplement the operations. The office was conceived in response to sky-rocketing indigent defense costs. The PDO strives to provide the indigent defendant representation by a law office which is well-equipped with access to legal research materials and with an investigator in order to give defendants equal footing as if defendants had retained an average law firm.

The PDO is staffed by the Chief Public Defender and several part-time attorneys who assist the Chief with the caseload. In addition, the office has two full time support staff, consisting of a secretary and an investigator. The secretary handles the administrative duties of the office, and the investigator interviews all newly-detained inmates at the county jail within 24 hours of arrest and conducts all investigations required by the public defenders and to assist in the preparation of motions, orders and any other documents required by the courts.

TRLA is usually able to place 5 or 6 lawyers in court on days when the district or county courts have arraignments or “docket calls.” That practice, coupled with very early interviews of arrested persons at the county detention center, have permitted the PDO to stay ahead of the caseload, particularly with respect to routine guilty pleas and dismissals. In addition, the judges in the county recently amended the indigent defense plan and local rules to permit TRLA to make indigency determinations in most cases, thereby enabling TRLA to decide almost immediately whether it will establish an attorney-client relationship with a newly-arrested defendant. That practice makes it possible in a majority of cases for PDO attorneys to determine whether a case should be settled quickly by a plea bargain or will require more intensive representation. As a result, many cases are now resolved at the initial arraignment, eliminating multiple appearances and their concomitant delays.

Willacy County Public Defender  
308 East Harrison Avenue  
Harlingen, Texas 78550

Website: <http://www.trla.org/office/?of=WP>

## *A Few Examples of Public Defenders Throughout the Nation*

**California** Indigent defense in California is provided primarily by individual counties, with the state providing about 6% of total expenditures. Most counties in California have a public defender office. The larger counties also have alternative public defender offices which handle conflict cases. However, in an effort to control costs, some counties have experimented with alternative forms of defense delivery, be it through a contract system, or assigned counsel.

In 1987, the State Bar of California adopted voluntary guidelines that established standards regarding all facets of indigent defense. A link to these guidelines and the websites to all of the California public defender offices can be found below.

The Los Angeles County Public Defender is the oldest and largest in the state. With over 700 Attorneys and a full staff of social workers, investigators and support staff, the office offers a wide range of services. These services include a juvenile and a mental health department, as well as a department devoted to contempt proceedings for violation of court orders, such as child support and child visitation or custody orders.

More information about the Los Angeles County Public Defender can be found in the links provided below.

### Online Resources

- Los Angeles County Public Defender website
- State Bar of California Guidelines
- Links to Various Public Defenders throughout California

**New York** New York State provides approximately 36% of the total funding for indigent defense, with the rest of the costs falling to the county. Counties are required to have a public defender, a private legal aid society, an approved bar association plan that rotates the services of appointed counsel, or some combination of the three. As it is largely up to the counties to shape indigent defense services provided, delivery methods vary widely from county to county.

Los

The New York Indigent Defense Commission has been charged with examining the state's indigent defense systems to suggest ideas for reform. A wealth of information can be found on their website regarding indigent defense services throughout the state. A link to this website can be found below.

Indigent defense in New York City is handled primarily through non-profit organizations such as the Legal Aid Society and the Neighborhood Defender Service of Harlem. The Legal Aid Society is a law firm for poor people, and was founded over 125 years ago. Legal Aid provides a wide variety

of legal services for people who cannot afford a lawyer. Legal Aid is the single largest provider of criminal defense services for the City of New York and represents most of the juveniles appearing in Family Court as legal guardian.

The Neighborhood Defender Service of Harlem (NDSNY) is a non-profit model public law office dedicated to providing the highest quality legal representation to inner city residents in Upper Manhattan. NDSNY's neighborhood-based services are available upon request. The service involves civil and criminal attorneys, social workers, investigators, paralegals, and law school interns in the defense of its clients. NDSNY is organized differently from traditional defender offices; each client is represented by a small team, rather than by an individual attorney. NDSNY's services go beyond direct legal representation, to helping clients avoid future contact with the criminal justice system.

#### Online Resources

- Legal Aid Society of New York Website
- Neighborhood Defender Service of Harlem
- New York Indigent Defense Commission

**Washington D.C.** The Public Defender Service of Washington D.C. (PDS) has been serving the City for over 30 years. PDS divides its services into the following divisions: trial, appellate, mental health, special litigation, civil legal services, and parole. The agency also participates in the local drug court program. PDS has over 200 employees, and 100 staff attorneys.

The PDS Mental Health Division is staffed by seven attorneys, two social workers and two investigators. This division represents those that have been involuntarily committed for mental health reasons. In addition, the division represents people who have been found not guilty by reason of insanity.

PDS also offers an Offender Rehabilitation Division (ORD), which is devoted to breaking the cycle of recidivism that plagues most indigent communities and those with mental illnesses. The division is staffed by 12 program developers who are trained in social work. The staff has at their disposal numerous rehabilitative services, community programs, and counseling services.

Public Defender Service for the District of Columbia  
633 Indiana Avenue, NY  
Washington, D.C. 20004

Website: <http://www.pdsdc.org/>

**New Mexico** has a completely state funded public defender system. The governor appoints the chief defender who controls the day to day operation of the entire department. The office employs about 200 attorneys. In addition, the State contracts with approximately 130 other attorneys throughout the state in areas where the department does not have an office. Public defenders handle misdemeanors, felonies, juvenile and appellate cases. The office handles about 60,000 cases per year.

**Oklahoma** Indigent defense services in Oklahoma are controlled by the Oklahoma Indigent Defense System. The system handles cases from all counties in the state except for Oklahoma and Tulsa Counties. The System handles all criminal cases where incarceration is possible, as well as appeals.

Oklahoma County Public Defender handles the bulk of cases in Oklahoma County. In addition to felonies, misdemeanors, and appeals, the office also has a civil division which handles contempt, adoptions, and acts as guardian ad litem in divorce proceedings. Tulsa County also has its own stand alone public defender office, which handles most felony, misdemeanor, and juvenile cases

**Arkansas** Starting in 1998, Arkansas has had a primarily state funded indigent defense system. The system is controlled by the Arkansas Public Defender Commission, which sets salaries of attorneys and staff. Counties are still responsible for providing facilities, equipment and supplies.

## Summary

In sum, the preceding chapters outline how to make an informed decision about whether a public defender is right for your community. Like any other new governmental program or new non-profit initiative, there are risks and benefits associated with the implementation. Regardless of what decision your community makes, the authors of this publication wish you only the best in your efforts to improve the delivery of indigent defense services in your community. The Task Force looks forward to its continued work with the counties and courts to improve the quality and delivery of indigent defense services. It is only through all our efforts that the right to counsel is preserved and the interests of justice are assured for all Texans.

## Appendix A: Article 26.044

### Art. 26.044. Public Defender

(a) In this chapter:

(1) “Governmental entity” includes a county, a group of counties, a branch or agency of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

(2) “Public defender” means a governmental entity or nonprofit corporation:

(A) operating under a written agreement with a governmental entity, other than an individual judge or court;

(B) using public funds; and

(C) providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.

(b) The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity or nonprofit corporation to serve as a public defender. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a regional public defender. In appointing a public defender under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if appointing a regional public defender:

(1) the duties of the public defender;

(2) the types of cases to which the public defender may be appointed under Article 26.04(f) and the courts in which the public defender may be required to appear

(3) whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or the commissioners courts; and

(4) if the public defender is appointed to serve a term, the term of appointment and the procedures for removing the public defender.

(c) Before appointing a public defender under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender. A proposal must include:

(1) a budget for the public defender, including salaries;

(2) a description of each personnel position, including the chief public defender position;

(3) the maximum allowable caseloads for each attorney employed by the proponent;

(4) provisions for personnel training;

(5) a description of anticipated overhead costs for the public defender; and

(6) policies regarding the use of licensed investigators and expert witnesses by the proponent.

(d) After considering each proposal for the public defender submitted by a governmental entity or nonprofit corporation, the commissioners court or commissioners courts shall select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation for indigent defendants in the county or counties.

(e) The total cost of the proposal may not be the sole consideration in selecting a proposal.

(f) To be eligible for appointment as a public defender, the governmental entity or nonprofit corporation must be directed by a chief public defender who:

- (1) is a member of the State Bar of Texas;
- (2) has practiced law for at least three years; and
- (3) has substantial experience in the practice of criminal law.

(g) A public defender is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender serves more than one county.

(h) A public defender may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender as specified by the commissioners court or commissioners courts under Subsection (b)(1).

(i) Except as authorized by this article, the chief public defender or an attorney employed by a public defender may not:

- (1) engage in the private practice of criminal law; or
- (2) accept anything of value not authorized by this article for services rendered under this article.

(j) A public defender may refuse an appointment under Article 26.04(f) if:

- (1) a conflict of interest exists;
- (2) the public defender has insufficient resources to provide adequate representation for the defendant;
- (3) the public defender is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or
- (4) the public defender shows other good cause for refusing the appointment.

(k) The judge may remove a public defender who violates a provision of Subsection (i).

(l) A public defender may investigate the financial condition of any person the public defender is appointed to represent. The defender shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.

(m) If it is necessary that an attorney other than a public defender be appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.

# Appendix B: Feasibility Worksheet

## Feasibility Worksheet For Counties Considering the Texas Public Defender Option

### 1. Caseload

Case Type (felony, misdemeanor, juvenile, mental, complex, etc.)	1	2	3
<b>A. Total Annual Cases Paid</b> (obtain from auditors' report submitted to Task Force on Indigent Defense/OCA)			
<b>B. Share of Indigent Defense Cases for a Public Defender</b> (choose a number close to 100% if rural and close to 50% if urban)			
<b>C. Public Defender Caseload</b>	$C = A \times B$	$C = A \times B$	$C = A \times B$

### 2. Staff

Case Type	1	2	3
<b>A. Public Defender Caseload</b>			
<b>B. Attorney Staff Ratio</b> (400 misdemeanor cases per attorney per year, 150 felony cases per attorney per year, consult caseload standards for other ratios)			
<b>C. Number of Attorneys Needed</b> (round to the next whole number)	$C = A \div B$	$C = A \div B$	$C = A \div B$
<b>D. Number of Support Staff Needed</b> (roughly 1 investigator and 1 staff assistant for each five attorneys; round upward)	$D = C \div 2.5$	$D = C \div 2.5$	$D = C \div 2.5$

### 3. Rough Budget

Case Type	1	2	3
<b>A. Total Staff Salaries</b>			
<b>B. Fringe Benefits</b>	$B = A \times .25$	$B = A \times .25$	$B = A \times .25$
<b>C. Operating</b> (Calculate based on actual county expenses if data is available e.g. prosecutor operating.)	$C = (A + B) \times .2$	$C = (A + B) \times .2$	$C = (A + B) \times .2$
<b>D. Total Rough PD Costs</b>	$D = A + B + C$	$D = A + B + C$	$D = A + B + C$

## Endnotes

<sup>1</sup>Tex. Const. Art. I § 10.

<sup>2</sup>372 U.S. 335 (1963).

<sup>3</sup>*Douglas v. California*, 372 U.S. 353 (1963) ; *Miranda v. Arizona*, 384 U.S. 436 (1967); *In re Gault*, 387 U.S. 1 (1967); *Coleman v. Alabama*, 399 U.S. 483 (1969); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Alabama v. Shelton*, 122 U.S. 1764 (2002).

<sup>4</sup>*Ex Parte King*, 550 S.W.2d 691 (Tex.Cr.App. 1977); *Ex Parte Gonzales*, 945 S.W.2d 830 (Tex. Cr.App. 1997).

<sup>5</sup>In addition to *Gideon*, which involved felony cases, the U.S. Supreme Court has found that the Sixth and Fourteenth Amendments to the United States Constitution require counsel to be provided to indigent defendants in state juvenile delinquency proceedings, *In Re Gault*, 387 U.S. 1 and state misdemeanor proceedings in which actual imprisonment is imposed, *Argersinger v. Hamlin*, 407 U.S. 25 (1972). In *Alabama v. Shelton*, 535 U.S. 654 (2002), the Court extended *Argersinger* by holding that a suspended sentence may not be imposed in misdemeanor cases unless the defendant was offered an attorney at trial. Further, the Court has held that the right to counsel attaches at various pre-trial stages, including custodial interrogations, *Miranda v. Arizona*, 384 U.S. 436 (1966), line-up identifications, *United States v. Wade*, 388 U.S. 218 (1967), and preliminary hearings *Coleman v. Alabama*, 399 U.S. 1 (1970).

<sup>6</sup>The exception is that the state pays for representation in capital post-conviction proceedings and the Task Force distributes supplemental state money to counties that qualify for formula and discretionary grants.

<sup>7</sup>See Chapter 5 for summaries of the structure, goals and budget of these 14 public defender offices.

<sup>8</sup>Public defender offices are the primary delivery system for indigent defense services in most of the nation's largest cities and counties. In 1999, public defender programs operated in 90 of the 100 largest counties in the United States. See Bureau of Justice Statistics Bulletin, "Indigent Defense Services in Large Counties, 1999," November 2000. Many rural jurisdictions also benefit from public defender programs, including statewide public defenders in states such as New Mexico, Kentucky, Florida, and Colorado, and the increased use of rural public defenders in states like North Carolina, Georgia, Virginia and others. In Texas, counties with public defender offices vary in size from large (Dallas, population 2,218,899) to small (Willacy, population 20,082).

<sup>9</sup>See also *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

<sup>10</sup>Public defenders are statutorily authorized to investigate the financial condition of any person they are appointed to represent, and they must report results of these investigations to the appointing judge, who may hold a hearing to determine whether any client is indigent and entitled to counsel. See Tex. Code Crim. Proc. Art. 26.044(l).

<sup>11</sup>Carole Keeton Rylander, Comptroller of Public Accounts, *Financial Management Review of El Paso County* (1999).

<sup>12</sup> Jennifer M. Saubermann, Robert L. Spangenberg & David J. Newhouse, *The Spangenberg Group, Second Interim Report: An Evaluation of the Bexar and Hidalgo County Public Defender Offices After One Year of Operation* 66 (2007).

<sup>13</sup> Source: Monthly Jail Population reports from Texas Commission on Jail Standards at <http://www.tcjs.state.tx.us/index.php?linkID=320>.

<sup>14</sup> *Id.*

<sup>15</sup> The percentage of cases handled by public defenders varies. Typically, Offices that handle a very specific subset of cases will handle a larger percentage of cases that fall into that area. For instance, the Travis County Public Defender is appointed only juvenile cases, and handles over 96% of such cases. The Dallas County Public Defender handles all types of cases, and handles about 76%. A public defender office should be expected to handle somewhere between 50% and 80% of cases that qualify for appointment.

<sup>16</sup> The American Bar Association's Bar Information Program provides expert technical assistance as a resource to government agencies. Participating in training sessions and conferences also may enable those planning a public defender office to access strategies and ideas by interacting with public defenders from across Texas and the nation. The National Legal Aid and Defenders Association holds annual skills and management training sessions, and hosts an annual conference specifically designed for public defenders.

<sup>17</sup> See Chapter 4, ABA STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION, THIRD EDITION (1993); Chapter 5, ABA STANDARDS FOR CRIMINAL JUSTICE PROVIDING DEFENSE SERVICES, THIRD EDITION (1992); ABA GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES (Rev Ed. Feb. 2003); Robert B. Shepherd, Jr. Editor, *Juvenile Justice Standards Annotated: A Balanced Approach*, ABA INST. OF JUDICIAL ADMIN. (1996); ABA STANDARDS OF PRACTICE FOR ATTORNEYS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996); National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services* (1984); National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989); National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995). See Figure 1.2 for a list of internet links to additional public defender resources.

<sup>18</sup> A public defender office will not be able to handle all cases because some cases will present conflicts of interest. Co defendants pose the most common type of conflicts, but public defender offices will also be precluded from representing defendants who were previously prosecution witnesses. Juvenile delinquency and misdemeanor cases are somewhat more likely to involve co defendants than felonies. Workload issues will also impact the volume of cases a public defender may handle.

<sup>19</sup> El Paso and Webb County assign about half of the indigent defense caseload to the public defender – this leaves room for the best private attorneys to continue serving indigent clients.

<sup>20</sup> Try to ensure, if possible, that case counts are accurate. For example, a felony and a subsequent probation violation on that felony should not be counted as two felony cases but rather as one felony and one probation violation.

<sup>21</sup> Private attorneys under 55 years of age who practice law and live in El Paso County and cannot claim financial hardship must either accept appointments to represent indigent individuals or pay a fee to the county of \$600 per year. Cases that present potential conflicts of interest for the Public Defender’s Office must be assigned to a private attorney. If an attorney with no prior criminal law experience is assigned, the courts will sometimes appoint the Public Defender’s Office to “second-chair” the case.

<sup>22</sup> Jennifer M. Saubermann, Robert L. Spangenberg, David J. Newhouse & Ross Shepard, The Spangenberg Group, *Initial Interim Report to the Texas Task Force on Indigent Defense: An Analysis of the Newly Established Bexar and Hidalgo PublicDefender Offices* at 17 (2006).

<sup>23</sup> Source: Monthly Jail Population reports from Texas Commission on Jail Standards at <http://www.tcjs.state.tx.us/index.php?linkID=320>.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

# Effective Assistance of Counsel: Implementing the Louisiana Public Defender Act of 2007

## Evaluation of Public Defense Services and Operations in Louisiana's 15th Judicial District Indigent Defense System



June 2010

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# **Effective Assistance of Counsel:**

Implementing the

Louisiana Public Defender Act of 2007

June 2010

Produced on behalf of:  
Louisiana Public Defender Board

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National Legal Aid & Defender Association

## Executive Summary

The Louisiana legislature passed the Louisiana Public Defender Act of 2007 (“Act 307”) on an overwhelmingly bipartisan vote with the expressed intent of ensuring that “all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding” and “that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.” Act 307 has yet to take root in the 15th Judicial District (JDC).

The indigent defense office (IDO) of the 15th JDC operates with little coordinated management. Attorneys are paid a single flat fee to take an unlimited number of cases, creating a financial conflict between the rights of the defendant to competent counsel and the attorney’s take home pay. Indigent clients facing misdemeanor or traffic offenses carrying jail time may very well not receive counsel at all, despite the state and federal constitutional mandates that they be afforded an attorney. Defendants are likely to be represented by as many as three or four different attorneys during the course of a single case – typically known as “horizontal representation” and universally decried by all national standards and Act 307.

Many of the defense attorneys in the IDO are very experienced, talented and highly regarded attorneys. Still, the attorneys carry excessive caseloads as defined by national standards, *before* factoring in their private caseload. The large caseloads carried by these attorneys prevent them from pursuing meaningful communication with their indigent clients. As a result, the lawyers end up meeting with their clients at the courthouse on dates when cases are set for hearing or trial. An inaptly named “open file discovery” policy has the adverse affect of encouraging attorneys never to file motions. Access to investigators – though changing – has been virtually non-existent during the tenure of the current district defender. New attorneys are thrown into court with little training and no structure is in place to assess attorney performance. Indigent clients found or pled guilty are regularly assessed an excessively large amount of fees to be paid as a condition of probation, including the cost of their inadequate defense. Failure to pay such fees will result in the revocation of their probation and jail time to be served at further taxpayers’ expense.

The National Legal Aid & Defender Association (NLADA) reached these conclusions after the Louisiana Public Defender Board (LPDB) contracted NLADA to conduct a management evaluation of the 15th JDC Indigent Defender Office, pursuant to LPDB’s duties under Act 307 to review, monitor, and assess the performance of all attorneys providing counsel for indigent defendants. As set out in Chapter I (pages 1 - 5), LPDB requested NLADA specifically to: evaluate the organizational structure, practices, and policies; eval-

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uate the caseloads, workloads and workflow impediments; and identify the availability and use of investigators.

One of the principle reasons the legislative intent of Act 307 has not reached the 15th JDC is some lingering confusion about the status of the district defenders vis-à-vis the LPDB. Prior to 2007, every local indigent defense system was fully autonomous and the chief public defender of each system was in charge, reporting only to their judicially-appointed local indigent defender board. With the disbanding of the local boards through the passage of Act 307, district defenders were to become either employees of LPDB or contractors with LPDB. Yet there is no signed contract between the LPDB and the current district defender. Instead, there is a document that purports to be a contract signed by the district defender in his management capacity and the district defender in his attorney capacity, hiring himself to serve as district defender and to provide felony representation. District defenders should not be signing as both parties to a contract under which they will then determine their own annual salary.

The 15th IDO district defender has ceded to the office administrator whatever limited supervision is being performed. Strikingly, the district defender said that he was not aware of any performance standards or policies issued by the LPDB, even though the *Trial Court Performance Standards* had been published in April 2009, a full five months prior to the site visit.

It is simply impossible for any attorney to supervise the work of 49 other attorneys spread across three parishes while working part time, even if that attorney does not carry a full public caseload. Whether supervision criteria is developed at the state level or by local service providers or in combination is less relevant at this point than having someone with the time, tools and training to supervise and evaluate every single attorney and support staff in the jurisdiction.

Chapter II (pages 6 - 51) details the evidence to support the conclusion that the 15th IDO fails to appropriately represent clients. For example, trial defense attorneys are not presently being appointed to represent indigent defendants (whether in or out of custody) until after the initiation of prosecution by the district attorney through the filing of a bill of information or securing an indictment. The IDO instead designates what could be referred to as a “placeholder attorney” (the pre-indictment/bond reduction attorney). This is tantamount to not appointing any attorney at all, as the placeholder attorney does not meet with the client, does not begin investigation of the case, does not negotiate with the prosecutor for dismissal or plea agreement in the case, and does not in short serve as *counsel* to the client in the defense of the charge against her. Then, on the back end of felony cases, the IDO does not provide continuity of trial counsel to represent defendants in any ensuing probation revocation hearing.

This was most clearly seen in Acadia Parish. Clients there are given a memo that informs the individual that s/he will be represented by “an attorney with the Pre-Indictment Division” until such time as a bill of information is filed by the District Attorney’s office. This memo also tells the IDO clients that they are responsible for producing witnesses at any future bond reduction hearing, and that if no witnesses present on their behalf *there will be no bond reduction hearing*. In other words, the pre-indictment attorney will take no steps whatsoever to locate, identify, and secure the appearance of witnesses on behalf of the client in order to reduce their bond. Throughout the 15th Judicial District, clients will not actually meet the pre-indictment attorney until the date on which their bond reduction hearing is set to occur, if then.

At the time of the site team evaluation, the pre-indictment attorney in Lafayette was serving his first day on the job as an IDO attorney. He did not meet or talk with any of the clients he was representing that morning. At arraignments, he: entered a plea of not guilty on behalf of the client; waived formal reading of the charges against the client; and requested 30 days within which the eventually appointed defense attorney could file any necessary pre-trial motions. As everyone throughout the system informed the NLADA site team, there is no real representation provided to any indigent defendant until after institution of prosecution and arraignment, because the real trial lawyer is not appointed until after arraignment on the charge. Several judges expressed concern, noting that important defenses may be lost as a result of the delay in the defense attorney beginning preparation of the defense case. One judge observed that, while a retained attorney will begin investigating a case and negotiating for dismissal or a plea early on and before institution of prosecution, all of this time is lost for an indigent client because there is no investigation or negotiation until after arraignment.

Once a defendant receives a trial lawyer, that attorney has far too many cases and not enough training to handle the job. Attorneys in the 15th IDO work above nationally recognized caseload standards. Of the 44 IDO attorneys who were assigned cases throughout the 2008-2009 fiscal year, 21 of those attorneys were carrying IDO caseloads that are in excess of national standards, *before* factoring in their private retained client caseloads. Just looking at the self-reported numbers for cases assigned during the 2008-2009 fiscal year shows that 44 percent of felony attorneys (11 of 25) significantly exceeded the national standard for felony cases handled (150 cases). But the situation is much worse. These are simply the number of new cases assigned during the 12-month fiscal year. Surely, a certain number of cases assigned during the previous year were still open and rolled over into this time period. And, though some of the cases opened during this 12-month fiscal year were disposed in the same fiscal year, some would have still been open

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during the following year. National standards refer to any case handled in a given year (number of cases open at the start of a year plus new assignments). Again, all of this excessive workload is *before private cases are factored in*.

One of the ways case overload manifests itself is when even experienced defense attorneys fail to raise appropriate issues. A prosecutor in Acadia Parish related that he had been involved over time in six capital murder prosecutions of juveniles. Despite the youth of the charged offenders, caselaw providing that the mentally handicapped cannot be subjected to the death penalty, and the various guilt and sentencing factors that implicate mental capacity/health in particular in cases of juveniles, the public defense attorney had never raised any issue of competency in any of those cases

Many defendants simply go unrepresented in the 15th JDC, despite the Sixth Amendment mandate that counsel be appointed for any person being prosecuted with the potential loss of liberty who cannot afford to hire their own attorney. The Rayne City Court judge and the Crowley City Court judge both advised that they do not appoint counsel in misdemeanor cases; instead, an IDO attorney is present and available merely to answer questions, should a defendant have any. In Abbeville City Court, the judge will only appoint an attorney in a case where there is mandatory jail time or when repeat convictions can result in enhanced penalties (such as theft, possession of marijuana or drug paraphernalia, DUI, telephone harassment, simple battery on a police officer, stalking, and domestic abuse). In all other cases including those that carry the possibility of jail time as a sentence, the judge will not appoint counsel.

Overcoming the hurdles that prevent adequate implementation of the legislative intent of Act 307 will necessarily involve a concerted effort by advocates at both the state and local level. In making recommendations (Chapter III, pages 52 - 59), NLADA notes that contracting with attorneys to provide indigent defense services is a perfectly acceptable method of providing those services, both under national standards and under Act 307. But a flat fee contracting system that pits the financial interests of the attorneys against the interests of their clients, and in which insufficient data is gathered to provide accountability, is not acceptable under either. NLADA urges the LPDB to promulgate all contracts between the LPDB and district defenders as well as between the LPDB and the indigent defense attorneys within each judicial district, and to promulgate policies regarding the effectuation of those contracts.

NLADA believes that LPDB has the statutory authority to make the following five changes without additional legislative direction:

1. *LPDB should promulgate, adopt and enforce contracting regulations*
2. *LPDB should adopt and implement attorney qualification & training standards*

3. LPDB should adopt a policy requiring district defenders in populous jurisdictions to be full-time and begin implementing regional director system set out in Act 307
4. LPDB should promulgate policies and provide training regarding the proper use of investigators
5. LPDB should promulgate and require the implementation of policy directing that vertical representation be provided, whenever possible, in the 15th JDC and throughout Louisiana's public defense system, with prompt appointment occurring in accordance with the mandates of Rothgery v. Gillespie County, 128 S.Ct. 2578 (2008), and appointment of counsel occurring on behalf of all indigent defendants facing loss of liberty as a potential sentence.

In conclusion, NLADA applauds the Louisiana legislature for their leadership in constructing a system that can root out inefficient and ineffective use of taxpayer resources. But Act 307 is not an end in and of itself. Its passage simply demarcated a new phase on the continuum toward making *Gideon's* promise a reality. Though implementation of Act 307 has been arduous at times, NLADA believes that these relatively few recommendations, if implemented, will significantly meet the legislative intent of the Louisiana Public Defender Act of 2007.

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# Introduction

The Louisiana legislature passed the Louisiana Public Defender Act of 2007 (hereinafter “Act 307”) on an overwhelmingly bipartisan vote with the expressed intent of ensuring that “all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding,”<sup>1</sup> and “that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.”<sup>2</sup> This wrought a dramatic change in the manner in which public defense services in Louisiana are provided.<sup>3</sup>

Before Act 307, each of the 41 judicial districts operated their own public defense system under the authority of a local three- to seven-member indigent defender board selected by the judges of the district court.<sup>4</sup> These local boards were responsible for choosing the method of providing counsel for indigents – appointment by the court from a list of volunteer attorneys; contracting with one or more attorneys; employing a chief public defender and assistants; or a combination of these three methods – and securing the attorneys to carry out the chosen method.<sup>5</sup>

All funding for the operation of each of the judicial district public defense systems was managed entirely at the local level through a judicial district indigent defender fund.<sup>6</sup> The source of funds was primarily generated and collected locally<sup>7</sup> from:

- a court cost assessment of \$35 by all courts of original criminal jurisdiction on every conviction other than parking violations, generally referred to as Traffic Ticket funding;<sup>8</sup>
- a percentage of the collections on bond forfeitures;<sup>9</sup>
- court ordered payment by partially indigent defendants;<sup>10</sup> and
- beginning in 2003, a \$40 application fee paid by each person applying for indigent defense counsel.<sup>11</sup>

By far, Traffic Ticket funding made up the largest portion of the funding. The only state contribution<sup>12</sup> to the funding of indigent defense was \$9.5 million as of 2006, distributed through the Louisiana Indigent Defense Assistance Board but without that agency having any true oversight of or accountability by the local districts.

Act 307 created, for the first time in Louisiana, a comprehensive statewide public defense system under the administration of the Louisiana Public Defender Board (LPDB). LPDB is charged “to provide for the supervision, administration, and delivery of a statewide public defender system, which must deliver uniform public defender services in all courts in this state.”<sup>13</sup> To carry out this mission, the LPDB is given complete authority and control “over all aspects of the delivery of public defense services throughout the courts of the state of Louisiana.”<sup>14</sup> The local indigent defender boards were abolished. Concomitant with the passage of Act 307, the legislature increased the state funding of

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indigent defense to \$28,131,238,<sup>15</sup> administered by the LPDB through the Louisiana Public Defender Fund.<sup>16</sup> Locally generated funding from court costs, bond forfeitures, and recoupment from and application fees of defendants continue to be deposited into the local indigent defender fund of each judicial district.<sup>17</sup>

Day-to-day operations of the state public defense system are carried out by the state staff.<sup>18</sup> Once the members of the LPDB were appointed, they set about hiring the state office staff mandated by Act 307. The present state public defender took her position on June 2, 2008. Over the next year, additional positions were filled and staffing was fairly well completed by August of 2009. The LPDB Staff is charged with, among other things, assessing the performance of all indigent defense attorneys within the system<sup>19</sup> and with implementing and ensuring compliance with all statutory and regulatory standards and guidelines.<sup>20</sup>

In order to ensure continuity of operations of defense systems throughout the state as Act 307 was implemented, the legislature directed that any person serving as chief indi-

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## Methodology

NLADA has long played a leadership role in the development of national standards for public defense systems<sup>a</sup> and processes for evaluating a jurisdiction's compliance with those standards.<sup>b</sup> The concept of using standards to address quality concerns is not unique to the field of indigent defense. In fact, the strong pressures of favoritism, partisanship, and/or profits on public officials underscore the need for standards to assure fundamental quality in all facets of government. For instance, realizing that standards are necessary to both compare bids equitably and to assure quality products, policymakers long ago ceased automatically taking the lowest bid to build a hospital, school, or a bridge and required winning contractors to meet minimum quality standards of safety. So must there be minimum standards for quality in the provision of counsel to the poor.

The use of national standards of justice in this way reflects the demands of the United States Supreme Court in *Wiggins v. Smith*, 539 U.S. 510 (2003) and *Rompilla v. Beard*, 545 U.S. 374 (2005). In *Wiggins*, the Court recognized that national standards, including those promulgated by the American Bar Association (ABA), should serve as guideposts for assessing ineffective assistance of counsel claims. The ABA standards define competency, not only in the sense of the attorney's personal abilities and qualifications, but also in the systemic sense that the attorney practices in an environment that provides her with the time, resources, independence, supervision and training to effectively carry out her charge to adequately represent her clients. *Rompilla* echoes those sentiments, noting that the

ABA standards describe the obligations of defense counsel "in terms no one could misunderstand."<sup>c</sup>

The American Bar Association's *Ten Principles of a Public Defense Delivery System* present the most widely accepted and used synopsis of national standards for public defense. Adopted in February 2002, the ABA *Ten Principles* distill the existing voluminous standards for public defense systems to their most basic elements, which officials and policymakers can readily review and apply. In the words of the ABA Standing Committee on Legal Aid and Indigent Defendants, the *Ten Principles* "constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney."<sup>d</sup>

Over the past forty years, the specialized nature of juvenile procedures has grown in scope. Juvenile defenders need not only be aware of the procedural rules and constitutional criminal procedures of the juvenile and adult court systems, but also must be aware of the developmental and mental abilities of their young clients, collateral consequences of conviction (including immigration, access to housing and jobs, admission into armed services, among others), and the enhanced protections for children under federal and state law. To help policymakers understand their responsibilities in the realm of juvenile representation, the prevailing standards are the *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems*, promulgated by the National Juvenile De-

gent defender of a judicial district as of January 1, 2007 would continue to be employed by or under contract with the new system going forward.<sup>21</sup> Similarly, the LPDB was to preserve the method of delivering services in the then existing district public defender programs so long as: they provide effective assistance of counsel; they meet performance standards; and the delivery method employed in the district is consistent with all statutory and regulatory standards and guidelines.<sup>22</sup>

The National Legal Aid & Defender Association (NLADA) was retained by the LPDB to conduct a management evaluation of the 15th Judicial District Indigent Defender Office. LPDB requested NLADA specifically to: evaluate the organizational structure, practices, and policies; evaluate the caseloads, workloads and workflow impediments; and identify the availability and use of investigators. NLADA assembled a site-visit team of professional researchers and leading public defense practitioners<sup>23</sup> to conduct in-court observations and interviews with defense providers and other key players in the local criminal justice system, including district and city court judges, prosecutors, law enforcement

fender Center and NLADA's American Council of Chief Defenders. The *Ten Core Principles* provide "criteria by which an indigent defense system may fully implement the holding of *In Re Gault*" in areas specific to the welfare of children like educational advocacy and right to treatment.

Finally, NLADA looked to the Louisiana Public Defender Act of 2007, which sets out in detail the powers and duties of the Louisiana Public Defender Board, of the LPDB state staff, and of the district defenders.

<sup>a</sup> National Study Commission on Defense Services, U.S. Department of Justice, *Guidelines for Legal Defense Systems in the United States*, 1976; ABA, *Ten Principles of a Public Defense Delivery System*, adopted 2002; NLADA, *Standards for the Appointment and Performance of Counsel in Death Penalty Cases*, 1988 (adopted as ABA, *Guidelines for the Appointment and Performance of Counsel In Death Penalty Cases*, 1989), NLADA, *Defender Training and Development Standards*, 1997; NLADA, *Performance Guidelines for Criminal Defense Representation*, 1995; NLADA, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, 1984 (adopted by the ABA, 1985); NLADA, *Standards for the Administration of Assigned Counsel Systems*, 1989; NLADA, *Standards and Evaluation Design for Appellate Defender Offices*, 1980; NLADA, *Evaluation Design for Public Defender Offices*, 1977; and NLADA, *Indigent Defense Caseloads and Common Sense: An Update*, 1994).

<sup>b</sup> NLADA's standards-based assessments utilize a modified version of the Pieczenik *Evaluation Design for Public Defender Offices*, which has been used since 1976 by leading criminal justice organizations, such as the National Defender Institute and the Criminal Courts Technical Assistance

Project of the American University Justice Programs Office. The NLADA protocol combines a review of a jurisdiction's budgetary, caseload and organizational information with site visits to observe courtroom practices and/or to interview defense providers and other key criminal justice policymakers (e.g., judges, prosecutors, county officials). This methodology ensures that a variety of perspectives is solicited and enables NLADA to form as complete and accurate a picture of a public defense system as possible.

<sup>c</sup> Citation to national public defense standards in court decisions is not limited to capital cases. See, for example: *United States v. Russell*, 221 F.3d 615 (4th Cir. 2000) (Defendant was convicted of prisoner possession of heroin; claimed ineffective assistance of counsel; the court relied, in part on the ABA Standards to assess the defendant's claim); *United States v. Blaylock*, 20 F.3d 1458 (9th Cir. 1993) (Defendant convicted of being a felon in possession of a weapon; filed appeal arguing, in part, ineffective assistance of counsel. Court stated: "In addition, under the *Strickland* test, a court deciding whether an attorney's performance fell below reasonable professional standards can look to the ABA standards for guidance. *Strickland*, 466 U.S. at 688." And, "While *Strickland* explicitly states that ABA standards "are only guides," *Strickland*, 466 U.S. at 688, the standards support the conclusion that, accepting Blaylock's allegations as true, defense counsel's conduct fell below reasonable standards. Based on both the ABA standards and the law of the other circuits, we hold that an attorney's failure to communicate the government's plea offer to his client constitutes unreasonable conduct under prevailing professional standards."); *United States v. Loughery*, 908 F.2d 1014 (D.C. Cir. 1990) (Defendant pleaded guilty to conspiracy to violate the Arms Control Export Act. The court followed the standard set forth in *Strickland* and looked to the ABA Standards as a guide for evaluating whether defense counsel was ineffective.)

<sup>d</sup> American Bar Association. *Ten Principles of a Public Defense System*, from the introduction, at: <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf>. The *Ten Principles* are attached as Appendix A.

officials, the staff and contract attorneys of the 15th Judicial District Indigent Defender Office, members of the LPDB, and others. On-site work was conducted on September 1-3, and September 21-24, 2009.<sup>24</sup>

### Overall Finding

Act 307 has yet to take root in the 15th JDC, as detailed throughout the rest of the report. As opposed to the Legislature's intent to impose oversight as a means of guaranteeing effective assistance of counsel, the indigent defense office (IDO) of the 15th JDC operates with little coordinated management. Attorneys are paid a single flat fee to take an unlimited number of cases, creating a financial conflict between the rights of the defendant to competent counsel and the attorney's take home pay. Indigent clients facing misdemeanor or traffic offenses carrying jail time may very well not receive counsel at all, despite the state and federal Constitutional mandates that they be afforded an attorney. Defendants are likely to be represented by as many as three or four different attorneys during the course of a single case – typically known as “horizontal representation” and universally decried by all national standards and Act 307.

Many of the attorneys carry excessive caseloads as defined by national standards, *before* factoring in their private caseload. The large caseloads carried by these attorneys prevent them from pursuing meaningful communication with their indigent clients. As a result, the lawyers end up meeting with their clients at the courthouse on dates when cases are set for hearing or trial. An inaptly named “open file discovery” policy has the adverse affect of encouraging attorneys never to file motions. Access to investigators – though changing since NLADA's initial site visit – has been virtually non-existent during the tenure of the current district defender. New attorneys are thrown into court with little training and no structure is in place to assess attorney performance. Indigent clients found or pled guilty are regularly assessed an excessively large amount of fees to be paid as a condition of probation, including the cost of their inadequate defense. Failure to pay such fees will result in the revocation of their probation and jail time to be served at further taxpayer expense.



**The 15th Judicial District  
Indigent Defender Office**

The 15th Judicial District encompasses Lafayette, Acadia, and Vermilion Parishes. There are multiple courts within each of the three parishes, with the Lafayette court system being by far the largest.

### **Acadia Parish**

District Court: 3 divisions  
Crowley City Court  
Rayne City Court

### **Lafayette Parish**

District Court: 8 divisions  
Lafayette City Court:  
2 divisions

### **Vermilion Parish**

District Court: 2 divisions  
Abbeville City Court  
Kaplan City Court

The 15th Judicial District Indigent Defender Office (IDO)<sup>25</sup> has its primary office in downtown Lafayette, one block from the courthouse and across the street from the parish jail. The IDO maintains a physical location in both of the other two parishes as well: one in Crowley, located on the courthouse square; and an office space located on the first floor of the courthouse in Abbeville. The sole functions of the three physical office locations of the IDO are to process the financial verification of eligibility of potential clients, send notice of counsel being appointed, and to administer the contracts and payroll for the public defense system attorneys.



There are only six employees within the IDO, plus a secretary who has joined as a seventh hourly-pay employee between the time of the site visit and the release of this report. The office manager works out of the Lafayette office and administers all attorney contracts, payroll, and acts as the primary point of contact. There are also 2.5<sup>26</sup> staff clerks in the Lafayette office. The Acadia Parish office in Crowley has one staff clerk. The Vermilion Parish office in Abbeville has 1.5 staff clerks. All attorney staff of the IDO are on contract in a part-time capacity,<sup>27</sup> including the district defender.

The district defender has served for eight years. He was originally contracted in 2003 by the local indigent defender board (disbanded as a result of Act 307) and has remained in place under the LPDB. As district defender, he handles a limited IDO caseload and contracts with approximately 49 other attorneys to represent indigent defendants in the three parishes of the district. Throughout his tenure as district defender and at the time of the site visit in September 2009, he worked out of his private law office where he employed a legal secretary, handled private paying criminal cases, and accepted federal appointments through the CJA panel of the Federal Public Defender for the Middle and Western Districts of Louisiana. He has advised NLADA subsequently that he has closed his private office and his private secretary is now employed by the IDO.

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The 49 attorneys of the IDO and the district defender are all contracted under individual 12-month contracts.<sup>28</sup> Each defender is paid a flat annual fee to accept a certain category of cases. Although the contracts do not so state, each defender provides representation only within a single parish in the district. The only changes to the contract for each individual defender are their name, their specific case type assignment in paragraph 3.A., and the amount of their annual flat fee in paragraph 3.B.<sup>29</sup> For those defenders who are available to provide capital case defense services, there is a separate contract that is in addition to their regular contract.<sup>30</sup> The capital defense contract varies slightly in its language from the regular contract, but again the contract is exactly the same for each defender who signs it. Detailed discussion of these contracts follows in the next subsection of this report. The IDO system does not employ or have on contract any investigators or social workers.

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### Vermilion Parish Physical Office Facilities

The IDO office in Vermilion Parish is a small room on the first floor of the Courthouse, located through two sets of doors, down a hallway, and behind a third unmarked door. It is very difficult to find, and it does not have any permanent identification or plaque affixed to the door or even near it. In the first floor hallway, there is a paper sign taped to a door which says: “Public Defender’s Office Through This Door.” Through that door is a small space that leads to a second door – invoking the feeling of being in a law enforcement controlled space. After passing through this second door, you are in a hallway and immediately facing yet another door bearing a sign that reads “Police Jury.” The only choice is to enter the Police Jury room or turn to the right which leads you directly into the Clerk of Court office. Just to the left of the Clerk of Court office, there is an unmarked door and behind that unmarked door is the space that serves as the IDO office in Vermilion Parish.

Clients of the IDO, in Vermilion Parish, are told to go to this IDO office to pay their application fee. Clients do not typically go inside of the IDO office. Instead, the approximately 9x12 foot space has a door with a built-in window for physically collecting applications and fees, much like an enclosed bank teller space. But more importantly, it is not unusual for clients to wend their way to the office, only to find that the door is locked and the office is unattended. This is because there is only one full-time IDO staff person who works in this office, with the help of an additional staff per-

son who works two days in Vermilion and three days in Lafayette. Both of these clerical staff must be in the courtroom when 72-hour hearings are being held and when arraignments are being held in any of the four courts in Vermilion, and they also must go to the jail to obtain applications for counsel from in-custody defendants. So, when they are in court or at the jail, the IDO office is closed. Similarly, if a client calls the office and no one is there, there is only a recording that instructs you to “please leave a message after the tone.” There is no instructive information on either the telephone message or the door of the office regarding office hours or when a client can reasonably expect any IDO personnel to be present.

A member of the clerk of court staff confirmed that the IDO office is frequently closed. It is impossible for the clerk of court staff to be unaware, because many clients and their family members end up in the Clerk of Court office by pure mistake, as they try to locate the unmarked IDO office. And even those who successfully find the IDO office often seek help from the clerk of court because of the absence of any notice or instructions or human presence at the IDO office.

From the moment that a defendant is arrested until they receive notice of appointment of trial counsel (which typically does not occur until 10 to 15 days after their arraignment, meaning often 2 to 5½ months after arrest), this “office” is the only point of contact between a Vermilion Parish defendant and the IDO.

**15th JDC Indigent Defender Office**

**Lafayette Parish**

David Balfour, district defender & felony attorney  
Chris St. Julien, paralegal & office manager

**IDO Staff/Clerks**

Kim Thibodeaux  
Lindsey McManus  
Danielle Menard (splits part-time between Lafayette & Vermilion)

**FELONY ATTORNEYS**

Randy Lasseigne  
Travis Mose  
Luke Edwards  
Eric Neumann  
Kirk Piccione  
Randal McCann  
Jennifer Robinson  
Valerie Garrett  
Harold Register  
Dan Kennison  
Gerald Block  
Valex Amos  
James Dixon, Jr.

**PRE-INDICTMENT**

Remy Jardell

**REVOCATION**

Chris Larue

**MISD. ATTORNEYS**

Kay Gautreaux  
Richard Mere  
Chris Richard  
Lenise Williams

**TRAFFIC/IWC**

Tricia Pierre

**NON-SUPPORT**

Monique Cloutier

**JUV/CINC**

Lloyd Dangerfield  
Vivian Neumann  
Allyson Prejean  
Thomas Dupont

**CITY COURT**

Roshell Jones  
Christ Beaner  
Christopher Evans

**Acadia Parish**

**IDO Staff/Clerks**

Annette Guidry

**FELONY ATTORNEYS**

Jack Nickel  
Burleigh Doga  
Kim Hayes  
Glenn Howie  
Clay Lejuene

**MISD/JUVENILE/CITY**

Rhett Harrington  
Michael Landry  
James Landry  
Brett Stefanski  
Scott Privat

**Vermilion Parish**

**IDO Staff/Clerks**

April Broussard  
Danielle Menard (part-time)

**FELONY ATTORNEYS**

Ronald Melebeck  
Pat Thomas  
Linda Veazey  
Louis Garrott  
Gabe Duhon  
Jan Rowe  
Burton Guidry

**PRE-INDICTMENT**

Joann Nixon

**MISD/JUVENILE**

Bart Broussard  
Nicole Guidry  
Julie Rosenzweig

This office structure chart is provided to give the reader a general overview of the staffing and primary attorney responsibilities, based on the 2009 contracts and at the time of the site visit in September 2009. Many of the attorneys have additional responsibilities beyond those shown here. Appendix V shows the complete representation responsibilities of every IDO attorney, as provided by the 15th IDO as of April 2010.

## A. Organizational Structure, Practices, and Policies

### i. Independence, Funding and Structure

#### ***Guidance of National Standards, ABA Principles 1 and 2***

The first of the ABA's *Ten Principles* addresses the importance of independence in indigent defense systems, explicitly limiting judicial oversight and political interference in the day-to-day administration of the system. The second of the *Principles* emphasizes that state funding and oversight are required to ensure uniform quality of services to all defendants in a state. This is to carry out the critical but often overlooked aspect of the Supreme Court's landmark ruling in *Gideon v. Wainwright* that the Sixth Amendment's guarantee of counsel was "made obligatory upon the States by the Fourteenth Amendment" – not upon county or local governments.<sup>31</sup>

#### ***Requirements of Act 307***

In creating the statewide public defense system of Act 307, the Louisiana legislature went far toward achievement of both of these principles. Local judges were removed entirely from oversight of public defense providers to any extent greater than they would have over a privately retained attorney or a prosecutor. Local indigent defender boards were abolished, eliminating the dangers of political interference and cronyism in the daily administration of the systems.

The LPDB was established as an independent non-partisan agency within the executive branch of government and was given full authority and control over all aspects of the delivery of public defense services throughout the state.<sup>32</sup> And, while not achieving 100 percent state funding of indigent defense services, the state of Louisiana now provides the majority of the funding statewide.

#### ***Current Practice in the 15th Judicial District IDO***

Though the LPDB has statutory authority, it is taking some time for that authority to be fully implemented throughout all of Louisiana's judicial districts. The state office, charged with carrying out the LPDB's responsibilities, was not fully staffed until approximately August of 2009. They have begun gathering the data and conducting the assessments necessary to determine the status of the provision of defense services in the now 43 judicial districts of the state. In the course of that information gathering, the LPDB staff has uncovered and corrected numerous instances of inappropriate policies and activities occurring in the judicial district defender systems.<sup>33</sup> As the LPDB chair said, there have certainly been some disappointing discoveries, but they are "a sign that the over-

sight and supervisory structure created by the Legislature in the 2007 Public Defender Act is working, as it should, on behalf of clients and the public.”

Accountability was lacking when each of the district public defense systems was fully autonomous, and accountability is now in place. LPDB’s request for an outside management evaluation of the 15th Judicial District Indigent Defender Office is one of the ways in which the LPDB state staff is fulfilling its statutory responsibility to “[r]eview, monitor, and assess the performance of all attorneys . . . to provide counsel for indigent defendants”<sup>34</sup> and to “[i]mplement and ensure compliance with contracts, policies, procedures, standards, and guidelines adopted pursuant to rule by the board or required by statute.”<sup>35</sup>

*Awareness and Communication of Authority of the LPDB*

One of the challenges faced by the LPDB and state staff is finding effective ways to communicate to indigent defense attorneys and support staff, criminal justice system

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## IDO Budget 2008

The 2008 Fiscal Year Budget for the 15th Judicial District IDO<sup>a</sup> projected total local revenue of \$1,959,200. Local revenue is received from five sources and was budgeted for 2008 in the following amounts:

Application Fees (from defendants)	\$ 260,000	(13.27%)
Partially Indigent Fees (from IDO clients)	\$ 100,000	( 5.10%)
Court Costs	\$ 1,179,200	(60.19%)
Bond Forfeitures	\$ 375,000	(19.19%)
Interest Earned	\$ 45,000	( 2.30%)
<b>Total Anticipated 2008 Local Revenue</b>	<b>\$ 1,959,200</b>	

Under Act 307, these funding sources that are collected locally continue to be deposited into the local indigent defender fund of each of the judicial districts.<sup>b</sup>

Of these five sources of locally collected revenue, the only one that is within the power of the IDO to attempt to increase is the assessment and collection of “Partially Indigent Fees” from clients of the IDO. By increasing the assessments made of clients, an IDO can increase its operating budget and thereby increase pay to attorneys and staff. Of the total actual 2008 expenditures, \$2,543,883.89 (85 percent) went to the 48 contract attorneys, leaving 15 percent to cover all other expenses including the salary of clerical staff, investigators, experts, rent, and utilities.<sup>c</sup>

Expenditures in the 2008 Fiscal Year Budget were projected to be \$2,963,550, for a projected deficiency of \$1,004,350. The only source of revenue for the IDO, beyond the locally collected sources, is the LPDB District Assistance. Actual revenues and expenditures for the IDO during the 2008 calendar year were:

Application Fees (from defendants)	\$ 96,237.18	( 3.3%)
Partially Indigent Fees (from IDO clients)	\$ 258,591.02	( 8.9%)
Court Costs	\$ 1,429,210.35	(49.5%)
Bond Forfeitures	\$ 329,279.52	(11.4%)
Interest Earned	\$ 30,165.40	( 1.0%)
Miscellaneous	\$ 1,500.00	( 0.1%)
LPDB State Funds	\$ 744,580.00	(25.8%)
<b>Total Actual 2008 Revenue</b>	<b>\$ 2,889,563.47</b>	
<b>Total Actual 2008 Expenditures</b>	<b>\$ 2,962,545.92</b>	

The LPDB state assistance to the IDO constituted 25.8 percent, or roughly one-fourth of total revenue.

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<sup>a</sup> See Appendix G.

<sup>b</sup> 2007 La. Acts 307, section 168.

<sup>c</sup> See 15th Judicial District Indigent Defender Board, Financial Statement, December 31, 2008, prepared by J.L. Sonnier, Certified Public Accountant. Attached as Appendix H.

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stakeholders, and the public. Act 307 created the position of district defender to manage the public defender services in each judicial district<sup>36</sup> and specifically to supervise the work of the district personnel and implement the standards, guidelines, and procedures of the LPDB and LPDB staff.<sup>37</sup> Thus the district defender is to be the conduit of information from the LPDB and LPDB staff to the local system. Our evaluation of the 15th Judicial District IDO revealed some concerns in this regard.

## Independence

“In recognition of its mandates under both the United States and Louisiana constitutions, the legislature enacts the Louisiana Public Defender Act of 2007 to provide for . . . [e]nsuring that the public defender system is free from undue political and judicial interference and free of conflicts of interest.”<sup>a</sup> Act 307 carried out this legislative intent, in part, by eliminating the local indigent defender boards and the selection of their members by district court judges. Today, local judges should not be selecting the public defense attorneys who appear before them to represent indigent clients, just as they do not select the private attorneys who appear before them to represent paying clients. Though Act 307 plainly intended to ensure independence of public defense attorneys, a district defender can give away that independence if they manage the system in a way that assigns an attorney to a judge, rather than to a client.

Although the contracts between the IDO and the individual attorneys are silent on this topic, in fact each defender provides representation only within a single parish in the district. And then within that single parish, each attorney provides representation in only certain types of cases and sometimes in only certain courts. When this is combined with the way in which the judges allocate cases among themselves, the result is that each IDO attorney in fact is being assigned to the courtrooms of generally only 2 or 3 judges.

There are 13 district court benches within the 15th Judicial District. The chart to the right helps in conceptualizing the actual role of each of these judges within the district.

Traditionally, each judge sat only in the parish shown below. So, Judges Trahan, Everett, and Earles were the only district judges sitting in Acadia Parish; and any public defender working in Acadia would appear only before these three judges. Similarly, only Judges Broussard and Conque sat in Vermilion Parish; and any public defender working in Vermilion would appear only before these two judges. Lafayette Parish operated a “track system” (which always excluded Judges Blanchet and Keaty who sit only in Family Court cases), so the six remaining judges divided themselves into four felony tracks. If a felony case was allotted to Track 1, then that case could be presided over by any of the Track 1 judges, such that motions might be heard before one judge while trial in the same case could be conducted before another judge, and so forth for the other three tracks. By

Div	Judge	Parish	04/20/09 - 12/17/2009	02/25/10 - present
Div A	Trahan	Acadia	Fel Track 3	
Div B	Edwards	Lafayette	Fel Track 1 “Drug Track”	
Div C	Broussard	Vermilion	Fel Track 4	
Div D	Rubin	Lafayette	Fel Track 1; Juv; “Drug Court”	
Div E	Clause	Lafayette	Fel Track 3; Juv	
Div F	Everett	Acadia	Fel Track 3	
Div G	Conque	Vermilion	Fel Track 3	
Div H	Blanchet	Lafayette – Family		
Div I	Duplantier	Lafayette	Fel Track 2, 4; Juv	Juv
Div J	Earles	Acadia	Fel Track 2	
Div K	Michot	Lafayette	Fel Track 2, 3, 4; Acadia; Vermilion	
Div L	Castle	Lafayette	Fel Track 2, 4; Vermilion	Juv
Div M	Keaty	Lafayette – Family		

The 2009 IDO contract with each of the defense attorneys is wholly silent about any need to comply with or even the existence of the rules and standards<sup>38</sup> of the LPDB. The contract states:<sup>39</sup>

1.D. Representation provided by Counsel is not subject to detailed instruction from The Program as to how to achieve representation of the clients. However, The Program may

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long-standing tradition, the Lafayette felony defense attorneys were also assigned to tracks, which meant that any felony attorney practiced only before 2 or 3 judges. Track 1 attorneys are: David Balfour, Randy Lasseigne, Travis Mose, and Luke Edwards. Track 2 attorneys are: Eric Neumann, Kirk Piccione, Randal McCann, and Jennifer Robinson. Track 3 attorneys are: Valerie Garrett, Harold Register, and Dan Kennison. Track 4 attorneys are: Valex Amos, Gerald Block, and James Dixon.

At the time of the NLADA site evaluation (during the 04/20/09 to 12/17/09 timeframe shown in table on preceding page), the judges were in the midst of changing their own system regarding the parishes in which they sit,<sup>b</sup> though the Lafayette track system was still in place at that time. In Acadia Parish, Judge Michot from Lafayette was occasionally sitting in addition to the Acadia Parish division judges. In Vermilion, Judges Michot and Castle from Lafayette were both occasionally sitting in addition to the Vermilion Parish division judges. And in Lafayette, all three of the Acadia Parish judges and both of the Vermilion Parish judges were occasionally sitting in Lafayette Parish.

The IDO attorneys voiced a good bit of consternation at having to appear before new and unfamiliar judges who had different ways. Two Vermilion attorneys said the Lafayette judges were terrible and disregard defendant's rights, and that they would prefer to have "their own judges" rather than for judges to rotate through the district.

At least one judge was disturbed by the defense practices he observed when sitting for the first time outside his own parish. He had recently sat in Lafayette for the first time and had presided over misdemeanor probation revocations. He was very concerned that there were no lawyers appearing with the defendants, yet he was being asked by the prosecutor to impose sentences of typically 5 months in jail. He apparently did not feel that he had the power to alter the regular practice in the Lafayette courts by requiring that attorneys be appointed to these clients.

It appears from the current on-line 15th Judicial District Court "2010 Court Calendar" that the judges have now successfully completed their transition away from the track system. NLADA suspects, however, that IDO Lafayette felony attorneys are still appointed on the basis of track and that this likely still has the functional outcome of causing certain attorneys to appear only or primarily before 2 or 3 judges. And those IDO attorneys who do not handle felonies are most assuredly still appearing before a limited number of judges. For example, in Lafayette District Court: Commissioner Frederick conducts all arraignments and the Lafayette pre-indictment attorney appears for all arraignments; all juvenile matters are heard by Judges Duplantier and Castle, and all Lafayette juvenile matters are appointed to Allyson Prejean, Lloyd Dangerfield, and Vivian Neumann. Julie Rosenzweig will only ever appear before the two judges of Abbeville City Court and Kaplan City Court.

Of great concern is the sense of ownership that some judges evidenced regarding the IDO attorney assigned to their court. In Lafayette, *all* felony drug probation revocation cases are heard by Judge Edwards. He requested that the district defender designate a single attorney to represent all indigent defendants in these proceedings. And the district defender complied. The judge said: "They hired a single attorney to handle *my* revocation docket." The newest member of the IDO appears *only* before Judge Edwards in felony drug revocation proceedings, in addition to serving as the Lafayette pre-indictment attorney. Likewise, the judge presiding over the juvenile drug court had requested a particular IDO attorney be assigned, and the IDO attorney agreed to serve in that capacity *as a favor to the judge*.

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<sup>a</sup> 2007 La. Acts 307, section 142.B.(2).

<sup>b</sup> The court calendars for the two time periods shown in the chart are attached as Appendix F.

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## **ABA Principle 1**

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

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## **ABA Principle 2**

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

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establish general guidelines or may prohibit certain acts or practices of Counsel as it deems appropriate. In all aspects counsel is a general contractor whose obligations [sic] to deliver legal representation to clients in accordance with the Constitutions of the United States and the State of Louisiana, Louisiana Law, the rules of ethics of the Louisiana State Court and the local rules of the 15th Judicial District Court.

Of note, it appears that one attorney must have had independent awareness of the authority of the LPDB over the provision of defense services, as a single one of all of the 2009 contracts contains a hand-written alteration to the standard language in the paragraph governing when an attorney may be suspended without pay by the IDO. The standard sentence in the contracts reads: "Counsel agrees that the judgment of The Chief on such questions is final and binding." This one contract was hand-changed to read: "Counsel agrees that the judgment of **the State Board** on such questions is final and binding."

The office manager advised that she disseminates policies and performance guidelines to the IDO attorneys, usually including them along with the attorneys' monthly pay stubs and sometimes sending them by email. Yet when the site team inquired of the IDO attorneys about whether they were aware of the *Trial Court Performance Standards* that had been promulgated five months earlier, most of them were completely unaware of the document, while only a few said they recalled having read it a while back. The IDO does not take any steps to ensure that the attorneys have actually received or read these policies.

Effective September 14, 2009, the district defender notified the IDO attorneys that, in compli-

ance with LPDB policies, they are now being required to keep track of and report their time spent in representing IDO clients.<sup>40</sup> The tone of that communication, however, leaves much to be desired from a district defender fulfilling the crucial role as conduit of information between the LPDB and the attorneys providing services to clients. The memo states:

I have good news and bad news.

...

Now the bad news.

Baton Rouge is requiring that all attorneys write time for all IDO work. Time is to be recorded in increments of 1/10 hour, 1/10 equaling six minutes. Please round up or down appropriately. Also, I ask that everyone try to record your time accurately. This is not insurance defense work. The time you record will not translate into more income. These time records must be provided by [sic] to [the office manager] by the 5th of each month. Finally, only lawyer time is to be recorded, not staff time.

This memo conveys the clear impression that keeping track of and reporting time spent on indigent defense cases is merely a burden being imposed by the LPDB that will not produce more income for the attorneys. It is of concern that he does not emphasize the importance of accountability and that determining how much time is actually spent by attorneys on behalf of their clients will allow the LPDB to seek necessary resources and properly allocate those resources uniformly throughout the state. It is of equal concern that he chooses instead to emphasize to defenders that they will not make more money by complying with LPDB policies, drawing attention to the fact that these defenders operate under flat-fee contracts that place their own financial interests in conflict with the interests of their clients.

Two of the IDO attorneys expressed the view that it was unfair for the LPDB state office to require them to keep data and time. They felt they were already overworked, did not have time to enter data in addition to handling their designated IDO caseload, and frankly did not feel that they should be held accountable for their time since they were contractors rather than employees.

### *Appearance of Self-Dealing*

Another difficulty arising during the implementation of Act 307 is full integration of the district defenders into the statewide public defense system. As noted earlier, prior to 2007, every local indigent defense system was fully autonomous and the chief public defender of each system was in charge, reporting only to their local indigent defender

board. Under Act 307, each district defender is either an employee of or a contractor with the LPDB.<sup>41</sup> Like many other former chiefs, the district defender of the 15th JDC automatically came under contract with the LPDB, by virtue of having been the chief indigent defender as of January 1, 2007, and at the same compensation level he had previously received.<sup>42</sup> Yet there is no signed contract between the LPDB and the district defender.<sup>43</sup> Instead, there is a document that purports to be a contract signed by the district defender in his management capacity and the district defender in his attorney capacity, hiring himself to serve as district defender and to provide felony representation.<sup>44</sup>

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### **ABA Principle 8**

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

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ments and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services.”<sup>45</sup>

Flat-fee contracts, which pay a single lump sum for an unlimited number of cases regardless of how much work the attorney does, create a direct financial conflict of interest between the attorney and the client, in derogation of ethical and constitutional mandates governing the scope and quality of representation. Under this type of contract, any work performed by the attorney beyond the bare minimum effectively reduces the attorney’s take-home compensation. And without regard to the necessary parameters of ethical representation, the attorney’s caseload will creep higher and higher, yet the attorney is in no position to refuse an excessive number of cases – in fact they are contractually bound to accept them no matter how many.

District defenders should not be signing as both parties to a contract under which they will then determine their own annual salary.

#### *Flat-Fee Contracts*

An additional area of concern with regard to the contracts presently being used by the IDO involves flat-fee contracting. The eighth of the ABA *Ten Principles* explains that “[c]ontracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance require-

## A Tale of Two Counties: Washington State & the Prohibition of Flat-Fee Contracts

In January 2009, the Washington Supreme Court banned indigent defense providers from entering into flat fee contracts because of the inherent conflict of interest it produces between a client's right to adequate counsel and the attorney's personal financial interest. The decision was the result of the great disparity of services provided by Washington's counties.

For example, King County, Washington (Seattle) has a high quality indigent defense system. Poor people charged with crimes in Seattle are assigned to one of four independent, non-profit private law firms that contract with the county to provide right to counsel services. The contracts with the county government limit the number of cases to reasonable levels. If, for instance, the district attorney's office finds reason to charge a defendant with a crime carrying the possibility of a death sentence, the public defender automatically receives additional money from the county to put two attorneys solely on that one case until its completion. Oftentimes this results in the public defender offering mitigation evidence to the prosecutor in advance of a formal filing of death penalty charges to persuade the prosecution that it is not in the best interest of justice to continue to pursue death as a sentencing option. The executive director of at least one office is clearly seen as an equal partner in the administration of justice and the setting of criminal justice policy.

Contrast that with Grant County, Washington — a jurisdiction of approximately 80,000 that is situated two counties east of King County. Grant County contracted with a single public defender to administer the indigent defense caseload for a predetermined dollar amount — regardless of the number of cases opened within that year — as a means of controlling rising criminal justice costs. The public defender administrator retained the authority to farm out any portion of the work for whatever price he could negotiate.

As a spotlight series conducted by the *Seattle Times* described it, “[t]he more cases [the administrator] kept for himself, the fewer he had to dole out. The fewer he doled out, the more money he kept.”<sup>a</sup> In one year, the administrator made \$225,000 — though to do so he had to handle 415 felony cases himself, or more than 175 percent above the prescribed number of felony cases any one attorney should ethically handle in a given year according to all nationally-recognized caseload standards. The Grant County indigent defense provider spent on average four hours on each case — including those cases that went to trial.

Grant County's problems were addressed as a result of an American Civil Liberties Union of Washington class action lawsuit against this system, alleging that the overwhelming caseload compelled the attorney to take short cuts, like failing to investigate cases, failing to file credible motions, and failing to meet with the clientele. The case was settled after Superior Court Judge Michael Cooper found that indigent defendants in Grant County have a “well-grounded fear” of not receiving effective legal counsel. Under the terms of the settlement, the county had to hire sufficient staff to meet national caseload guidelines, provide effective supervision and training, and hire a magistrate to ensure standards are met. Moreover, a client who spent months in jail due to the deficient work of his Grant County public defender was awarded \$3 million that held his public defender personally responsible for the inadequate service. The public defender was also disbarred. Grant County settled with this one client for \$250,000.

<sup>a</sup> Ken Armstrong, Florangela Davila and Justin Mayo. “The Empty Promise of an Equal Defense: Part 2: Attorney profited, but his clients lost.” *The Seattle Times*, Local News: Monday, April 05, 2004.

As mentioned in the previous section, each of the 49 attorneys of the IDO and the district defender are all contracted under individual 12-month contracts where they are paid a flat annual fee to accept a certain category of cases.<sup>46</sup> The flat-fee amount for each attorney under their IDO contract is determined based on: (1) base pay for the category of case they are contracted to handle; (2) \$500 for each year of service as a contract attorney with the IDO, up to a maximum of \$10,000; and (3) administrative duties within the IDO system. The base amounts that attorneys are paid for each category of case have var-

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ied from 2007 to 2008 to 2009. Based on all of the information provided both orally and in writing, NLADA has prepared a chart (see pages 20 - 21) showing the breakdown of the flat-fee contract amount for each IDO attorney under the contracts as signed in January 2009 and in effect until (apparently) September 1, 2009.<sup>47</sup> During that time period, it appears that contract amounts were determined as follows:

- Attorneys available for appointment in capital cases receive a base contract amount of \$12,000 for their availability; felony attorneys receive a base contract amount of \$42,700; juvenile attorneys receive a base contract amount of \$53,500;<sup>48</sup> and misdemeanor attorneys receive a base contract amount of \$26,500.
- Each attorney receives an additional \$500 for each year of service as a contract attorney with the IDO, up to a maximum of \$10,000.
- A small number of the attorneys are paid for providing administrative or supervisory level services, including the district defender, however it is unclear how the amount of payment for those services is determined.

Critically, the amount the attorney is paid does not appear to bear any relationship to their caseload.<sup>49</sup> The workloads of the IDO attorneys are discussed in detail later in this report, however suffice it to say here that the IDO does not have any binding caseload limits for the number of cases that each attorney can be assigned to handle at any given time or during the course of a year, and in fact there is no limit under the contracts as to how many clients or cases an attorney can be forced to accept in return for the flat-fee paid. Additionally, all of the contract attorneys are expressly allowed to carry a private retained caseload in addition to their indigent caseload, without any obligation that they report the number of private cases they are handling.

Each IDO contract attorney is in essence paid a flat annual fee to *be available as a public defender* for some unlimited number of indigent defendants in a given category of cases in a given parish. The IDO leaves it almost exclusively in the hands of each contract defender to determine how to do that and how to bear the expense of doing that. Before each attorney represents a single client or earns a single dollar, they must *first* bear all of the costs of establishing an office from which they can provide criminal defense services. The IDO contracts require that:

- 2.A. Counsel is expected to have an active, ongoing law practice, with a physical address. Counsel shall provide office work product, secretarial, receptionist, telephone, telephone answering, fax, postage, copies and all other standard services. The cost of

these services and expenses remain solely the expense of Counsel and Counsel's responsibility.

2.B. Counsel shall provide all office supplies, including stationery and shall conduct representation under Counsel's letterhead and address. . . .<sup>50</sup>

All of the expenses listed in the contract, and additionally furniture and computers and malpractice insurance and state licensing & bar dues and legal research materials and utilities, are what is commonly referred to as "overhead" that is necessary simply for a defense attorney to remain operational from day-to-day.<sup>51</sup> Put another way, these costs must be paid *before a lawyer represents a single client*. Under the flat-fee contracts in use by the IDO, every one of the 50 attorneys providing defense services must pay for all of these overhead expenses out of the flat-fee rate paid pursuant to their contract. The IDO does not collect from its contract attorneys any information about the dollar amounts each of them expend in providing the overhead resources required of them under their contracts.

Once an attorney is actually designated as the defense attorney for a given client in a given case, then there are additional case-related out-of-pocket expenses that must also be borne by the contract attorney. These are the expenses that the attorney would not incur but for representing the client, and they include expenses such as long-distance telephone charges, mileage to and from court and to conduct investigation, preparation of copies and exhibits, costs incurred in obtaining discovery, and of course the cost of hiring necessary investigators and experts in the case. The current contract in use by the IDO requires each contract attorney to pay for all of these out-of-pocket expenses, other than for an investigator<sup>52</sup> and experts, out of the flat-fee rate paid pursuant to their contract, thus diminishing even further the amount of the fee actually earned by the lawyer. The IDO does not collect from its contract attorneys any information about the dollar amounts each of them expend in case-related expenses on behalf of each of their clients as required of them under their contracts.

The Louisiana Supreme Court long ago addressed the necessity of paying an attorney a reasonable and not oppressive fee to represent any indigent defendant, albeit in the context of a judge appointing a lawyer rather than in the context of an IDO contracting with a lawyer. In 1993 in *State v. Wigley*,<sup>53</sup> the Court said "that in order to be reasonable and not oppressive, any assignment of counsel to defend an indigent defendant must provide for reimbursement to the assigned attorney of properly incurred and reasonable out-of-pocket expenses and overhead costs."<sup>54</sup> The fee to the lawyer – i.e., what the lawyer actually earns for representing the client – must be in addition to these overhead costs and out-of-pocket expenses. In the 15th Judicial District IDO, however, attorneys are paid a flat-fee, out of which they must pay first overhead and second case-related out-

## Attorney Contract Pay, in effect January 1 to September 1, 2009<sup>a</sup>

Attorney	Parish	Case Categories	Total Contract Paid, 2009	Capital Fees	Base Contract Pay	Seniority <sup>b</sup>	Administrative Duties
D. Balfour <sup>c</sup>	Lafayette	Felony, District Defender	\$94,600		\$21,350	\$10,000	\$63,250
G. Block <sup>d</sup>	Lafayette	Felony, Capital Coordinator	\$80,200		\$42,700	\$10,000	\$27,500
A. Prejean <sup>e</sup>	Lafayette	Juvenile, Juvenile Drug Court	\$67,300		\$64,300	\$3,000	
J. Nickel <sup>f</sup>	Acadia	Felony, Felony Arraignments, Capital, Parish Coordinator	\$65,780	\$12,000	\$43,280	\$8,500	\$2,000
P. Thomas <sup>g</sup>	Vermilion	Felony, Capital	\$65,200	\$12,000	\$43,200	\$10,000	
L. Veazey <sup>g</sup>	Vermilion	Felony, Capital	\$65,200	\$12,000	\$43,200	\$10,000	
L. Garrott <sup>h</sup>	Vermilion	Felony, Felony Revocations, Capital	\$63,500	\$12,000	\$49,500	\$2,000	
L. Dangerfield	Lafayette	Juvenile	\$63,000		\$53,500	\$9,500	
B. Doga	Acadia	Felony, Capital	\$62,700	\$12,000	\$42,700	\$8,000	
H. Register	Lafayette	Felony, Capital	\$62,700	\$12,000	\$42,700	\$8,000	
G. Howie	Acadia	Traffic/Juv. Delinquency/Pre-Indict., Crowley City, Rayne City OCS	\$62,700		\$57,200	\$5,500	
V. Garrett	Lafayette	Felony, Capital	\$62,200	\$12,000	\$42,700	\$7,500	
B. Stefanski <sup>i</sup>	Acadia	Felony, District Court OCS	\$62,200		\$56,200	\$6,000	
E. Nuemann	Lafayette	Felony, Capital	\$61,700	\$12,000	\$42,700	\$7,000	
V. Amos	Lafayette	Felony, Capital	\$60,700	\$12,000	\$42,700	\$6,000	
K. Piccione	Lafayette	Felony, Capital	\$60,700	\$12,000	\$42,700	\$6,000	
V. Neumann	Lafayette	Juvenile	\$59,000		\$53,500	\$5,500	
C. Lejuene	Acadia	Felony, Capital	\$58,200	\$12,000	\$42,700	\$3,500	
N. Guidry	Vermilion	Misdemeanors, Juvenile, Abbeville City/Kaplan City OCS	\$57,900		\$55,900	\$2,000	
J. Dixon	Lafayette	Felony, Capital	\$56,700	\$12,000	\$42,700	\$2,000	
L. Edwards	Lafayette	Felony, Capital	\$56,200	\$12,000	\$42,700	\$1,500	
R. McCann	Lafayette	Felony, Capital	\$56,200	\$12,000	\$42,700	\$1,500	
B. Guidry	Vermilion	Felony, Capital	\$55,700	\$12,000	\$42,700	\$1,000	
K. Hayes	Acadia	Felony, Capital	\$55,200	\$12,000	\$42,700	\$500	
R. Melebeck	Vermilion	Felony, Parish Coordinator	\$54,700		\$42,700	\$10,000	\$2,000
B. Broussard	Vermilion	Misdemeanors, Juvenile, Revocations	\$51,650		\$47,650	\$4,000	

<sup>a</sup> See explanatory text at page 18. Appendix V, provided by the IDO, shows the compensation break-down for every IDO attorney as of April 2010.

<sup>b</sup> Seniority pay is capped at \$10,000. The amounts shown in this column were calculated based on the seniority pay for each attorney shown in the local IDO report from 2007, and adding \$1,000 (\$500 per year) to arrive at the 2009 seniority pay due to the attorney. 2007 IDO report attached as Appendix J.

<sup>c</sup> As of April 2010, the IDO advised that the district defender salary of \$94,600 was allocated as: base contract pay of \$48,000; seniority pay of \$10,000; and administrative duty pay of \$36,600.

<sup>d</sup> Block serves as "capital coordinator" according to his [delete per base] contract. No separate contract for capital cases for 2009 was provided to NLADA.

<sup>e</sup> 2009 base contract amount for juvenile representation is \$53,500. It is possible that Prejean's base contract includes \$10,800 for Juvenile Drug Court.

<sup>f</sup> Administrative duties are estimated at \$2,000, based on similar contract for Melebeck (Vermilion Parish coordinating attorney). Base contract pay includes \$42,700 for felony cases. We estimate the remaining \$580 is for felony arraignments.

<sup>g</sup> The normal base pay for felonies is \$42,700 and the attorney

Attorney	Parish	Case Categories	Total Contract Paid, 2009	Capital Fees	Base Contract Pay	Seniority <sup>b</sup>	Administrative Duties
R. Lasseigne <sup>l</sup>	Lafayette	Felony	\$51,200	\$42,700	\$8,500		
J. Rowe	Vermilion	Felony	\$49,700	\$42,700	\$7,000		
D. Kennison <sup>k</sup>	Lafayette	Felony	\$47,200	\$42,700	\$4,500		
T. Mose	Lafayette	Felony	\$45,200	\$42,700	\$2,500		
G. Duhon	Vermilion	Felony	\$44,200	\$42,700	\$1,500		
C. Beaner	Lafayette	Lafayette City	\$44,200	\$42,700	\$1,500		
R. Jones	Lafayette	Lafayette City	\$44,200	\$42,700	\$1,500		
J. Robinson	Lafayette	Felony	\$43,700	\$42,700	\$1,000		
M. Cloutier	Lafayette	Non-Support	\$42,500	\$35,500	\$7,000		
J. Nixon <sup>l</sup>	Vermilion	Dist. Pre-Indict., Non-Support, OCS; Abbeville & Kaplan City OCS	\$35,430	\$35,430	\$0		
M. Landry	Acadia	Crowley City OCS, Rayne City Misdemeanors, Juvenile	\$34,950	\$31,450	\$3,500		
T. Pierre	Lafayette	District Court DWI & IWC	\$34,000	\$29,500	\$4,500		
R. Harrington	Acadia	Misdemeanor, Juv. OCS, Non-Support, Revocations	\$33,080	\$27,580	\$5,500		
K. Gautreaux	Lafayette	Misdemeanor	\$29,000	\$26,500	\$2,500		
R. Mere	Lafayette	Misdemeanor	\$28,500	\$26,500	\$2,000		
C. Richard	Lafayette	Misdemeanor	\$28,500	\$26,500	\$2,000		
L. Williams	Lafayette	Misdemeanor	\$28,000	\$26,500	\$1,500		
J. Rosenzweig <sup>l</sup>	Vermilion	Kaplan City Misd. & Juv., Abbeville City OCS conflicts	\$26,100	\$26,100	\$0		
C. Larue	Lafayette	Felony Revocations, Drug Court	\$25,600	\$21,100	\$4,500		
C. Evans	Lafayette	Lafayette City Juvenile	\$24,900	\$23,400	\$1,500		
T. Dupont	Lafayette	Lafayette City Juvenile	\$23,400	\$23,400	\$0		
T. Gauthier <sup>m</sup>	Lafayette	Pre-Indictment, Habeas, Revocations	\$21,600				
J. Landry	Acadia	Rayne City OCS	\$7,750	\$6,250	\$1,500		
S. Privat <sup>n</sup>	Acadia	Misdemeanor, Juvenile, City Court(s)					
R. Jardell <sup>n</sup>	Lafayette	Pre-Indictment, Habeas, Revocations					

receives the maximum seniority pay of \$10,000. This leaves an extra \$500 that cannot be attributed.

<sup>h</sup> No contract provided for 2009. Figures are estimates based on Garrott's 2007 contract, and adjusted to 2009 pay levels of IDO attorneys handling similar case types.

<sup>i</sup> Base contract pay includes \$42,700 for felony cases, as he was originally contracted at the beginning of 2009. We estimate the remaining \$13,500 is for OCS cases.

<sup>j</sup> No contract provided for 2009, though he continues to serve as an IDO attorney. In 2008, his contract was for \$55,500 for felony representation. The 2009 figures assume the attorney handles the same case type as in 2007 & 2008.

<sup>k</sup> No contract provided for 2009, though he continues to serve as

an IDO attorney.

<sup>l</sup> Attorney not listed on 2007 IDO report. Therefore NLADA cannot estimate the "seniority," and not enough information to estimate the breakout of base fees for each category of case type being handled under the 2009 contract.

<sup>m</sup> 2009 contract provided, but we believe he left the office prior to our site visit and no longer holds this position. We believe he was replaced by Scott Privat early in 2009, who then was reassigned to Acadia Parish [delete comma] and was replaced in Lafayette Parish by Remy Jardell at the time of the NLADA site visit.

<sup>n</sup> No 2009 contract provided. We have insufficient information to be able to estimate the attorney's level of pay.

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of-pocket expenses, leaving whatever remains as the fee earned by the attorney. The IDO has no way of determining the amount of the fee that each contract attorney earns as a result of their contract, and thus cannot know whether the attorney is being paid a reasonable fee or whether the contract is oppressive or whether the contract amount is resulting in a boondoggle.

The use of flat-fee contracts by the 15th Judicial District IDO is even more worrisome, because the contract also allows attorneys to be retained by a client whom they were already appointed to represent. The contract provides:<sup>55</sup>

5.B. Should Counsel be approached by a client of The Program requesting to pay a private fee, Counsel shall advise The District Defender of the request for retainer, the terms of the potential retainer and whether in fact Counsel wishes to accept same. Counsel's retainer by an appointed client shall be subject to approval of The District Defender [sic] shall be reimbursed for any office expenses, cost or expenditures of any kind related to the case prior to the time Counsel was retained.

In a system such as this, where the attorney's income is capped but their work is not, and they are required to pay for all of their own overhead in serving as indigent defense counsel, and the contract lacks any provision to alter those circumstances, the attorney's own self-interest is in serious danger of subconsciously overriding their dedication to the needs of their clients.

### ii. Minimum Qualifications, Training, Accountability

#### ***Guidance of National Standards, ABA Principles 6, 9, and 10***

All national standards, including ABA *Principle 6*, require attorneys representing indigent clients in criminal proceedings to have the appropriate experience to handle a case competently.<sup>56</sup> That is, policymakers should not assume that an attorney who is newly admitted to the bar is sufficiently skilled to handle every type of case or that even an experienced real estate lawyer would have the requisite skill to adequately defend a person accused of a serious sexual assault, for example. ABA *Principle 6* acknowledges that attorneys with basic skills can effectively handle cases that are less complicated and that carry less serious potential consequences. Significant training, mentoring, and supervision are needed, however, to foster the budding skills of even the most promising young attorney before allowing her to handle more complex cases.<sup>57</sup>

The systemic need to foster attorneys is the thrust of the call for on-going training encapsulated in ABA *Principle 9*. For example, new-attorney training is essential to cover

matters such as: how to interview a client; the level of investigation, legal research and other preparation necessary for a competent defense; trial tactics; relevant case law; and ethical obligations. Effective training includes a thorough introduction to the workings of the indigent defense system, the district attorney's office, the court system, and the probation and sheriff's departments, as well as any other corrections components. It makes use of role playing and other mock exercises and videotapes to record student work on required skills, such as direct and cross-examination and interviews (or mock interviews) of clients, which are then played back and critiqued by a more experienced attorney or supervisor.

As *Principle 9* indicates, training should be an on-going facet of a public defender agency. Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields evolve. As the practice of law grows more complex each day, even the most skilled attorney practicing criminal law must undergo training to stay abreast of such continually changing fields as forensic sciences and police eye witness identification procedures, while also learning to recognize signs of mental illness or substance abuse in a client.<sup>58</sup> Such training should not be limited to theoretical knowledge. Defense practitioners also must gain practical trial experience by serving as co-counsel in a mentoring situation on a number of serious crimes, and/or having competently completed a number of trials on less serious cases, *before* accepting appointments on serious felonies.

The authority to decide whether or not an attorney has garnered the requisite experience and training to begin handling serious cases as first chair should be given to an experienced criminal defense lawyer who can review past case files and continue to supervise, or serve as co-counsel, as the newly qualified attorney begins defending her initial serious felony cases – as demanded by *ABA Principle 10*. Without supervision, attorneys are left to determine on their own what constitutes competent representation and will often fall short of that mark. To help attorneys, an effective performance plan should be developed – one that is much more than an evaluation form or process for monitoring compliance with standards – and should include: a) clear plan objectives;<sup>59</sup> b) specific performance guidelines;<sup>60</sup> c) specific tools and processes for assessing how people are performing relative to those expectations and what training or other support they need to meet performance expectations;<sup>61</sup> and d) specific processes for providing training, supervision, and other resources that are necessary to support performance success.

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### **ABA Principle 6**

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

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## ***Requirements of Act 307***

The Louisiana legislature wisely wove these principles of qualification, training, supervision, and accountability deeply into the fabric of the Louisiana Public Defender Act. First, they directed the LPDB to adopt all rules, standards and guidelines necessary in the areas of supervision, performance standards (appellate, capital, trial, juvenile, child in need of care), attorney qualifications, training, and accountability.<sup>62</sup> Second, they mandated by statute four high-level positions within the state office that are charged with ensuring these principles are carried out: the deputy public defender-director of training,<sup>63</sup> the deputy public defender-director of juvenile defender services;<sup>64</sup> the trial-level compliance officer;<sup>65</sup> and the juvenile justice compliance officer.<sup>66</sup> It is an explicit duty of the state staff to review, monitor, and assess the performance of all attorneys who provide counsel for indigent defendants.<sup>67</sup>

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## ***ABA Principle 9***

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

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The mandates of Act 307 and of national standards are not, however, being implemented in the 15th Judicial District IDO. Before addressing this in detail, we acknowledge that many of the defense attorneys in the IDO are very experienced, talented, and highly regarded attorneys. Approximately 15 of them have been on IDO contracts for 15 years or more. Yet the level of service provided by any individual attorney within the IDO is simply serendipitous and not the result of any plan by the IDO to ensure their ability to provide constitutionally required effective representation.

## ***Current Practice in the 15th Judicial District IDO***

The 15th Judicial District IDO does not have any written standards or policies for determining whether attorneys have sufficient qualifications to serve as counsel to indigent defendants. This is of particular concern in juvenile delinquency representation, as the attorneys contracted to represent juveniles handle both felonies and misdemeanors on behalf of their youthful clients. One IDO juvenile attorney began with the IDO in January of 2009, having never before served as a public defender or criminal defense attorney.

She had graduated law school in 2005, but evacuated from Louisiana following Hurricane Katrina and spent her time doing contract work for other attorneys, then she opened her own practice in 2008 after returning to Louisiana. Just three months after beginning with the IDO, she was appointed to defend a juvenile in an attempted second degree

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## ***ABA Principle 10***

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

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murder case without any co-counsel or assistance. This was her first ever felony case of any sort, and she was concerned. It was reported to NLADA that she contacted the office manager for the IDO to ask whether she should be handling this case and was told “yes, this is something you should do.”

Once an attorney is contracted to provide services through the IDO, they receive no further training or supervision. The only training requirement imposed by their contract is that they attend CLE as required by the Louisiana State Bar Association and obtain not less than half of the required CLE hours in criminal law related to their public defense work.<sup>68</sup> Each defender must pay for their tuition and any expenses they incur in connection with obtaining CLE, such as hotel and travel to out-of-town training, though they can be reimbursed up to \$300 for their CLE tuition.<sup>69</sup> By way of contrast, according to the local defender attorneys, all CLE training for prosecutors is paid for by the Office of the District Attorney and assistant district attorneys receive pay for their time spent in attending mandatory CLE.

Attorneys are expressly advised in their contracts that they will not be supervised:<sup>70</sup>

1.D. Representation provided by Counsel is not subject to detailed instruction from The Program as to how to achieve representation of the clients. However, The Program may establish general guidelines or may prohibit certain acts or practices of Counsel as it deems appropriate. In all aspects Counsel is a general contractor whose obligations [sic] to deliver legal representation to clients in accordance with the Constitutions of the United States and the State of Louisiana, Louisiana Law, the rules of ethics of the Louisiana State Court and the local rules of the 15th Judicial District Court.

The district defender advised the site team that he does not believe he needs to tell contract attorneys how to practice law. For quality assurance, he told us he primarily relies on feedback from clients and their complaints if any. He indicated that he occasionally goes to the courthouses to watch the attorneys in court, but at least two attorneys who work in Vermilion Parish reported that they had never seen him at the district courthouse there or at Abbeville City Court. Strikingly, the district defender said that he was not aware of any performance standards or policies issued by the LPDB, even though the *Trial Court Performance Standards* had been published in April 2009, a full five months prior to the site visit.

Our site visit happened to coincide with the first day on the job for a defense attorney new to the IDO. His agreement with the IDO<sup>71</sup> calls for him to provide representation at all pre-indictment proceedings and felony drug court revocations in Lafayette. He commented to our site team that there is “not a whole lot I can do, because they violated con-

ditions of probation.” Defending against those allegations was exactly what he had contracted with the IDO to do, but without guidance he seemed uncertain about how to do so.

One of the Vermilion IDO misdemeanor & juvenile attorneys began with the IDO in January 2009, having opened her practice during 2008. Though she graduated law school in 2005, she had never previously worked as a public defender. The only actual training she received from the IDO was on how to enter information into the database. She re-

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### Felony drug-case probation revocations in Lafayette

Every client who is facing revocation of probation on a drug-related felony charge in Lafayette will appear before a single judge for those revocation hearings. And every indigent client will be represented by a single IDO attorney who is assigned to handle those cases. This is not the attorney who represented the client during the case proper.

The IDO attorney receives the entire stack of case files for the revocation docket on the afternoon before it is to occur. This is the first time he has seen these files, and he has never met the clients. On the morning of the revocation docket, the judge sits on the bench, while the courtroom full of defendants and their family members wait for the defendant’s name to be called. One by one, each defendant is called up, but not to appear before the judge. The IDO attorney will take the client out into the main corridor and meet with him for literally only minutes to review the alleged probation violation charges. Then the IDO attorney and the client go into the jury deliberation room, where the prosecutor and probation officers are seated around the table.

The defendant, most often in shackles, sits at the head of the table. To his right is the prosecutor, and two seats away on the other side of the prosecutor is the IDO attorney. Throughout the docket observed by the NLADA site team, the IDO attorney said almost nothing. Clients spoke only to the prosecutor; clients’ family members spoke only to the prosecutor. Often the client and family members would unwittingly make matters worse by presenting incriminating facts, but the IDO attorney did not do anything to prevent this and he did not do anything to advocate on behalf of the clients.

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time in six capital murder prosecutions of juveniles. Despite the youth of the charged offenders, caselaw providing that the mentally handicapped cannot be subjected to the death penalty, and the various guilt and sentencing factors that implicate mental capacity/health in particular in cases of juveniles, the public defense attorney had never raised any issue of competency in any of those cases.

placed a defense attorney who was moving up to the Vermilion felony docket from Kaplan City Court misdemeanor & juvenile cases. During December 2008, she watched him handle each docket for one day before she took over; then in January after she took over the caseload, he came and watched her for two days – this was the entirety of the supervision she has received from the IDO. In Abbeville City Court OCS-parent cases (Office of Child Services cases, representing the parent), which she inherited from a different attorney,<sup>72</sup> she received files that “were a mess” and she spent dozens of hours updating and closing the files – boxes of them had been passed down from lawyer to lawyer without anyone systematically going through them.

An example of the ways in which even experienced defense attorneys can fail to raise appropriate issues, when they lack sufficient training, was provided by a prosecutor in Acadia Parish. He had been involved over

### iii. Prompt Appointment, Continuous Representation, Confidential Communications

#### *Guidance of National Standards, ABA Principles 3, 7, and 4*

The third of the ABA's *Ten Principles* addresses the obligation of public defense systems to provide for prompt financial eligibility screening of defendants, toward the goal of early appointment of counsel. Standardized procedures for client eligibility screening serve the interests of uniformity and equality of treatment of defendants with limited resources. Situations in which individual courts and jurisdictions are free to define financial eligibility as they see fit – e.g., ranging from “absolutely destitute” to “inability to obtain adequate representation without substantial hardship,” with factors such as employment or ability to post bond considered disqualifying in some jurisdictions but not in others – have long been decried. The National Study Commission on Defense Services found in 1976 that such practices constitute a violation of both due process and equal protection.<sup>73</sup>

Requirements for prompt appointment of counsel are based on the constitutional imperative that the right to counsel attaches at “critical stages” occurring before trial, such as custodial interrogations,<sup>74</sup> lineups,<sup>75</sup> and preliminary hearings.<sup>76</sup> In 1991, the U.S. Supreme Court ruled that one critical stage – the probable cause determination – is constitutionally required to be conducted within 48 hours of arrest.<sup>77</sup> Prompt appointment of counsel is equally important in other aspects of defending a client. Valid legal challenges that could result in dismissal of a case should not be delayed for lack of counsel to identify, investigate, and raise them.

Most standards take requirements regarding early assignment of counsel beyond the constitutional minimum requirement, to be triggered by detention or request even where formal charges may not have been filed, in order to encourage early interviews, investigation, and resolution of cases, and to avoid discrimination between the outcomes of cases involving public defense clients and those clients who pay for their attorneys.<sup>78</sup> Just two years ago, the Supreme Court again emphasized the early attachment of the right to counsel in *Rothgery v. Gillespie County, Tex.*, \_\_\_ US. \_\_\_, 128 S.Ct. 2578 (2008), holding that a defendant's right to counsel attaches at the initiation of the adversarial process and without regard to when the prosecutor becomes involved.

Prompt appointment of counsel would not mean much if the client never saw the same attorney again. For this reason, ABA *Principle 7* demands that the same attorney continue to represent the client – whenever possible – throughout the life of the case.<sup>79</sup> Though it may seem intuitive to have an attorney work a case from beginning to end, many jurisdictions employ an assembly-line approach to justice in which a different attorney handles each separate part of a client's case (i.e., arraignment, pre-trial confer-

ences, trial, etc.). Standards on this subject note that the reasons for public defender offices to employ the assembly-line model are usually related to saving money and time. Lawyers need only sit in one place all day long, receiving a stream of clients and files and then passing them on to another lawyer for the next stage, in the manner of an “assembly line.”<sup>80</sup> But standards uniformly and explicitly reject this approach to representation,<sup>81</sup> for very clear reasons: it inhibits the establishment of an attorney-client relationship; fosters in attorneys a lack of accountability and responsibility for the outcome of a case; increases the likelihood of omissions of necessary work as the case passes between attorneys; is not cost-effective; and is demoralizing to clients as they are re-interviewed by a parade of staff starting from scratch.<sup>82</sup>

Once a client has been deemed eligible for services and an attorney is appointed, *Principle 4* demands that the attorney be provided sufficient time and a confidential space to meet with the client.<sup>83</sup> As the *Principle* itself states, the purpose is “to ensure confidential communications” between attorney and client. This effectuates the individual attorney’s professional ethical obligation to preserve attorney-client confidences,<sup>84</sup> the breach of which is punishable by disciplinary action. It also fulfills the responsibility of the jurisdiction and the public defense system to provide a structure in which confiden-

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### ABA Principle 7

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

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with representation that is uniformly fair and consistent. And they specifically addressed these areas of eligibility for and appointment of counsel,<sup>87</sup> vertical representation,<sup>88</sup> and confidential attorney-client communications.<sup>89</sup>

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### ABA Principle 3

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

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tiality may be preserved<sup>85</sup> – an ethical duty that is perhaps nowhere more important than in public defense of persons charged with crimes, where liberty and even life are at stake and client mistrust of public defenders as paid agents of the state is high.<sup>86</sup>

### Requirements of Act 307

In Act 307, the legislature paid careful attention to ensuring that these national standards were upheld. They charged the LPDB with adopting standards, guidelines, and rules as necessary to make certain that every indigent defendant throughout Louisiana is provided

### ***Current Practice in the 15th Judicial District IDO***

When a person is arrested in the 15th Judicial District and is unable to immediately make bail, they will be brought before a judge within 72 hours of arrest for a hearing to determine the amount of their bail, whether there was probable cause for the arrest if it was not effected on the basis of a warrant, and whether the defendant is requesting and entitled to appointment of counsel.<sup>90</sup> If a person is released from custody prior to requesting appointment of counsel, the determination of whether they desire and are entitled to appointment of counsel will occur when they come to court for arraignment following institution of prosecution.

There are not any defense attorneys present at any 72-hour hearings held in the 15th Judicial District. The district defender is firmly of the belief that attorneys are assigned in all three parishes to attend 72-hour proceedings. The judges who preside over the 72-hour hearings expressly told the site team that there are not any attorneys present, as did the IDO clerical staff and IDO attorneys. Appendix V, provided by the IDO in April 2010, shows that no attorney is assigned to or paid for the category of “Inst./72.” IDO clerical staff are present for the purpose of accepting applications from defendants whom the judges direct to apply for public counsel. Bail is set without any advocacy by a defense attorney and solely at the discretion of the presiding judge.

In Vermilion, the 72-hour hearings (at least for traffic and misdemeanor cases) are conducted by the judge without any prosecutors or defense attorneys present, and they are conducted by video, with the judge sitting in the courtroom and the defendants sitting in the jail. The IDO clerical staff person is present with the judge in the courtroom. The judge will ask each defendant whether they can afford to hire an attorney. If the defendant says no, then the judge refers the defendant to talk to the IDO clerical staff. The IDO is responsible for following up by going to the jail and obtaining the appropriate forms from the defendant. Each defendant who is requesting appointed counsel must pay a \$40 application fee up front. Similarly in Abbeville City Court, when a client appears for their 72-hour hearing, the judge will ask if they want a public defender. If so, the IDO clerical staff will have the defendant fill out an application on the spot, but again there are no actual defense attorneys present. In Acadia, 72-hour hearings are also conducted by video, with the judge and the IDO clerk present at the courthouse and the defendant at the jail.

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### ***ABA Principle 4***

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

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No matter what parish, defendants who are referred to the IDO are handed a memo that provides written information about bond reduction and habeas processes and representation by counsel.<sup>91</sup> There are variations between the parishes in the precise information contained in this memo. In Acadia Parish, the memo informs the individual that s/he will be represented by “an attorney with the Pre-Indictment Division” until such time as a bill of information is filed by the District Attorney’s office. This memo also tells the IDO clients that they are responsible for producing witnesses at any future bond reduction hearing, and that if no witnesses present on their behalf *there will be no bond reduction hearing*. In other words, the pre-indictment attorney will take no steps whatsoever to locate, identify, and secure the appearance of witnesses on behalf of the client in order to reduce their bond. Throughout the judicial district, clients will not actually meet the pre-indictment attorney until the date on which their bond reduction hearing is set to occur, if then.

The Lafayette Parish Sheriff said he would be willing to pay part of an IDO salary to have any IDO attorney come to the jail, review paperwork for detained pre-trial defendants, and in particular try to identify defendants with mental health problems to have them released from the jail. Because jail overcrowding is such a serious problem, he would like to have a judge, prosecutor, and defense attorney at the jail daily, reviewing bonds and determining who is appropriate for release.

After arrest, the District Attorney’s office then has varying periods of time from 45 to 150 days within which to institute prosecution, depending on the nature of the charge and whether the defendant is in or out of custody.<sup>92</sup> Arraignment on the charge upon which prosecution is instituted must generally occur within 30 days of the filing of the charges by the prosecutor.<sup>93</sup> As a practical matter, the site team was advised that in Lafayette arraignment typically occurs approximately two months after the date of arrest,<sup>94</sup> followed by a pretrial one to two months later, and then trial a month after that. One district judge said that the purpose of the pretrial is to ensure that the lawyer meets with the client prior to the trial date. In Vermilion, the pretrial is held on the day before trial. An Acadia judge advised that they do not have pretrials in that parish.

### *Eligibility to receive public counsel*

People who are arrested in the 15th Judicial District, and who are requesting appointed counsel at their 72-hour hearing, and who are unable to bond out of jail on their charge in advance of the IDO clerical staff making it to the jail to have them complete an application, will complete their financial *Application for Public Defender*<sup>95</sup> in advance of actual institution of prosecution against them. But most potential clients will complete this application when they come to court for arraignment on the bill of information or indictment. There are slight variations between the three parishes in the exact process

employed, but for purposes of example we describe what the site team observed during arraignments in Lafayette.

Arraignments in Lafayette all take place before Commissioner Frederick, and the pre-indictment attorney from the IDO appears on behalf of all presumptively indigent defendants during their arraignment. Defendants appear before Commissioner Frederick who asks them, among other things, whether they are requesting appointment of counsel. Commissioner Frederick advised the site team that the only people he does not refer to the public defenders are those being charged with violations of parish ordinances, like leash law violations. During the arraignment docket observed by the site team, everyone who asked for counsel was appointed to the IDO. The Commissioner directs the defendants who are seeking counsel to see the bailiff, and the pre-indictment attorney will hand them paperwork to take with them.

The bailiff is sitting by the door which leads from the arraignment courtroom to an adjacent courtroom, where the three IDO clerical assistants are sitting at tables awaiting the defendants. The bailiff tells each defendant to complete the application and then bring the form to one of the clerical assistants. A clerical assistant reviews the form with the defendant and guides the defendant through completing any missing information. The bailiff and the constant stream of other waiting defendants are all sitting less than 10 feet away, such that there is no confidentiality whatsoever. Each defendant is assessed a \$40 application fee at the time that they complete their application and are told to pay that fee at the Sheriff's office. The clerk hands them a *Defendant Information Sheet* and a green *\$40.00 Application Fee Notice*.<sup>96</sup> Significantly, defendants are not told whether they are eligible to receive appointed counsel. Instead, they are told that it will take approximately 10 business days to process their application and that they will receive a letter in the mail telling them whether they are eligible for an attorney and, if so, who that attorney will be.

After arraignments, the IDO clerical staff return to their office to process the applications. They have written instructions regarding the maximum income and the maximum funds available after expenses that presumably will render a defendant ineligible for appointed counsel.<sup>97</sup> The IDO generally represents anyone who says they are indigent and need a public lawyer. This is contrary to the legislative intent that requires screening to ensure that only those who are “financially unable to retain private counsel” are given a publicly-paid attorney.<sup>98</sup> Specifically, Act 307 provides uniform eligibility criteria to be applied throughout the state.<sup>99</sup>

### *Failure to provide counsel in misdemeanor cases*

The representation policies of the 15th Judicial District with regard to misdemeanors regularly violate the Sixth Amendment to the United States Constitution, as interpreted

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by the Supreme Court in *Argersinger v. Hamlin*<sup>100</sup> and *Alabama v. Shelton*.<sup>101</sup> In *Argersinger*, the Court held that the Sixth Amendment requires a defendant to receive an attorney if faced with loss of liberty on any charge, no matter how minor.<sup>102</sup> From 1972 until 2002, in contradiction of the clear ruling of *Argersinger* that all misdemeanor defendants are entitled to counsel if they are going to be jailed for their offense, many jurisdictions throughout the country took the position that they did not have to provide an appointed attorney to indigent misdemeanor defendants who were going to be placed on probation with a suspended sentence. This led to the case of *Alabama v. Shelton*, 535 U.S. 654 (2002). Mr. Shelton was indigent and did not receive an attorney to defend him on his misdemeanor charge. He was convicted and was placed on probation with a suspended sentence. The United States Supreme Court clarified in *Shelton* that a suspended sentence cannot be imposed unless an indigent defendant is provided with an attorney during the prosecution on the charge – it is insufficient to wait until a probation revocation hearing to provide the defendant with a lawyer.<sup>103</sup> The Court held that, if the individual was not afforded counsel at the time of the original charge, the judge is foreclosed from incarcerating that individual for failing to comply with one or more of the conditions stemming from probation or a suspended sentence.<sup>104</sup>

A significant number of misdemeanors carry potential loss of liberty under Louisiana law and many misdemeanors carry mandatory jail time. As a result, under the Sixth Amendment counsel is required to be appointed for any person being prosecuted in such a case who cannot afford to hire their own attorney. The Rayne City Court judge and the Crowley City Court judge both advised that they do not appoint counsel in misdemeanor cases; instead, an IDO attorney is present and available merely to answer questions, should a defendant have any. In Abbeville City Court, the judge<sup>105</sup> will only appoint an attorney in a case where there is mandatory jail time or when repeat convictions can result in enhanced penalties (such as theft, possession of marijuana or drug paraphernalia, DUI, telephone harassment, simple battery on a police officer, stalking, and domestic abuse). In all other cases including those that carry the possibility of jail time as a sentence, the judge will not appoint counsel. The judge will ask the defendant if s/he has a lawyer and, if not, will advise the defendant that “you are entitled to hire a lawyer, but I’m not going to appoint one.”

The NLADA site team observed “Traffic Court” taking place in the Vermilion District Court. The following exchange occurred repeatedly:

Prosecutor:	<i>Calling out name of a defendant on that day’s docket.</i>
Defendant:	Here.
Prosecutor:	You have an attorney?
Defendant:	No.

Prosecutor:            You getting an attorney?  
Defendant:            No.  
Prosecutor:            Come on up.

The prosecutor would then talk to the defendant, presumably about their case. While it was impossible for the site team to know whether the defendants who were called faced possible loss of liberty on their charges, given that the traffic court docket that day included DUI offenses for which the judge later accepted guilty pleas, it seems highly likely that at least some of the defendants were entitled to representation by counsel. Later during the same docket, the judge took the bench and inquired of everyone in the courtroom at large as to whether there was anyone present who was: charged with a DUI and wanting to plead guilty or no contest, and who did not have any attorney, and who did not want an attorney. Defendants who responded affirmatively to the judge's inquiry were called up and given a 3-page form by the prosecutor, and subsequently entered a guilty plea. No further efforts were made to ensure that defendants understood they were waiving their right to an attorney.

Despite the clear mandates of *Argersinger* and *Shelton*, defendants are in fact losing their liberty without representation by counsel. For IDO clients who are placed on probation for a misdemeanor, they simply do not receive representation after their original probated sentence is imposed. Both the IDO office manager and the supervising officer of the 15th JDC's Misdemeanor Probation Division advised the NLADA site team that clients are not entitled to public defender representation for misdemeanor probation revocations. One district judge expressed concern about the manner in which probation revocation hearings are conducted in misdemeanor cases in Lafayette. He had recently spent a week presiding over these revocation hearings, and there were no defense attorneys appearing on behalf of any of the defendants. The prosecutor was regularly asking the judge to revoke the defendants' probation and sentence them to five months in jail, all without the defendants being represented by counsel.

### *Delay in appointment of counsel and horizontal representation*

In the 15th Judicial District, an indigent client may be represented by as many as three or four different attorneys during the course of a single case – typically known as “horizontal representation” and universally decried by all national standards<sup>106</sup> and Act 307.

Whether a potential client is requesting appointment of counsel while in jail after arrest and unable to make bail, or whether the client is out of custody and requesting appointment of counsel at their arraignment on charges after institution of prosecution, in the 15th Judicial District they will initially be represented by a “pre-indictment/bond reduction” attorney. The IDO provides a “pre-indictment” attorney in each parish.<sup>107</sup>

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For IDO clients who are not able to make bail, the pre-indictment attorney will represent them at a bond reduction hearing, which is typically held within two weeks of their arrest. This hearing is the very first time that any IDO client will actually see an IDO attorney. At the same time, however, the client will be told that this attorney only represents them on the matter at hand – attempting to get their bond reduced – and not for the entirety of their defense.

The pre-indictment attorney will also appear at arraignment following institution of prosecution, so the client will still not meet their actual trial attorney. At the time of the site team evaluation, the pre-indictment attorney in Lafayette was serving his first day on the job as an IDO attorney. He did not meet or talk with any of the clients he was representing that morning. At arraignments, he: entered a plea of not guilty on behalf of the client; waived formal reading of the charges against the client; and requested 30 days within which the eventually appointed defense attorney could file any necessary pre-trial motions. As everyone throughout the system informed the NLADA site team, there is no real representation provided to any indigent defendant until after institution of prosecution and arraignment, because the real trial lawyer is not appointed until after arraignment on the charge. Several judges expressed concern, noting that important defenses may be lost as a result of the delay in the defense attorney beginning preparation of the defense case. One judge observed that, while a retained attorney will begin investigating a case and negotiating for dismissal or a plea early on and before institution of prosecution, all of this time is lost for an indigent client because there is no investigation or negotiation until after arraignment.

The IDO clerical staff determine which attorney will be appointed to represent which defendant, after they return to their offices following the arraignment docket and process all of the financial applications they have received. Staff check the database to determine whether the client has previously been represented by an IDO attorney. If the charging instrument contains the name of co-defendants or a victim, staff will also check the database for these names, in an effort to avoid conflicts. Then they assign the case to an IDO trial attorney by rotating through the list of attorneys contracted to handle the type of case in the parish.<sup>108</sup> The only exception is for capital murder cases, where the district defender makes the decision as to which attorney will be appointed next.<sup>109</sup> The IDO staff prepare a letter to the client, enclosing a “Notice of Appointment” that names their attorney (also mailed to the court, the prosecutor, and the IDO attorney) and advising them of the recoupment fee they are being assessed.<sup>110</sup>

Typically, both the client and the IDO trial attorney who will be representing the client following arraignment receive notice of the appointment within 10 business days of the arraignment. In the meantime, the pre-indictment attorney’s duties on behalf of the client are complete. Until a client receives this letter, the client does not know the identity of the attorney who will represent her. One or two weeks after the arraignment,

the client may receive a letter or phone call from her attorney asking her to set up an appointment. And if a single client is charged with both a felony and a misdemeanor, even arising out of a single course of conduct, the client will have two separate lawyers on the charges.

The IDO attorneys who contract to provide juvenile representation handle all juvenile cases, whether felony or misdemeanor (for adults, there are felony attorneys and there are misdemeanor attorneys). But the juvenile defenders do not follow a case if the juvenile is transferred from juvenile to adult court. In that situation, the case is reassigned to an adult felony defender.

Under the IDO system, the duties of the trial attorney end at sentencing, even for those clients who are placed on probation, and even for those clients for whom imposition of sentence is deferred pursuant to La. C.Cr.P. art. 893(D). For clients of the IDO who are placed on felony probation and brought back to court later on allegations that they have violated the conditions of their probation, they are assigned yet another attorney who is contracted to the IDO to handle revocations. In Lafayette, a single judge is responsible for hearing all revocations of probation on felony drug cases. He advised that he gets so many revocation hearings that court can last long into the night, so he asked for and received a single IDO attorney to represent defendants on revocations in his court (the same attorney who serves as the pre-indictment attorney for Lafayette). Another attorney handles all revocations in all other courts in Lafayette. The IDO attorney receives a massive stack of case files on the day before the revocation hearings are held – the first notice the attorney receives as to who they will be representing in court. The attorney then meets each and all of the clients in the courthouse corridors on the day of their probation revocation hearing, virtually ensuring that the attorney cannot provide effective representation.

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## Conflicts

The IDO does not have any method of determining whether an IDO attorney has a conflict of interest arising out of the attorney’s private caseload. And generally, the attorney cannot determine the existence of a conflict until the attorney receives discovery. Because the trial attorney is not appointed in the first instance until 10 to 15 days following arraignment, and because discovery is typically not received until approximately 30 days after that, it is often the case that an attorney’s conflict in representing the client is not discovered until several months following the date of arrest. This necessitates the appointment of new counsel, and results in further delays before an IDO client will ever meet the attorney who will actually defend them.<sup>a</sup>

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<sup>a</sup> The “Attorney Conflict Form” and “Notice of Reassignment of Counsel” form are attached as Appendix O. When an attorney discovers that they have a conflict, they complete the “Attorney Conflict Form” and submit it to the IDO office in their parish. The IDO *clerkal staff* approves or disapproves the conflict. If approved, the IDO clerical staff will prepare and file a “Notice of Reassignment of Appointment of Counsel” sending a copy to the court, the prosecutor, the withdrawing and substituting IDO attorneys, and the client.

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### *Lack of Attorney-Client Communications*

The majority of the judges indicated that the IDO attorneys do not communicate well with their clients – this was the judges’ greatest complaint about the IDO attorneys.

They uniformly expressed that the large caseloads carried by these attorneys prevent

them from pursuing meetings with their clients. As a result, the lawyers end up meeting with their clients at the courthouse on dates when cases are set for hearing or trial.

The IDO attorneys themselves almost all said that they will send a letter to an out-of-custody client requesting that the client call to set up an appointment to meet. But if that meeting does not take place – for whatever reason – the attorney will not take any other steps at all to contact the client. Instead, they will meet their client for the first time at the courthouse on the date of either the pre-trial or the trial. The attorneys did not evidence any concern with this “meet ‘em and plead ‘em” approach to representation. They did say, however, that the judges get upset if a client is then disputing the allegations, so that the case has to be reset.

Defense attorneys appearing with juvenile clients in Vermilion Parish never stood with their client before the judge when being observed by the site team, but instead remained seated at counsel table, even while the judge conducted intensive colloquies with the juvenile defendants and often

their parent. In one instance, a young man was before the judge to enter an admission to a delinquent act, and both of his parents were present with him. As the judge enquired whether he understood what he was doing, the defendant seemed confused and was not

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## Representing Parents in CINC cases

The NLADA site team observed Child in Need of Care (CINC) cases in Vermilion parish. IDO attorneys represent both the parents and the child in CINC matters – there are 3 IDO attorneys available: one for each parent and one for the child – and these cases involve parents facing the loss of custody of their children. Throughout the proceedings, the three IDO attorneys appeared to do nothing more than process cases through the system and most every client was leaving the courtroom in tears. A member of the site team went to the hallway and began talking to each client as they left the courtroom. He asked: “Did you speak to your lawyer before today? Did you attempt to contact your lawyer before today? How long before your court appearance today was it when you first talked to your lawyer?” Each and every client that day said that they had met their attorney for the first time in the courtroom on that very day just before their case was called.

One client told what had happened to her. She had tried calling her attorney well before the court date, but had never been able to reach nor received a return call from the lawyer. She took it upon herself to prepare a large poster board with photos of her daughter at various points in her young life, to try to demonstrate to the judge that her daughter was happy living with her. When her case was called on the docket that day, her attorney told her that she could not present her poster to the judge, saying “there’s no time for that.” The attorney then agreed, against the wishes of the client, to move the case toward termination of her parental rights.

A social worker supervisor who was in court that day confirmed that none of the clients in the courtroom had spoken to their lawyers before that day. A second social worker said that it was normal for the IDO attorneys to talk to their clients for the first time at court, and that she had never seen a contested hearing during the eight months she had been in the parish.

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able to explain his understanding. Eventually, as the judge explained further the rights that he would be giving up by entering an admission, the young man declared that he wanted to fight the charge. And that was the end of any plea agreement he had been offered. Perhaps the young man simply changed his mind, but it is equally possible that the public defender had not fully explained to him what would occur during the plea colloquy and the ramifications of entering an admission. In any event, his counsel was assuredly not standing beside him and answering questions that arose during his court appearance.

There are no private confidential meeting places at the Crowley City Courthouse. And there is no place designated at the courthouse where IDO attorneys can meet confidentially with their clients. Likewise, there is no private room or area for attorneys to meet with their clients at the Abbeville City Courthouse. The IDO attorneys generally discuss plea offers and other matters with clients while the court is on break, pulling them aside “here and there” for these attorney-client discussions.

The Lafayette Parish jail has two face-to-face attorney client meeting rooms and attorneys can visit with their clients at the jail at any time, 24 hours a day, 7 days a week, without restriction; though sheriff’s department personnel advised that they do not have many IDO attorneys coming to the jail to meet with their clients. In addition, every one of the housing pods has at least three “IDO telephones” that detained defendants can use to contact their appointed attorney free of charge. A significant number of the IDO attorneys said they do not feel “safe” at the Lafayette Parish jail, because there are often not deputies nearby. This is a fairly unusual complaint to hear from criminal defense attorneys. The Acadia Parish jail personnel similarly advised that attorneys rarely visit the

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### Representing Children

A young girl appeared before the judge on a truancy matter. She and her mother stood at the microphone in the center of the courtroom before the judge, while their IDO attorneys remained seated at counsel table behind them. The judge struggled for several minutes to help the girl understand the allegations against her and her options. “The prosecutor is saying that you haven’t been attending school. Do you understand?” The child nodded her head, yes. “You have three choices. If you want to fight the charge, you can ask for a trial. You can admit it, and forego a trial. Or you can plead no contest. Do you understand those options?” She shook her head, no. The judge tried asking the questions in a few different ways, to no avail. It quickly became clear to our site team that the child had some sort of mental impairment. Yet her IDO attorney did *nothing* to counsel her, advise her, or advocate on her behalf.

Eventually the judge said to her: “You’ve been here to see me before, haven’t you? Do you remember coming to talk to me before?” Yes, she said. “Do you remember that I told you then you need to go to school?” Yes, she said. “So why haven’t you been going to school?” asked the judge. The girl stood silently and began to cry. A little more gently, the judge continued: “Is there something happening at school that makes you not want to go?” Finally, the girl said through her tears, “The girls at school make fun of me because I’m fat.” The judge finally realized there was no way he could proceed, so he turned his attention to the IDO attorney, saying “you have more work to do.”

Later that day, one of the IDO attorneys we had observed in the morning lamented that the docket for that day would continue into the afternoon. She said: “You know we would have been out of there hours ago. It’s only because you’re here that we aren’t. The judge is showing off because you’re sitting in the courtroom, watching.”

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jail, estimating 2 or 3 attorney visits a week counting both public and private attorneys. The attorney-client visitation room is a *tiny* room, with 2 chairs, a glass window, and a door, located just off of the family visitation room.

## B. Caseloads, Workloads, and Workflow Impediments

### i. Workload

#### *Guidance of National Standards, ABA Principle 5*

If it were possible to evaluate the overall health of a jurisdiction's indigent defense system by a single criterion, the establishment of reasonable workload controls<sup>111</sup> might be the most important benchmark of an effective system. An adequate indigent defense program must have binding workload standards for the system to function, because public defenders do not generate their own work. Public defender workload is determined, at the outset, by a convergence of decisions made by other governmental agencies and beyond the control of the indigent defense providers. The legislature may criminalize additional behaviors or increase funding for new police positions that lead to increased arrests. As opposed to district attorneys who can control their own caseload by dismissing marginal cases or diverting cases out of the formal criminal justice setting or offering better plea deals, public defense attorneys are assigned their caseload by the court and are ethically bound to provide the same uniform-level of service to each of their clients.

Workload controls ensure that public defenders are able to spend a reasonable amount of time fulfilling the parameters of adequate attorney performance,<sup>112</sup> including: meeting and interviewing a client; preparing and filing necessary motions;<sup>113</sup> receiving and reviewing responses to motions; conducting factual investigation, including locating and interviewing witnesses, locating and obtaining documents, locating and examining physical evidence; performing legal research; conducting motion hearings; engaging in plea negotiations with the state; conducting status conferences with the judge and prosecutor; preparing for and conducting trials; and sentencing preparation in cases where there is a guilty plea or conviction after trial.

Restricting the number of cases an attorney can reasonably handle has benefits beyond the impact on an individual client's life. For example, the overwhelming percentage of criminal cases in this country requires public defenders.<sup>114</sup> Therefore, the failure to adequately control workload will result in too few lawyers handling too many cases in almost every criminal court jurisdiction — leading to a burgeoning backlog of unresolved cases. The growing backlog means people waiting for their day in court fill local jails at taxpayers' expense. Forcing public defenders to handle too many cases often leads to lapses in necessary legal preparations. Failing to do the trial right the first time results in endless appeals on the back end — delaying justice to victims and defendants alike — and ever-increasing criminal justice expenditures. And, when an innocent person is sent to

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jail as a result of public defenders not having the time, tools, or training to effectively advocate for their clients, the true perpetrator of the crime remains free to victimize others and put public safety in jeopardy.

The National Advisory Commission (NAC) on Criminal Justice Standards and Goals first developed numerical caseload limits in 1973 under the auspices of the U.S. Department of Justice. With modifications in some jurisdictions, those caseload limits have been widely adopted and proven quite durable in the intervening three decades.<sup>115</sup> NAC 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 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.”<sup>116</sup> What this means is that an attorney who handles only felony cases should handle no more than 150 such cases in a single year and nothing else.

ABA’s *Principle 5* states unequivocally that defense counsel’s workload must be “controlled to permit the rendering of quality representation” and that “counsel is obligated to decline appointments” when caseload limitations are breached. *Principle 5* supports the NAC standards with their instruction that caseloads should “under no circumstances exceed” these numerical limits.<sup>117</sup>

In May 2006, the ABA’s Standing Committee on Ethics and Professional Responsibility further reinforced this imperative with its *Formal Opinion 06-441*. The ABA ethics opinion observes: “[a]ll lawyers, including public defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently.”<sup>118</sup> Both the trial advocate and the supervising attorney with managerial control over an advocate’s workload are equally bound by the ethical responsibility to refuse any new clients if the trial advocate’s ability to provide competent and diligent representation to each and every one of her clients would be compromised by the additional work. Should the problem of an excessive workload not be resolved by refusing to accept new clients, *Formal Opinion 06-441* requires the attorney to move “to withdraw as counsel in existing cases to the extent necessary to bring the workload down to a manageable level, while at all times attempting to limit the prejudice to any client from whose case the lawyer has withdrawn.” In August 2009, the ABA again affirmed the NAC standards when the House of Delegates approved *Eight Guidelines of Public Defense Related to Excessive Workload* and its statement “[n]ational caseload standards should in no event be exceeded.”<sup>119</sup>

### ***Requirements of Act 307***

Under Act 307, the LPDB is required to “make an annual report to the legislature regarding the state of . . . public defender services it regulates. . . . include[ing] at a minimum . . . comprehensive workload data.”<sup>120</sup> The LPDB is also required to adopt standards, guidelines, and rules where necessary regarding data collection and reporting, workloads based on case weighting, and conflicts, among other things.<sup>121</sup>

### ***Current Practice in the 15th Judicial District IDO***

The IDO does not have any written standards or guidelines regarding the caseloads or workloads that can appropriately be carried by the IDO contract attorneys. The district defender advises that each felony attorney in the system probably had approximately 100 open cases at any one time, and that there is an office policy of no more than 150 felony files per attorney at any one time. He says that he is able to access the caseload data for each attorney to see their file count and ensure they are not overloaded.

Judges throughout the 15th Judicial District lamented that the large caseloads carried by the IDO attorneys prevent them from spending sufficient time meeting with their clients and result in the attorneys meeting with their clients at the courthouse on the day of court. One Vermilion district judge thinks that both the prosecutors and the defense attorneys have workloads that are too high.

NLADA requested the IDO to provide caseload information for each of the IDO attorneys for 2007, 2008, and 2009. We received caseload information from both the IDO and the LPDB in many forms showing the month-by-month appointment of cases to each IDO attorney during the 2008-2009 fiscal year, which ran from July 1, 2008 through June 30, 2009.<sup>122</sup> From that information, NLADA prepared a spreadsheet of caseloads for all IDO attorneys that shows the parish in which they work, the type of cases they handle, and the extent to which their IDO caseload, before factoring in their private caseload, is below or above national caseload standards.<sup>123</sup>

NLADA concluded that the caseload data is under-reported. For example, IDO attorneys advised that, throughout the judicial district, bail reduction cases and pre-indictment cases are not entered into the database and so are not counted. As another example, we were told that the Abbeville City Court system is “a mess.” Cases “pop up at the last

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### ***ABA Principle 5***

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

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minute” that the IDO attorneys did not know about. The attorneys do not receive dockets in advance, and the court appoints them to cases but then often does not send the appropriate information to the IDO, so that the IDO does not consider the attorneys to have been “appointed.” Similarly, we have concerns as to whether probation revocation cases are being properly and fully counted, because at least in Lafayette Parish the attorneys do not receive dockets in advance, and so the IDO may not be fully aware of each probation revocation case that an IDO attorney handles.

Despite Act 307 having adopted a uniform definition of a “case”<sup>124</sup> and established requirements that every district use this definition in making their annual caseload reports to the LPDB,<sup>125</sup> this statutory definition is not being used by the IDO to count cases. Instead, each IDO attorney enters their case information into the database according to their best understanding about how they are to do that and with limited training. Overall, IDO attorneys appear to be “counting cases” in whatever manner the prosecutor in their parish uses to charge cases – meaning the IDO attorneys count docket numbers.

Even a cursory review of this incomplete and under-reported data paints a portrait of overworked attorneys in the 15th JDC. Just looking at the self-reported numbers for cases during the 12-month fiscal year shows that 44 percent of felony attorneys (11 of 25) exceeded the national standard for felony cases handled (150 cases). But the situation is much worse. These are simply the number of cases assigned during the 12-month fiscal year. Surely, a certain number of cases assigned during the previous year were still open and rolled over into this time period. And, though some of the cases opened during this 12-month fiscal year were disposed in the same fiscal year, some would have still been open during the following year. National standards refer to any case handled in a given year (number of cases open at the start of a year plus new assignments).

Though there are no national workload standards for capital cases, the commentary to the ABA *Death Penalty Guideline 6.1* notes: “In terms of actual numbers of hours invested in the defense of capital cases, recent studies indicate that several thousand hours are typically required to provide appropriate representation. For example, an in-depth examination of federal capital trials from 1990 to 1997 conducted on behalf of the Judicial Conference of the United States found that the total attorney hours per representation in capital cases that actually proceeded to trial averaged 1,889.” This has generally been interpreted to say that a death-certified attorney should handle no more than three such cases a year. In other jurisdictions, it is well settled that defense attorneys may only work on one trial level capital case at one time. In Washington State, by court rule, “[b]oth counsel at trial must have five years’ experience in the practice of criminal law, be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case.”<sup>126</sup> For example, in King County, Washington (Seattle), by contract with the county, a de-

fender office that had 32 open cases would have 64 attorneys working on those cases.

Therefore, to the extent that any of the reported assigned felony cases are capital cases, the caseload situation only worsens. The IDO advises that there is an office policy that no capital attorney should have more than two capital files at any time. Presumably this would be two death penalty cases out of the 150 felony cases that the IDO policy allows – or nearly double the caseload allowed under national standards. The 15th Judicial District is an active death penalty jurisdiction and, as of June 30, 2009, LPDB reported to NLADA that there were 13 active capital cases pending.<sup>127</sup> For example, Randal McCann had three death certified cases out of his 121 felony assignments, and so his IDO workload is actually 180 percent of what a full-time attorney should be handling.

The picture in misdemeanor and juvenile delinquency cases is no better. There, 70 percent (7 of 10)<sup>128</sup> of the IDO attorneys exceed national standards before factoring in their private cases and IDO cases pending at the start of the year. National standards for juvenile delinquency cases state that an attorney should handle no more than 200 such cases per year. Both of the attorneys handling only juvenile delinquency cases are at roughly double the national standard. Attorneys handling exclusively misdemeanor cases (national standard of 400 per year) fair better, with all three under the national standard. But those attorneys handling mixed misdemeanor and delinquency cases all exceed the national standard for misdemeanors alone, even though the addition of delinquency cases

### Felony Appointments, FY08-09

Attorney	Parish	Contract Case Type	Total Assigned Cases	% of Standard
Doga	Acadia	Felony	147	98%
Hayes	Acadia	Felony	121	81%
LeJeune	Acadia	Felony	138	92%
Nickel	Acadia	Felony	146	97%
Stefanski	Acadia	Felony	131	87%
Amos	Lafayette	Felony	140	93%
Dist. Defender	Lafayette	Felony	116	77%
Block	Lafayette	Felony	117	78%
Dixon	Lafayette	Felony	135	90%
Garrett	Lafayette	Felony	178	119%
Kennison	Lafayette	Felony	225	150%
Lasseigne	Lafayette	Felony	158	105%
McCann	Lafayette	Felony	121	81%
Mose	Lafayette	Felony	185	123%
Neumann	Lafayette	Felony	176	117%
Piccione	Lafayette	Felony	167	111%
Register	Lafayette	Felony	160	107%
Robinson	Lafayette	Felony	429	286%
Duhon	Vermilion	Felony	168	112%
Garrot	Vermilion	Felony	152	101%
Guidry	Vermilion	Felony	116	77%
Melebeck	Vermilion	Felony	101	67%
Rowe	Vermilion	Felony	130	87%
Thomas	Vermilion	Felony	115	77%
Veazey	Vermilion	Felony	152	101%

to their overall caseload should drive down the number of cases they can competently handle.

And, all of this excessive workload is *before private cases are factored in*. Each of the defense attorneys contracted to the IDO work out of their own private law offices, bear all overhead expenses, and are expressly allowed to maintain a private practice caseload in addition to their IDO responsibilities.<sup>129</sup>

Specifically, the contract provides that the attorneys “may accept private clients in any field of law, provided that Counsel will not maintain a caseload which is excessive or impairs Counsel’s ability to adequately represent clients of The Program.” The IDO does not make any effort, however, to monitor the private caseloads of the attorneys in order to assure compliance with this provision.

One last matter bears mentioning. The workload of the 15th Judicial District is not disbursed evenly among the IDO attorneys. NLADA does not believe this is intentional on the part of the IDO, and in fact found that the assignment of cases to attorneys within the system appears to be occurring on a rotational basis intended to evenly distribute the cases. But because each attorney handles only a certain type of case and only for one parish within the 15th JDC, the method of allocating cases simply does not distribute the workload evenly. The caseload distribution for all IDO attorneys during the 12-month period from July 1, 2008 through June 30, 2009 shows that the workloads of IDO attorneys (based on national caseload standards) range from a low of 49 percent to a high of 286 percent.<sup>130</sup> Of the 44 IDO attorneys who were assigned cases throughout the 2008-2009 fiscal year, 21 of those attorneys were carrying IDO caseloads that are in excess of national standards, before factoring in their private retained client caseloads.

### *Conflicts between clients*

The district defender estimates that approximately 90 percent of the criminal defense in the district is provided by the IDO. He believes that he could not get the caliber of attorneys he has now under a full-time employment system. Additionally, he believes that the cost to the system would be greater under a full-time staffed office, because conflicts

## Misdemeanor and Juvenile Appointments, FY08-09

Attorney	Parish	Contract Case Type	Total Assigned Cases	% of Standard
Dangerfield	Lafayette	Juv. Delinquency	363	182%
Neumann	Lafayette	Juv. Delinquency	409	205%
Mere	Lafayette	Misdemeanor	294	74%
Richard	Lafayette	Misdemeanor	299	75%
Williams	Lafayette	Misdemeanor	297	74%
Broussard	Vermilion	Misd./Juv.	711	178%
Guidry	Vermilion	Misd./Juv.	615	154%
Harrington	Acadia	Misd./Juv.	548	137%
Howie	Acadia	Misd./Juv.	800	200%
Landry	Acadia	Misd./Juv.	545	136%

would have to be assigned out to other attorneys; under a contract system he believes that is avoided.

The IDO does not have any written policies or guidelines regarding when an attorney has a “conflict” such that a case or client should be transferred to another IDO attorney (see text and side bar, page 35). Information provided by judges, prosecutors, and IDO attorneys during interviews causes serious concern as to whether conflicts are being appropriately identified and addressed. For example, in a misdemeanor brought to the attention of the site team, a single attorney had been designated to represent two codefendants in a single case. The two defendants had been involved in a fight with each other. Rather than appointing separate attorneys to represent each of the defendants, instead one defendant was prosecuted first and then a month later the second defendant was prosecuted, with each of them represented by the same attorney. The criminal justice system in the 15th Judicial District seemed to believe that the delay in prosecuting the second defendant somehow cured the attorney’s conflict of interest.

In another situation, there was a significant push on truancy cases in the Vermilion courts in early 2009. In these truancy cases, both the children and their parents were defendants in the cases. A single attorney was designated to represent both the child and the parent in each case. The Abbeville City Court judge quite properly believed this was a conflict of interest. The IDO attorney contacted the office administrator and was told that there was no conflict of interest in the attorney representing both the child and the parent. Apparently this decision by the non-attorney office manager was sufficient to override the concerns of both the judge and the IDO attorney with regard to whether a conflict of interest existed and should be addressed.

### *Willingness to file motions*

The 15th Judicial District has a single District Attorney’s Office that handles all prosecutions in the courts throughout the three parishes of the district. The NLADA site team received varying renditions about whether and how the prosecution policies vary among the three parishes. For example, it was represented to the site team that the prosecutors in both Lafayette and Acadia courts provide “open file discovery,” while prosecutors in Vermilion courts do not. Yet a Vermilion district judge advised that there is in fact open file discovery in Vermilion.

An Acadia parish district judge described how this works in practice, explaining that the prosecutor will give the defense attorney a copy of a file, saying “Here is what I have, whether you are entitled to it or not.” But, this seems to be contingent upon the defense attorney *not* filing any written motions in the case, at least prior to receiving whatever the prosecutor sees fit to provide. As the judge went on to explain, the prosecutor is saying in essence, “I will show you my file. But if you make me answer written motions be-

fore we even know whether we really have a case, then I will stop providing open file discovery.” Given that under Louisiana law issues are only reserved for appellate review if they are raised by written motion or an oral objection made in open court,<sup>131</sup> the failure of defense counsel to timely file written pretrial motions may forever waive a defendant’s right to object. Open file discovery as practiced in the 15th Judicial District may be convenient for the defense attorneys and the prosecutors, but it does not appear to protect the rights of indigent clients. One district judge observed that very few written motions are filed, only very occasionally are any hearings held, and the “evidence” often consists of the prosecutor and defense attorney providing to him the police report and asking him to rule based on the “facts” as set out in that police report.

A Vermilion district judge told NLADA “open file discovery” is the policy in the courts there. He also advised that no motions are *ever* filed for further discovery and that he had never heard anyone argue that any additional discovery was needed.

### *Conflicts arising out of recoupment policies*

All persons seeking to have counsel appointed must pay a \$40 application fee at the time they apply. This fee can be waived by either the judge or the IDO. The IDO assumes that in-custody defendants cannot afford to pay the fee. For all out-of-custody defendants, the fee is assessed uniformly.

In addition to the application fee, certain indigent defendants are also required to make a payment to partially defray the cost of their appointed counsel. The decision about which clients will be assessed a fee does not, however, have anything to do with the financial ability of the client to pay the fee. We were told that IDO clients who are found not guilty or against whom the charges are dismissed are not required to make any payment, yet a sample *Notice of Appointment* letter we were provided told the client they were to pay \$350 for their attorney *before* they had even appeared for pre-trial and certainly before conviction. IDO clients who are incarcerated are also not assessed any fee. Arbitrarily, only and all of those IDO clients who are placed on probation (both misdemeanor and felony) are assessed this recoupment fee, the payment of which is then made a condition of their probation. In other words, the IDO attorneys are actively involved in negotiating for their own clients to be forced to pay for their services as part of negotiating plea deals to stay out of jail.

The amount that an IDO client will be required to pay in recoupment is based solely on whether the case is a misdemeanor or a felony, and again bears no relationship to the ability of the client to pay the fee, nor to the time spent by the attorney on the client’s case.<sup>132</sup> In misdemeanor cases clients are ordered to pay a minimum of \$200, and in felony cases clients are ordered to pay a minimum of \$350. The office manager estimates that 90 percent of all IDO clients are assessed these fees and that, of those, approximately 50 percent actually pay some portion if not all of the assessed fee.

As stated, these fees are assessed as a condition of probation. If a client fails to pay, their probation can be revoked and they can be remanded to prison or jail. The IDO advises that there is an office policy directing the IDO attorneys to waive the IDO fees if the failure to pay the fee is the basis to revoke a client's probation. Such a policy could only be carried out, however, if IDO attorney were representing every client in every probation revocation proceeding, and they are not. According to the misdemeanor probation supervisor, it is the policy of the Misdemeanor Probation Department that all conditions of probation must be met within the first 6 months of probation, even where a defendant is placed on probation for longer. When asked point-blank, the supervisor said: "Failure to pay IDO fees is a revocable violation."<sup>133</sup> And as previously explained, defendants placed on probation for misdemeanors do not receive appointed counsel at any hearing held on an alleged violation of their misdemeanor probation. Appendix V, provided by the IDO in April 2010, shows that no attorney was assigned to and no funds were allocated for misdemeanor revocation representation.

The district defender advised the site team, regarding the operational budget of the IDO, that approximately \$700,000 comes from the state and \$700,000 from the city, with the balance having to be recouped through alternative revenue sources. Though this isn't quite accurate,<sup>134</sup> the implication is obvious: the state funds from LPDB are not enough – in reality dwarfed by the local dollars – and any revenue the IDO is able to raise on its own can supplement the office's budget, 85 percent of which is spent directly on the contract amounts paid to the IDO attorneys.<sup>135</sup> One veteran defender said: "There is encouragement to assess those fees [recoupment fees on plea deals], but I don't because I'm secure [in my position]." The contract attorneys, therefore, have a direct financial incentive to press their clients to accept pleas that double as cost recovery measures for the office. The office in turn distributes those funds back out to the attorneys. And should a client fail to pay those assessments, she can find her probation revoked. Put another way, the attorneys have a financial disincentive to bring a case to a trial that could result in a client being sentenced to jail or found not guilty, rather than probation, thereby forfeiting the opportunity to recoup attorney's fees.

This stands in contradistinction to all national standards. National standards permit cost recovery from indigent-but-able-to-contribute defendants under limited circumstances. The American Bar Association's *Criminal Justice Standards, Providing Defense Services*, Standard 5-7.1 directs that: "Counsel should not be denied because of a person's ability to pay part of the cost of representation." Cost recovery after the representation has been provided is unconditionally prohibited (with one exception, where the client committed fraud in obtaining a determination of financial eligibility), under ABA Standard 5-7.2. Pre-representation contribution is permitted if: (1) it does not impose a long-

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term financial debt; (2) there is a reasonable prospect that the defendant can make reasonably prompt payments; and (3) there are “satisfactory procedural safeguards,”<sup>136</sup> so as not to chill the exercise of the right to counsel.

Cost recovery from partially indigent defendants was first authorized by the *National Advisory Commission on Criminal Justice Standards and Goals*, Defense Standard 13.2 (promulgated in 1973 pursuant to directions of the 1967 President’s Crime Commission), with the caveat that the amount should be “no more than an amount that can be paid without causing substantial hardship to the individual or his family.” The concept was subsequently fleshed out in the *Guidelines for Legal Defense Systems in the United States* (National Study Commission on Defense Services, 1976), Guideline 1.7:

If the accused is determined to be eligible for defense services in accordance with approved financial eligibility criteria and procedures, and if, at the time that the determination is made, he is able to provide a limited cash contribution to the cost of his defense without imposing a substantial financial hardship upon himself or his dependents, such contribution should be required as a condition of continued representation at public expense...

1. (b) The amount of contribution to be made under this section should be determined in accordance with predetermined standards and administered in an objective manner; provided, however, that the amount of the contribution should not exceed the lesser of (1) ten (10) percent of the total maximum amount which would be payable for the representation in question under the assigned counsel fee schedule, where such a schedule is used in the particular jurisdiction, or (2) a sum equal to the fee generally paid to an assigned counsel for one trial day in a comparable case.

## ii. Availability and Use of Investigators

### ***Guidance of National Standards, ABA Principle 5***

All national standards strongly recommend that workloads should be adjusted to account for the extent to which an attorney has access to adequate support staff (investigators, social workers, paralegals, legal secretaries, and office managers). Investigators, for example, have specialized experience and training to make them more effective than attorneys at critical case-preparation tasks, such as finding and interviewing witnesses, assessing crime scenes, and gathering and evaluating evidence — tasks that otherwise have to be conducted, at greater cost, by an attorney. Similarly, social workers have the train-

ing and experience to assist attorneys in fulfilling their ethical obligations with respect to sentencing, by assessing the client's deficiencies and needs (e.g., mental illness, substance abuse, domestic problems, educational or job-skills deficits), relating them to available community-based services and resources, and preparing a dispositional plan meeting the requirements and expectations of the court, the prosecutor, and the law.<sup>137</sup>

Because of this, some states impose further restrictions on their indigent defense case-load standards. For example, public defenders in Indiana who do not maintain state-sponsored attorney-to-support-staff ratios cannot carry more than 120 felony cases per year (down from the standard of 150 felonies per year for full-time public defenders with appropriate support staff). Under the Indiana Standards, attorneys without adequate support staff cannot carry more than 300 misdemeanor cases per year (down from 400).<sup>138</sup>

### ***Current Practice in the 15th Judicial District IDO***

Current IDO policies regarding the use of investigators seem to reflect, at least in part, the political and judicial interference from the local indigent defender board in place prior to Act 307. Prior to Act 307 and under the previous chief public defender, the IDO had two or three investigators on retainer, with a line item in the budget for investigations in the amount of \$100,000 annually. The investigators were used in the most serious cases and were assigned to begin work during the pre-indictment phase. The investigator file would be turned over to the trial attorney, once that attorney was appointed after arraignment. A particular district court judge complained regularly about what he saw as an excessive use of investigation by the IDO. When the previous chief public defender retired, that district judge was able to work this policy issue into the hiring considerations for the next chief – at that time a decision made by the local indigent defender board whose members were appointed by the district court judges.

In 2007, the IDO spent \$7,285 on investigation; in 2008, it was \$3,833. The 2009 contracts signed in January 2009 with each of the defense attorneys contracted to the IDO provide:

1.B. Counsel agrees not to retain or otherwise hire experts, investigators or incur any expenses on behalf of the client without prior approval of The Program. The hiring of any expert/investigator without such approval will result in Counsel's being personally responsible for any fees, charges or expenses of such individuals. The Program may at his discretion approve an increase in fees paid to any expert/investigator previously approved.<sup>139</sup>

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There is no further information in the contract instructing the attorney as to how they are to go about obtaining approval to hire an expert or investigator. The IDO provided to the NLADA site team the forms that IDO attorneys were required to use, at least as of June 15, 2009, to obtain approval for hiring an investigator (or expert) in a case.<sup>140</sup>

NLADA conducted its site visits in two parts. The first site visit occurred on September 1-3, 2009; the second occurred September 21-24, 2009. Between the two visits, on September 14, 2009, the district defender issued a memorandum to all IDO attorneys regarding investigation.<sup>141</sup> The IDO advises that the issuance of this memorandum at this time was purely coincidental. That memorandum made two significant changes regarding the use of investigators by IDO attorneys.

First, the memo provides that an investigator will interview every potential client arrested for a serious felony within seventy-two (72) hours of arrest, to obtain as much preliminary information as possible. Given that an attorney has not typically been appointed to represent a client at this point, it is unclear who will direct the investigator in carrying out this interview. The memo acknowledges as much, stating “[w]hen and if the individual is assigned an attorney, the investigator will immediately arrange a meeting with that attorney to discuss his/her findings, so that a continuing investigative plan can be implemented. Following such a meeting, the attorney should submit a request for investigative assistance . . .”

Second, the memo provides that defense attorneys are allowed to hire an investigator to provide up to five hours of investigative services in every case, payable at the rate of \$55 per hour, without having to first obtain approval from the district defender. This is an express change from the terms of the January 2009 contracts between the IDO and the defense attorneys. There are not any investigators under contract with the IDO. The IDO does, however, provide a list of seven investigators whom it approves the IDO attorneys to use, payable at the rate of \$55 per hour.<sup>142</sup>

Finally, this new use of investigator policy does not provide for investigators in anything other than “serious felony” cases. Presumably the past practice of not using investigators at all will continue in misdemeanor, juvenile delinquency, and other felony cases.

One district judge indicated his belief that defense attorneys should have absolute and unfettered access to an investigator whenever they believe they need one and that such access is “fundamental.” The local indigent defender board in existence prior to Act 307 would not approve the use of investigators based on budget constraints, but it was his belief that the IDO attorneys now have access to investigators for their cases.



# Conclusion

NLADA concludes that neither the legislative intent of Act 307 nor the constitutional imperative to provide a meaningful right to counsel are being met in the 15th Judicial District. Overcoming the hurdles that prevent the adequate implementation of the legislative intent will necessarily involve a concerted effort by advocates at both the state and local level. NLADA believes, however, that LPDB has the statutory authority to make the following changes without additional legislative direction:

1. *LPDB should promulgate, adopt and enforce contracting regulations*

NLADA notes that contracting with attorneys to provide indigent defense services is a perfectly acceptable *method* of providing those services, both under national standards and under Act 307. But a flat-fee contracting system that pits the financial interests of the attorneys against the interests of their clients, and in which insufficient data is gathered to provide accountability, is not acceptable under either.

NLADA urges the LPDB to promulgate all contracts between the LPDB and district defenders as well as between the LPDB and the indigent defense attorneys within each judicial district and to promulgate policies regarding the effectuation of those contracts. Contracts should cite to all pertinent LPDB standards, especially the performance standards, so that attorneys understand the parameters of performance required of them.

Similarly, to avoid any future confusion or legal quagmire, the LPDB should provide written authority to the banks that serve as the depository institutions for the indigent defender fund<sup>143</sup> in each judicial district, specifying the identity of the district defender who administers that fund and the powers that the district defender has over the fund, and should promulgate policies to establish checks and balances over the appropriate purposes for which the fund can be expended. This is clearly required of the LPDB by Act 307's mandate that the board "review and approve the strategic plan and budget proposals submitted by . . . district public defenders on behalf of the districts"<sup>144</sup> and adopt rules, standards, and guidelines with regard to accountability, salary, and compensation,<sup>145</sup> among other things.

2. *LPDB should adopt and implement attorney qualification & training standards*

LPDB needs to develop attorney qualification standards and training standards, such that it would be impossible for an attorney (whether new to a system or a long-standing provider) to be assigned to a case that they are unprepared to handle. Many states have already done so, and we suggest that LPDB look to Massachusetts as a best practice site on this front. Massachusetts provides indigent defense services through the Committee on Public Counsel Services (CPCS). CPCS has statutory oversight of the delivery of services in each of Massachusetts' counties and is re-

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quired to monitor and enforce standards much like LPDB. Private attorneys, compensated at prevailing hourly rates through contracts, provide the majority of defender services.

At the local level, attorneys accepting cases must first be certified by CPCS to take cases. To accept district court cases (misdemeanors and concurrent felonies), attorneys must apply, be deemed qualified, and attend a five-day state-administered continuing legal education seminar offered several times throughout the year. No attorney may be a member of more than two regional programs (unless she is certified as bilingual).

Attorneys seeking assignment to felony cases must be individually approved by the Chief Counsel of CPCS, whose decision is informed by the recommendation of a Certified Advisory Board composed of eminent private attorneys from each geographical region. To be certified for these more serious cases, attorneys at the outset must have tried at least six criminal jury trials within the last five years or have other comparable experience. Proof of qualification, including names of cases, indictment numbers and charges, names of judges and prosecutors, dates, and a description of the services provided must be included in the application.

Recommendations from three criminal defense practitioners familiar with the applicant's work are also required. Certification is only valid for a term of four to five years, after which all attorneys must be reevaluated.<sup>146</sup>

All newly certified attorneys in Massachusetts must participate in a mandatory program of mentoring and supervision overseen by regional advocacy centers. For attorneys seeking appointments to children and family law matters, for example, counsel must meet with their mentor prior to any new assignments and bring writing samples to help the mentor develop a skills profile. The mentor and mentee are required to meet at least four times per year. The mentor is instructed to follow CPCS' performance guidelines in assessing the attorney's ability. Participation in the program is mandatory for an attorney's first eighteen months, and may continue longer at the discretion of the mentor.

3. *LPDB should adopt a policy requiring district defenders in populous jurisdictions to be full-time and begin implementing regional director system set out in Act 307.*

NLADA recognizes that attorney qualification, training and performance standards would be meaningless if there is no one to supervise the work attorneys are doing. And, though we recognize that ABA *Principle 2* requires a full-time public defender office be established in jurisdictions with a caseload sufficient to support one, we do not make that recommendation here – given the requirement in Act 307 that the existing delivery model is presumptively satisfactory and despite our belief that the 15th JDC does have a large enough caseload to support such an office. The language of Act 307 does not preclude the LPDB from requiring those jurisdictions with large caseloads to have a full-time defender director, whether that director is paid through a contract *method* or an employment *method*.

It is simply impossible for any attorney to supervise the work of 49 other attorneys spread across three parishes while working part-time, even if that attorney does not carry a full public caseload. Whether supervision criteria is developed at the state level or by local service providers or in combination is less relevant at this point than having someone with the time, tools and training to supervise and evaluate every single attorney and support staff in the jurisdiction. A meaningful evaluation process should include both “objective” measures of performance, such as case dispositions and other statistics, and the so-called “subjective” measures, such as courtroom observation and review of files. The “subjective” measures should be employed by reference to the policies and procedures of LPDB and may also include the judgment of the defender director about an attorney’s courtroom performance, sensitivity in dealing with clients and other factors.

Evaluations should be conducted on a regular basis (at least once a year); they should be in writing, shown to each attorney and support staff, and discussed. The employee must be able to submit written comments on the evaluation, and there must be a grievance procedure for disagreements about conclusions contained in the evaluation. To assure that evaluations are reliably done, evaluations of supervisors must address the effective use of the performance evaluation process.

NLADA does not take the position that every district defender in Louisiana need be full-time with a limited caseload, nor do we presume that there is no district defender who is providing adequate supervision and evaluation. It is clear to us, however, that the 15th IDO district defender has ceded to the office administrator whatever limited supervision is being performed. That is unacceptable. The 15th JDC needs immediate supervision and that can only come in the form of an adequately compensated and licensed professional whose job it is to provide on-going supervision and training.

It is crucial that there be a permanent physical location in each of the three parishes, staffed by an attorney during all business hours both personally and by telephone, that is open to the public as the location and identity of the public defense system. Clients, potential clients, witnesses, victims and victims’ families, law enforcement, prosecutors, judges, the community, and vendors all need to know where they can go to find and talk with the public defense system. In multi-parish districts such as the 15th JDC, especially where as here they operate as basically three independent court systems, there must be such a location in each parish (see side bar, page 8).

Just as the district public defense system must have a permanent physical presence for the community in each parish it serves, so should the LPDB have a permanent physical presence much closer in proximity to each district than can be provided by the state office in Baton Rouge. This requires the LPDB to institutionalize the regional director model anticipated in Act 307. The limited size of LPDB central staff simply makes it impossible, without regional directors, to determine whether appropriate supervision is taking place in each judicial district. Regional-

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ization is not new to indigent defense in Louisiana. The Louisiana Appellate Project (LAP) has been in place as the statewide public defense provider for non-capital felony appeals since 1996. It is structured along geographic lines that are equivalent to each of the Circuit Court of Appeal jurisdictions, has an executive director, and has a supervising attorney designated for each of the five jurisdictions. This is true even though the entire LAP comprises only 26 attorneys.

LPDB does not have to move immediately to developing a regional director system throughout the state, but the problems of the 15th JDC and those reported in Calcasieu Parish suggest that a Regional Director for Southwest Louisiana would be a good place to start.

#### 4. *LPDB should promulgate policies and provide training regarding the proper use of investigators*

The new September 14, 2009, IDO policy regarding the increased availability and use of investigators is a step forward for the 15th JDC IDO, but it is not well and fully thought out. It is crucial that the initial contact interview with the client be conducted either by the attorney who will actually be defending the client against the charge or by a representative of counsel who is operating under the direct supervision of the attorney.

As provided in the LPDB *Trial Court Performance Standards*, section 711.B.1., “the purpose of the initial interview is to acquire information from the client concerning the case, the client and pre-trial release, *and also to provide the client with information concerning the case.*” (emphasis added). It is for these reasons that the *Performance Standards* direct the attorney, where possible, to be familiar with the elements of the offenses and potential punishments, obtain copies of relevant documents, and for an in-custody client to be familiar with the legal criteria and procedures for determining pretrial release, the types of pretrial release conditions set by the courts and agencies that administer them, and the procedures for reviewing bail, all prior to the first meeting with the client. *Id.* at section 711.A. An investigator is simply not in a position, either through training or as allowed by the Louisiana Rules of Professional Conduct, to analyze the information provided by the client in terms of its applicability to the charges and defenses available and to provide to the client the necessary legal analysis. An investigator should at all times be working under the direct supervision of the appointed attorney.

The proper role of the investigator is to assist in conducting the investigation, under the supervision of the attorney, as set out in the LPDB *Trial Court Performance Standards*, section 717, performing tasks such as locating potential witnesses and accompanying the attorney during interviews of those witnesses, locating and documenting relevant physical evidence and crime scenes, locating and serving sub-

poenas to obtain relevant documents, and so forth. The funds presently allocated by the IDO to pay investigators to interview clients (at a time before an attorney is appointed under the present horizontal and delayed IDO system of appointing attorneys) should be reallocated to pay investigators to conduct investigation under the supervision of the attorney. This is not to say that investigation should wait until weeks after arraignment on the charge – rather counsel should be appointed promptly following a client’s arrest and should immediately have the use of and begin supervising the work of the investigator in the case. All public defense trial attorneys throughout the state should be trained in the proper use of investigators to assist them in the uniformly fair delivery of public defense services to their clients.

5. *LPDB should promulgate and require the implementation of policy directing that vertical representation be provided, whenever possible, in the 15th JDC and throughout Louisiana’s public defense system, with prompt appointment occurring in accordance with the mandates of Rothgery v. Gillespie County, 128 S.Ct. 2578 (2008), and appointment of counsel occurring on behalf of all indigent defendants facing loss of liberty as a potential sentence.*

Act 307 expressly directs the LPDB to “adopt standards and guidelines which ensure that each district devises a plan to provide that, to the extent feasible and practicable, the same attorney handles a case from appointment contact through completion at the district level in all cases.” 2007 La. Acts 307, section 148.B.(1)(b). In the 15th JDC, as was the factual scenario in *Rothgery*, trial defense attorneys are not presently being appointed to represent indigent defendants (whether in or out of custody) until after the initiation of prosecution by the District Attorney through the filing of a bill of information or securing an indictment. The IDO instead designates what could be referred to as a “placeholder attorney” (the pre-indictment/bond reduction attorney). This is tantamount to not appointing any attorney at all, as the placeholder attorney does not meet with the clients, does not begin investigation of the case, does not negotiate with the prosecutor for dismissal of or plea agreement in the case, and does not in short serve as *counsel* to the client in the defense of the charge against them. Then, on the back end of felony cases, the IDO does not provide continuity of trial counsel to represent defendants in any ensuing probation revocation hearing, *even where sentence has been deferred* pursuant to La. C.Cr.P. art. 893(D). *See also Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

More egregious still is the situation for misdemeanor defendants. Throughout the courts of the 15th Judicial District, indigent clients are expressly denied the right to have counsel appointed to represent them in many misdemeanor cases where they face potential loss of liberty, in direct violation of *Argersinger v. Hamlin* and *Ala-*

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*bama v. Shelton.* All misdemeanor defendants facing loss of liberty are denied representation in probation revocation proceedings, during which their probation may be revoked and they may be sentenced to jail.

In conclusion, NLADA applauds the Louisiana legislature for their leadership in constructing a system that can root out inefficient and ineffective use of taxpayer resources. But Act 307 is not an end in and of itself. Its passage simply demarcated a new phase on the continuum toward making *Gideon's* promise a reality. Though implementation of Act 307 has been arduous at times, NLADA believes that these relatively few recommendations, if implemented, will significantly meet the Legislative intent of the Louisiana Public Defender Act of 2007.



## Endnotes

<sup>1</sup> La. R.S. 15: 142 (B) 5.

<sup>2</sup> La. R.S. 15: 142 (B) 4.

<sup>3</sup> Numerous reports and papers detailed the inadequacies of the Louisiana public defender systems prior to Act 307. See, for example: NLADA, *A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana's Criminal Courts*, September 2006; ABA-SCLAID, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, January 2005; Honorable Sylvia R. Cooks and Karen Karre Fontenot, *The Messiah is Not Coming: It's Time for Louisiana to Change its Method of Funding Indigent Defense*, 31 S.U.L. REV. 197 (2004); NLADA, *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years After Gideon*, March 2004; Bernadette Jones Palombo and Jeff Sadow, *The Provision of the Right to Counsel in Caddo Parish, Louisiana*, 2004; Michael M. Kurth and Daryl V. Burckel, *Defending the Indigent in Southwest Louisiana*, 2003; ABA, *The Children Left Behind: A Review of the Status of Defense for Louisiana's Children and Youth in Delinquency Proceedings*, 2002; ABA, *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana*, 2001; The Spangenberg Group, *The Orleans Indigent Defender Program: An Overview*, 1997; The Spangenberg Group, *Study of the Indigent Defender System in Louisiana: Final Report*, 1992; The Spangenberg Group, *A Study of the Operation of the Indigent Defense System in the 19th Judicial District East Baton Rouge Parish, Louisiana*, 1992; American University, *An Evaluation of Indigent Criminal Defense Services in Louisiana and A Proposal for a Statewide Public Defender Service*, 1974; American University, *Management Study of an Indigent Defender Program, New Orleans, Louisiana*, 1974.

<sup>4</sup> La. R.S. 15:144, repealed by 2007 La. Acts 307.

<sup>5</sup> La. R.S. 15:145, repealed by 2007 La. Acts 307.

<sup>6</sup> La. R.S. 15:146, prior to amendment and reenactment by 2007 La. Acts 307.

<sup>7</sup> For example, in 2005, the total combined cost of public defense throughout the state was \$25,943,529, of which only \$4,381,640 (16.9 percent) was funded by the state, and the balance of \$21,561,889 was generated locally. The Spangenberg Group, *State and County Expenditures for Indigent Defense Services in Fiscal Year 2005*, December 2006.

<sup>8</sup> La. R.S. 15:146, prior to amendment and reenactment by 2007 La. Acts 307.

<sup>9</sup> La. R.S. 15:571.11.(L).

<sup>10</sup> La. R.S. 15:148, prior to amendment and reenactment by 2007 La. Acts 307.

<sup>11</sup> La. R.S. 15:147(A)(1)(f), prior to amendment and reenactment by 2007 La. Acts 307.

<sup>12</sup> In 1973, the state paid \$10,000 to each district indigent defender board, pursuant to La. R.S. 15:146(C). Though the statute was not repealed until enactment of Act 307, the state never again paid these warrants.

<sup>13</sup> 2007 La. Acts 307, section 146.A.(1).

<sup>14</sup> 2007 La. Acts 307, section 147.A.

<sup>15</sup> 2007 La. Acts 18.

<sup>16</sup> 2007 La. Acts 307, section 167.

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<sup>17</sup> 2007 La. Acts 307, section 168.

<sup>18</sup> 2007 La. Acts 307, section 150.A.

<sup>19</sup> 2007 La. Acts 307, section 152.B.(15).

<sup>20</sup> 2007 La. Acts 307, section 152.B.(3).

<sup>21</sup> 2007 La. Acts 307, section 161.H.(1).

<sup>22</sup> “The provisions of this Act are to be construed to preserve the operation of district public defender programs which provide effective assistance of counsel and meet performance standards in whatever form of delivery that local district has adopted, provided that method of delivery is consistent with standards and guidelines adopted by the board pursuant to rules and as required by statute.” 2007 La. Acts 307, section 142.F.

<sup>23</sup> Site team bios are attached as Appendix B.

<sup>24</sup> List of interviews conducted attached as Appendix C.

<sup>25</sup> In the vernacular employed in the 15th Judicial District, everyone uses the term “IDO” to refer to the indigent defense system, which presumably would be the acronym for Indigent Defender Office. To avoid confusion, NLADA similarly refers to the IDO or the Indigent Defender Office for the balance of this report. We have chosen in the report title, however, to use the moniker of Indigent Defense *System* because we believe this more accurately reflects what exists in the 15th Judicial District.

In Louisiana and throughout the country, there are three basic forms of delivery system: a Public Defender Office, which is an agency of the county or state, staffed with attorneys and support staff, all as full-time government employees working together in a single office; a Contract System, where the county or state issues a contract to a lawfirm, an individual attorney, or a group of attorneys to handle a certain number of cases, type of cases, or cases arising out of specified courts, in a given year, in exchange for payment of an agreed rate (which is the type of system existing in the 15th Judicial District); or an Assigned/Appointed Counsel System, where individual attorneys have agreed to have their names placed on a list from which judges or an assigned counsel administrator may appoint them as needed on a case-by-case basis, and they are typically paid by the hour.

<sup>26</sup> One clerk splits her time between the Lafayette and Vermilion Parish offices.

<sup>27</sup> Although information relating to the District Attorney’s Office was outside the scope of this evaluation, it appears that most prosecutors in the 15th Judicial District are also part-time, with private offices where they engage in civil practice on behalf of private retained clients.

<sup>28</sup> A sample 2009 “Variable Fund Retainer Contract” is attached as Appendix D.

<sup>29</sup> There is a single exception in the contracts with one attorney, where a hand-written change was made to the contract. This is discussed more fully at page 14.

<sup>30</sup> A sample 2009 “Capital Variable Fund Retainer Contract” is attached as Appendix E. More detailed explanation of these capital defense contracts is contained *infra* at pages 18-22, 43; and in endnotes 46 to 55, 68, 126-127.

<sup>31</sup> *Gideon v. Wainwright*, 372 U.S. 335, 340 (1963) (emphasis added). The onus on state government to

fund 100% of indigent defense services is supported by American Bar Association and National Legal Aid & Defender Association criminal justice standards. See American Bar Association, *Ten Principles of a Public Defense Delivery System*, Principle 2: “Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.” See also: *Guidelines for Legal Defense Systems in the United States* (National Study Commission on Defense Services, U.S. Department of Justice, 1976), Guideline 2.4.

<sup>32</sup> 2007 La. Acts 307, section 147.A.

<sup>33</sup> See for example the November 10, 2009 statement by the LPDB regarding discovery of apparent misappropriation of significant funds from the Capital Appeals Project, further detailed in the WDSU report “Head of Non-Profit Resigns Amid Money Probe,” November 12, 2009.

<sup>34</sup> 2007 La. Acts 307, section 152.B.(15).

<sup>35</sup> 2007 La. Acts 307, section 152.B.(3).

<sup>36</sup> 2007 La. Acts 307, section 161.A.

<sup>37</sup> 2007 La. Acts 307, section 161.E. (1), (10).

<sup>38</sup> Among the duties of the LPDB under Act 307 is the requirement that it “adopt all rules necessary to implement the provisions of [the Act]. . . include[ing] . . . : Creating mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state.” Act 307, section 148.A.,B.(1). Areas to be addressed by these standards include:

- Workloads, based on case weighting;
- Vertical Representation;
- Client Communication;
- Supervision (both PD staff and assigned counsel);
- Performance Standards (capital, juvenile, appellate, trial);
- Qualifications for attorneys;
- Training;
- Accountability;
- Racial Diversity;
- Conflicts;
- Data Collection and Reporting;
- Salary and Compensation;
- Investigators and Experts.

In April 2009, the LPDB promulgated *Trial Court Performance Standards*. La. Reg., Vol. 35, No. 04, April 20, 2009. Though the 2009 contracts between the IDO and the contract attorneys were signed in January 2009, there is no indication that the contracts were updated to include reference to these standards, nor that the contract attorneys were informed in any way of their existence and the need to comply with them.

<sup>39</sup> See Appendix D, paragraph 1.D.

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<sup>40</sup> See *Memorandum*, dated September 14, 2009, from the district defender, to All IDO Attorneys, regarding Retainer Contracts. Appendix I.

<sup>41</sup> 2007 La. Acts 307, section 161.A. See also section 143(5): “District public defender’ or ‘chief indigent defender’ means an attorney **employed by or under contract with the board** to supervise service providers and enforce standards and guidelines within a judicial district or multiple judicial districts.”

<sup>42</sup> 2007 La. Acts 307, section 161.H.

<sup>43</sup> See Appendix D.

<sup>44</sup> Prior to Act 307, each indigent defender board (IDB) was a legal entity established by the legislature and statutorily given the authority to carry out its duties. La. R.S. 15:145, prior to *repeal by* 2007 La. Acts 307. The IDB was legislatively authorized to administer the indigent defender fund within the judicial district. La. R.S. 15:146, prior to *repeal by* 2007 La. Acts 307. The IDB also had authority to hire or contract with a public defender, and could thus convey to that public defender the authority to act on its behalf. So, in this way, a public defender could go to the bank with a letter from the IDB and have the authority to open a bank account and transact business, or with a letter from the IDB the public defender would have authority to enter into a contract on behalf of the IDB. Act 307 eliminated entirely the existence of the 41 local IDBs and replaced them with the single LPDB.

The LPDB is a state agency within the office of the governor, La. R.S. 15:146(A)(1), and all of the members of the board and its agents and employees are subject to the Code of Governmental Ethics. La. R.S. 15:146(A)(2). Every district defender is either an employee of or contractor with the LPDB, La. R.S. 15:161(A); 143(5), and is thus both a “public servant” and a “public employee” because they are under the supervision of the State Public Defender who is the agency head of the LPDB, La. R.S. 42:1102(3), (17)(a)(iv). The “district office,” by whatever name it is known, is merely the physical location of the district defender, and not a separate legal entity. La. R.S. 15:143(4).

By statute, only the LPDB can authorize the district defender to enter into contracts, La. R.S. 15:165(B)(3), and the district defender is prohibited from self-dealing by the Code of Governmental Ethics, La. R.S. 42:1113(A). In a somewhat similar situation in another of the judicial district public defense systems, the district defender was paying himself for 2/3 of office expenses for the use by the public defense system of a building he owned. The LPDB requested an advisory opinion concerning whether this was proper. In Ethics Board Docket No. 2009-951, the Louisiana Board of Ethics advised:

Section 1113A prohibits a public servant from bidding on or entering into a contract, subcontract or transaction that is under the supervision or jurisdiction of the public servant’s agency. Because Mr. [] is the District Defender, he may not enter into a contract with the District Defender’s Office, to defray his office expenses.

<sup>45</sup> See ABA Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992), Standard 5-3.3(b)(x); NLADA, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, 1984, Guidelines III-8, III-9.

<sup>46</sup> See Appendix D. NLADA requested from the IDO copies of all contracts for everyone in their system and we received most of them. We are aware that services are being provided by the following attorneys for whom we did not receive 2009 contracts: Louis Garrott; Remy Jardell; Dan Kennison; Randy Lasseigne; Scott Privat. We were provided with 2008 contracts for Garrott, Kennison, and Lasseigne. We were not provided a 2008 contract for Privat. It is believed that Jardell began contracting with the IDO during 2009.

<sup>47</sup> In telephone discussions with the IDO in preparation for our site visits, NLADA was advised:

Attorneys available for appointment in capital cases receive a base contract amount of \$12,000 for their availability; felony attorneys receive a base contract amount of \$48,000; juvenile attorneys receive a base contract amount of \$58,000; and misdemeanor attorneys receive a base contract amount of \$26,000. Each attorney then receives an additional \$500 for each year of experience/seniority/longevity. A small number of the attorneys are paid for providing administrative or supervisory level services, including the district defender.

It is somewhat unclear as to exactly what time period the above explanation applies.

NLADA received a copy of the 2007 fiscal reporting for the 15th Judicial District Indigent Defender Office. That report contains the breakdown for the contract amount for each individual defender during 2007. See Appendix J. The contract base amounts shown on the 2007 report comport with the information provided orally by the IDO, except that in 2007 attorneys appear to have been paid a base contract amount of \$24,000 for their availability in capital cases.

For the 2008 calendar year, which is the only full calendar year since enactment of Act 307, NLADA received copies of the contracts with the attorneys and also received a copy of the 2008 fiscal reporting for the 15th Judicial District Indigent Defender Office, which contain the total contract amount paid to each attorney but do not contain a break-down of the total contract amount by base pay amounts. NLADA can only presume that the information provided orally by the IDO pertained to the base contract amounts in effect during the 2008 calendar year.

For the 2009 calendar year, NLADA received copies of the contracts with the attorneys (although some appear to have been inadvertently omitted), but these do not contain a break-down of the total contract amount by base pay amounts. NLADA also had the oral information provided above. Finally, NLADA had the benefit of the district defender's September 14, 2009 *Memorandum* to All IDO Attorneys, in which he explains changes in the attorneys' contract amounts. See Appendix I. He wrote:

As of September 1, I will be able to re-instate everyone's 2008 contract amount, with the exception of First-Degree retainers. However, this increased monthly amount will cover a 10-month period (September, 2009 – June, 2010). I will not be able to go back and reimburse everyone for July and August, 2009. The attached contract amount is based on a 10-month period, not a 12-month period. The 2010 contracts and subsequent annual contracts will be for a 12-month period. Beginning July 1, 2010, I hope to increase the contract amounts. We are now on a fiscal calendar with the State.

I was not able to increase the First-Degree retainers to the 2008 amount. You will note however, that I increased the retainer amount by 50%. After a First-Degree case is assigned, a First-Degree attorney will receive an additional monthly amount over and above the retainer. It is no longer necessary to write time for First-Degree assignments.

The IDO did not provide to NLADA the new contracts to which the district defender refers in this *Memorandum*, which apparently took effect on September 1, 2009 and cover the 10-month period spanning September 1, 2009 through June 30, 2010.

From all of the above, NLADA was able to deduce that base contract amounts for each type of service were less under the 2009 contracts than they had been under the 2008 contracts. So, in calculating the base contract amounts for each attorney in 2009, NLADA added \$1,000 to the Seniority amount they were receiving in 2007 (\$500 per year for two years), deducted this 2009 Seniority amount from their total 2009 contract amount, and the remainder is the amount each attorney was paid for the particular type of case they were contracted to handle.

<sup>48</sup> It is rare that NLADA evaluates a public defense system and finds that juvenile delinquency attorneys are paid more than felony attorneys. At first blush, the site team was encouraged that perhaps this reflected a recognition of the special duties of juvenile defense attorneys. The district defender explained that these base contract fees are calculated based on "days in court." In other words, there are a given number of days during which court will be held on felony matters during a year, and that is 22 days in court; while there are 48 court days for juvenile delinquency matters. At this rate, felony attorneys are paid \$1,940.90 per

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court day and juvenile delinquency attorneys are paid \$1,114.58 per court day.

<sup>49</sup> For detailed discussion of the attorneys' caseloads and workloads, see pages 39 to 48.

<sup>50</sup> See Appendix D, paragraphs 2.A., B.

<sup>51</sup> "Overhead costs 'include the cost of office, library, equipment, supplies, professional liability insurance, and secretarial help, all of which would be utilized in serving as counsel for an indigent defendant.' Overhead is 'all actual costs to the lawyer for the purpose of keeping his or her door open to handle [the appointed case] . . . pro rata.'" *State v. Wigley*, 624 So.2d 425, 428 n.4 (La. Sept. 7, 1993) (internal citations omitted).

<sup>52</sup> See pages 48 to 50 for a detailed discussion of the use of and payment for investigators in the IDO.

<sup>53</sup> *State v. Wigley*, 624 So.2d 425 (La. Sept. 7, 1993).

<sup>54</sup> *Wigley*, 624 So.2d at 429.

<sup>55</sup> See Appendix D, paragraph 5.B.

<sup>56</sup> Principle 6 of the ABA *Ten Principles* demands that "[d]efense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation." *Ten Principles of a Public Defense Delivery System* (ABA 2002) at p. 3. See also *Performance Guidelines for Criminal Defense Representation* (NLADA 1995), Guidelines 1.2, 1.3(a); *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (ABA 1989), Guideline 5.1.

<sup>57</sup> For most public defender systems across the country, the training and practical experience gained by attorneys working on less serious criminal cases permits them to acquire the skills necessary to handle more serious cases. Over time – often measured in years – attorneys in these systems acquire the skills that support handling more challenging cases.

<sup>58</sup> Commentary to the ABA *Standards for Providing Defense Services* views attorney training as a "cost-saving device" because of the "cost of retrials based on trial errors by defense counsel or on counsel's ineffectiveness." The Preface to the NLADA *Defender Training and Development Standards* states that quality training makes staff members "more productive, efficient and effective." Available at: [http://www.nlada.org/Defender/Defender\\_Standards/Defender\\_Training\\_Standards](http://www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards).

<sup>59</sup> These can vary greatly both in kind and number but they commonly include such things as: fostering and supporting professional development; giving people clear guidance about what is expected of them; and supporting accountability. Moreover, effective performance plans are tied to and support the fulfillment of the agency's mission and vision. Critically, effective plans emphasize a goal of promoting the attorney's performance success.

<sup>60</sup> People need to know what is expected of them in order to work to fulfill those expectations. Performance expectations should include, for example, attitudinal expectations and administrative responsibilities as well as substantive knowledge and skills.

<sup>61</sup> People whose positions require them to conduct performance evaluations must be trained and evaluated as part of their performance plan, so that evaluations are done fairly and consistently.

<sup>62</sup> 2007 La. Acts 307, section 148.A., B.

<sup>63</sup> 2007 La. Acts 307, section 153.

<sup>64</sup> 2007 La. Acts 307, section 154. Among other duties, this director is to “ensure that board policies and public pronouncements properly recognize that children and young adults do not possess the same cognitive, emotional, decision-making, or behavioral capacities as adults and, as such, require that special attention be given to the representation of juveniles to ensure uniformly competent representation.” *Id.* at subsection B.(3).

<sup>65</sup> 2007 La. Acts 307, section 157; specifically to develop evaluation protocols and evaluation implementation plans, conduct regular assessment and ongoing monitoring, and make reports to the LPDB on variances from board standards and guidelines in the individual districts.

<sup>66</sup> 2007 La. Acts 307, section 158; having all the same duties as the trial-level compliance officer, but in the area of juvenile delinquency representation.

<sup>67</sup> 2007 La. Acts 307, section 152.B.(15).

<sup>68</sup> See Appendix D, paragraph 1.E. For attorneys admitted to practice prior to 2008, they must obtain 12.5 hours of CLE each year, including one hour of ethics and one hour of professionalism. For attorneys newly admitted to the Louisiana bar in either 2008 or 2009, they must obtain 12.5 hours of CLE annually, and during their first two years of admission 8 hours of which must be earned in ethics, professionalism and/or law office management. <http://www.lascmcle.org/requirements.asp#3rd>

To be eligible to represent an indigent client in a capital case, an attorney must also be certified, under the standards adopted by the LPDB predecessor agency (the Louisiana Indigent Defender Board, “LIDB”) and must obtain 12 hours of CLE involving advocacy in capital defense, followed by 12 hours in capital defense advocacy every two years thereafter. Louisiana *Standards on Indigent Defense*, Chapter 7, *Standards Relating to the Provision of Counsel to Indigents Accused of Capital Crimes*, Standards 7-1.3 and 7-1.4. <http://www.lapdb.org/Acrobat%20files/Capital%20Certification%20Rules.PDF> These hours may be part of, and are not required to be in addition to, the CLE requirements imposed by the State Bar Association.

<sup>69</sup> See Appendix D, paragraph 1.E.

<sup>70</sup> See Appendix D, paragraph 1.D.

<sup>71</sup> The IDO did not provide a copy of the written contract with this attorney.

<sup>72</sup> The attorney who was replaced in Abbeville City Court OCS-parent cases is still an IDO contract attorney. He now is contracted to handle only Vermilion District Court juvenile delinquency, misdemeanors, and probation revocations – in essence a promotion from city court work.

<sup>73</sup> NSC commentary at 72-74.

<sup>74</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>75</sup> *Kirby v. Illinois*, 406 U.S. 682 (1972).

<sup>76</sup> *Coleman v. Alabama*, 399 U.S. 1 (1970).

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- <sup>77</sup> *County of Riverside v. McGlaughlin*, 500 U.S. 44 (1991).
- <sup>78</sup> *ABA Defense Services*, commentary to Standard 5-6.1, at 78-79.
- <sup>79</sup> *ABA Principle 7*: The same attorney continuously represents the client until completion of the case. Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.
- <sup>80</sup> *NSC* at 470.
- <sup>81</sup> *ABA Defense Services*, commentary to Standard 5-6.2, at 83.
- <sup>82</sup> *NSC* at 462-470, citing *Wallace v. Kern* (slip op., E.D.N.Y. May 10, 1973), at 30; reported at 392 F. Supp. 834, rev'd on other grounds, 481 F.2d 621; *Moore v. U.S.*, 432 F.2d 730, 736 (3rd Cir. 1970); and *U.S. ex rel Thomas v. Zelker*, 332 F.Supp. 595, 599 (S.D.N.Y. 1971).
- <sup>83</sup> *ABA Principle 4*: Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.
- <sup>84</sup> *ABA Model Rules of Professional Conduct*, Rule 1.6; *Model Code of Professional Responsibility*, DR 4-101; *ABA Defense Function*, Standard 4-3.1; NLADA Performance Guidelines, 2.2. State Performance Standards; New York’s “Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State” (NYSDA 2004); “New York State Bar Association Standards for Providing Mandated Representation” (NYSBA 2005); and “Client-Centered Representation Standards” (NYSDA Client Advisory Board 2005).
- <sup>85</sup> *NSC*, Guideline 5.10.
- <sup>86</sup> *NSC*, Guideline 5.10, and commentary at p. 460.
- <sup>87</sup> 2007 La. Acts 307, section 175.
- <sup>88</sup> “The board shall adopt standards and guidelines which ensure that each district devises a plan to provide that, to the extent feasible and practicable, the same attorney handles a case from appointment contact through completion at the district level in all cases.” 2007 La. Acts 307, section 148.B.(1)(b).
- <sup>89</sup> “The board shall adopt standards and guidelines to ensure that defense attorney providing public defender services provide documentation of communications with clients regarding the frequency of attorney client communications as required by rules adopted by the board.” 2007 La. Acts 307, section 148.B.(1)(c).
- <sup>90</sup> La. C.Cr.P. arts. 230.1 and 230.2. In Lafayette Parish, the arraignments following institution of prosecution are all conducted by Commissioner Thomas J. Frederick. He is appointed by the 13 elected District Court Judges. He has presently served as Commissioner for seven years, and prior to being appointed as Commissioner he was a contract public defender for 11 years.
- <sup>91</sup> See Appendix K.

<sup>92</sup> La. C.Cr.P. art. 701(B).

	In-Custody	Out-of-Custody
Misdemeanor	45 days	90 days
Felony	60 days	150 days
Capital Felony	120 days	

<sup>93</sup> La. C.Cr.P. art. 701(C).

<sup>94</sup> At least part of the delay in instituting prosecution was attributed to law enforcement being slow to produce written reports to the prosecutors. As a result of jail overcrowding, the parish leadership have pressured law enforcement to provide written reports within two weeks of arrest, in the hope that the prosecutors would be able to evaluate cases earlier and dismiss those they do not intend to prosecute so that the defendants could be released from jail. Despite these efforts, it generally takes 3 to 4 weeks on average before the written report is provided by law enforcement to the prosecutor, and it then takes the DA’s office another 3 to 4 weeks to evaluate the case.

Jail overcrowding appears to be a quite serious problem. The Lafayette Parish jail was built to hold 338, but at the time of the site visit it was holding 954 inmates, double- and triple-bunked. Some sheriff’s department officials expressed the belief that the only reason they stop at 954 is because the fire marshal will not allow more. When the jail population exceeds 954, they ship additional inmates out for housing to Avoyelles Parish in groups of 10 at a time.

<sup>95</sup> See Appendix P.

<sup>96</sup> See Appendix M. The only defendants who are not required to pay the \$40 application fee are “inmates” – presumably those who are in custody at the time they complete the application.

<sup>97</sup> See Appendix L.

<sup>98</sup> 2007 La. Acts 307, section 143(6). See also, 2007 La. Acts 307, section 175.A.(1)(b)-(c):

A person will be deemed ‘indigent’ who is unable, without substantial financial hardship to himself or to his dependents, to obtain competent, qualified legal representation on his own. ‘Substantial financial hardship’ is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, resides in public housing, or earns less than two hundred percent of the Federal Poverty Guideline. A defendant is presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is housed in a mental health facility.

Defendants not falling below the presumptive threshold will be subjected to a more rigorous screening process to determine if their particular circumstances, including seriousness of the charges being faced, monthly expenses, local private counsel rates, would result in a ‘substantial hardship’ were they to seek to retain private counsel.

<sup>99</sup> 2007 La. Acts 307, section 174.A.(1)(b)-(e).

<sup>100</sup> 407 U.S. 25 (1972).

<sup>101</sup> 535 U.S. 654 (2002).

<sup>102</sup> The Court observed:

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The requirement of counsel may well be necessary for a fair trial even in a petty offense prosecution. We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more. . . . While only brief sentences of imprisonment may be imposed, the cases often bristle with thorny constitutional questions.

...

Beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor, as well as in felony, cases. Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

In addition, the volume of misdemeanor cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result. . . . There is evidence of the prejudice which results to misdemeanor defendants from this “assembly line justice.”

*Argersinger v. Hamlin*, 407 U.S. 25, 33-36 (1972) (citations omitted).

<sup>103</sup> *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).

<sup>104</sup> Examples of such conditions include attending drug treatment, observing a curfew, maintaining employment, or paying fines and court costs. The Court said:

Where the State provides no counsel to an indigent defendant, does the Sixth Amendment permit activation of a suspended sentence upon the defendant’s violation of the terms of probation? We conclude that it does not. A suspended sentence is a prison term imposed for the offense of conviction. Once the prison term is triggered, the defendant is incarcerated not for the probation violation, but for the underlying offense. The uncounseled conviction at that point “result[s] in imprisonment,” it “end[s] up in the actual deprivation of a person’s liberty.” This is precisely what the Sixth Amendment, as interpreted in *Argersinger* and *Scott*, does not allow.

*Alabama v. Shelton*, 535 U.S. 654, 662 (2002) (internal citations omitted).

<sup>105</sup> There was some indication that the Abbeville City Court judge who had just taken the bench in January 2009 was re-examining this long-standing policy and was considering appointing counsel in allailable offenses, but there had been no policy change in this regard at the time of the site visit in September 2009.

<sup>106</sup> The commentary to ABA Standard 5-6.2 explains the deficiencies of horizontal representation. “The disadvantages of horizontal representation, particularly in human terms, are substantial. Defendants are forced to rely on a series of lawyers and, instead of believing they have received fair treatment, may simply feel that they have been ‘process by the system.’ This form of representation may be inefficient as well, because each new attorney must begin by familiarizing himself or herself with the case and the client must be re-interviewed. Moreover, when a single attorney is not responsible for the case, the risk of substandard representation is probably increased.”

<sup>107</sup> The pre-indictment attorney: represents all in-custody IDO clients at any bond reduction hearing; files any pre-indictment motions or writs for all in-custody IDO clients when a delay in the institution of prosecution provides a basis to seek their release; and appears at arraignment with all IDO clients, both in-custody and out-of-custody.

<sup>108</sup> See Appendix L.

<sup>109</sup> There are a total of 15 IDO attorneys who are certified to be appointed in capital cases: eight in Lafayette; four in Acadia; and three in Vermilion.

<sup>110</sup> See Appendix N.

<sup>111</sup> Workload limits have been reinforced in recent years by a growing number of systemic challenges to underfunded public defense systems, where courts do not wait for the conclusion of a case, but rule before trial that a defender's caseloads will inevitably preclude the furnishing of adequate defense representation. See, e.g., *Missouri ex rel. Wolff v. Ruddy*, 617 S.W.2d 64 (Mo. 1981), cert. den. 454 U.S. 1142 (1982); *New Hampshire v. Robinson*, 123 N.H. 665, 465 A.2d 1214 (1983); *Corenevsky v. California Superior Court*, 36 Cal.3d 307, 682 P.2d 360 (1984); *Arizona v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984); *Arizona v. Hanger*, 146 Ariz. 473, 706 P.2d 1240 (1985); *California v. Knight*, 194 Cal. App. 337, 239 Cal. Rptr. 413 (1987); *Kansas ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987); *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988), cert. den. 495 U.S. 957 (1989); *Hatten v. Florida*, 561 So.2d 562 (Fla. 1990); *In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit*, 561 So.2d 1130 (Fla. 1990); *Oklahoma v. Lynch*, 796 P.2d 1150 (Okla. 1990); *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770 (1991); *City of Mount Vernon v. Weston*, 68 Wash. App. 411, 844 P.2d 438 (1993); *Louisiana v. Peart*, 621 So.2d 780 (La. 1993); *Kennedy v. Carlson*, 544 N.W.2d 1 (Minn. 1996). Many other cases have been resolved by way of settlement.

<sup>112</sup> The items contained in the text are just a partial list of ethical duties required under national and state performance guidelines. *Performance Guidelines for Criminal Defense Representation* (NLADA, 1995) is available on-line at: [www.nlada.org/Defender/Defender\\_Standards/Performance\\_Guidelines](http://www.nlada.org/Defender/Defender_Standards/Performance_Guidelines).

<sup>113</sup> For example: bail reduction motions; motion for preliminary examination; motion for discovery; motion for bill of particulars; and motion for initial investigative report. Also, motions to quash and motions to suppress.

<sup>114</sup> Throughout our country, more than 80 percent of people charged with crimes are deemed too poor to afford lawyers. See: Harlow, U.S. Department of Justice, Office of Justice Programs, *Defense in Criminal Cases* at 1 (2000); Smith & De-Frances, U.S. Department of Justice, Office of Justice Programs, *Indigent Defense* at 1 (1996). See generally: Stuntz, *The Virtues and Vices of the Exclusionary Rule*, 20 Harv. J. L. & Pub. Pol. 443, 452 (1997). The actual number of such individuals will increase as the number of poor people in the United States (currently estimated at 37 million) goes up. See A.P., *U.S. Poverty Rate Rises to 12.7 Percent*, N.Y. Times, August 30, 2005, <http://www.nytimes.com/aponline/national/APCensus-Poverty.html?ei=5094&en=d74b58>. (8/30/2005). See also: Congressional Research Service, *Poverty in the United States: 2008* (October 6, 2009): "In 2008, 39.8 million people were counted as poor in the United States—an increase of 2.6 million persons from 2007, and nearly the largest number of persons counted as poor since 1960. The poverty rate, or percent of the population considered poor under the official definition, was reported at 13.2%; up from 12.5% in 2007, and the highest rate since 1997. The recent increase in poverty reflects the worsened economic conditions since the onset of the economic recession in December 2007. Many expect poverty to rise further next year, and it will likely remain comparatively high even after the economy begins to recover. The incidence of poverty varies widely across the population according to age, education, labor force attachment, family living arrangements, and area of residence, among other factors. Under the official poverty definition, an average family of four was considered poor in 2008 if its pre-tax cash income for the year was below \$22,025. This report will be updated on an annual basis, following release of U.S. Census Bureau annual income and poverty estimates." (Available at: <http://www.fas.org/sfp/crs/misc/RL33069.pdf>)

<sup>115</sup> See *Indigent Defense Caseloads and Common Sense: An Update* (NLADA, 1992), surveying state and local replication and adaptation of the NAC caseload limits.

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<sup>116</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973), p. 276, Standard 13.12. The National Advisory Commission accepted the numerical standards arrived at by the NLADA Defender Committee “with the caveat that particular local conditions — such as travel time — may mean that lower limits are essential to adequate provision of defense services in any specific jurisdiction.” *Id.* at 277. Because many factors affect when a caseload becomes excessive, other standards do not set numerical maximums. ABA *Principle 5* notes in commentary that national numerical standards should in no event be exceeded and that “workload” — caseload adjusted by factors including case complexity, availability of support services, and defense counsel’s other duties — is a better measurement.

<sup>117</sup> The NAC numerical standards have been refined, but not supplanted, by a growing body of methodology and experience in many jurisdictions for assessing “workload” rather than simply the number of cases, by assigning different “weights” to different types of cases, proceedings and dispositions. See *Case Weighting Systems: A Handbook for Budget Preparation* (NLADA, 1985); *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001) [www.ncjrs.org/pdffiles1/bja/185632.pdf](http://www.ncjrs.org/pdffiles1/bja/185632.pdf).

<sup>118</sup> American Bar Association, Standing Committee on Ethics and Professional Responsibility. *Formal Opinion 06-441: Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*. May 13, 2006. Opinion can be found online at: [www.abanet.org/cpr/pubs/ethicopinions.html](http://www.abanet.org/cpr/pubs/ethicopinions.html).

<sup>119</sup> American Bar Association, *Eight Guidelines of Public Defense Related to Excess Workload*, August 2009, p. 11.

<sup>120</sup> 2007 La. Acts 307, section 147.B.(4)(c).

<sup>121</sup> 2007 La. Acts 307, sections 148.A., B.(1)(a), B.(3), B.(8), B.(9), B.(11), B.(13).

<sup>122</sup> See Appendix Q.

<sup>123</sup> See Appendix R. One of the problems in grappling with the true workloads of the IDO attorneys is that almost all of the IDO attorneys carry what is known as a “mixed caseload.” A mixed caseload occurs any time an attorney handles more than one type of case from the available types: capital, felony, misdemeanor, juvenile. For this reason, the most accurate method of comparing the workloads among the attorneys of the IDO is to convert the overall caseload of each attorney into “Misdemeanor Equivalents,” which allows comparison of the workload of a felony attorney to the workload of a misdemeanor attorney, and so forth. The final two columns of Appendix R provide this information and allow for this comparison.

<sup>124</sup> 2007 La. Acts 307, section 174.C.

<sup>125</sup> 2007 La. Acts 307, section 174. A., B.

<sup>126</sup> SPRC 2. [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=SPRC&ruleid=supsprc2](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=SPRC&ruleid=supsprc2).

<sup>127</sup> See Appendix S. Although the list of pending capital cases appears to show 20 capital cases as of 6/30/09, LPDB explains that there were actually 13 capital cases on that date. This is because seven capital defendants’ cases were counted more than once: Aaron Francois, Kevin Francis, Kevin Gildhouse, Ove Williams, Ryan Williams, and Aaron Leday. This is an anomaly of the current LPDB database. If more

than one attorney enters the same case, the case will show up twice even though it has the same docket number. The only way to cross-check this is by having all of the attorneys' case lists with clients' names and all docket numbers.

<sup>128</sup> Thomas Dupont is also a Lafayette parish IDO attorney contracted to handle Lafayette City Juvenile cases. He is not included in this calculation because he did not begin with the IDO until February of 2009, and so he only received cases during 5 months of this 12-month fiscal year period.

<sup>129</sup> See Appendix D, paragraphs 2.A., 2.B., 5.C.

<sup>130</sup> See Appendix R. The percentage of national workload standards for each IDO attorney was calculated after converting the attorney's caseload to a misdemeanor equivalent. See also endnote 123 *supra*. We excluded certain attorneys from consideration, either because they did not work as an IDO attorney for the full 12-month period (Thomas Dupont), or they accept cases only sporadically (James Landry), or their IDO contract calls for them to serve a certain role rather than handle a certain case type (Scott Privat, Trent Gauthier, Remy Jardell, and Christopher Larue).

<sup>131</sup> La. C.Cr.P. art. 920.

<sup>132</sup> See Appendix L. The IDO refers to the amount that a defendant is to pay for their appointed counsel as "PI Fee," which we believe stands for "partial indigency fee." The partial indigency fee being assessed by the IDO is calculated solely on the basis of the amount of funds they determine that a defendant has after paying their monthly expenses. This is shown on Appendix L under the headings of "felony" and "misdemeanor."

<sup>133</sup> It is not clear whether there are children or parents of juveniles who are locked up for failure to pay IDO fees as a condition of probation, but it is certain that this is possible for adult clients on both misdemeanor and felony probation. As an aside, the misdemeanor probation supervisor told the site team that the most common violation upon which people's misdemeanor probationary sentences are revoked is failure to attend classes and that 75 percent of all misdemeanor probationers never report ("pled and fled").

<sup>134</sup> In 2008, IDO recouped from its clients \$258,591.02 in attorneys' fees and \$96,237.18 in application fees, a total of \$354,828.20. For 2008, that amounted to 12.2 percent of the office's annual revenue. When added to IDO revenue from court costs (\$1,429,210.35), bond fees & forfeitures (\$329,279.52), and earned interest (\$30,165.40), the office operated on \$2,143,483.47 in local funds. The state funds provided by LPDB that year (\$744,580) were only 25.8 percent of the office's \$2,889,563.47 in total revenues.

<sup>135</sup> In 2008, out of \$2,962,545.92 in total expenses, \$2,543,883.89 (85 percent) went to the office's 48 contract attorneys, leaving 15 percent for all other expenses.

<sup>136</sup> Required safeguards include:

- Right to notice of the potential obligation;
- Right to an evidentiary hearing on the imposition of costs of counsel, with an attorney present and with the opportunity to present witnesses and to have a written record of the judicial findings;
- Right to a determination of present ability to pay actual costs of counsel and related fees, such as investigative or clerical costs;
- Right to all civil judgment debtor protection;
- Right to petition for remission of fees, in the event of future inability to pay;

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- Notice that failure to pay will not result in imprisonment, unless willful;
- Notice of a limit, statutory or otherwise, on time for the recovery of fees;
- Adequate information as to the actual costs of counsel, with the right not to be assessed a fee in excess of those actual costs; and
- Where any of these rights are relinquished, the execution of a voluntary, knowing and intelligent written waiver, as is required in any instance concerning the constitutional right to counsel.

<sup>137</sup> Such services have multiple advantages. As with investigators, social workers are not only better trained to perform these tasks than attorneys, but are more cost-effective; preparation of an effective community-based sentencing plan reduces reliance on jail and its attendant costs; defense-based social workers are, by virtue of the relationship of trust engendered by the attorney-client relationship, more likely to obtain candid information upon which to predicate an effective dispositional plan than an attorney; and the completion of an appropriate community-based sentencing plan can restore the client to a productive life, reduce the risk of future crime, and increase public safety.

<sup>138</sup> See <http://www.in.gov/judiciary/pdc/docs/standards/indigent-defense-non-cap.pdf> at Table 1, p. 14.

<sup>139</sup> See Appendix D, paragraph 1.B.

<sup>140</sup> See Appendix T.

<sup>141</sup> The memo is provided as Appendix U.

<sup>142</sup> See Appendix U.

<sup>143</sup> 2007 La. Acts 307, section 168.

<sup>144</sup> 2007 La. Acts 307, section 147.B.(3).

<sup>145</sup> 2007 La. Acts 307, section 148. A., B.

<sup>146</sup> First and second degree murder cases require proof of five years of criminal litigation experience, familiarity with Massachusetts' criminal courts, service as lead counsel in at least ten jury trials of a serious and complex nature over the preceding five years, at least five of which have been life felony indictments resulting in a verdict, decision or hung jury. As with Superior Court certification, applicants must submit information along with recommendations of three criminal defense lawyers.



# Appendices

## Effective Assistance of Counsel

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**Appendix A:**  
***ABA Ten Principles of a Public Defense  
Delivery System***

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

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

sible for ensuring uniform quality statewide.<sup>11</sup>

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

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

**5** Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.<sup>18</sup> National caseload standards should in no event be exceeded,<sup>19</sup> but the concept of workload (i.e., caseload adjusted by fac-

tors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.<sup>20</sup>

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

**7** **The same attorney continuously represents the client until completion of the case.** Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.<sup>22</sup> The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

**8** **There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.<sup>23</sup> Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.<sup>24</sup> Contracts with private attorneys for public defense services should never be

let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases,<sup>25</sup> and separately fund expert, investigative, and other litigation support services.<sup>26</sup> No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.<sup>27</sup> This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

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

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

<sup>1</sup> “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.

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

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

<sup>4</sup> Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Inde-

pendence, 1997).

<sup>5</sup> ABA, *supra* note 2, Standard 5-4.1

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

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

<sup>8</sup> ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>9</sup> NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

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

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

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<sup>12</sup> For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

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

<sup>14</sup> NSC, *supra* note 2, Guideline 1.3. 15 American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter “ABA Defense Function”], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter “Performance Guidelines”], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

<sup>16</sup> NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

<sup>17</sup> ABA Defense Function, *supra* note 15, Standard 4-3.1.

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

<sup>19</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare,

and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter “Death Penalty”].

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

<sup>21</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

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

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

<sup>24</sup> ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

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

<sup>26</sup> ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

<sup>27</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

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

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

**Appendix B:**  
**NLADA Research Team Bios**

**T. Patton Adams** is the Executive Director of the South Carolina Commission on Indigent Defense which oversees the indigent defense system in the state. He was instrumental in achieving legislation which merged appellate defense services with the rest of the state's indigent defense system; and subsequently led efforts in 2007 which resulted in a unified, statewide public defender system and a 50 percent increase in state appropriated funding. He is a graduate of Washington & Lee University and the University of South Carolina School of Law, a former Mayor of Columbia, SC, and a member of the Charleston School of Law Board of Advisors. He has previously participated in NLADA-NDLI training for the Louisiana Public Defender Board, and as a panelist at the February 2010 Department of Justice Symposium, and is a member of the American Council of Chief Defenders and the NLADA Defender Policy Group.

**James D. Bethke** serves as the director of the Texas Task Force on Indigent Defense charged with implementing a statewide system of standards, financing and other resources for criminal defendants unable to hire attorneys. He also serves as the presiding officer of the Timothy Cole Advisory Panel on Wrongful Convictions. He is a member of the Texas Criminal Justice Integrity Unit. He is a past-chair Juvenile Law Exam Commission for the Texas Board of Legal Specialization. He currently serves on the Indigent Defense Advisory Group (IDAG) for the ABA Standing Committee for Legal Aid and Indigent Defendants. He is a U.S. Army veteran from the 101st Airborne Division, is a graduate of the University of Texas at Tyler and the Texas Tech University law school.

**David Carroll** is the director of research and evaluation in Defender Legal Services division of the National Legal Aid & Defender Association. Mr. Carroll has conducted assessments of the right to counsel in numerous jurisdictions across the country, including: Montana, New York, the District of Columbia, Hamilton County (Cincinnati) Ohio, Clark County (Las Vegas) Nevada, Santa Clara County (San Jose) California, and Venango County (Franklin) Pennsylvania. He is currently serving as an advisor to the Nevada Supreme Court Task Force on Indigent Defense and providing technical assistance to the Idaho State Criminal Justice Planning Commission.

NLADA's report, *A Race to the Bottom: Speed & Savings over Due Process*, details the extent to which the Constitutional right to counsel is inadequately enforced in criminal courts throughout Michigan. The report — conducted on behalf of the Michigan Legislature per joint resolution (SCR 39) in conjunction with the State Bar of Michigan — shows that few Michigan counties have evolved beyond the parameters of the early twentieth century systemic defense delivery model described in the Scottsboro Boys case [*Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)].

In 2004, NLADA released *In Defense of Public Access to Justice*, a comprehensive report detailing the impact Louisiana's systemic indigent defense deficiencies had on one judicial district — Avoyelles Parish. A legislative Task Force on Indigent Defense subsequently retained Carroll to advise them on different models for delivering indigent defense services. The Louisiana State Bar retained NLADA to document issues in post-Katrina New Orleans and to create a road map for a legislative fix to the state's systemic deficiencies. The second report, primarily authored by Carroll and released in September 2006, was the starting point for a legislative advisory group put together by the

## National Legal Aid & Defender Association

chair of the House Criminal Justice Committee that eventually led to the passage of the Louisiana Public Defender Act of 2007.

**Karl Doss** is director of Training & Community Education for the National Legal Aid & Defender Association. He joined NLADA in 2009 as staff attorney with NLADA's Defender Legal Services. During his 23 years as a lawyer, Karl has been admitted to practice law in Minnesota, New York, and Virginia and has held a numerous positions, including: assistant public defender in Hennepin County, Minnesota; assistant county attorney in Hennepin County; referee of the Hennepin County Family Court; law guardian in the Brooklyn (NY) Family Court; deputy public defender in Norfolk, Virginia; director of training for the Virginia Indigent Defense Commission; and director of Judicial Programs with the Supreme Court of Virginia.

**Richard Goemann** recently left the National Legal Aid & Defender Association to join D.C. Law Students in Court as the organization's executive director. From 2006-10, he served as the director of Defender Legal Services for the NLADA. Previously, Goemann was an Assistant Federal Public Defender for the Eastern District of Virginia and served as the Executive Director for Virginia's Indigent Defense Commission, and as the Executive and Deputy Director for the IDC's predecessor agency, the Public Defender Commission. Richard also served as the Public Defender for Fairfax, Virginia, and was an assistant and senior assistant public defender in Alexandria, Virginia. Goemann received his J.D. degree from New York University School of Law, and was selected as an E. Barrett Prettyman Graduate Fellow at Georgetown University Law Center where he earned an LL.M. degree in Advocacy.

**Phyllis Mann** is the director of the National Defender Leadership Institute, within the National Legal Aid & Defender Association. Prior to joining NLADA, she was a consultant in criminal defense, providing expert testimony in both state and federal courts in capital defense, research and writing in systemic areas of criminal defense, and serving as the curriculum coordinator for NLADA's *Life in the Balance* capital defense training. Before returning to her home state of Texas, where she still resides, Phyllis practiced exclusively criminal defense — trial and appeal, state and federal — in Louisiana. At various times in her career she served as a public defender for Rapides Parish, as an appellate public defender for the Louisiana Appellate Project, as a court appointed capital defender certified by the Louisiana Indigent Defender Assistance Board, and as a court appointed CJA attorney for the Western and Middle Districts of Louisiana. In 2005, Phyllis secured the unanimous opinion from the Louisiana Supreme Court in *State v. Citizen & Tonguis*, establishing the authority for trial court judges to halt capital prosecutions in Louisiana where there is no funding for the defense of the accused. Following Hurricane Katrina, she established and led an *ad hoc* group of criminal defense attorneys in their pro bono efforts to interview, counsel, and document the approximately 8,500 prisoners and detainees evacuated from south-eastern Louisiana jails and to represent them where appropriate in *habeas corpus* and bond proceedings. She received the 2006 *Arthur von Briesen Award* from NLADA for her contributions as a private attorney to indigent defense in Louisiana. Phyllis is a past president of the Louisiana Association of Criminal Defense

Lawyers and was the recipient of LACDL's 2005 *Justice Albert Tate Jr. Award* for lifetime achievement in criminal defense.

**Jon Mosher** is research associate for the Defender Legal Services' Research & Evaluations department of the National Legal Aid & Defender Association. He assists in the direction of NLADA's numerous standards-based assessments of indigent defense systems, including: a statewide assessment of the right to counsel Idaho's trial courts (the report, primarily authored by Mosher, was released January 2010); a statewide evaluation of trial-level right to counsel systems in Michigan; an evaluation of public defender services in Hamilton County (Cincinnati), Ohio; a study of public defense in Orleans Parish (New Orleans) Louisiana; an evaluation of the Idaho State Appellate Defender's Office; and a study of public defender services in the State of New York. He joined NLADA in 2003 as resource coordinator with Defender Legal Services, serving as primary staff liaison to the American Council of Chief Defenders. He is a graduate of George Washington University.

**Yvonne Segars** is Public Defender for the State of New Jersey, and has been a defense attorney for 20 years. Prior to her appointment in 2002, she served as the Chief Managing Attorney in Essex County, the largest office of the public defender region in New Jersey. Earlier she served as bond counsel with the NJ firm of McManimon & Scotland, LLC gaining experience in municipal finance and transactional law. Segars is a member of the Defender Policy Group for the National Legal Aid and Defender Association (NLADA); Vice-Chair of the NJ State Sentencing Commission; a member of the New Jersey State Criminal Disposition Commission and the NJ Domestic Violence Fatality and Near Fatality Review Board. She sits on the Board of Advisors for the Office of the Child Advocate, the Division of Youth and Family Services Staffing and Outcome Review Panel, and is Chairwoman of that group's Subcommittee on Juveniles in Detention.

Segars was the 2005 recipient of Kean University's Doctor of Laws Honorary Degree. In 2004 she received the Rutgers Law School Distinguished Alumna Award and the Leadership Award from the Association of Black Women Lawyers. She received her J.D. from Rutgers School of Law, Newark, and her B.A. in psychology from Kean University.

**Wesley Shackelford** is Deputy Director/Special Counsel to the Task Force on Indigent Defense (TFID). He develops standards and policies for the provision of indigent defense services. He provides legal advice on the issue to judges, counties, and the Task Force. He also speaks about indigent defense issues to stakeholders and policymakers. He has been with TFID since 2002. Wesley previously served as Senior Staff Attorney for the Texas Juvenile Probation Commission (TJPC) from 1995-2002. He was the intergovernmental relations' specialist for TJPC and provided information to legislators and other state agencies. Wesley also responded to inquiries on juvenile justice law from judges, probation officers, and prosecutors, as well as, speaking regularly on juvenile law and progressive sanctions. Prior to TJPC, Wesley was employed as a research associate at the Senate Research Center and a research associate at the Texas Legislative Council. Wesley graduated from the University of Texas at Austin with a B.A. in Government in 1990. He received his Doctor of Jurisprudence in 1994 from the University of Texas

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School of Law and was licensed to practice law in 1994. He is a member of the Juvenile Law Section of the State Bar of Texas.

**Jo-Ann Wallace** is the President and CEO of the National Legal Aid & Defender Association. She was previously NLADA's Senior Vice President for Programs. This position was responsible for oversight of both the Civil Legal Aid and Indigent Defense Program agendas. From 1994 – 2000, Ms. Wallace served as Director of the Public Defender Service for the District of Columbia (PDS), widely regarded as the nation's model defender agency. During Ms. Wallace's tenure, the PDS budget and staff more than doubled as the agency aggressively implemented progressive criminal justice reforms. Before her appointment to Director, Ms. Wallace served the agency in a number of capacities: Deputy Chief of the Appellate Division; Coordinator of the Juvenile Services Program; and as a staff attorney representing both juvenile and adults in trial and appellate litigation.

Ms. Wallace served on the NLADA Board of Directors from 1995–99, including serving as Chairperson in 1999. She also chaired the NLADA Defender Council, 1989–90, and the National Blue Ribbon Advisory Panel on Defender Services, a joint project with the United States Department of Justice (USDJ), 1995-96. Ms. Wallace was a founding Co-Chair of the Chief Defender Roundtable, now named the American Council of Chief Defenders (ACCD), a leadership council of top defender executives from across the United States. Ms. Wallace has served as a member of the American Bar Association Criminal Justice Standards Committee. She has significant experience as an expert on criminal justice and indigent defense issues, including serving as a consultant to the United States Department of Justice, local government entities and indigent defense programs. Ms. Wallace is a graduate of New York University School of Law.

**Gary Windom** is the Chief Public Defender for the Law Offices of the Public Defender for the County of Riverside, California. He is presently Vice-Chair of NLADA, and on the board and past chair of the American Council of Chief Defenders. Gary is Past Chair and current Management Chair of the California Public Defender's Association. He is also the Chair of the California Council of Chief Defenders. He is the 2009 recipient of the Bernard E. Witkin Amicus Curiae Award, presented by the Judicial Council of California, Administrative Office of the Courts.



**Appendix C:**  
**List of Interviews & Observations**

## Court Observations

### **Acadia Parish:**

CINC proceedings

### **Lafayette Parish:**

Arraignments

CINC proceedings

Felony Trial Docket

Probation Revocation Docket

Drug Probation Revocation Docket

### **Vermilion Parish:**

72-hour hearings

CINC proceedings

Juvenile traffic & misdemeanor

Misdemeanor Trial Docket

Traffic court

## Interviews

### **Administrators:**

John Comeaux

Vermilion Parish Clerk of Court

Mona Hebert

Abbeville City Court Clerk of Court

### **District Attorney's Office:**

Ted Ayo

Assistant District Attorney

Michelle Billeaud

Assistant District Attorney

Bart J. Bellaire

Assistant District Attorney

Roger P. Hamilton, Jr.

Assistant District Attorney

Michael Harson

15th JDC District Attorney

Aimee F. Hebert

Assistant District Attorney

Laurie Hulin

Assistant District Attorney

Angie Wagar

Assistant District Attorney

### **Indigent Defender Office:**

Valex Amos

Lafayette IDO Attorney

David Balfour

District Defender

Gerald Block

Lafayette IDO Attorney

April Broussard

IDO Office Manager

Bart Broussard

Vermilion IDO Attorney

Lloyd Dangerfield

Lafayette IDO Attorney

James Dixon, Jr.

Lafayette IDO Attorney

Burleigh Doga

Acadia IDO Attorney

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Gabe Duhon  
Vermilion IDO Attorney

Kay Gautreaux  
Lafayette IDO Attorney

Annette Guidry  
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Burton Guidry  
Vermilion IDO Attorney

Nicole Guidry  
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Rhett Harrington  
Acadia IDO Attorney  
Kim Hayes  
Acadia IDO Attorney

Glenn Howie  
Acadia IDO Attorney

Remy Jardell  
Lafayette IDO Attorney

Roshell Jones  
Lafayette IDO Attorney

James Landry  
Acadia IDO Attorney

Michael Landry  
Acadia IDO Attorney

Clay Lejuene  
Acadia IDO Attorney

Randy McCann  
Lafayette IDO Attorney

Lindsay McManus  
Lafayette IDO Staff

Ron Melebeck  
Vermilion IDO Attorney

Danielle Menard  
Lafayette/Vermilion IDO Staff

Richard Mere  
Lafayette IDO Attorney

Vivian Neumann  
Lafayette IDO Attorney

Jack Nickel  
Acadia IDO Attorney

JoAnn Nixon  
Vermilion IDO Attorney

James Kirk Piccione  
Lafayette IDO Attorney

Allyson Prejean  
Lafayette IDO Attorney

Jennifer Robinson  
Lafayette IDO Attorney

Julie Rosenzweig  
Vermilion IDO Attorney

Jan Rowe  
Vermilion IDO Attorney

Brett Stefanski  
Acadia IDO Attorney

Chris St. Julien  
15th IDO office manager/paralegal

Kim Thibodeaux  
Lafayette IDO Staff

Patricia Thomas  
Vermilion IDO Attorney

## Effective Assistance of Counsel

Linda Veazy  
Lafayette IDO Attorney

Hon. John D. Trahan  
District Court Div. A

### **Investigators:**

Russell Ancelet

Hon. Marie B. Trahan  
Crowley City Court

Roy Givens

### **Law Enforcement and OCS:**

Michael Couvillion  
Vermilion Parish Sheriff

### **Judges:**

Hon. Ed Broussard  
District Court Div. C

Michael Hoffpauir  
15th JDC Probation & Parole  
District Administrator

Hon. Marilyn C. Castle  
District Court Div. L

Rachel Goldsmith  
15th JDC Misdemeanor Probation Division  
Supervising Officer

Hon. Durwood Conque  
District Court Div. G

Hon. James M. Cunningham III  
Rayne City Court

Eby Henry  
Acadia Parish Correctional Center Warden

Hon. Thomas R. Duplantier  
District Court Div. I

Michael Neustrom  
Lafayette Parish Sheriff

Hon. Jules Edwards  
District Court Div. B

Rob Reardon  
Lafayette Parish Director of Jail

Hon. Glen Everett  
District Court Div. F

Anonymous  
Lafayette Parish Social Workers

Hon. Thomas J. Frederick  
Commissioner

Hon. Patrick L. Michot  
District Court Div. K

Hon. Richard Putnam III  
Abbeville City Court

Hon. Edward D. Rubin  
District Court Div. D

Hon. Doug Saloom  
Lafayette City Court

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**Revised 6/15/09**

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April 2010**

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The National Legal Aid & Defender Association (NLADA), founded in 1911, is the oldest and largest national, non-profit membership organization devoting all of its resources to advocating equal access to justice for all Americans. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal services and public defense services throughout the nation and provides a wide range of services and benefits to its individual and organizational members.

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**Appendix A:**  
***ABA Ten Principles of a Public Defense  
Delivery System***

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

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

sible for ensuring uniform quality statewide.<sup>11</sup>

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

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

**5** Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.<sup>18</sup> National caseload standards should in no event be exceeded,<sup>19</sup> but the concept of workload (i.e., caseload adjusted by fac-

tors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.<sup>20</sup>

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

**7** **The same attorney continuously represents the client until completion of the case.** Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.<sup>22</sup> The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

**8** **There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.<sup>23</sup> Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.<sup>24</sup> Contracts with private attorneys for public defense services should never be

let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases,<sup>25</sup> and separately fund expert, investigative, and other litigation support services.<sup>26</sup> No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.<sup>27</sup> This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

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

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

<sup>1</sup> “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.

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

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

<sup>4</sup> Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Inde-

pendence, 1997).

<sup>5</sup> ABA, *supra* note 2, Standard 5-4.1

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

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

<sup>8</sup> ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>9</sup> NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

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

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

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<sup>12</sup> For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

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

<sup>14</sup> NSC, *supra* note 2, Guideline 1.3. 15 American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter “ABA Defense Function”], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter “Performance Guidelines”], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

<sup>16</sup> NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

<sup>17</sup> ABA Defense Function, *supra* note 15, Standard 4-3.1.

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

<sup>19</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare,

and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter “Death Penalty”].

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

<sup>21</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

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

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

<sup>24</sup> ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

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

<sup>26</sup> ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

<sup>27</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

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

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

**Appendix B:**  
**NLADA Research Team Bios**

**T. Patton Adams** is the Executive Director of the South Carolina Commission on Indigent Defense which oversees the indigent defense system in the state. He was instrumental in achieving legislation which merged appellate defense services with the rest of the state's indigent defense system; and subsequently led efforts in 2007 which resulted in a unified, statewide public defender system and a 50 percent increase in state appropriated funding. He is a graduate of Washington & Lee University and the University of South Carolina School of Law, a former Mayor of Columbia, SC, and a member of the Charleston School of Law Board of Advisors. He has previously participated in NLADA-NDLI training for the Louisiana Public Defender Board, and as a panelist at the February 2010 Department of Justice Symposium, and is a member of the American Council of Chief Defenders and the NLADA Defender Policy Group.

**James D. Bethke** serves as the director of the Texas Task Force on Indigent Defense charged with implementing a statewide system of standards, financing and other resources for criminal defendants unable to hire attorneys. He also serves as the presiding officer of the Timothy Cole Advisory Panel on Wrongful Convictions. He is a member of the Texas Criminal Justice Integrity Unit. He is a past-chair Juvenile Law Exam Commission for the Texas Board of Legal Specialization. He currently serves on the Indigent Defense Advisory Group (IDAG) for the ABA Standing Committee for Legal Aid and Indigent Defendants. He is a U.S. Army veteran from the 101st Airborne Division, is a graduate of the University of Texas at Tyler and the Texas Tech University law school.

**David Carroll** is the director of research and evaluation in Defender Legal Services division of the National Legal Aid & Defender Association. Mr. Carroll has conducted assessments of the right to counsel in numerous jurisdictions across the country, including: Montana, New York, the District of Columbia, Hamilton County (Cincinnati) Ohio, Clark County (Las Vegas) Nevada, Santa Clara County (San Jose) California, and Venango County (Franklin) Pennsylvania. He is currently serving as an advisor to the Nevada Supreme Court Task Force on Indigent Defense and providing technical assistance to the Idaho State Criminal Justice Planning Commission.

NLADA's report, *A Race to the Bottom: Speed & Savings over Due Process*, details the extent to which the Constitutional right to counsel is inadequately enforced in criminal courts throughout Michigan. The report — conducted on behalf of the Michigan Legislature per joint resolution (SCR 39) in conjunction with the State Bar of Michigan — shows that few Michigan counties have evolved beyond the parameters of the early twentieth century systemic defense delivery model described in the Scottsboro Boys case [*Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)].

In 2004, NLADA released *In Defense of Public Access to Justice*, a comprehensive report detailing the impact Louisiana's systemic indigent defense deficiencies had on one judicial district — Avoyelles Parish. A legislative Task Force on Indigent Defense subsequently retained Carroll to advise them on different models for delivering indigent defense services. The Louisiana State Bar retained NLADA to document issues in post-Katrina New Orleans and to create a road map for a legislative fix to the state's systemic deficiencies. The second report, primarily authored by Carroll and released in September 2006, was the starting point for a legislative advisory group put together by the

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chair of the House Criminal Justice Committee that eventually led to the passage of the Louisiana Public Defender Act of 2007.

**Karl Doss** is director of Training & Community Education for the National Legal Aid & Defender Association. He joined NLADA in 2009 as staff attorney with NLADA's Defender Legal Services. During his 23 years as a lawyer, Karl has been admitted to practice law in Minnesota, New York, and Virginia and has held a numerous positions, including: assistant public defender in Hennepin County, Minnesota; assistant county attorney in Hennepin County; referee of the Hennepin County Family Court; law guardian in the Brooklyn (NY) Family Court; deputy public defender in Norfolk, Virginia; director of training for the Virginia Indigent Defense Commission; and director of Judicial Programs with the Supreme Court of Virginia.

**Richard Goemann** recently left the National Legal Aid & Defender Association to join D.C. Law Students in Court as the organization's executive director. From 2006-10, he served as the director of Defender Legal Services for the NLADA. Previously, Goemann was an Assistant Federal Public Defender for the Eastern District of Virginia and served as the Executive Director for Virginia's Indigent Defense Commission, and as the Executive and Deputy Director for the IDC's predecessor agency, the Public Defender Commission. Richard also served as the Public Defender for Fairfax, Virginia, and was an assistant and senior assistant public defender in Alexandria, Virginia. Goemann received his J.D. degree from New York University School of Law, and was selected as an E. Barrett Prettyman Graduate Fellow at Georgetown University Law Center where he earned an LL.M. degree in Advocacy.

**Phyllis Mann** is the director of the National Defender Leadership Institute, within the National Legal Aid & Defender Association. Prior to joining NLADA, she was a consultant in criminal defense, providing expert testimony in both state and federal courts in capital defense, research and writing in systemic areas of criminal defense, and serving as the curriculum coordinator for NLADA's *Life in the Balance* capital defense training. Before returning to her home state of Texas, where she still resides, Phyllis practiced exclusively criminal defense — trial and appeal, state and federal — in Louisiana. At various times in her career she served as a public defender for Rapides Parish, as an appellate public defender for the Louisiana Appellate Project, as a court appointed capital defender certified by the Louisiana Indigent Defender Assistance Board, and as a court appointed CJA attorney for the Western and Middle Districts of Louisiana. In 2005, Phyllis secured the unanimous opinion from the Louisiana Supreme Court in *State v. Citizen & Tonguis*, establishing the authority for trial court judges to halt capital prosecutions in Louisiana where there is no funding for the defense of the accused. Following Hurricane Katrina, she established and led an *ad hoc* group of criminal defense attorneys in their pro bono efforts to interview, counsel, and document the approximately 8,500 prisoners and detainees evacuated from south-eastern Louisiana jails and to represent them where appropriate in *habeas corpus* and bond proceedings. She received the 2006 *Arthur von Briesen Award* from NLADA for her contributions as a private attorney to indigent defense in Louisiana. Phyllis is a past president of the Louisiana Association of Criminal Defense

Lawyers and was the recipient of LACDL's 2005 *Justice Albert Tate Jr. Award* for lifetime achievement in criminal defense.

**Jon Mosher** is research associate for the Defender Legal Services' Research & Evaluations department of the National Legal Aid & Defender Association. He assists in the direction of NLADA's numerous standards-based assessments of indigent defense systems, including: a statewide assessment of the right to counsel Idaho's trial courts (the report, primarily authored by Mosher, was released January 2010); a statewide evaluation of trial-level right to counsel systems in Michigan; an evaluation of public defender services in Hamilton County (Cincinnati), Ohio; a study of public defense in Orleans Parish (New Orleans) Louisiana; an evaluation of the Idaho State Appellate Defender's Office; and a study of public defender services in the State of New York. He joined NLADA in 2003 as resource coordinator with Defender Legal Services, serving as primary staff liaison to the American Council of Chief Defenders. He is a graduate of George Washington University.

**Yvonne Segars** is Public Defender for the State of New Jersey, and has been a defense attorney for 20 years. Prior to her appointment in 2002, she served as the Chief Managing Attorney in Essex County, the largest office of the public defender region in New Jersey. Earlier she served as bond counsel with the NJ firm of McManimon & Scotland, LLC gaining experience in municipal finance and transactional law. Segars is a member of the Defender Policy Group for the National Legal Aid and Defender Association (NLADA); Vice-Chair of the NJ State Sentencing Commission; a member of the New Jersey State Criminal Disposition Commission and the NJ Domestic Violence Fatality and Near Fatality Review Board. She sits on the Board of Advisors for the Office of the Child Advocate, the Division of Youth and Family Services Staffing and Outcome Review Panel, and is Chairwoman of that group's Subcommittee on Juveniles in Detention.

Segars was the 2005 recipient of Kean University's Doctor of Laws Honorary Degree. In 2004 she received the Rutgers Law School Distinguished Alumna Award and the Leadership Award from the Association of Black Women Lawyers. She received her J.D. from Rutgers School of Law, Newark, and her B.A. in psychology from Kean University.

**Wesley Shackelford** is Deputy Director/Special Counsel to the Task Force on Indigent Defense (TFID). He develops standards and policies for the provision of indigent defense services. He provides legal advice on the issue to judges, counties, and the Task Force. He also speaks about indigent defense issues to stakeholders and policymakers. He has been with TFID since 2002. Wesley previously served as Senior Staff Attorney for the Texas Juvenile Probation Commission (TJPC) from 1995-2002. He was the intergovernmental relations' specialist for TJPC and provided information to legislators and other state agencies. Wesley also responded to inquiries on juvenile justice law from judges, probation officers, and prosecutors, as well as, speaking regularly on juvenile law and progressive sanctions. Prior to TJPC, Wesley was employed as a research associate at the Senate Research Center and a research associate at the Texas Legislative Council. Wesley graduated from the University of Texas at Austin with a B.A. in Government in 1990. He received his Doctor of Jurisprudence in 1994 from the University of Texas

## National Legal Aid & Defender Association

School of Law and was licensed to practice law in 1994. He is a member of the Juvenile Law Section of the State Bar of Texas.

**Jo-Ann Wallace** is the President and CEO of the National Legal Aid & Defender Association. She was previously NLADA's Senior Vice President for Programs. This position was responsible for oversight of both the Civil Legal Aid and Indigent Defense Program agendas. From 1994 – 2000, Ms. Wallace served as Director of the Public Defender Service for the District of Columbia (PDS), widely regarded as the nation's model defender agency. During Ms. Wallace's tenure, the PDS budget and staff more than doubled as the agency aggressively implemented progressive criminal justice reforms. Before her appointment to Director, Ms. Wallace served the agency in a number of capacities: Deputy Chief of the Appellate Division; Coordinator of the Juvenile Services Program; and as a staff attorney representing both juvenile and adults in trial and appellate litigation.

Ms. Wallace served on the NLADA Board of Directors from 1995–99, including serving as Chairperson in 1999. She also chaired the NLADA Defender Council, 1989–90, and the National Blue Ribbon Advisory Panel on Defender Services, a joint project with the United States Department of Justice (USDJ), 1995-96. Ms. Wallace was a founding Co-Chair of the Chief Defender Roundtable, now named the American Council of Chief Defenders (ACCD), a leadership council of top defender executives from across the United States. Ms. Wallace has served as a member of the American Bar Association Criminal Justice Standards Committee. She has significant experience as an expert on criminal justice and indigent defense issues, including serving as a consultant to the United States Department of Justice, local government entities and indigent defense programs. Ms. Wallace is a graduate of New York University School of Law.

**Gary Windom** is the Chief Public Defender for the Law Offices of the Public Defender for the County of Riverside, California. He is presently Vice-Chair of NLADA, and on the board and past chair of the American Council of Chief Defenders. Gary is Past Chair and current Management Chair of the California Public Defender's Association. He is also the Chair of the California Council of Chief Defenders. He is the 2009 recipient of the Bernard E. Witkin Amicus Curiae Award, presented by the Judicial Council of California, Administrative Office of the Courts.



**Appendix C:**  
**List of Interviews & Observations**

## Court Observations

### **Acadia Parish:**

CINC proceedings

### **Lafayette Parish:**

Arraignments

CINC proceedings

Felony Trial Docket

Probation Revocation Docket

Drug Probation Revocation Docket

### **Vermilion Parish:**

72-hour hearings

CINC proceedings

Juvenile traffic & misdemeanor

Misdemeanor Trial Docket

Traffic court

## Interviews

### **Administrators:**

John Comeaux

Vermilion Parish Clerk of Court

Mona Hebert

Abbeville City Court Clerk of Court

### **District Attorney's Office:**

Ted Ayo

Assistant District Attorney

Michelle Billeaud

Assistant District Attorney

Bart J. Bellaire

Assistant District Attorney

Roger P. Hamilton, Jr.

Assistant District Attorney

Michael Harson

15th JDC District Attorney

Aimee F. Hebert

Assistant District Attorney

Laurie Hulin

Assistant District Attorney

Angie Wagar

Assistant District Attorney

### **Indigent Defender Office:**

Valex Amos

Lafayette IDO Attorney

David Balfour

District Defender

Gerald Block

Lafayette IDO Attorney

April Broussard

IDO Office Manager

Bart Broussard

Vermilion IDO Attorney

Lloyd Dangerfield

Lafayette IDO Attorney

James Dixon, Jr.

Lafayette IDO Attorney

Burleigh Doga

Acadia IDO Attorney

## National Legal Aid & Defender Association

Gabe Duhon  
Vermilion IDO Attorney

Kay Gautreaux  
Lafayette IDO Attorney

Annette Guidry  
Acadia IDO Staff

Burton Guidry  
Vermilion IDO Attorney

Nicole Guidry  
Vermilion IDO Attorney

Rhett Harrington  
Acadia IDO Attorney  
Kim Hayes  
Acadia IDO Attorney

Glenn Howie  
Acadia IDO Attorney

Remy Jardell  
Lafayette IDO Attorney

Roshell Jones  
Lafayette IDO Attorney

James Landry  
Acadia IDO Attorney

Michael Landry  
Acadia IDO Attorney

Clay Lejuene  
Acadia IDO Attorney

Randy McCann  
Lafayette IDO Attorney

Lindsay McManus  
Lafayette IDO Staff

Ron Melebeck  
Vermilion IDO Attorney

Danielle Menard  
Lafayette/Vermilion IDO Staff

Richard Mere  
Lafayette IDO Attorney

Vivian Neumann  
Lafayette IDO Attorney

Jack Nickel  
Acadia IDO Attorney

JoAnn Nixon  
Vermilion IDO Attorney

James Kirk Piccione  
Lafayette IDO Attorney

Allyson Prejean  
Lafayette IDO Attorney

Jennifer Robinson  
Lafayette IDO Attorney

Julie Rosenzweig  
Vermilion IDO Attorney

Jan Rowe  
Vermilion IDO Attorney

Brett Stefanski  
Acadia IDO Attorney

Chris St. Julien  
15th IDO office manager/paralegal

Kim Thibodeaux  
Lafayette IDO Staff

Patricia Thomas  
Vermilion IDO Attorney

Linda Veazy  
Lafayette IDO Attorney

Hon. John D. Trahan  
District Court Div. A

**Investigators:**

Russell Ancelet

Hon. Marie B. Trahan  
Crowley City Court

Roy Givens

**Law Enforcement and OCS:**

Michael Couvillion  
Vermilion Parish Sheriff

**Judges:**

Hon. Ed Broussard  
District Court Div. C

Michael Hoffpauir  
15th JDC Probation & Parole  
District Administrator

Hon. Marilyn C. Castle  
District Court Div. L

Rachel Goldsmith  
15th JDC Misdemeanor Probation Division  
Supervising Officer

Hon. Durwood Conque  
District Court Div. G

Hon. James M. Cunningham III  
Rayne City Court

Eby Henry  
Acadia Parish Correctional Center Warden

Hon. Thomas R. Duplantier  
District Court Div. I

Michael Neustrom  
Lafayette Parish Sheriff

Hon. Jules Edwards  
District Court Div. B

Rob Reardon  
Lafayette Parish Director of Jail

Hon. Glen Everett  
District Court Div. F

Anonymous  
Lafayette Parish Social Workers

Hon. Thomas J. Frederick  
Commissioner

Hon. Patrick L. Michot  
District Court Div. K

Hon. Richard Putnam III  
Abbeville City Court

Hon. Edward D. Rubin  
District Court Div. D

Hon. Doug Saloom  
Lafayette City Court

**Appendix D:  
Variable Fund Retainer Contract,  
sample 2009**

**VARIABLE FUND RETAINER CONTRACT**  
**15<sup>TH</sup> JUDICIAL DISTRICT PUBLIC DEFENDER PROGRAM**  
**STATE OF LOUISIANA**  
**PARISHES OF ACADIA, LAFAYETTE AND VERMILION**

The 15<sup>th</sup> Judicial District Public Defender Program, through the District Public Defender, hereinafter referred to as **The Program**, pursuant to **R.S. 15:146 et seq** does hereby retain under the following conditions and terms of this contract, **DAVID BALFOUR**, 115 West Main Lafayette, LA 70501 hereinafter referred to as **COUNSEL**.

**DUTIES OF COUNSEL**

1. A. Counsel is retained to represent clients assigned to Counsel by The Program. This includes all forms of representation beginning with post-indictment proceedings, through trial and notice of appeal if necessary. Where appropriate this will include but shall not be limited to the following:

- Counsel agrees to personally or through an approval representative meet each assigned client within 72 hours of appointment if that client is incarcerated;
- If the client has been released from incarceration counsel is to attempt to communicate with client by mail within 72 hours of appointment;
- At the time of the initial contact with client, Counsel is to inform client of the nature of the pending charge(s) and the of the potentially sentence(s) for the alleged offense(s);
- Post indictment bond reduction if necessary;
- Counsel is to communicate with client on a regular recurring basis informing client of the evidence against him/her, the necessity of and/or the status of pre-trial motions, the necessity of and/or status of investigation and the status of trial preparations;
- Sentencing litigation, including Habitual Offender Sentencing;
- Preparation and filing of Motion to Reconsider Sentence if appropriate or necessary;
- Filing of Motion and order for Appeal if appropriate or necessary;
- Filing of Reports and forms as required by the Louisiana Appellate Project;
- Counsel may be required to represent clients at Probation Revocation Hearings or Proceedings;

1. B. Counsel agrees not to retain or otherwise hire experts, investigators or incur any expenses on behalf of the client without prior approval of The Program. The hiring of any expert/investigator without such approval will result in Counsel's being personally responsible for any fees, charges or expenses of such individuals. The Program may at his discretion approve an increase in fees paid to any expert/investigator previously approved.

1. C. Counsel understands and agrees that the services provided to clients of The Program shall be in every way equivalent to those Counsel would otherwise provide to any non-appointed clients. Without exception, Counsel agrees that appointed clients shall have the same access, services and courtesies as any client of Counsel and as expected by client from lawyers generally and as provided by Counsel to clients otherwise represented. This includes, but is not limited to office visits, jail visits, telephone contact and other communication.

1. D. Representation provided by Counsel is not subject to detailed instruction from The Program as to how to achieve representation of the clients. However, The Program may establish general guidelines or may prohibit certain acts or practices of Counsel as it deems appropriate. In all aspects Counsel is a general contractor whose obligations to deliver legal representation to clients in accordance with the Constitutions of the United States and the State of Louisiana, Louisiana Law, the rules of ethics of the Louisiana State Court and the local rules of the 15<sup>th</sup> Judicial District Court.

1. E. Counsel agrees to attend an approved Continuing Legal Education Seminar and obtain not less than half the required hours set by Louisiana Bar Association in Criminal Law related to work provided under this contract. Counsel will maintain sufficient records to certify same and provide a copy of those records to The Program by the end of this contract year. Reimbursement of up to \$300 for tuition shall be provided by The Program upon written request and proof of attendance from Counsel. Counsel further agrees to participate in periodic training/educational sessions deemed necessary by The Program.

1. F. Counsel understands and agrees to follow the mandated policies and procedures of The Program in connection with maintaining accurate and up to date data entry into the State Data Control System and any other similar data accounting system mandated by the Program.

### **WORK PRODUCT, OFFICE, PLEADINGS, SUPPLIES**

2. A. Counsel is expected to have an active, ongoing law practice, with a physical address. Counsel shall provide office work product, secretarial, receptionist, telephone, telephone answering, fax, postage, copies and all other standard services. The cost of these services and expenses remain solely the expense of Counsel and Counsel's responsibility.

2. B. Counsel shall provide all office supplies, including stationery and shall conduct representation under Counsel's letterhead and address. The Program shall provide an initial folder with intake information on the case.

2. C. Office Space of The Program in various parishes of the 15<sup>th</sup> Judicial District shall not be subject to use by Counsel for any private retained work and the equipment of The Program is solely for the use of office staff or other persons specifically authorized by The District Defender.

### **RETAINER**

3A. Counsel is more specifically assigned to **District Defender and Felonies**. The duties and obligations inherent in this assignment will include all of the above when and where appropriate. This assignment is non-exclusive and is subject to change on direction of The Program. Counsel agrees to extra duty and stand-in duty from time to time as The Program may require and this provision is no bar or condition to reassignment.

3. B. The contract of Counsel herein is retained for a maximum annual retainer of **Ninety Six Thousand Four Hundred Dollars and 00/100 (\$96,400.00)** payable monthly and subject to the terms herein. Failure to comply with the terms of the contract may result in the monthly retainer amount being held by The Program until the District Defender has determined that Counsel is in compliance.

3. C. The contract herein is for a one year term subject to cancellation upon thirty days notice by Counsel, and without notice by The Program. Counsel shall abide by orders of the District Court and in any case wherein representation is essential after termination of this contract, Counsel agrees to remain enrolled in that particular case without compensation.

3.D. Counsel shall be automatically terminated upon suspension, disbarment or finding of probable cause for felony prosecution by a Grand Jury or Magistrate or for any conduct harmful to the administration of justice or the Public Defender Program. Upon termination counsel shall provide files, materials and work product to the Parish Office in order to facilitate assignment of new counsel.

3. E. Counsel shall abide by the laws of the State of Louisiana and the United States and may be subject to suspension without pay under circumstances prejudicial to the interests of clients of The Program. Counsel agrees that the judgment of The Chief on such questions is final and binding.

3. F. Failure to comply with any of the mandates of this contract may result in immediate cancellation of Counsel's contract.

### **TERM**

4. A. The resources of The Program are subject to fluctuation and variance according to conditions beyond control of The Program and the monthly sum due under this contract is due only to the extent that funds during the calendar month are sufficient to allow The Program to make such payment.

4. B. In any month wherein the retainer fund is insufficient to pay 100% of retainers, counsel and every other attorney under contract to The Program shall received a proportional share of the available fund up to the authorized maximum retainer. This calculation shall not include full time personnel. The Program is under no obligation and there shall be no indebtedness due to any shortfall in retainer payments and counsel has no claim under this contract for any such shortage. Counsel herein is not merely taking compensation, but his cause for entering this contract includes the gain of legal experience, court room exposure, knowledge and trial experience included in his service as Public Defender.

**PARTIALLY INDIGENT FEES**

5. A. Counsel acknowledges that under R.S. 15:146 et seq clients of The Program may be subject to assessment of partially indigent fees. Counsel hereby signifies understanding that any fees secured from the clients of The Program are solely the property of The Program and shall be remitted over to The Program immediately upon receipt. Counsel is neither authorized nor allowed to receive fees from clients of The Program for any matter subject to representation under this contract. Counsel shall remit to The Program any sums collected in connections with representation of the client of The Program and shall fully account to The Program for any retainers, gratuities or fees received from the client in connection with representation under order of appointment herein paid under the "Partially Indigent" provisions of the Statues.

5. B. Should Counsel be approached by a client of The Program requesting to pay a private fee, Counsel shall advise The District Defender of the request for retainer, the terms of the potential retainer and whether in fact Counsel wishes to accept same. Counsel's retainer by an appointed client shall be subject to approval of The District Defender shall be reimbursed for any office expenses, cost or expenditures of any kind related to the case prior to the time Counsel was retained.

5. C. Counsel may accept private clients in any field of law, provided that Counsel will not maintain a caseload which is excessive or impairs Counsel's ability to adequately represent clients of The Program. In consideration of the retainer herein, Counsel agrees to make the clients assigned under this contract a priority.

Signed after fully read:

David K. Balfour  
DAVID BALFOUR

Date: 1/29/09

David K. Balfour  
District Defender

Date: 2/4/09

**Appendix E:  
Capital Variable Fund Retainer Contract,  
sample 2009**

**CAPITAL  
VARIABLE FUND RETAINER CONTRACT  
15<sup>TH</sup> JUDICIAL DISTRICT PUBLIC DEFENDER PROGRAM  
STATE OF LOUISIANA  
PARISHES OF ACADIA, LAFAYETTE AND VERMILION**

The 15<sup>th</sup> Judicial District Public Defender Program hereinafter referred to as **THE PROGRAM**, through the District Defender pursuant to R.S. 15:146 *et seq* does hereby retain under the conditions and terms of this contract, **JACK E. NICKEL**, Post Office Box 2040 Crowley, LA 70526, hereinafter referred to as **COUNSEL**.

**DUTIES OF COUNSEL**

1. A. Counsel is retained to represent clients assigned to Counsel by The Program. This includes all forms of representation beginning with post-indictment proceedings, through trial and notice of appeal if necessary. Where appropriate this will include but shall not be limited to the following:

- Counsel agrees to personally or through an approval representation immediately meet each assigned client if that client is incarcerated;
- If the client has been released from incarceration counsel is to attempt to communicate with client by mail immediately;
- At the time of the initial contact with client, Counsel is to inform client of the nature of the pending charge(s) and the of the potentially sentence(s) for the alleged offense(s);
- Post indictment bond reduction if necessary;
- The filing of appropriate discovery and or necessary motions is to be considered an on going process continuing throughout the prosecution;
- All necessary investigation is to begin immediately and is to continue throughout the prosecution;
- Counsel is to communicate with client on a regular recurring basis informing client of the evidence against him/her, the necessity of and/or the status of pre-trial motions, the necessity of and/or the status of investigation and the status of trial preparations;
- As soon as appropriate following appointment a comprehensive investigation into possible mitigation shall begin with immediate consideration given to retention of appropriate expert assistance
- Preparation and filing of Motion to Reconsider Sentence if appropriate or necessary;
- Filing of Motion and order for Appeal if appropriate or necessary is mandated;
- Preparation of reports and forms as required by the Louisiana Appellate Project;
- Obtaining and perfecting all paper work necessary to be certified as death penalty counsel from the State Indigent Defender Board

1. B. Counsel is retained to pursue bond setting prior to indictment, if at all possible, pursuant to LSA-Cr.P. art. 331 and appear at any hearing for such bond setting. This is the preferable procedure.

1. C. Any and all expert assistance is to be obtained through the Louisiana Public Defender Board, through the Office of the State Defender. Investigative assistance is to be obtained through The Program. If a Death Penalty prosecution is amended to a lesser charge and expert/investigator assistance from the Louisiana Public Defender Board ceases, Counsel agrees not to retain or otherwise hire experts, investigators or incur any expenses on behalf of the client without prior approval of The District Defender. The hiring of any expert/investigator without such approval will result in Counsel being personally responsible for any fees, charges or expenses of such individuals. The District Defender may at his discretion approve an increase in fees paid to any expert/investigator previously approved; however, it is understood that failure to obtain prior approval for any such increases shall result in counsel's being personally responsible for any unapproved fees/increases.

1. D. Counsel understands promises and agrees that the services provide to death penalty clients of The Program shall be in every way equivalent to those Counsel would otherwise represent. Without exception, Counsel agrees that clients shall have the same access, services and courtesies as any client of Counsel and as expected by clients from lawyers generally and as proved by Counsel to clients otherwise represented. This includes, but is not limited to office visits, telephone contact and other communication.

1. E. Counsel agrees to attend the necessary and required minimum hours of Death Penalty Continuing Legal Education approved by the Louisiana Supreme Court related to work and obligations provided under this contract, and will maintain sufficient records to certify same.

1. F. Counsel agrees to familiarize herself/himself with all Louisiana and U.S. Supreme Court Decisions related to death penalty case relevant in Louisiana.

## **WORK PRODUCT, OFFICE, PLEADINGS, SUPPLIES**

2. A. Counsel is expected to have an active, ongoing law practice, with a physical address. Counsel shall provide office work product, secretarial, receptionist, telephone, telephone answering, fax, postage, copies and all other standard services. The cost of these services and expenses remain solely the expense of Counsel and Counsel's responsibility.

2. B. Counsel shall provide all office supplies, including stationery and shall conduct representation under Counsel's letterhead and address. The Program shall provide an initial folder with intake information on the case.

2. C. Office Space of The Program in various parishes of the 15<sup>th</sup> Judicial District shall not be subject to use by Counsel for any private retained work and the equipment of The Program is solely for the use of office staff or other persons specifically authorized by The District Defender.

## **RETAINER**

3. A. At the discretion of The District Defender or The Capital Coordinator, Counsel can be assigned to represent client at the innocent/guilty phase of the prosecution or the penalty phase of the prosecution.

3. B. The contract of Counsel herein is retained for a maximum annual retainer of **TWELVE THOUSAND DOLLARS AND 00/100 (\$12,000.00)** payable in monthly increments along with Counsel's general retainer contract and subject to the terms herein; when counsel is assigned a defense role he a prosecution he/she will bill monthly in court and out court time at the rate of \$100.00 per hour for the duration of the prosecution, with the maximum billed amount not to exceed the monthly retainer amount; if the First Degree prosecution is reduced Counsel will submit a final bill with the prosecution being reassigned to a tract attorney; all hourly statements are to be submitted to the Capital Coordinator for review and approval for payment.

3. C. The contract herein is for a one year term subject to cancellation upon thirty days notice by Counsel, and without notice by The Program. Counsel shall abide by orders of the District Court and in any case wherein representation is essential after termination of this contract, Counsel agrees to remain enrolled in that particular case without compensation.

3. D. Counsel shall be automatically terminated upon suspension, disbarment or finding of probable cause for felony prosecution by a Grand Jury or Magistrate or for any conduct harmful to the administration of justice or the Public Defender Program. Upon termination counsel shall provide files, materials and work product to the Parish Office in order to facilitate assignment of new counsel.

3. E. Counsel shall abide by the laws of the State of Louisiana and the United States and may be subject to suspension without pay under circumstances prejudicial to the interests of clients of The Program. Counsel agrees that the judgment of The Chief on such questions is final and binding.

3. F. Failure to comply with any of the mandates of this contract may result in immediate cancelation of Counsel's contract.

## **TERM**

4. A. The resources of The Program are subject to fluctuation and variance according to conditions beyond control of The Program and the monthly sum due under this contract is due only to the extent that funds during the calendar month are sufficient to allow The Program to make such payment.

4. B. In any month wherein the retainer fund is insufficient to pay 100% of retainers, counsel and every other attorney under contract to The Program shall received a proportional share of the available fund up to the authorized maximum retainer. This calculation shall not include full time

personnel. The Program is under no obligation and there shall be no indebtedness due to any shortfall in retainer payments and counsel has no claim under this contract for any such shortage. Counsel herein is not merely taking compensation, but his cause for entering this contract includes the gain of legal experience, court room exposure, knowledge and trial experience included in his service as Public Defender.

**PARTIALLY INDIGENT FEES**

5. A. Counsel acknowledges that under R.S. 15:146 et seq clients of The Program may be subject to assessment of partially indigent fees. Counsel hereby signifies understanding that any fees secured from the clients of The Program are solely the property of The Program and shall be remitted over to The Program immediately upon receipt. Counsel is neither authorized nor allowed to receive fees from clients of The Program for any matter subject to representation under this contract. Counsel shall remit to The Program any sums collected in connections with representation of the client of The Program and shall fully account to The Program for any retainers, gratuities or fees received from the client in connection with representation under order of appointment herein paid under the "Partially Indigent" provisions of the Statues.

5. B. Should Counsel be approached by a client of The Program requesting to pay a private fee, Counsel shall advise The District Defender of the request for retainer, the terms of the potential retainer and whether in fact Counsel wishes to accept same. Counsel's retainer by an appointed client shall be subject to approval of The District Defender shall be reimbursed for any office expenses, cost or expenditures of any kind related to the case prior to the time Counsel was retained.

5. C. Counsel may accept private clients in any field of law, provided that Counsel will not maintain a caseload which is excessive or impairs Counsel's ability to adequately represent clients of The Program. In consideration of the retainer herein, Counsel agrees to make the clients assigned under this contract a priority.

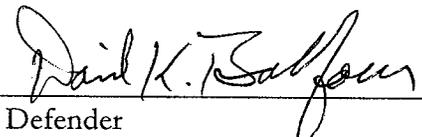
**ADDITIONAL OBLIGATIONS**

The terms of this contract are in addition to and separate from the obligations and provisions contained in the Variable Fund Retainer Contract signed by counsel and The District Defender.

Signed after fully read:

  
\_\_\_\_\_  
JACK E. NICKEL

Date: 1-22-09

  
\_\_\_\_\_  
District Defender

Date: 2/4/09

**Appendix F:  
15th Judicial District Court calendars,  
April 20, 2009 – December 17, 2009,  
and February 25, 2010 – present**

FIFTEENTH JUDICIAL DISTRICT COURT

2008-09 CRIMINAL CALENDAR

\*\*REVISED 4-20-09\*\*

Div. A -- TRAHAN

Div. E -- CLAUSE

Div. I -- DUPLANTIER

Div. M -- KEATY

Div. B -- EDWARDS

Div. F -- EVERETT

Div. J -- EARLES

Div. C -- BROUSSARD

Div. G -- CONQUE

Div. -- MICHOT

Comm. -- FREDERICK

Div. D -- RUBIN

Div. H -- BLANCHET

Div. L -- CASTLE

2009	ACA		LAF											VERM	
	Felony Track				Pretrial Track				Juvenile	Fel./Misd. Arraign.	Traf. Arr. & Rules**	Misd. Trials	Traffic Trials		
	1	2	3	4	1	2	3	4							
1				<b>G</b>											
2				<b>G</b>						Comm					
3				<b>G</b>						Comm**					
4				<b>G</b>			<b>G</b>								
5				<b>G</b>											
8 - 12	LOUISIANA BAR ASSN CONFERENCE (confirmed)														
15	<b>K</b>				<b>C</b>								<b>A</b>		
16	<b>K</b>				<b>C</b>				<b>E</b>				<b>A</b>		
17	<b>K</b>				<b>C</b>				<b>E</b>					<b>A</b>	
18	<b>K</b>				<b>C</b>		<b>C</b>						<b>A</b>		
19	<b>K</b>				<b>C</b>								<b>C</b>	<b>A</b>	
22		<b>B</b>	<b>L</b>												<b>G</b>
23		<b>B</b>	<b>L</b>						<b>D</b>	Comm					<b>G</b>
24		<b>B</b>	<b>L</b>						<b>D</b>		Comm				<b>G</b>
25		<b>B</b>	<b>L</b>		<b>B</b>			<b>L</b>							<b>G</b>
26		<b>B</b>	<b>L</b>												<b>G</b>
29 - 2	DA's CONFERENCE (confirmed)														
3	4th of JULY HOLIDAY (observed)														
6	<b>F</b>		<b>J</b>												<b>L</b>
7	<b>F</b>		<b>J</b>												<b>L</b>
8	<b>F</b>		<b>J</b>												<b>L</b>
9	<b>F</b>		<b>J</b>												<b>L</b>
10	<b>F</b>		<b>J</b>												<b>L</b>
13		<b>D</b>										<b>E</b>			<b>G</b>
14		<b>D</b>							<b>I</b>			<b>E</b>			<b>G</b>
15		<b>D</b>							<b>I</b>				<b>E</b>		<b>G</b>
16		<b>D</b>			<b>D</b>	<b>I</b>						<b>E</b>			<b>G</b>
17		<b>D</b>										<b>D</b>	<b>E</b>		<b>G</b>
20	<b>A</b>			<b>F</b>											
21	<b>A</b>			<b>F</b>				<b>E</b>		Comm					
22	<b>A</b>			<b>F</b>				<b>E</b>			Comm				
23	<b>A</b>			<b>F</b>				<b>E</b>							
24	<b>A</b>			<b>F</b>											
27					<b>I</b>										
28					<b>I</b>										
29					<b>I</b>										
30					<b>I</b>										
31					<b>I</b>										
3	<b>J</b>														
4	<b>J</b>							<b>D</b>		Comm					
5	<b>J</b>							<b>D</b>			Comm**				
6	<b>J</b>						<b>D</b>								
7	<b>J</b>														
10					<b>K</b>							<b>D</b>			<b>C</b>
11					<b>K</b>							<b>D</b>			<b>C</b>
12					<b>K</b>								<b>D</b>		<b>C</b>
13					<b>K</b>	<b>K</b>						<b>D</b>			<b>C</b>
14					<b>K</b>							<b>K</b>	<b>D</b>		<b>C</b>
17		<b>B</b>	<b>L</b>												<b>G</b>
18		<b>B</b>	<b>L</b>							Comm					<b>G</b>
19		<b>B</b>	<b>L</b>								Comm				<b>G</b>
20		<b>B</b>	<b>L</b>		<b>B</b>										<b>G</b>
21		<b>B</b>	<b>L</b>												<b>G</b>
24	<b>F</b>			<b>E</b>											<b>G</b>
25	<b>F</b>			<b>E</b>											<b>G</b>
26	<b>F</b>			<b>E</b>											<b>G</b>
27	<b>F</b>			<b>E</b>											<b>G</b>
28	<b>F</b>			<b>E</b>											<b>G</b>
31															
1								<b>I</b>		Comm					
2								<b>I</b>			Comm**				
3															
4															

FELONY JURY WEEKS ARE DESIGNATED BY BOLD LETTERS



FIFTEENTH JUDICIAL DISTRICT COURT

VER. 2-25-10

**2010 COURT CALENDAR**

Div. A -- TRAHAN  
Div. B -- EDWARDS  
Div. C -- BROUSSARD

Div. D -- RUBIN  
Div. E -- CLAUSE  
Div. F -- EVERETT

Div. G -- CONQUE  
Div. H -- BLANCHET  
Div. I -- DUPLANTIER

Div. J -- EARLES  
Div. K -- MICHOT  
Div. L -- CASTLE  
Div. M -- KEATY

**NOTE:** All custody-related matters are heard before Judges David Blanchet and Phyllis Keaty (Divisions H and M, respectively), who preside over the Family Court section of the 15th JDC.

ALL TRIALS BEGIN ON MONDAY (FOLLOWING RULES) UNLESS OTHERWISE NOTED

WEEK BEGINNING	CRIMINAL						CIVIL			DUTY			JURY TRIALS ARE DESIGNATED IN BOLD LETTERS
	ACA	LAF			VERM	ACA	LAF	VERM	ACA	LAF	VERM		
		FEL	JUV	MISD/ TRAF	FRI MISD								
Jan. 4 - 8	<b>15th JDC COURT OPENING</b>												
Jan. 11 (Rules)	A	<b>D</b>	L	J	L	<b>C</b>	BI	<b>FGK</b>	E	M	F	E	
Jan. 12 - 15	A	<b>D</b>	L	J	L	<b>C</b>	BI	<b>FGK</b>	E	M	F	E	
Jan. 18	<b>MONDAY HOLIDAY (MARTIN LUTHER KING, JR'S BIRTHDAY)</b>												
Jan. 19 (Rules)	<b>F</b>	<b>E</b>					CK	<b>ABI</b>	JL	K	M	J	
Jan. 20 - 22	<b>F</b>	<b>E</b>					CK	<b>ABI</b>	JL	K	M	J	
Jan. 25 (Rules)		<b>BK</b>	I			G	EF	JL	<b>A</b>	E	J	A	
Jan. 26 - 29		<b>BK</b>	I			G	EF	JL	<b>A</b>	E	J	A	
Feb. 1 (Rules)	J	<b>D</b>	L				AG	<b>EFIK</b>	<b>BC</b>	M	K	C	
Feb. 2 - 5	J	<b>D</b>	L				AG	<b>EFIK</b>	<b>BC</b>	M	K	C	
Feb. 8 (Rules)		<b>E</b>		A	E	<b>G</b>	D	BCJ	<b>IK</b>	D	B	I	
Feb. 9 - 12		<b>E</b>		A	E	<b>G</b>	D	BCJ	<b>IK</b>	D	B	I	
Feb. 15	<b>MONDAY HOLIDAY (PRESIDENTS' DAY)</b>												
Feb. 16	<b>TUESDAY HOLIDAY (MARDI GRAS)</b>												
Feb. 17 (Rules)							BJL	DEGIK	F	J	D	F	
Feb. 18 - 19							BJL	DEGIK	F	J	D	F	
Feb. 22 (Rules)	<b>F</b>	<b>BK</b>	I			C	<b>E</b>	<b>AJL</b>	<b>DG</b>	E	I	M	
Feb. 23 - 26	<b>F</b>	<b>BK</b>	I			C	<b>E</b>	<b>AJL</b>	<b>DG</b>	E	I	M	
Mar. 1 (Rules)	A	<b>E</b>					<b>DK</b>	<b>BCFGI</b>	<b>JL</b>	K	M	L	
Mar. 2 - 5	A	<b>E</b>					<b>DK</b>	<b>BCFGI</b>	<b>JL</b>	K	M	L	
Mar. 8 (Rules)	J		L				AF	<b>BCDEGK</b>	I	F	G	I	
Mar. 9 - 12	J		L				AF	<b>BCDEGK</b>	I	F	G	I	
Mar. 15 (Rules)		<b>D</b>		K	D	G	<b>C</b>	AIL	<b>EF</b>	C	A	E	
Mar. 16 - 19		<b>D</b>		K	D	G	<b>C</b>	AIL	<b>EF</b>	C	A	E	
Mar. 22 (Rules)		<b>B</b>	I				<b>G</b>	<b>DEFJL</b>	<b>ACK</b>	G	E	K	
Mar. 23 - 26		<b>B</b>	I				<b>G</b>	<b>DEFJL</b>	<b>ACK</b>	G	E	K	
Mar. 29 (Rules)	F	<b>EK</b>				<b>C</b>	<b>IJ</b>	ABG	DL	I	B	L	
Mar. 30 - Apr. 1	F	<b>EK</b>				<b>C</b>	<b>IJ</b>	ABG	DL	I	B	L	
Apr. 2	<b>FRIDAY HOLIDAY (GOOD FRIDAY)</b>												
Apr. 5 (Rules)	<b>A</b>	<b>D</b>					<b>B</b>	J	<b>G</b>	B	J	G	
Apr. 6 - 9	<b>A</b>	<b>D</b>					<b>B</b>	J	<b>G</b>	B	J	G	
Apr. 12 (Rules)							<b>DKL</b>	<b>ACEFG</b>	BIJ	D	C	I	
Apr. 13 - 14							<b>DKL</b>	<b>ACEFG</b>	BIJ	D	C	I	
Apr. 15 - 18	<b>SPRING CONFERENCE (confirmed)</b>												
Apr. 19 (Rules)		<b>K</b>	L	F	K	<b>G</b>	<b>ACE</b>	<b>DI</b>		E	K	G	
Apr. 20 - 23		<b>K</b>	L	F	K	<b>G</b>	<b>ACE</b>	<b>DI</b>		E	K	G	
Apr. 26 (Rules)	J	<b>B</b>					F	<b>CDEIKL</b>	G	F	C	G	
Apr. 27 - 30	J	<b>B</b>					F	<b>CDEIKL</b>	G	F	C	G	
May 3 (Rules)		<b>E</b>	I			<b>C</b>	BG	<b>FJKL</b>	<b>AD</b>	B	I	D	
May 4 - 7		<b>E</b>	I			<b>C</b>	BG	<b>FJKL</b>	<b>AD</b>	B	I	D	
May 10 (Rules)	F	<b>D</b>		B	n/a		IJ	AG	<b>CK</b>	M	A	K	
May 11 - 14	F	<b>D</b>		B	n/a		IJ	AG	<b>CK</b>	M	A	K	
May 17 (Rules)	J	<b>K</b>	I			G	A	<b>CDFL</b>	<b>B</b>	A	F	B	
May 18 - 21	J	<b>K</b>	I			G	A	<b>CDFL</b>	<b>B</b>	A	F	B	
May 24 (Rules)		<b>B</b>	L			<b>C</b>	K	<b>AEJ</b>	<b>FI</b>	K	L	C	
May 25 - 28		<b>B</b>	L			<b>C</b>	K	<b>AEJ</b>	<b>FI</b>	K	L	C	
May 31	<b>MONDAY HOLIDAY (MEMORIAL DAY)</b>												
June 1 (Rules)	A	<b>EK</b>					L	<b>BK</b>	J	L	K	J	
June 2 - 4	A	<b>EK</b>					L	<b>BK</b>	J	L	K	J	
June 7 - 11	<b>LA STATE BAR ASSN CONFERENCE (confirmed)</b>												
June 14 (Rules)	J	<b>B</b>		I	B		C	<b>DG</b>	<b>A</b>	C	D	A	
June 15 - 18	J	<b>B</b>		I	B		C	<b>DG</b>	<b>A</b>	C	D	A	
June 21 (Rules)	<b>A</b>	<b>DK</b>	I			<b>G</b>	L	EF	BC	M	E	B	
June 22 - 25	<b>A</b>	<b>DK</b>	I			<b>G</b>	L	EF	BC	M	E	B	
June 28 - July 2	<b>DA's CONFERENCE (confirmed)</b>												
June 28 (Rules)							FG	ACIJK	<b>EL</b>	G	A	L	
June 29 - July 2							FG	ACIJK	<b>EL</b>	G	A	L	

FIFTEENTH JUDICIAL DISTRICT COURT

VER. 2-25-10

**2010 COURT CALENDAR**

Div. A -- TRAHAN  
Div. B -- EDWARDS  
Div. C -- BROUSSARD

Div. D -- RUBIN  
Div. E -- CLAUSE  
Div. F -- EVERETT

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**NOTE:** All custody-related matters are heard before Judges David Blanchet and Phyllis Kealy (Divisions H and M, respectively), who preside over the Family Court section of the 15th JDC.

JURY TRIALS ARE DESIGNATED IN **BOLD LETTERS**

ALL TRIALS BEGIN ON MONDAY (FOLLOWING RULES) UNLESS OTHERWISE NOTED

WEEK BEGINNING	CRIMINAL					CIVIL			DUTY			
	ACA	LAF		VERM		ACA	LAF	VERM	ACA	LAF	VERM	
		FEL	JUV	MISD/ TRAF	FRI MISD							
July 5	MONDAY HOLIDAY (4TH of JULY observed)											
July 6 (Rules)	J	E	L		C		BFG	K	J	G	K	
July 7 - 9	J	E	L		C		BFG	K	J	G	K	
July 12 (Rules)	F	B	I	J	B	D	EL	G	D	I	M	
July 13 - 16	F	B	I	J	B	D	EL	G	D	I	M	
July 19 (Rules)	F	D	L		G	E	ABJ	I	E	J	I	
July 20 - 23	F	D	L		G	E	ABJ	I	E	J	I	
July 26 (Rules)	A					BK	CIL	DEG	B	L	D	
July 27 - 30	A					BK	CIL	DEG	B	L	D	
Aug. 2 (Rules)		K			C	J	BD		J	B	G	
Aug. 3 - 6		K			C	J	BD		J	B	G	
Aug. 9 (Rules)	J	E	I	C	I	D	FK	BL	D	F	M	
Aug. 10 - 13	J	E	I	C	I	D	FK	BL	D	F	M	
Aug. 16 (Rules)	F	BD			G	CL	AEI	J	C	I	J	
Aug. 17 - 20	F	BD			G	CL	AEI	J	C	I	J	
Aug. 23 (Rules)	A	K	L		C	GI	BDJ	EF	I	L	E	
Aug. 24 - 27	A	K	L		C	GI	BDJ	EF	I	L	E	
Aug. 30 (Rules)		E				FJ	CGIL	AK	F	C	A	
Aug. 31 - Sept. 3		E				FJ	CGIL	AK	F	C	A	
Sept. 6	MONDAY HOLIDAY (LABOR DAY)											
Sept. 7 (Rules)		D	I			BEL	AFJK	CG	L	J	G	
Sept. 8 - 10		D	I			BEL	AFJK	CG	L	J	G	
Sept. 13 (Rules)	J	K		F	L	A	BCEIL	D	A	B	D	
Sept. 14 - 17	J	K		F	L	A	BCEIL	D	A	B	D	
Sept. 20 (Rules)	A	B	L			K	CDEGI	F	K	G	F	
Sept. 21 - 24	A	B	L			K	CDEGI	F	K	G	F	
Sept. 27 (Rules)		E			G	CDJ	FKL	AI	J	M	A	
Sept. 28 - Oct. 1		E			G	CDJ	FKL	AI	J	M	A	
Oct. 4 - 8	OPENING CEREMONIES OF LOUISIANA SUPREME COURT											
Oct. 11 (Rules)		K		A	K	C	F	D	BJ	F	D	B
Oct. 12 - 15		K		A	K	C	F	D	BJ	F	D	B
Oct. 18 (Rules)	A	B	L			EI	CF	DK	I	M	K	
Oct. 19 - 22	A	B	L			EI	CF	DK	I	M	K	
Oct. 25 (Rules)	F	D	I			AG	BEJK	CL	A	K	C	
Oct. 26 - 29	F	D	I			AG	BEJK	CL	A	K	C	
Nov. 1	MONDAY HOLIDAY (ALL SAINTS' DAY)											
Nov. 2	TUESDAY HOLIDAY (ELECTION DAY)											
Nov. 3 (Rules)	J	K			G	BD	ACIL	E	D	C	E	
Nov. 4 - 5	J	K			G	BD	ACIL	E	D	C	E	
Nov. 8 (Rules)	A		L		C	J	BDEGK	FI	J	G	F	
Nov. 9 - 10	A		L		C	J	BDEGK	FI	J	G	F	
Nov. 11	THURSDAY HOLIDAY (VETERANS' DAY)											
Nov. 12	A		L		C	J	BDEGK	FI	J	G	F	
Nov. 15 (Rules)	F	DE	I	n/a	D	KL	C	AG	L	D	A	
Nov. 16 - 19	F	DE	I	n/a	D	KL	C	AG	L	D	A	
Nov. 22 (Rules)						F	EGI	BDJ	F	E	B	
Nov. 23 - 24						F	EGI	BDJ	F	E	B	
Nov. 25 - 26	THANKSGIVING HOLIDAY											
Nov. 29 (Rules)	J	BK			G	C	AD	FL	C	A	L	
Nov. 30 - Dec. 3	J	BK			G	C	AD	FL	C	A	L	
Dec. 6 (Rules)		E	L	B	E	AI	DFGJ	CK	I	E	M	
Dec. 7 - 10		E	L	B	E	AI	DFGJ	CK	I	E	M	
Dec. 13 (Rules)	F	D	I		C	G	ABJKL	E	G	L	C	
Dec. 14 - 17	F	D	I		C	G	ABJKL	E	G	L	C	
Dec. 20 - 24	CHRISTMAS HOLIDAYS											
Dec. 27 - 31	NEW YEAR'S HOLIDAYS											

**Appendix G:  
15th Judicial District Indigent Defender  
Board, 2008 FY Budget**



	Lafayette District	240,000.00
	Lafayette City	625,000.00
	Abbeville City	30,000.00
	Brath City	6,200.00
	Kaplan City	20,000.00
	Vermilion District	75,000.00
		<b>\$1,179,200.00</b>
<b>Bail Reform Act</b>		
	Acadia	27,500.00
	Lafayette	205,500.00
	Vermilion	48,500.00
		<b>\$281,500.00</b>
<b>Interest Income</b>		<b>\$45,000.00</b>
	<b>TOTAL REVENUE</b>	<b>\$1,865,700.00</b>
<b>2007 Expenditures Breakdown</b>		
<b>Salaries</b>	Admin/Paralegal	52,500.00
	Lafayette	28,800.00
	Lafayette	24,800.00
	Lafayette	26,800.00
	Lafayette	22,500.00
	Acadia	28,300.00
	Acadia	10,000.00
	Vermilion	26,300.00
	Vermilion	10,000.00
		<b>\$230,000.00</b>
<b>Payroll Taxes</b>	Acadia	4,200.00
	Lafayette	19,500.00
	Vermilion	4,200.00
		<b>\$19,000.00</b>
<b>Liability/Property/Auto/Dishoncsty</b>		<b>\$2,950.00</b>
<b>Workman Comp</b>		<b>\$11,000.00</b>
<b>Group Health</b>	Acadia	4,100.00
	Lafayette	21,800.00
	Vermilion	4,100.00
		<b>\$30,000.00</b>
<b>Legal Retainers</b>	Acadia	450,500.00
	Lafayette	1,506,000.00
	Vermilion	484,000.00
		<b>\$2,440,500.00</b>
<b>Dues/Seminars</b>	Acadia	2,100.00
	Lafayette	7,200.00
	Vermilion	2,700.00
		<b>\$12,000.00</b>
<b>Rent</b>	Acadia	6,000.00
	Lafayette	15,000.00
		<b>\$21,000.00</b>

<b>Building repair &amp; maint.</b>	Acadia	150.00
	Lafayette	400.00
	Vermilion	150.00
		<b>\$700.00</b>
<b>Telephone/Utilities</b>	Acadia	3,600.00
	Lafayette	6,800.00
	Vermilion	3,600.00
		<b>\$14,000.00</b>
<b>Postage</b>	Acadia	550.00
	Lafayette	2,450.00
	Vermilion	1,000.00
		<b>\$4,000.00</b>
<b>Office Expense</b>	Acadia	2,000.00
	Lafayette	14,000.00
	Vermilion	4,500.00
		<b>\$20,500.00</b>
<b>Capital Outlay</b>	Acadia	2,500.00
	Lafayette	5,000.00
	Vermilion	2,500.00
		<b>\$10,000.00</b>
<b>Software</b>		<b>\$1,000.00</b>
<b>Equipment Main./Repair</b>		<b>\$7,500.00</b>
<b>Medical Experts</b>	Acadia	3,000.00
	Lafayette	15,000.00
	Vermilion	7,000.00
		<b>\$25,000.00</b>
<b>Investigation</b>	Juvenile	33,500.00
	Felony/Misd	37,500.00
		<b>\$71,000.00</b>
<b>Other Experts</b>	Acadia	3,000.00
	Lafayette	15,000.00
	Vermilion	7,000.00
		<b>\$25,000.00</b>
<b>Misc. Defense Cost</b>	(video, copies, etc.)	<b>\$4,500.00</b>
<b>Accounting &amp; Auditing</b>		<b>\$13,000.00</b>
<b>Bank Charges</b>		<b>\$900.00</b>
<b>TOTAL EXPENDITURES</b>		<b>\$2,963,550.00</b>

Staff	Salary	Medical Ins.	H.S.A.
Administrator	\$52,500.00	\$224.89	\$115.00
Sec 1 Laf	\$28,800.00	\$224.89	\$115.00
Sec 2 Laf	\$26,800.00	\$224.89	\$115.00
Sec 3 Laf	\$24,800.00	\$224.89	\$115.00
Sec 4 Laf	\$22,500.00	\$224.89	\$115.00
Sec 5 Acadia	\$28,300.00	\$224.89	\$115.00
Sec 5 Acadia	\$10,000.00	\$224.89	
Sec 6 Verm	\$26,800.00	\$224.89	\$115.00
Sec 6 Verm	\$10,000.00	\$224.89	
<b>Total</b>	<b>\$230,500.00</b>	<b>\$2,024.01</b>	<b>\$805.00</b>

**Appendix H:  
15th Judicial District Indigent Defender  
Board, Statement of Revenues and  
Expenditures, December 31, 2008**

15TH JUDICIAL DISTRICT INDIGENT DEFENDER BOARD  
 Excess revenue (Expenditures)  
 STATEMENT OF REVENUES AND EXPENDITURES-CASH BASIS  
 FOR THE ONE MONTH AND TWELVE MONTHS ENDED DECEMBER 31, 2008

	Current		Year to Date	
	Actual	Percent	Actual	Percent
<b>REVENUE</b>				
State Revenue			\$ 744,580.00	25.8
Other Local Revenues	\$ 154,607.62	66.7	1,429,210.35	49.5
Bond Fees and Forfeitures	29,412.51	12.7	329,279.52	11.4
Interest Earned	1,209.49	0.5	30,165.40	1.0
Application Fees	8,966.07	3.9	96,237.18	3.3
Reimbursements/Attorney Fees	37,699.23	16.3	258,591.02	8.9
Miscellaneous			1,500.00	0.1
<b>* TOTAL REVENUE</b>	<b>231,894.92</b>	<b>100.0</b>	<b>2,889,563.47</b>	<b>100.0</b>
<b>EXPENDITURES</b>				
Salaries	235,263.30	101.5	2,757,528.62	95.4
Hospital/Disability ins.	2,526.26	1.1	30,025.77	1.0
Payroll Taxes	1,407.66	0.6	16,290.66	0.6
Worker's Compensation			5,860.00	0.2
Malpractice insurance			210.00	0.0
Auto/Physical Liability			2,109.00	0.1
Audit/accting expense			13,347.75	0.5
Expert Witness			36,695.29	1.3
Investigators	385.36	0.2	3,833.24	0.1
Capital Representation			887.81	0.0
Building Lease/Rent	1,815.00	0.8	21,780.00	0.8
IT/Technical Support	125.00	0.1	9,444.60	0.3
Major Acquisitions			5,980.20	0.2
Equipment Lease/Rent			2,140.00	0.1
Phone/Util/Postage/Intern	958.20	0.4	14,432.30	0.5
Office Supplies	928.26	0.4	24,086.72	0.8
Travel/Lodging/Mileage/Di	371.38	0.2	371.38	0.0
Dues & Seminars	400.00	0.2	7,135.00	0.2
Law Library/Journals/Sub- scription			10,064.00	0.3
Other Operating Expenses			160.00	0.0
Miscellaneous			163.58	0.0
<b>* TOTAL EXPENDITURES</b>	<b>244,180.42</b>	<b>105.3</b>	<b>2,962,545.92</b>	<b>102.5</b>
<b>* EXCESS OF REV. OVER EXP.</b>	<b>\$ (12,285.50)</b>	<b>(5.3)</b>	<b>\$ (72,982.45)</b>	<b>(2.5)</b>

SEE ACCOUNTANTS' COMPILATION REPORT

**Appendix I:**  
***Memorandum*, regarding Retainer Contracts,**  
**September 14, 2009**

**FIFTEENTH JUDICIAL DISTRICT  
PUBLIC DEFENDER OFFICE**

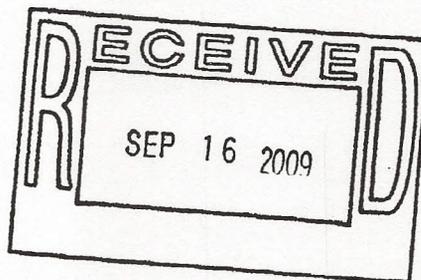
LAFAYETTE PARISH  
321 W. Main St. – Suite 1-C  
P. O. Box 3622  
LAFAYETTE, LOUISIANA 70501

PHONE (337) 232-9345

**MEMORANDUM**

September 14, 2009

**TO: ALL IDO ATTORNEYS**  
**FROM: DAVID K. BALFOUR**  
**RE: RETAINER CONTRACTS**



I have good news and bad news.

First the good news. As of September 1, I will be able to re-instate everyone's 2008 contract amount, with the exception of First-Degree retainers. However, this increased monthly amount will cover a 10-month period (September, 2009 - June, 2010). I will not be able to go back and reimburse everyone for July and August, 2009. The attached contract amount is based on a 10-month period, not a 12-month period. The 2010 contracts and subsequent annual contracts will be for a 12-month period. Beginning July 1, 2010, I hope to increase the contract amounts. We are now on a fiscal calendar with the State.

I was not able to increase the First-Degree retainers to the 2008 amount. You will note however, that I increased the retainer amount by 50%. After a First-Degree case is assigned, a First-Degree attorney will receive an additional monthly amount over and above the retainer. It is no longer necessary to write time for First-Degree assignments.

Now the bad news.

Baton Rouge is requiring that all attorneys write time for all IDO work. Time is to be recorded in increments of 1/10 hour, 1/10 equaling six minutes. Please round up or down appropriately. Also, I ask that everyone try to record your time accurately. This is not insurance defense work. The time you record will not translate into more income. These time records must be provided by to Chris St. Julien by the 5<sup>th</sup> of each month. Finally, only lawyer time is to be recorded, not staff time.

cc: Chris St. Julien

15<sup>th</sup> Judicial District  
**PUBLIC DEFENDERS OFFICE**  
Post Office Box 3622  
321 W. Main Street, Suite 1C  
Lafayette, Louisiana 70502  
(337) 232-9345

September 15, 2009

Please be advised Contracts should be returned to the  
above address no later than **September 30, 2009.**

**ACADIA - LAFAYETTE - VERMILION**

**Appendix J:  
Contract Bases 2007**

Contract Bases 2007										
City Courts	Felony ID	Misd. ID	Traffic ID	Juv NS	P/Ind. DC	Iwcr/rev/Laf	Crowley	Rayne Abb	Kaplan Admin	Seniority Capital Total
	Balfour	24000								
	Laesslyne	48000							40000	10000 24000
	Mose	48000								7500 55,500.00
	Edwards	48000								1500 49,500.00
	Neumann E	48000								500 12000 60,500.00
	Pickone	48000								6000 24000 78,000.00
	McCann	48000								5000 24000 77,000.00
	Regester	48000								500 24000 72,500.00
	Garrett	48000								7000 24000 79,000.00
	Kennison	48000								6500 24000 78,500.00
	Block	48000								3500 51,500.00
	Amos	48000							27000	10000 85,000.00
	Dixon	48000								5000 24000 73,000.00
										1000 24000 835,000.00
	Gaulleaux	26000								1500 27,500.00
	Richard	26000								1000 27,000.00
	Mere	26000								1000 27,000.00
	Bryant	26000								500 26,500.00
	Pierre		26000							3500 32,500.00
	Dangerfield		58000							8500 66,500.00
	Prejean		58000							2000 63,500.00
	Neumann V		58000			3500				4500 62,500.00
	Thibault O		27000							500 27,500.00
	Chouler			40000						6000 46,000.00
	Francis-Jones									500 27,500.00
	Evans									500 54,500.00
	Larive					20000				500 54,500.00
	Beaner						1500			30000 32,000.00
										500 574,000.00
										Lafayette Total 1,506,000.00



**Appendix K:**

***Memorandum, to APSO Arrestee re Public  
Defender/Attorney, and  
Public Defenders Office Information Sheet***

Glenn Howie  
785-8500

15th Judicial District  
PUBLIC DEFENDERS OFFICE  
521 S.W. Court Circle -P.O. Box 252  
Crowley, LA 70526  
(337) 788-3635

NEXT BOND REDUCTION

9-30-09

Memo to: APSO Arrestee  
Re: PUBLIC DEFENDER/ATTORNEY

This memo is to advise you, an attorney with the Pre-Indictment Division will be representing you While you are IN JAIL and a BILL OF INFORMATION has NOT BEEN FILED by the District Attorney's Office.

You will be put on the next available Bond Reduction Docket, which are usually held on Wednesdays. BOND REDUCTIONS ARE NOT HELD EVERY WEDNESDAY.

Bond reductions will NOT be filed on your behalf if you have ANY of the following;

- a. Probation or Parole Hold
- b. Hold from another Parish or State
- c. Warrants for Failure to Appear
- d. If you are Currently Serving Time on any Other Charges
- e. If you are charged with Misdemeanors in City Court and Your Bonds Are Set at the Minimum Amount

**\*YOU ARE ONLY ENTITLED TO ONE BOND REDUCTION WITH THE PRE-INDICTMENT ATTORNEY, SO READ CAREFULLY\***

In order to have a Hearing in front of Judge Frederick, you must have witnesses. If you do not have any witnesses present on the day of your bond reduction you will not have a Hearing. Therefore, you must call your family, friends, neighbors, co-workers and employers and ask them to ATTEND your Bond Reduction Hearing to testify on your behalf. If you have witnesses to testify on your behalf that is no guarantee that your bond will be reduced.

**\*The Public Defender's Office CAN NOT POST YOUR BOND\***

The Attorney will attempt to reduce your bond and take whatever steps are available on your behalf. The Judge will hold a Bond Hearing **"ONE TIME"!**

The District Attorney assigned to your case has **45 DAYS for MISDEMEANORS and 60 DAYS for FELONIES** from the date you are arrested to file formal charges, or present the matter to a Grand Jury.

When an INDICTMENT or BILL OF INFORMATION is filed by the District Attorney, YOU HAVE BEEN FORMALLY CHARGED, and an Arraignment date will be set and a subpoena will be sent to you.

A Writ of Habeas Corpus can be filed after the 45<sup>th</sup> day on Misdemeanors and the 60<sup>th</sup> day on Felonies so you will need to contact the Public Defender's Office at 788-3635. If a Bill of Information is filed before you Hearing, your Writ will be DENIED, NOW! If your Writ is Granted, remember the District Attorney's Office can still formally charge you, after you release!!

If you are formally charged and in jail, the Pre-Indictment Attorney will represent you at arraignment. Your Trial Attorney will begin representing you after arraignment. Your Trial Attorney can file for more Bond Reductions upon your request.

You should discuss your case with your **TRIAL ATTORNEY ONLY!!!**

Your Trial Attorney will represent you during Pre-Trial and Trial proceedings and will assist you in the event the District Attorney offers you a Plea Bargain. **YOU MUST CONTACT YOUR ATTORNEY FOR AN APPOINTMENT OR PHONE CONFERENCE.**

If you have any questions, contact the Public Defenders Office at: 788-3635

# Public Defenders Office Information Sheet

## Read This Sheet Completely Before You Contact This Office

You have been arrested on the following charges:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

Your total bond is \$ \_\_\_\_\_.

### **BOND REDUCTIONS**

You are automatically placed on the bond reduction docket if you have no detainers or holds.

Bond reductions are normally taken up on Mondays unless there are no felony tracts that week. Dates and times are subject to change according to the court's discretion.

No bond reductions will be taken up on the following Mondays: August 3<sup>rd</sup>, August 31<sup>st</sup>, September 7<sup>th</sup>, November 23<sup>rd</sup>, December 21<sup>st</sup>, and December 28<sup>th</sup>.

If you went to 72 hour court on a Monday, Tuesday or Wednesday you will be placed on the bond reduction docket for the following Monday. If you went to 72 hour court on a Thursday or Friday, you will be placed on the bond reduction docket held on the 2<sup>nd</sup> Monday after you went to 72 hour court.

Mr. Scott Privat has been assigned to represent you at this time. He can be reached at 984-8180. He will meet with the District Attorney to discuss lowering your bond on Monday morning at 8:00 a.m. Depending on the charge and your record, the DA may stipulate to a reduction. However, if no stipulation can be reached, a bond review hearing will be necessary. It is not advised that you testify on your own behalf at the bond review hearing because anything you say can be used against you at your trial. Therefore, you may contact a relative (mother, father, brother, sister, etc.) or a friend to come and testify on your behalf. They need to meet the public defender at 8:00 a.m. on the Monday of your bond review hearing at the jail. They will be given a form to fill out and they will be asked basic questions whether you work, have a place to live, what type of bond can you afford, etc. If no person can testify for you, the public defender will address the court and submit your file to the judge. The judge will then make a decision on your bond.

**If No Bill of Information is filed** against you in 45 days for a misdemeanor or 60 days on a felony a motion will be filed to ask the Judge to release you without bond because there are no formal charges filed against you. If the Motion is granted you will be released, you may receive a subpoena to appear in court for these charges.

**If a Bill of Information is filed a Trial Attorney** will be assigned to you. You will receive a Notice of Appointment which has the Attorney's name, address and phone number. Your attorney will get discovery from the District Attorney and provide you with a copy. This process takes approximately 30 to 60 days from the date charges are filed against you.

**If you are transferred from LPCC** or move from the address you gave on your application, you must give your attorney your new address in order for him/her to remain in contact with you.

**If you are released or bond out of jail**, you must complete an application with this office and qualify in order for an attorney to be assigned to represent you. This application can be done after you have received a subpoena for court.

Post Office Box 3622 - 321 W. Main Street, Ste 1C, Lafayette, Lafayette 70502  
Toll Free from LPCC 232-8168

**Appendix L:  
Instructions used by IDO Staff to  
determine eligibility, assess  
recoupment, and appoint counsel**

FELONY RONALD MELEBECK, LINDA VEAZEY, LOUIS GARROT,  
PATRICIA THOMAS, JAN ROWE, GABE DUHON, BURTON  
GUIDRY

MISDEMEANOR NICOLE GUIDRY, BART BROUSSARD

TRAFFIC BART BROUSSARD

DISTRICT JUV.

DELIQUENTS, OCS CHILDREN- BART BROUSSARD  
OCS 1<sup>ST</sup> PARENT(S)- NICOLE GUIDRY  
OCS 2<sup>ND</sup> PARENT(S)- JOANN NIXON  
(Can Represent all  
fathers)

ABBEVILLE CITY

DELIQUENTS, OCS CHILDREN- NICOLE GUIDRY  
OCS 1<sup>ST</sup> PARENT(S)- JULIE ROSENZWEIG  
OCS 2<sup>ND</sup> PARENT(S)- JOANN NIXON

KAPLAN CITY

*Nicole - FINS*  
*Sub. & Improper Sup. of minor*  
DELIQUENTS, OCS CHILDREN- JULIE ROSENZWEIG  
OCS 1<sup>ST</sup> PARENT(S)- NICOLE GUIDRY  
OCS 2<sup>ND</sup> PARENT(S)- JOANN NIXON

*Can rep. both FINS & Improper Sup of minor*  
\$40 APPLICATION FEE (EXCLUDES INMATES ONLY)

SINGLE HOUSEHOLD MAXIMUM MONTHLY INCOME \$1800  
FAMILY HOUSEHOLD MAXIMUM MONTHLY INCOME \$3300

\$\$ REMAINING AFTER EXPENSES	FELONY	MISDEMEANOR
\$0-349	\$350	\$200
\$350-450	\$400	\$250
\$451-550	\$450	\$300
\$551-650	\$500	\$350
\$651-750	\$550	\$400
\$751-800	\$600	\$450
\$800-above	DENIED	DENIED

\*DO NOT CHARGE PI FEE FOR JUV. OR CITY COURT (APP FEE ONLY)

\*TRAFFIC- IF THEY APPLY THAT DAY AND PLEAD THAT DAY- \$190

\*NONSUPPORT-RULE TO SET SUPPORT-ONLY CHARGE \$40 APP. FEE  
MOTION TO REDUCE CHILD SUPPORT- CHARGE APP AND PI FEE

15<sup>th</sup> Judicial District  
**PUBLIC DEFENDERS OFFICE**  
Post Office Box 3622  
321 W. Main Street, Suite 1C  
Lafayette, Louisiana 70502  
(337) 232-9345

March 3, 2008

To: IDO Staff  
From: Chris

RE: PI fee increases

Below is a new income/fee scale which is effective today. Please let me know if you have any questions.

Thanks,  
Chris

Single household maximum monthly income \$1800  
Family household maximum monthly income \$3300

\$\$ Remaining after Expenses	Felony	Misd.
\$0-349	\$350	\$200
\$350-450	\$400	\$250
\$451-550	\$450	\$300
\$551-650	\$500	\$350
\$651-750	\$550	\$400
\$750-800	\$600	\$450
\$801-above	DENIED	DENIED

**Appendix M:**  
***Defendant Information Sheet, and***  
***\$40.00 Application Fee Notice***

**15<sup>th</sup> Judicial District**  
**Public Defenders Office**  
321 W. Main Street, Suite 1C  
Lafayette, LA 70501  
(337) 232-9345

## Defendant Information Sheet

You have just completed an application to determine if you qualify for the appointment of an Attorney through the Public Defenders Office.

If you have not paid your \$40 application fee, it must be paid by the due date on the green notice you have been given. Your application may not be processed if your fee is not paid timely. You can mail a money order to Post Office Box 3622, Lafayette La. 70502 or you can hand deliver your payment to the above address.

Your application will be processed within the next 10 to 15 business days. If you qualify for an Attorney, a Notice of Appointment indicating the Attorney's name, address and phone number, will be mailed to you at the address you've given. If you are assessed a fee for representation you will receive that information along with the Notice of Appointment.

Once the attorney receives the file, they will mail you correspondence regarding your case. *It is your responsibility to contact the attorney to discuss your case before your next court date.*

If you have any witnesses, you will need to give the attorney their names, addresses and telephone numbers.

### **Misdemeanors**

Misdemeanors are crimes punishable by a fine of a few hundred dollars and/or jail time of up to six months. Misdemeanors are set on a Trial docket only. All motion and preliminary matters will be taken up on the same day.

### **Felonies**

Felony crimes are punishable by jail time, probation and/or a fine. Jail time can be parish jail or state time (referred to as "Hard Labor"). Felony cases are set for two court dates, a Pre-Trial and a Trial date.

At the Pre-Trial date your Attorney will attempt to negotiate a plea bargain with the District Attorney. If you agree to plea, you will be sentenced that day and it will not be necessary for you to appear at the trial date on your subpoena. If you decide not to accept the plea bargain your case will go to trial and you will need to appear on the Trial date listed on the subpoena you received at your arraignment.

### **Plea Bargains**

In this District, most cases are disposed of by "Plea Bargain". In which you and the District Attorney agreed to a charge and sentence. You should consider your attorney's advice in regards to the Plea Bargain. The District Attorney may not always be willing to negotiate your sentence and may want to "Go To Trial" and let the Judge or Jury decide the case. Also be advised that the Judge always makes the final decision on a defendant's sentence, not your attorney or the District Attorney. However, if an agreement is reached between you and the D.A. the Judge will usually follow that agreement.

### **Subpoena**

You were personally served with your subpoena when you appeared before the Judge at your arraignment. (It's pink) You will not be served again for this case.

## \$40.00 APPLICATION FEE NOTICE

You are hereby ordered to pay \$40.00 to the Public Defenders Office on or before \_\_\_\_\_.

Any questions call LINDSEY (MISS)  
KIM (FELLOW) @ 337-232-9345.

Docket/Case #: \_\_\_\_\_, must be on your MONEY ORDER or with your Cash.

Money Orders are Payable to: **PUBLIC DEFENDERS OFFICE**

Mail To: P.O. Box 3622, Lafayette, LA. 70502

Hand Delivery: 321 West Main St., Ste 1-C, Lafayette, LA.

*(Located in the LEGAL CENTER next to ACE BONDING)*

**\*\*\*\*\*NO CHECKS, CREDIT OR DEBIT CARDS ACCEPTED\*\*\*\*\***

**Appendix N:**  
**Sample letter to client with Notice of**  
**Appointment, and**  
***Notice of Appointment* form**

15<sup>th</sup> Judicial District  
**PUBLIC DEFENDERS OFFICE**

Post Office Box 3622  
321 W. Main Street, Suite 1C  
Lafayette, Louisiana 70502  
(337) 232-9345

September 1, 2009

██████████  
████████████████████  
Youngsville , LA 705292

RE: State of Louisiana Vs. ██████████  
Docket No.: 124947

Dear Defendant:

Please find attached a copy of the Notice of Appointment which list the attorney appointed to represent you.

After review of the information you provided on your application and the fact that you are not in jail, it has been determined that you are partially indigent. Therefore, it is necessary that you assist in your defense cost. You have been assessed a fee in the amount of \$350 for your representation. Payments should be made to the **Public Defenders Office** on a monthly basis until your fees are paid in full.

We accept Cash or Money Orders Only. **Payments can be hand delivered to 321 W. Main Street, Suite 1C, or mailed to Post Office Box 3622, Lafayette, Louisiana 70502.** Money orders should be made payable to the Public Defenders Office. Your name and docket number should also be listed on your money order.

Should you have any questions, please feel free to contact us.

Best Regards,

David Balfour  
Chief Public Defender

Enclosure  
cc: File  
Clerk of Court

Versus

Lafayette Parish

██████████

Case No: 119279

---

**Certification of Indigence  
And  
Notice of Appointment of Counsel**

As provided by La. R.S. 15:147 and La. R.S. 15:148, the 15th Judicial District Court ordered the above Defendant to be interviewed by the Public Defender Office for a determination of indigence.

The 15th Judicial District Public Defender, through the District Public Defender, has determined the above Defendant is indigent and has made the following appointment of counsel.

**Chris Richard, Attorney at Law**  
730 Jefferson Street, Lafayette, LA 70501  
234-5505

The charge(s) against the defendant is/are

14:63	Criminal Trespass
14:108	Resisting an Officer

By copy of this filing, your client, the Clerk of Court and the District Attorney are so advised and informed of your appointment.

By: \_\_\_\_\_

District Public Defender  
Signed: March 18, 2010

**Appendix O:**  
***Attorney Conflict Form, and***  
***Notice of Reassignment of Counsel***



State of Louisiana

Abbeville City Court

Versus

Vermilion Parish

[REDACTED]

Case No: C-93153

**Notice of Reassignment of Appointment of Counsel**

The appointment of Nicole Guidry by the 15th Judicial District Indigent Defender Board in the above captioned matter has been revoked and the following appointment of counsel has been made.

**Julie Rosenzweig, Attorney at Law**  
300 N. Louisiana Street, Abbeville, LA 70510  
422-6253

The charge(s) against the defendant is/are

14:67.B.3            Misdemeanor Theft - Less than \$300

The Defendant, the above Attorneys and the District Attorney's Office are hereby advised of the change in counsel through a copy of this filing.

By: David K. Balfour  
Chief Public Defender  
Signed: July 22, 2009

**Appendix P:**  
***Application for Public Defender***

Office Use Only

Dk # \_\_\_\_\_ OCS 72: \_\_\_\_\_ PT: \_\_\_\_\_ T: \_\_\_\_\_

Chg: \_\_\_\_\_

Dk # \_\_\_\_\_ Dist/City \_\_\_\_\_ T \_\_\_\_\_ Arr: \_\_\_\_\_ PT: \_\_\_\_\_ T: \_\_\_\_\_

Chg: \_\_\_\_\_

Assigned Open Cases: Atty \_\_\_\_\_ Track \_\_\_\_\_ Dk \_\_\_\_\_ REC #: \_\_\_\_\_ C/M \_\_\_\_\_

App Fee: Paid\$ \_\_\_\_\_ Date Pd \_\_\_\_\_ Bal: \$ \_\_\_\_\_ Due Date \_\_\_\_\_ PI Fee: 150, 250, \$ \_\_\_\_\_

APPLICATION FOR PUBLIC DEFENDER

Applicant hereby affirms under penalty or perjury that he or she desires counsel but is financially unable to procure those services and the following information concerning his or her financial means and obligations is true and correct to the best of his or her knowledge. Applicant also agrees to report in writing any change in his or her address or financial status to Public Defender's Office

Parent's Name: \_\_\_\_\_ aka/Madien \_\_\_\_\_

Address: \_\_\_\_\_ Lot/Apt \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

DOB: \_\_\_\_\_ Sex: \_\_\_\_\_ Race: \_\_\_\_\_ SS# \_\_\_\_\_

Child Name \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Martial Status: Circle one Single Married Separated Divorced Widow

How many children do you have under 18: \_\_\_\_\_ How many of these child(ren) live with you? \_\_\_\_\_

How many people/children do you support in your household? \_\_\_\_\_

Attending School? YES/NO Name of School: \_\_\_\_\_

Do you have a job? YES/NO If NO; last day you worked. \_\_\_\_\_

If YES who do you work for: \_\_\_\_\_

How often do you get paid: weekly, biweekly, semi-monthly or month

On average how much is your check when you receive it? \$ \_\_\_\_\_

Does your spouse have a job? YES NO If NO; what was the last day worked. \_\_\_\_\_

If YES who do they work for: \_\_\_\_\_

How often do they get paid: weekly, biweekly, semi-monthly or month

On average how much is their check when they receive it? \$ \_\_\_\_\_

The dollar amount you, your spouse & child(ren) RECEIVES:

Food Stamps \$ \_\_\_\_\_ Welfare \$ \_\_\_\_\_ SSI \$ \_\_\_\_\_

Unemployment \$ \_\_\_\_\_ Retirement \$ \_\_\_\_\_ Workers Comp \$ \_\_\_\_\_

Child Support \$ \_\_\_\_\_ Disability \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

List property you or your spouse are buying or own: Car, Truck, Boat, Motorcycle, House or Land

Year and Model of Vehicle \_\_\_\_\_ Approximate value\$ \_\_\_\_\_

Year and Model of Vehicle \_\_\_\_\_ Approximate value\$ \_\_\_\_\_

Approximate value of Home or Land \$ \_\_\_\_\_

The dollar amount YOU PAY:

Rent/House Note \$ \_\_\_\_\_ Lot Rent \$ \_\_\_\_\_ Utility Bill \$ \_\_\_\_\_

Water \$ \_\_\_\_\_ Phone \$ \_\_\_\_\_ Gas (home) \$ \_\_\_\_\_

Cable \$ \_\_\_\_\_ Car Note \$ \_\_\_\_\_ Car Ins. \$ \_\_\_\_\_

Gas (vehicle) \$ \_\_\_\_\_ Cab/Bus Fair \$ \_\_\_\_\_ Rx expense \$ \_\_\_\_\_

Life/Med Ins. \$ \_\_\_\_\_ House Ins. \$ \_\_\_\_\_ Medical Bills \$ \_\_\_\_\_

Child Care \$ \_\_\_\_\_ School Lunch \$ \_\_\_\_\_ Work Lunch \$ \_\_\_\_\_

Groceries, Toiletries, Cleaning and Baby Supplies \$ \_\_\_\_\_ Credit Cards \$ \_\_\_\_\_

Probation Fees \$ \_\_\_\_\_ Fines/Loans \$ \_\_\_\_\_ Bondman \$ \_\_\_\_\_

Child Support \$ \_\_\_\_\_ Rent to Own \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

If you are unemployed and/or do not have any expenses, who do you live with? \_\_\_\_\_

Signature (sign your name) \_\_\_\_\_

Date of Application \_\_\_\_\_

Dk # \_\_\_\_\_ Dist/City \_\_\_\_\_ T \_\_\_\_\_ Arr: \_\_\_\_\_ PT: \_\_\_\_\_ T: \_\_\_\_\_  
Chg: \_\_\_\_\_

Dk # \_\_\_\_\_ Dist/City \_\_\_\_\_ T \_\_\_\_\_ Arr: \_\_\_\_\_ PT: \_\_\_\_\_ T: \_\_\_\_\_  
Chg: \_\_\_\_\_

Open Cases: Atty \_\_\_\_\_ T \_\_\_\_\_ Dk \_\_\_\_\_ Open Cases: Atty \_\_\_\_\_ T \_\_\_\_\_ Dk \_\_\_\_\_

App Fee: Paid\$ \_\_\_\_\_ Date \_\_\_\_\_ Receipt# \_\_\_\_\_  
Balance Due \$ \_\_\_\_\_ Due Date \_\_\_\_\_ PI Fee: 150, 250, \$ \_\_\_\_\_

## APPLICATION FOR PUBLIC DEFENDER

Applicant hereby affirms under penalty or perjury that he or she desires counsel but is financially unable to procure those services and the following information concerning his or her financial means and obligations is true and correct to the best of his or her knowledge. Applicant also agrees to report in writing any change in his or her address or financial status to Public Defender's Office

**Start** ▶ Name: \_\_\_\_\_ aka/Madien \_\_\_\_\_

Address: \_\_\_\_\_ Lot/Apt \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

DOB: \_\_\_\_\_ Sex: \_\_\_\_\_ Race: \_\_\_\_\_ SS# \_\_\_\_\_

Marital Status: Circle one Single Married Separated Divorced Widow

How many children do you have under 18: \_\_\_\_\_ How many of these child(ren) live with you? \_\_\_\_\_

How many people/children do you support in your household? \_\_\_\_\_

Attending School? YES/NO Name of School: \_\_\_\_\_

Do you have a job? YES/NO If NO; last day you worked. \_\_\_\_\_

If YES who do you work for: \_\_\_\_\_

How often do you get paid: weekly, biweekly, semi-monthly or month

On average how much is your check when you receive it? \$ \_\_\_\_\_

Does your spouse have a job? YES NO If NO; what was the last day worked. \_\_\_\_\_

If YES who do they work for: \_\_\_\_\_

How often do they get paid: weekly, biweekly, semi-monthly or month

On average how much is their check when they receive it? \$ \_\_\_\_\_

### The dollar amount you, your spouse & child(ren) RECEIVES:

Food Stamps \$ \_\_\_\_\_ Welfare \$ \_\_\_\_\_ SSI \$ \_\_\_\_\_

Unemployment \$ \_\_\_\_\_ Retirement \$ \_\_\_\_\_ Workers Comp \$ \_\_\_\_\_

Child Support \$ \_\_\_\_\_ Disability \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

### List property you or your spouse are buying or own: Car, Truck, Boat, Motorcycle, House or Land

Year and Model of Vehicle \_\_\_\_\_ Approximate value\$ \_\_\_\_\_

Year and Model of Vehicle \_\_\_\_\_ Approximate value\$ \_\_\_\_\_

Approximate value of Home or Land \$ \_\_\_\_\_

### The dollar amount YOU PAY:

Rent/House Note \$ \_\_\_\_\_ Lot Rent \$ \_\_\_\_\_ Utility Bill \$ \_\_\_\_\_

Water \$ \_\_\_\_\_ Phone \$ \_\_\_\_\_ Gas (home) \$ \_\_\_\_\_

Cable \$ \_\_\_\_\_ Car Note \$ \_\_\_\_\_ Car Ins. \$ \_\_\_\_\_

Gas (vehicle) \$ \_\_\_\_\_ Cab/Bus Fair \$ \_\_\_\_\_ Rx expense \$ \_\_\_\_\_

Life/Med Ins. \$ \_\_\_\_\_ House Ins. \$ \_\_\_\_\_ Medical Bills \$ \_\_\_\_\_

Child Care \$ \_\_\_\_\_ School Lunch \$ \_\_\_\_\_ Work Lunch \$ \_\_\_\_\_

Groceries, Toiletries, Cleaning and Baby Supplies \$ \_\_\_\_\_ Credit Cards \$ \_\_\_\_\_

Probation Fees \$ \_\_\_\_\_ Fines/Loans \$ \_\_\_\_\_ Bondman \$ \_\_\_\_\_

Child Support \$ \_\_\_\_\_ Rent to Own \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

If you are unemployed and/or do not have any expenses, who do you live with? \_\_\_\_\_

\_\_\_\_\_  
Defendant Signature (sign your name)

\_\_\_\_\_  
Date of Application

**Appendix Q:**  
***Public Defender District 15, Cases  
Received by Attorney, FY: 2008-2009***

# Public Defender District 15

\*2008

Cases Received By Attorney FY: 2008 - 2009

Attorney	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Amos, Valex	7	12	7	13	16	7	14	11	16	12	8	17	140
Application, Denied	10	7	9	10	9	7	13	4	4	2	7	4	86
Balfour, David	9	9	10	9	7	9	10	11	11	14	7	10	116
Beaner, Christ	33	54	26	59	1	28	6	17	14	33	13	5	289
Block, Gerald	6	11	7	11	10	3	12	12	13	8	6	18	117
Broussard, Bart	44	59	41	70	52	40	45	45	93	41	98	83	711
Cloutier, Monique	36	41	34	38	32	15	52	43	40	55	54	40	480
Dangerfield, Lloyd	41	19	18	26	39	36	31	10	42	49	24	28	363
Dixon, Jr., James	8	13	6	12	14	6	10	14	13	12	9	18	135
Doga, Burleigh	19	16	13	14	13	14	6	7	13	14	13	5	147
Duhon, Gabe	37	11	19	26	7	24	11	2	11	1	9	10	168
Dupont, Thomas	0	0	0	0	0	0	0	1	1	10	35	28	75
Edwards, Luke	15	16	13	15	8	8	28	14	9	17	10	17	170
Evans, C. Roan	28	106	34	51	44	32	33	48	26	24	2	0	428
Francis-Jones, Roshell	16	29	9	25	3	21	23	14	8	19	21	6	194
Garrett, Valerie	9	23	13	11	19	5	25	15	9	19	16	14	178
Garrot, Louis	19	17	16	16	4	8	8	8	8	5	11	14	134
Gauthier, Trent	0	0	0	0	1	1	8	0	0	0	0	0	10
Gautreaux, Kay	20	31	24	26	19	13	36	16	29	30	17	27	288
Guidry, Nicole	59	72	30	61	21	43	47	48	60	33	82	59	615
Guidry, Burton	19	15	10	6	8	8	4	11	12	3	8	12	116
Harrington, Thomas	52	47	38	71	51	30	29	38	61	61	29	41	548
Hayes, Kim	8	4	5	15	16	6	14	9	11	14	15	4	121
Howie, Glen	85	40	26	80	22	23	99	64	116	98	100	47	800 vs 695
Jardell, Remy	0	2	3	3	1	3	5	1	1	3	6	9	37
Kennison, Dan	8	18	19	21	22	5	32	9	20	21	20	30	225
Landry, James	3	0	0	0	0	0	4	1	0	2	3	0	13
Landry, Michael	25	7	71	90	34	48	89	44	67	25	44	1	545
Larue, Christopher	9	29	24	27	24	44	70	60	68	44	64	42	505
Lasseigne, Randy	18	10	12	16	9	9	20	10	9	19	13	13	158
LeJeune, Clay	18	13	13	20	11	6	6	9	19	10	8	5	138
McCann, Randal	28	17	11	9	1	8	7	13	3	13	3	8	121
Melebeck, Ronald	6	16	7	17	7	2	5	6	13	1	12	9	101
Merc, Richard	23	29	25	26	20	17	34	15	29	31	16	29	294
Mose, Travis	17	16	20	17	7	12	20	12	12	17	15	20	185
Neumann, Vivian	38	26	17	41	36	27	37	16	56	42	47	26	409
Neumann, Eric	14	15	13	10	14	15	12	17	12	22	6	26	176
Nickel, Jack	22	18	13	20	10	5	8	9	11	14	11	5	146
Nixon, JoAnn	39	29	29	28	8	3	5	4	10	7	3	13	178
Piccione, James Kirk	16	17	13	9	12	8	12	15	14	21	5	25	167
Pierre, Tricia	30	23	26	37	19	27	31	18	21	41	29	23	325
Prejean, Allyson	57	33	30	43	27	27	42	25	53	39	29	32	437 vs 487
Privat, Scott	12	13	4	10	5	7	38	29	34	30	48	35	265
Register, Harold	9	20	13	12	13	6	17	14	10	20	12	14	160
Richard, Chris	26	32	23	28	16	17	19	25	26	30	19	38	299
Robinson, Jennifer	72	85	56	56	35	37	23	15	12	12	3	23	429
Rosenzweig, Julie	8	6	0	3	3	9	52	18	20	34	8	15	176
Rowe, Jan	18	28	7	9	4	5	7	11	12	5	7	17	130
Stefanski, Brett	20	17	9	15	10	5	6	10	19	9	10	1	131
Thomas, Patricia	18	13	12	15	2	4	3	5	7	5	15	16	115 vs 477
Veazey, Linda	20	29	9	15	7	7	7	11	16	5	11	15	152
Williams, Lenise	25	28	24	26	14	19	21	24	29	30	20	37	297

104

122

mbs 120

163

389

# Public Defender District 15

Cases Received By Attorney FY: 2008 - 2009

<u>Attorney</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Total</u>
	1,179	1,241	911	1,288	787	769	1,196	908	1,223	1,126	1,081	1,034	12,743

**Appendix R:  
IDO attorney caseloads, FY 08-09**

LAST	FIRST	PARISH	CASES/TRACK	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL MISD EQUIV	% NAT'L STND	
Doga	Burleigh	Acadia	Fel Capital	19	16	13	14	13	14	6	7	13	14	13	5	147	392	98%
Hayes	Kim	Acadia	Fel Capital	8	4	5	15	16	6	14	9	11	14	15	4	121	323	81%
Lejeune	Clay	Acadia	Fel Capital	18	13	13	20	11	6	6	9	19	10	8	5	138	368	92%
Nickel	Jack	Acadia	Fel Capital Fel Arr Parish Coordinator	22	18	13	20	10	5	8	9	11	14	11	5	146	389	97%
Stefanski	Brett	Acadia	Fel Dist OCS	20	17	9	15	10	5	6	10	19	9	10	1	131	349	87%
Harrington	Rhett	Acadia	Misd, Juv. OCS, Non-Support, Rev	52	47	38	71	51	30	29	38	61	61	29	41	548	548	137%
Howie	Glen	Acadia	Traffic/Juv Delinquency/Pre-Indict Crowley City, Rayne City OCS	85	40	26	80	22	23	99	64	116	98	100	47	800	800	200%
Landry	James	Acadia	Crowley City OCS Rayne City Misd Juv	3	0	0	0	0	0	4	1	0	2	3	0	13	26	7%
Landry	Michael	Acadia	Rayne City OCS	25	7	71	90	34	48	89	44	67	25	44	1	545	545	136%
Balfour	David	Lafayette	Fel	9	9	10	9	7	9	10	11	11	14	7	10	116	309	77%
Edwards	Luke	Lafayette	Fel, T1 Capital	15	16	13	15	8	8	28	14	9	17	10	17	170	453	113%
Lasseigne	Randy	Lafayette	Fel, T1	18	10	12	16	9	9	20	10	9	19	13	13	158	421	105%
Mose	Travis	Lafayette	Fel, T1	17	16	20	17	7	12	20	12	12	17	15	20	185	493	123%
McCann	Randal	Lafayette	Fel, T2 Capital	28	17	11	9	1	8	7	13	3	13	3	8	121	323	81%
Neumann	Eric	Lafayette	Fel, T2 Capital	14	15	13	10	14	15	12	17	12	22	6	26	176	469	117%
Piccione	Kirk	Lafayette	Fel, T2 Capital	16	17	13	9	12	8	12	15	14	21	5	25	167	445	111%
Robinson	Jennifer	Lafayette	Fel, T2	72	85	56	56	35	37	23	15	12	12	3	23	429	1144	286%
Garrett	Valerie	Lafayette	Fel, T3 Capital	9	23	13	11	19	5	25	15	9	19	16	14	178	475	119%
Kennison	Dan	Lafayette	Fel, T3	8	18	19	21	22	5	32	9	20	21	20	30	225	600	150%
Register	Harold	Lafayette	Fel, T3 Capital	9	20	13	12	13	6	17	14	10	20	12	14	160	427	107%
Amos	Valex	Lafayette	Fel, T4 Capital	7	12	7	13	16	7	14	11	16	12	8	17	140	373	93%
Block	Gerald	Lafayette	Fel, T4 Capital	6	11	7	11	10	3	12	12	13	8	6	18	117	312	78%
Dixon	James	Lafayette	Fel, T4 Capital	8	13	6	12	14	6	10	14	13	12	9	18	135	360	90%
Gautreaux	Kay	Lafayette	Misd	20	31	24	26	19	13	36	16	29	30	17	27	288	288	72%
Mere	Richard	Lafayette	Misd	23	29	25	26	20	17	34	15	29	31	16	29	294	294	74%
Richard	Chris	Lafayette	Misd	26	32	23	28	16	17	19	25	26	30	19	38	299	299	75%
Williams	Lenise	Lafayette	Misd	25	28	24	26	14	19	21	24	29	30	20	37	297	297	74%
Dangerfield	Lloyd	Lafayette	Juv	41	19	18	26	39	36	31	10	42	49	24	28	363	726	182%
Neumann	Vivian	Lafayette	Juv	38	26	17	41	36	27	37	16	56	42	47	26	409	818	205%
Prejean	Allyson	Lafayette	Juv Juv Drug Court	57	33	30	43	27	27	42	25	53	39	29	32	437	874	219%
Cloutier	Monique	Lafayette	Non-Support	36	41	34	38	32	15	52	43	40	55	54	40	480	960	240%
Pierre	Tricia	Lafayette	District Court DWI & IWC	30	23	26	37	19	27	31	18	21	41	29	23	325		0%
Privat	Scott	Lafayette	Pre-Indict, Habeas, Rev	12	13	4	10	5	7	38	29	34	30	48	35	265		0%
Gauthier	Trent	Lafayette	Pre-Indict, Habeas, Rev	0	0	0	0	1	1	8	0	0	0	0	0	10		0%
Jardell	Remy	Lafayette	Pre-Indict, Habeas, Rev	0	2	3	3	1	3	5	1	1	3	6	9	37		0%
Larue	Christopher	Lafayette	Fel Rev, Drug Court	9	29	24	27	24	44	70	60	68	44	64	42	505		0%

LAST	FIRST	PARISH	CASES/TRACK	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL MISD EQUIV	% NAT'L STND	
Dupont	Thomas	Lafayette	Lafayette City Juvenile	0	0	0	0	0	0	0	1	1	10	35	28	75	150	38%
Evans	Roan	Lafayette	Lafayette City Juvenile	28	106	34	51	44	32	33	48	26	24	2	0	428	856	214%
Francis-Jones	Roshell	Lafayette	Lafayette City	16	29	9	25	3	21	23	14	8	19	21	6	194	194	49%
Beaner	Christ	Lafayette	Lafayette City	33	54	26	59	1	28	6	17	14	33	13	5	289	289	72%
Duhon	Gabe	Vermilion	Felony	37	11	19	26	7	24	11	2	11	1	9	10	168	448	112%
Garrot	Louis	Vermilion	Fel Fel Rev Capital	19	17	16	16	4	8	8	8	8	5	11	14	134	357	89%
Guidry	Burton	Vermilion	Fel Capital	19	15	10	6	8	8	4	11	12	3	8	12	116	309	77%
Melebeck	Ronald	Vermilion	Fel Parish Coordinator	6	16	7	17	7	2	5	6	13	1	12	9	101	269	67%
Rowe	Jan	Vermilion	Fel	18	28	7	9	4	5	7	11	12	5	7	17	130	347	87%
Thomas	Patricia	Vermilion	Fel Capital	18	13	12	15	2	4	3	5	7	5	15	16	115	307	77%
Veazey	Linda	Vermilion	Fel Capital	20	29	9	15	7	7	7	11	16	5	11	15	152	405	101%
Broussard	Bart	Vermilion	Misd, Juv, Revocations	44	59	41	70	52	40	45	45	93	41	98	83	711	711	178%
Guidry	Nicole	Vermilion	Misd, Juv, Abbeville City/Kaplan City OCS	59	72	30	61	21	43	47	48	60	33	82	59	615	615	154%
Nixon	JoAnn	Vermilion	Pre-Indict, Dist Non-Support, Dist OCS, Abbeville City/Kaplan City OCS	39	29	29	28	8	3	5	4	10	7	3	13	178	356	89%
Rosenzweig	Julie	Vermilion	Kaplan City Misd Kaplan City Juv, Abbeville City OCS conflicts	8	6	0	3	3	9	52	18	20	34	8	15	176	352	88%
Application	Denied			10	7	9	10	9	7	13	4	4	2	7	4	86		

**Appendix S:**  
***Capital Cases 15th JDC***

Capital Cases 15<sup>th</sup> JDC

Eric Smith	open	2007-05-04	116389	14:30 - 1 <sup>st</sup> murder
Aaron Francois	open	2009-03-03	123773	14:30
Kevin Francis	open	2009-04-23	74764	14:30
Kevin Gildhouse	open	2009-03-03	123773	14:30
Ryan Williams	open	2009-04-23	74765	14:42.1 forceable rape
Ove Wilson	open	2009-04-23	74804	14:30
Ryan Williams	open	2009-04-23	74803	14:30
Aaron Leday	open	2009-01-30	74540	14:30
Kevin Francis	open	2009-04-23	74802	14:30
Wilbert Clark	open	2007-08-21	117650	14:30
Kevin Francis	open	2009-04-23	74764	14:30
Daniel Prince	open	2008-05-07	72189-I,II	14:30
Kevin Francis	open	2009-04-23	74802	14:30
Aaron Francois	open	2009-03-03	123773	14:30
Claude Morrison	open	2009-04-24	74763-I,II,III	14:30
Ryan Williams	open	2009-04-23	74765	14:42.1
Ove Wilson	open	2009-04-23	74804	14:30
Kevin Gildhouse	open	2009-03-03	123773	14:30
Nathal Trahan	open	2008-05-02	120612	14:30
Aaron Leday	open	2009-01-23	74540	14:30

**Appendix T:**  
***Instructions for Submitting***  
***Investigator/Expert Request,***  
**Revised 6/15/09**

## **Instructions for Submitting Investigator/Expert Request**

1. All requests must be submitted directly to **District Defender David Balfour either by fax at 234-2454 or by mail, Post Office Box 92775, Lafayette, LA 70509.**
2. All requests must be submitted on attached form.
3. Allow at least two weeks for approval. **Do Not Wait Until Last Minute!**
4. All requests must have attached letter from Expert to the requesting Attorney, setting out with particularity the services contemplated and the estimate of fees that will be charged. (Request for investigator need not be accompanied by a letter from investigator)
5. Approval or Denial will be returned to you by fax.
6. If Denied and you are asked for additional information, a new request form must be submitted.

## **Instructions for requesting payment of Expert Bills**

1. All invoices are to be billed directly to Attorney.
2. Invoice must be itemized.
3. Invoice must have Defendant's Name and Docket Number for reference.
4. Invoice must have Expert's Tax ID number.
5. Attorney must review invoice for accuracy and the above items.
6. Attorney must sign and date the invoice indicating: Reviewed and Approved
7. Forward the original invoice with a copy of the approved expert request to **15<sup>th</sup> Judicial Public Defenders Office, Attn: Chris St. Julien, Post Office Box 3622, Lafayette, LA 70520**
8. Any invoice submitted for payment that is missing any of the above items will be returned to the Attorney.
9. No payments will be made to an Expert without an approved expert request. **NO EXCEPTIONS!**
10. **Any fees/expenses incurred in excess of the approval or without written approval is the liability of the Attorney. NO EXCEPTIONS!**

**15<sup>th</sup> Judicial District  
PUBLIC DEFENDERS OFFICE  
INVESTIGATOR/EXPERT REQUEST FORM**

**Attorney:** \_\_\_\_\_

**Defendant Name:**

**Parish:**

**Charge:**

**Docket #:**

**Court Dates:**

**Plea Status:**

**Facts of Case:**

**Type of Expert:**

**Name of Investigator/Expert:**

(Resume/CV if new expert/investigator)

**Anticipated Number of Hours Needed:**

**Anticipated Cost of Services:**

(Attach letter from expert)

**What issues should this investigator/expert consider?**

**What outcome do you anticipate?**

**Attorney signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\*\*\*\*\*

Amount Approved: \$ \_\_\_\_\_

Date Approved: \_\_\_\_\_

District Defender signature: \_\_\_\_\_

**Appendix U:**  
***Memorandum*, regarding Investigation,**  
**September 14, 2009**

**FIFTEENTH JUDICIAL DISTRICT  
PUBLIC DEFENDER OFFICE**

LAFAYETTE PARISH  
321 West Main Street, Suite 1-C  
Lafayette, Louisiana 70501

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Telephone: (337) 232-9345

September 14, 2009

**TO: ALL IDO ATTORNEYS**

**FROM: DAVID K. BALFOUR**

**RE: INVESTIGATION**

**PHASE 1:** Any potential client arrested for a serious felony will be interviewed within seventy two (72) hours of arrest by one of our contract investigators. The investigator will obtain as much preliminary information as possible with a subsequent follow up investigative goal in mind. This initial interview will be as thorough as the circumstances dictate. When and if the individual is assigned an attorney, the investigator will immediately arrange a meeting with that attorney to discuss his/her findings, so that a continuing investigative plan can be implemented. Following such a meeting, the attorney should submit a request for investigative assistance as set out below.

**PHASE 2 :** All attorneys will be allowed and encouraged to utilize up to five (5) hours of investigative assistance on any and all files assigned without the necessity of requesting such assistance. Thereafter, follow up requests as set out below should be submitted for approval.

**PHASE 3:** Follow up requests for investigative assistance will require only an estimate of the number of hours that will likely be necessary to complete the anticipated investigation.

**PHASE 4:** Upon the completion of the investigation, or every sixty (60) days, whichever comes first, the investigator will provide the assigned attorney a statement for services rendered to date. That statement will be a line item statement, listing first the date, followed by a brief description of the work undertaken on that date, followed by the dollar amount (\$55.00/hour) incurred in connection with that entry. Mileage or out of the ordinary expenses will be listed at the bottom of the statement, followed by a total amount requested by the investigator. This statement is to be sent to the trial attorney for review. After the trial attorney has reviewed and approved the statement for payment, such approval should be noted on the face of the statement and sent to Chris St. Julien for payment.

September 14, 2009

Page 2

If for some reason a trial attorney does not agree with an entry on the statement, obviously the attorney should contact the investigator to resolve any concerns. Barring unforeseen circumstances, all statements should be paid within thirty (30) days.

As has always been the case, I encourage each of you to use investigative services in connection with the defense of your clients. It is assumed that all serious felonies will automatically involve investigation, if only to determine the accuracy of the contentions of the State that can be the subject of independent investigation. The extent of ongoing investigation and/or, in certain circumstances, the need for investigation, is the sole determination of trial counsel. It should go without saying that anyone going into court who has not availed himself/herself of investigative services on behalf of his/her client may be deemed to have been ineffective.

Please remember, trial counsel has the ultimate authority as to how a planned defense is to be presented in court. Consequently, I urge each of you to actively participate in the investigative process. It is you who must determine what witnesses may be effective, how they are to be weaved into a defense and most importantly, it is you who must call and examine witnesses, not the investigator.

Attached is an updated listing of investigators that have been approved by the Office. If any of you have other investigators that you feel may be an asset to the attached list, do not hesitate to contact me with your suggestions.

END

**Investigator List**

Name	Name of Company	Address	Phone	Fax
James Miller		102 Triangle Circle, Lafayette, LA 70508	856-9760	
Frank K. McCardell, Jr.		109 Alonda Drive, Lafayette, LA 70503	989-2086	
Mac Wood	Black Horse Agency, LLC	P.O. Box 60279, Lafayette, LA 70506	235-1137	988-3432
Roy Givens	Superior Investigative Services	P.O. Box 5121, Lafayette, LA 70509	207-9411	261-0958
Russell Ancelet	Investigative Services of Laf	P.O. Box 3994, Lafayette, LA 70502	989-9486	989-0756
John Gabriel	P&M Investigations	P.O. Box 90741, Lafayette, LA 70509	593-8246	593-0098
Marcal Poullard	Encore Investigations			

**Appendix V:  
Chart of IDO attorney salaries &  
responsibilities, provided by IDO as of  
April 2010**

	Balfour	Lasseign	Edwards	Mose	Neumann	Piccione	McCann	Robinson	Garrett	Register	Kennerly	Block	Amos	Dixon	Totals
Felony	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$672,000
Senority	\$10,000	\$8,000	\$1,000	\$2,000	\$6,500	\$5,500	\$1,000	\$500	\$7,000	\$7,500	\$4,000	\$10,000	\$5,500	\$1,500	\$70,000
Admin.	\$36,000											\$30,000			\$66,000
<b>Sub Total</b>	<b>\$94,000</b>	<b>\$56,000</b>	<b>\$49,000</b>	<b>\$50,000</b>	<b>\$54,500</b>	<b>\$53,500</b>	<b>\$49,000</b>	<b>\$48,500</b>	<b>\$55,000</b>	<b>\$55,500</b>	<b>\$52,000</b>	<b>\$88,000</b>	<b>\$53,500</b>	<b>\$49,500</b>	<b>\$808,000</b>
Capital			\$24,000		\$24,000		\$24,000		\$24,000	\$24,000			\$24,000	\$24,000	\$192,000
<b>Totals</b>	<b>\$94,000</b>	<b>\$56,000</b>	<b>\$73,000</b>	<b>\$50,000</b>	<b>\$78,500</b>	<b>\$77,500</b>	<b>\$73,000</b>	<b>\$48,500</b>	<b>\$79,000</b>	<b>\$79,500</b>	<b>\$52,000</b>	<b>\$88,000</b>	<b>\$77,500</b>	<b>\$73,500</b>	<b>\$1,000,000</b>
<b>Gautreau</b>															
Dist	\$30,000	\$30,000	Richard	Bryant	Pierre	Prejean	Neumann	Dangerfield	Evans	Beaner	Jones	Cloutier	Gauthier	Larue	
Dist Traffic			\$30,000	\$30,000	\$30,000										\$120,000
Dist IWC					\$3,000										\$30,000
Dist OCS						\$30,000	\$30,000	\$30,000							\$90,000
Dist Juv					\$30,000	\$30,000	\$30,000								\$90,000
Inst. 72															\$0
City IWC									\$3,000						\$3,000
City MD									\$15,000	\$48,000	\$48,000				\$96,000
City Juv									\$8,000						\$15,000
City Juv Traf												\$40,000			\$8,000
NonSupport															\$40,000
Revo													\$8,000	\$12,000	\$12,000
Revo Edwards													\$4,000		\$8,000
Revo MD													\$12,000		\$0
Arraignments															\$4,000
Bond Red															\$12,000
Drug Ct Fel														\$12,000	\$12,000
Drug Ct Juv					\$12,000										\$12,000
Senority	\$2,000	\$1,500	\$1,500	\$1,000	\$4,000	\$2,500	\$5,000	\$9,000	\$1,500	\$1,000	\$1,000	\$6,500		\$4,000	\$40,500
<b>Totals</b>	<b>\$32,000</b>	<b>\$31,500</b>	<b>\$31,500</b>	<b>\$31,000</b>	<b>\$37,000</b>	<b>\$74,500</b>	<b>\$65,000</b>	<b>\$69,000</b>	<b>\$27,500</b>	<b>\$49,000</b>	<b>\$49,000</b>	<b>\$46,500</b>	<b>\$24,000</b>	<b>\$28,000</b>	<b>\$595,500</b>

Acadia	Nickel	Doga	Howie	Lejeune	Hayes	Totals				
Felony	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$240,000	Felony			
Arraingmer	\$1,200					\$1,200	Arraingments			
Seniority	\$8,000	\$7,500	\$6,000	\$3,000		\$24,000	Seniority			
Admin	\$1,500					\$1,500	Admin			
<b>Sub Total</b>	<b>\$58,700</b>	<b>\$55,500</b>	<b>\$54,000</b>	<b>\$51,000</b>	<b>\$48,000</b>	<b>\$266,700</b>	<b>Sub Total</b>			
Capital	\$24,000	\$24,000		\$24,000	\$24,000	\$96,000	Capital			
<b>Totals</b>	<b>\$82,700</b>	<b>\$79,500</b>	<b>\$54,000</b>	<b>\$75,000</b>	<b>\$72,000</b>	<b>\$362,700</b>	<b>Totals</b>			
<b>Privat</b>										
Dist MD		Harrington	M. Landry	J. Landry	Stefanski	Howie				
MD Arr.		\$8,000				\$8,000	Dist MD			
Dist Traffic	\$16,000	\$1,200				\$17,200	MD Arr.			
Dist OCS	\$7,500	\$7,500			\$7,500	\$22,500	Dist Traffic		Acadia	\$96,000
Dist Juv					\$7,500	\$7,500	Dist OCS		Juv.	\$90,000
Non Support		\$8,000				\$8,000	Dist Juv		Misd	\$43,500
Bond Reduction						\$3,000	Non Support		Retainers	\$299,200
Revo		\$6,500				\$6,500	Bond Reduction			
Crowley Ct	\$13,000					\$13,000	Revo			
Crowley O	\$7,500		\$7,500		\$7,500	\$22,500	Crowley Ct			
Crowley Juv					\$7,500	\$7,500	Crowley OCS			
Rayne Ct			\$6,500			\$6,500	Crowley Juv			
Rayne OCS			\$7,500	\$7,500	\$7,500	\$22,500	Rayne Ct			
Rayne Juv			\$7,500			\$7,500	Rayne OCS			
Seniority	\$0	\$5,000	\$3,000	\$1,000	\$5,500	\$15,000	Rayne Juv			
<b>Totals</b>	<b>\$44,000</b>	<b>\$36,200</b>	<b>\$38,500</b>	<b>\$8,500</b>	<b>\$43,000</b>	<b>\$3,000</b>	<b>Totals</b>			





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The National Legal Aid & Defender Association (NLADA), founded in 1911, is the oldest and largest national, non-profit membership organization devoting all of its resources to advocating equal access to justice for all Americans. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal services and public defense services throughout the nation and provides a wide range of services and benefits to its individual and organizational members.

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[www.nlada.org](http://www.nlada.org)



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Bureau of Justice Statistics

# Special Report

September 2010, NCJ 228229

## Census of Public Defender Offices, 2007

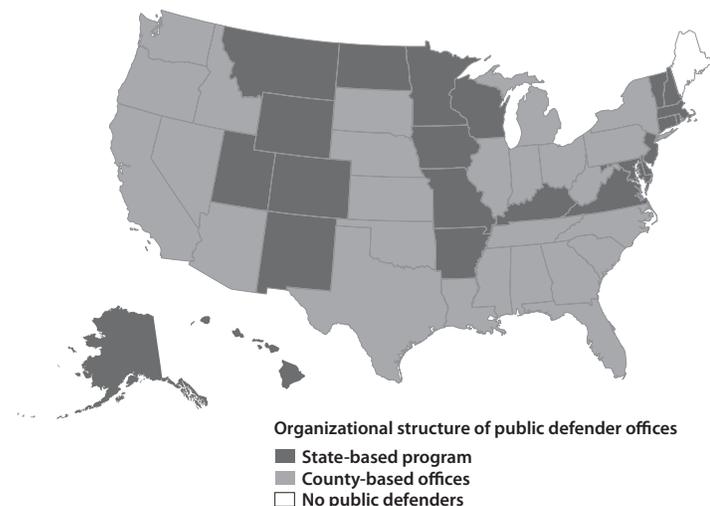
# State Public Defender Programs, 2007

Lynn Langton and  
Donald Farole, Jr., Ph.D.  
*BJS Statisticians*

In 2007, 49 states and the District of Columbia had public defender offices to provide legal representation for some or all indigent defendants. Twenty-two states had a state public defender program that oversaw the operations, policies, and practices of the 427 public defender offices located in these states (figure 1). State-based public defender offices functioned entirely under the direction of a central office that funded and administered all public defender offices in the state. In the remaining 27 states, public defender offices were county-based, administered at a local level, and funded principally by the county or through a combination of county and state funds. The public defender office in the District of Columbia operated like a county-based office and was classified as county-based.

Figure 1.

Twenty-two states had state public defender programs in 2007



## Highlights

- State programs spent more than \$830 million representing indigent defendants, which was about 14% of total state expenditures for all judicial and legal functions in 2007.
- Public defender programs in the 13 states with death penalty statutes spent a combined \$11.3 million providing capital case representation in 2007.
- Misdemeanor and ordinance violations accounted for the largest share (43%) of cases received by public defender programs.
- Fifteen state programs exceeded the maximum recommended number of felony and misdemeanor cases per attorney.
- State programs employed a median of 163 litigating attorneys per state.
- In 2007 state public defender programs employed about 1 investigator for every 6 full-time equivalent (FTE) litigating attorneys.
- State programs had a median attrition rate of 10% for attorneys in 2007.
- Among the 17 states that had a state public defender program in 1999, criminal caseloads increased by 20% overall from 1999 to 2007.

## Professional guidelines for the provision of indigent defense

*State Public Defender Programs, 2007* presents the Bureau of Justice Statistics' (BJS) 2007 Census of Public Defender Offices (CPDO) data in the context of applicable professional guidelines for representing indigent clients. The American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA), and special commissions, such as the National Study Commission on Defense Services (1976) and the President's National Advisory Commission on Criminal Justice Standards and Goals (1973), have released professional guidelines for the provision of indigent defense. In 2002, the ABA condensed these guidelines into the ABA's *Ten Principles of a Public Defense Delivery System*. The ten principles are widely regarded as a succinct statement of the currently accepted requirements for adequate defense representation and are referenced throughout the report. The report also references professional guidelines from the American Bar Association *Standards for Criminal Justice, Providing Defense Services* (3rd ed. 1992), and the National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995).

### Ten Principles

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

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

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

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

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

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

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

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

### Other professional guidelines

National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Chapter 13: The Defense* (1973).

National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976).

American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992).

National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995).

State public defender programs employed 29% of the nation's 15,000 public defenders in 2007 (table 1). The 4,300 attorneys working in these state programs served 73.4 million residents and handled approximately 1.5 million cases, or 27% of the nearly 5.6 million cases handled by public defenders nationwide.

In 1963 the United States Supreme Court ruled in *Gideon v. Wainwright* that state courts are required to ensure that right-to-counsel provisions under the Sixth and Fourteenth Amendments apply to indigent defendants. Since the Gideon ruling, states, counties, and jurisdictions have established varying means of providing public representation for defendants unable to afford a private attorney. Indigent defense systems typically provide representation using some combination of—

1. a public defender office
2. an assigned counsel system in which the court schedules cases for participating private attorneys
3. a contract system in which private attorneys contractually agree to take on a specified number of indigent defendants or indigent defense cases.

The Bureau of Justice Statistics' (BJS) 2007 Census of Public Defender Offices (CPDO) collected data on public defender offices, which was one of the three methods for delivering indigent defense services. Public defender offices have a salaried staff of full or part-time attorneys who represent indigent defendants and are employed as direct government employees or through a public, nonprofit organization.

The CPDO was the first systemic, nationwide study of public defender offices to collect data on the staffing, caseloads, expenditures, standards and guidelines, and attorney training in the 957 offices across 49 states and the District of Columbia. Maine did not have public defender offices in 2007.

Public defender offices nationwide employed over 15,000 litigating attorneys in 2007. These offices received a total of approximately 5.6 million indigent defense cases and spent about \$2.3 billion representing indigent defendants.

This report presents data on the policies and operations of the 427 public defender offices that comprised the 22 state public defender programs. Data from the 22 state programs are reported at the state-level because within each state, state-based offices often share resources and caseloads, as needed.

Information presented in the text and tables of the report came from the CPDO unless otherwise noted. In some instances states did not report data, and the CPDO findings were supplemented with information from relevant state statutes. Any data supplemented from outside sources are noted in the text and tables.

CPDO findings on county-based offices in 27 states and the District of Columbia are discussed in *County-based and Local Public Defender Offices, 2007*, BJS Web, September 2010.

Table 1.

**Characteristics of public defender offices, by type of office, 2007**

Type of office	Number of states <sup>a</sup>	Population served (in thousands) <sup>b</sup>	Number of offices <sup>c</sup>	Number of cases received <sup>d</sup>	FTE litigating attorneys <sup>e</sup>	Total expenditures (in thousands)
<b>U.S. total</b>	50	240,160	957	5,572,450	15,026	\$2,310,040
State-based	22	73,370	427	1,491,420	4,321	833,358
County-based	28	166,790	530	4,081,030	10,705	1,476,682

<sup>a</sup>Includes the District of Columbia, which is classified as county-based public defender office due to its unique status outside of any state's jurisdiction. In 2007 Maine did not have city, county, or state public defender offices.

<sup>b</sup>Includes the population served only in those jurisdictions that had a public defender office in 2007.

<sup>c</sup>Excludes public defender offices that are privately funded or principally funded by federal or tribal governments and those that provide primarily conflict of interest representation, or felony capital, juvenile, or appellate cases services. Also excludes all other providers of indigent services, including attorneys or offices providing contract or assigned counsel services on an individual or case basis.

<sup>d</sup>Rounded to the nearest ten. Alaska's state public defender program did not report caseload data. Caseload data available for 97.4% of all county-based offices.

<sup>e</sup>See *Methodology* for a definition of full-time equivalent (FTE) litigating attorney.

## State public defender programs spent over \$830 million providing indigent defense representation in 2007

In 2007, public defender programs served a total resident population of over 73 million and operated 427 public defender offices (table 2). These 22 programs served a median resident population of 2.9 million, with a median of 19 public defender offices per state; the number of offices per state ranged from 4 in North Dakota to 36 in Missouri. State public defender programs employed 4,321 litigating attorneys to handle the nearly 1.5 million cases received in 2007.

State programs spent more than \$830 million representing indigent defendants in 2007, with the median annual expenditure estimated at over \$33 million per program.<sup>1</sup> The 22 programs received a median of 73,000 cases, equating to a median per-case expenditure of \$510 (not shown in table).

<sup>1</sup>Survey instructions asked respondents to report operating expenditures for public defender offices only. If the state funded assigned counsel or contract attorneys in addition to public defenders, these expenditures were not to be reported by the state.

Table 2.

### General characteristics of state public defender programs, by state, 2007

State	State population (in thousands) <sup>a</sup>	Number of offices	Number of cases received <sup>b</sup>	FTE litigating attorneys <sup>c</sup>	Total expenditures (in thousands) <sup>d</sup>	State judicial and legal expenditures (in thousands)	Public defender expenditures as a percent of judicial and legal expenditures
<b>Total</b>	73,370	427	1,491,420	4,321	\$833,358	\$6,183,948	13.5%
<b>Median</b>	2,907	19	72,740	163	33,326	230,056	14.5
Alaska	681	13	/	93	\$17,231	\$171,776	10.0%
Arkansas	2,831	31	83,810	305	20,047	126,664	15.8
Colorado	4,843	22	90,620	241	37,884	251,642	15.1
Connecticut	3,490	27	83,100	127	47,600	566,197	8.4
Delaware	862	7	29,410	70	13,713	138,845	9.9
Hawaii	1,277	5	43,770	93	8,500	203,107	4.2
Iowa	2,983	16	70,150	96	48,533	218,686	13.3
Kentucky	4,236	31	148,520	327	32,513	364,033	8.9
Maryland	5,619	16	199,750	508	77,519	456,812	17.0
Massachusetts	6,468	28	16,820	197	123,400	820,454	15.0
Minnesota	5,182	27	139,120	371	61,800	371,252	16.7
Missouri	5,878	36	83,160	261	34,138	224,667	15.2
Montana	957	21	22,650	128	18,659	77,542	24.1
New Hampshire	1,312	10	24,130	107	12,668	96,935	13.1
New Jersey	8,653	23	100,240	458	99,000	839,868	11.8
New Mexico	1,964	13	72,740	223	37,083	235,445	15.8
North Dakota	638	4	2,270	10	1,700	38,956	4.4
Rhode Island	1,053	6	18,760	40	8,782	100,232	8.7
Vermont	621	11	11,690	31	6,839	53,823	12.7
Virginia	7,699	29	95,340	305	37,369	344,876	10.8
Wisconsin	5,599	35	142,400	294	80,766	269,400	30.0
Wyoming	523	16	12,980	38	7,615	54,187	14.1

/Data not reported.

<sup>a</sup>Population estimates from Population Division, U.S. Census Bureau, *Table 1. Annual estimates of the population for the United States, regions, states, and Puerto Rico: April 1, 2000 to July 1, 2008*. <<http://www.census.gov/popest/states/NST-ann-est2008.html>>.

<sup>b</sup>Rounded to the nearest ten. Includes cases received by general trial public defender offices only. Any indigent defense cases handled by contract or assigned counsel attorneys within the state are not included.

<sup>c</sup>See *Methodology* for a definition of full-time equivalent (FTE) litigating attorney.

<sup>d</sup>The Census of Public Defender Offices, 2007, instructed respondents to report either fiscal or calendar year 2007 total public defender office expenditures for indigent defense functions, excluding any fixed capital costs.

## A median of 15% of states' legal and judicial direct expenditures went to public defender programs

Each year the U.S. Census Bureau produces state-by-state estimates of direct government expenditures for police, courts, and corrections.<sup>2</sup> A median of 15% of state judicial and legal direct expenditures was spent by public defender programs in the 22 states in 2007. Wisconsin spent the largest share of judicial and legal expenditures on the state's public defender program (30%), followed by Montana (24%), Maryland (17%) and Minnesota (17%). All other states spent less than 20% of their reported legal and judicial expenditures on the public defender program.

<sup>2</sup>State-by-state justice expenditure estimates were derived from the U.S. Census Bureau's Annual Government Finance Survey. (See U.S. Census Bureau, State and Local Government Finance, Web 2007. <<http://www.census.gov/govs/estimate/>>).

## In 2007, 15 state public defender programs were overseen by an advisory board or commission

In 2007, 15 state public defender programs had an advisory board or commission (table 3). In 9 of these states, the board had both rule-making authority and the authority to hire and remove the chief public defender. The board's authority also extended over budgetary decisions in 6 of these states.

Seven of the 15 state public defender programs with an advisory board relied on more than one authority to select board members. The governor, in conjunction with the state supreme court, legislature, or other entity, such as the State Bar Association, appointed members to the advisory board in 7 state public defender programs: Connecticut, Iowa, Kentucky, Minnesota, North Dakota, New Hampshire, and Wisconsin. In

*The public defense function should be independent of undue political influence. To safeguard independence and promote efficiency and quality of services, a nonpartisan board should oversee defender systems.*

Table 3.

### Authorities appointing state public defender program advisory boards or commissions and the authority exercised by boards, by state, 2007

State	Advisory board appointed by—				Advisory board authority			
	Governor	Supreme Court	Legislature	Other <sup>a</sup>	Hire or remove chief public defender	Rule-making	Budgetary	Other <sup>b</sup>
<b>Total</b>	11	8	5	4	11	10	7	8
Arkansas	X				X	X	X	X
Connecticut	X		X		X	X	X	X
Colorado		X			X			
Hawaii	X				X	X		
Iowa	X	X	X					X
Kentucky	X	X		X			X	X
Maryland	X				X			X
Massachusetts		X			X	X	X	
Minnesota	X	X			X	X	X	X
Missouri	/	/	/	/	/	/	/	/
Montana	X				X	X		
North Dakota	X	X	X	X	X	X		
New Hampshire	X	X	X	X		X		X
Virginia				X	X	X	X	
Wisconsin	X		X		X	X	X	X

Note: Fifteen states had a public defense advisory board or commission. Alaska, Delaware, New Jersey, New Mexico, Rhode Island, Vermont, and Wyoming did not have an advisory board in 2007 and are not included in the table.

/Data not reported.

<sup>a</sup>Includes statutorily determined appointing bodies, State Bar Association, and state law school ex officio deans. In Virginia, the appointing body was statutorily determined and varied depending on the board member's position.

<sup>b</sup>Includes general supervision of operations, recommendations regarding per case fees, approval of district public defenders and deputy chief public defender selections, approval of union contracts and employee salaries, and authority to contract for indigent defense services.

The defender office should screen clients for eligibility, with eligibility decisions then subject to review by the court. The determination of eligibility should be based on the liquid assets of the defendant, as well as the defendant's own assessment of his or her ability to obtain sufficient representation. The office should not base indigency determinations on whether the defendant was able to post bond following his or her arrest.

Arkansas, Hawaii, Maryland, and Montana, the governor had the sole responsibility for advisory board appointments. The state supreme court was the sole appointing authority in Colorado and Massachusetts.

### Nearly all states with a state public defender program followed specific criteria or written guidelines to determine indigency

Except for New Hampshire, states with a public defender program used specific criteria to determine if a defendant qualified as indigent and was eligible for legal representation (table 4). Eligibility criteria included, at a minimum, the defendant's income level and a sworn or unsworn

statement from the defendant declaring indigency. Six states—Connecticut, Delaware, Kentucky, Massachusetts, Missouri, and Wisconsin—also considered a defendant's ability to post bond as a criterion for indigency determination.

Public defenders (8 states), judges (8 states), and court personnel (5 states) were the most common entities responsible for indigency screening for potential clients in the 18 states that reported data. Kentucky and Massachusetts used either pretrial services or probation officers to screen clients for indigency. Judges were also involved in the screening process in both these states (not shown in a table).

Table 4.

Criteria used to determine whether a defendant qualified for public counsel representation, by state, 2007

State	Number of factors considered <sup>a</sup>	Defendant's									
		Income level	Receipt of public assistance	Sworn application	Debt level	Federal poverty guidelines	Residence in public institution <sup>b</sup>	Judge's discretion	Unsworn application	Ability to post bail or bond	Other <sup>c</sup>
<b>Total</b>		21	17	16	15	13	11	9	7	6	9
Alaska <sup>d</sup>	4	X		X	X						X
Arkansas	7	X	X	X	X	X	X	X			
Colorado	8	X	X	X	X	X	X	X		X	
Connecticut	7	X	X		X	X		X	X	X	
Delaware	6	X	X	X			X	X			X
Hawaii	6	X	X		X		X		X		X
Iowa	4	X		X	X	X					
Kentucky	8	X	X	X	X	X		X		X	X
Maryland	6	X	X	X		X	X				X
Massachusetts	7	X	X	X	X	X	X			X	
Minnesota	7	X	X		X	X	X	X	X		
Missouri <sup>e</sup>	4	X		X						X	X
Montana	6	X	X		X	X	X		X		
New Hampshire <sup>f</sup>	0										
New Jersey	4	X	X	X	X						
New Mexico <sup>g</sup>	6	X	X			X	X		X		X
North Dakota	6	X	X	X	X	X		X			
Rhode Island	7	X	X	X	X	X	X		X		
Vermont	8	X	X	X	X	X	X	X			X
Virginia	4	X	X	X				X			
Wisconsin	6	X	X	X					X	X	X
Wyoming	3	X		X	X						

<sup>a</sup>The 2007 Census of Public Defender Offices (CPDO) included questions about 10 factors used to determine indigency.

<sup>b</sup>Includes residence in a public mental health institution or a correctional institution.

<sup>c</sup>Includes family status, number of dependants, monthly expenses, worker's compensation or disability, bankruptcy, liquid assets, letters from employers, and judicial discretion.

<sup>d</sup>Criteria used to determine eligibility for representation in Alaska were obtained from Alaska Statute 18.85.120(b), Determination of Indigency; Repayment. (See Alaska Legal Resource Center, Web. 5 Jan. 2009 <<http://www.touchngo.com/lglcntr/akstats/Statutes/Title18/Chapter85/Section120.htm>>.)

<sup>e</sup>Criteria used to determine eligibility for representation in Missouri were obtained from Missouri Revised Statute 600.086.(1), Eligibility for representation, rules to establish indigency, how determined, procedure, appeal, false statements, penalty investigation authorized. (See Missouri revised statutes, Web. 28 Aug. 2009 <<http://www.moga.mo.gov/statutes/C600-699/6000000086.htm>>.)

<sup>f</sup>New Hampshire did not use formal or written criteria to determine indigency.

<sup>g</sup>Criteria used to determine eligibility for representation in New Mexico were obtained from New Mexico Statutes Annotated 1978: Section 31-15-7. (See New Mexico Public Defender Department, Web. 26 Oct. 2009 <[http://www.pdd.state.nm.us/aboutus/clientinfo\\_guideline.html](http://www.pdd.state.nm.us/aboutus/clientinfo_guideline.html)>.)

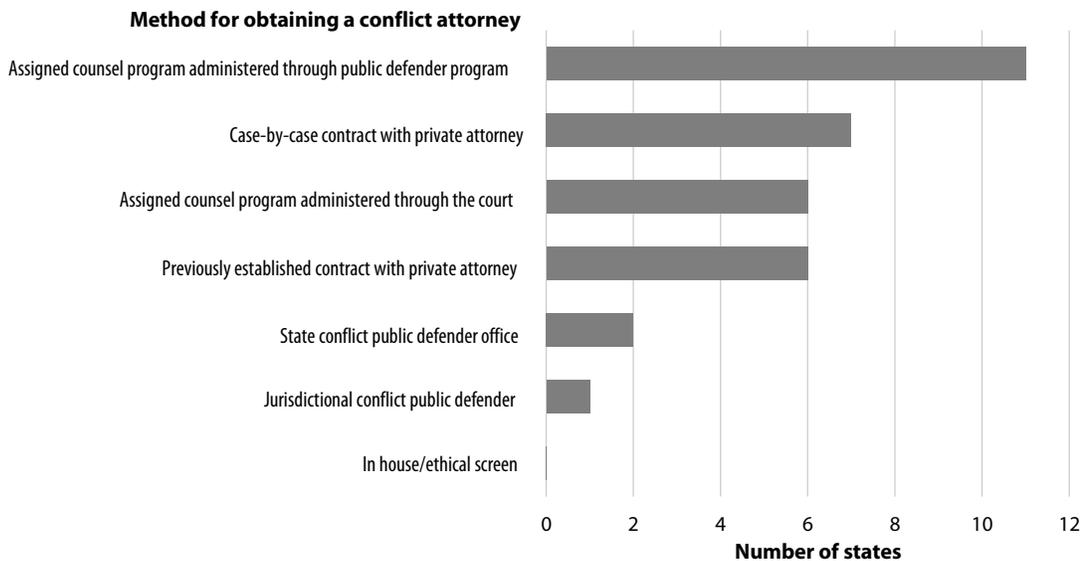
**Eleven of 19 reporting public defender programs used a state-administered assigned counsel program for conflict cases**

Nineteen state public defender programs provided data on the handling of cases in which there was a conflict of interest with the public defender office, such as a co-defendant already handled by the office. Of these states, 11 used a program-administered assigned counsel system to handle conflict cases in 2007 (figure 2). Seven states

reported using a case-by-case contract with a private attorney, the second most common approach to handling conflict cases. No state public defender program reported using an ethical screen, whereby an office takes the case regardless of the conflict, but isolates the attorney with conflicting connections from involvement in the case.

*The private bar should be involved in providing indigent defense services for cases in which there is a conflict of interest with the public defender's office or the public defender has exceeded caseload limits. Private bar appointments for conflict cases should be made through an established and directed assigned counsel or contract system and not on an ad hoc basis.*

**Figure 2.**  
**Types of conflict attorney systems established in states with state public defender programs, 2007**



Note: Based on 19 states. Alaska, Missouri, and New Mexico did not provide data on obtaining conflict attorneys. Numbers do not sum to 19 due to some states using multiple methods for handling conflict cases.

The same attorney should represent a client through all stages of case proceedings.

### Eleven state programs provided vertical representation for felony defendants in the majority of offices in the state

Vertical representation refers to the practice of one attorney representing a client from arraignment through the duration of the case. It is distinguished from horizontal representation in which a different attorney represents the same client at various stages of the case. Nearly three-quarters of reporting state public defender programs had a written policy encouraging vertical representation in 2007 (table 5). In 11 of the programs that reported data, the majority of offices in the state provided vertical representation for defendants in felony, non-capital

cases. Six state programs used a mixture of vertical and horizontal representation in felony, non-capital cases, and 4 programs assigned one attorney to cover the arraignment and another to represent the defendant through the duration of the case. No state program relied solely on horizontal representation for felony, non-capital cases in 2007.

Five state programs had a written policy that an attorney should be appointed within 24 hours of client detention. Thirteen programs had a policy of assigning cases based on case type and attorney experience. Most state programs (14) also had a policy that the most experienced attorneys in an office should handle the most complex cases.

Table 5.

Program operating guidelines and representation practices used by state public defender programs, by state, 2007

State	Operating guidelines included a policy related to—				Type of felony, non-capital case representation provided by the majority of offices in the state		
	Matching attorney experience with—		Types of cases handled	Attorney representation of client through all stages of proceedings	Vertical	Combination of vertical and horizontal	One attorney through arraignment, one for the duration of the case
	Attorney appointment within 24 hours of client detention	Case complexity					
<b>Total</b>	5	14	13	14	11	6	4
Alaska	/	/	/	/	/	/	/
Arkansas		X	X	X	X		
Colorado		X	X	X	X		
Connecticut		X		X			X
Delaware		X	X	X		X	
Hawaii		X	X	X			X
Iowa				X		X	
Kentucky	X	X	X	X	X		
Maryland		X	X			X	
Massachusetts	X	X	X	X	X		
Minnesota						X	
Missouri	/	/	/	/		X	
Montana		X	X	X		X	
New Hampshire	X	X	X	X	X		
New Jersey	X	X	X	X	X		
New Mexico	/	/	/	/			X
North Dakota	X			X	X		
Rhode Island							X
Vermont		X	X		X		
Virginia		X	X	X	X		
Wisconsin		X	X	X	X		
Wyoming					X		

/Data not reported

## Nineteen state public defender programs could charge fees for indigent defense services

Three states, Iowa, Minnesota, and Rhode Island, did not allow cost recoupment for public defender services in 2007 (table 6). The other 19 state programs had a system in place to allow for the collection of fees from indigent defendants.

Among the states permitting cost recoupment, the most widely available fee was a charge based on the cost for the defender's services (12 programs). Eight public defender programs could charge an up-front

application or administrative fee, which typically ranged between \$10 and \$200 depending on the state and type of case.<sup>3</sup> Expert witness fees, facilities fees, and court-related expenses were each allowed in 4 or fewer programs.

<sup>3</sup>See American Bar Association. (December 2001). 2001 Public Defender Up-front Application Fees Update. <<http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-table.pdf>>.

*Public defender programs can charge fees to indigent defendants under circumstances in which the defendant's contribution would not impose significant financial hardship.*

Table 6.

### Types of cost recoupment that could be required for public defender representation, by state, 2007

State	Cost recoupment that could be required						
	Attorney cost	Standard statutory fee	Application or administrative fee	Court-related expenses	Facilities fee	Expert witness fee	Other*
<b>Total</b>	11	9	8	4	3	4	3
Alaska		X			X		
Arkansas	X	X	X				
Colorado	X		X	X		X	
Connecticut	/	/	/	/	/	/	/
Delaware		X					
Hawaii	X						
Iowa							
Kentucky		X		X	X		
Maryland			X	X			
Massachusetts		X					
Minnesota							
Missouri			X			X	X
Montana	X	X					
New Hampshire	X	X				X	
New Jersey	X		X				X
New Mexico		X	X	X			
North Dakota	X	X	X				
Rhode Island							
Vermont	X		X				
Virginia	X						
Wisconsin	X				X		X
Wyoming	X					X	

Note: Iowa, Minnesota, and Rhode Island did not require any cost recoupment for indigent criminal defendants.

/Data not reported. Connecticut could require cost recoupment, but did not provide data on the types of fees that could be applied to indigent defendants.

\*Includes standard fees set by a commission or administrative rule and court reporter or investigator fees.

### Misdemeanors or ordinance violations made up more than 40% of the cases received by state public defender programs in 2007

The 22 state public defender programs received nearly 1.5 million cases in 2007. Misdemeanors carrying a jail sentence or ordinance violations accounted for about 640,000 (43%) of these cases (table 7). Felony non-capital cases accounted for the next largest percentage (25%) of public defender program caseloads. Juvenile-related (14%), civil (3%), appellate (1%), and felony capital (<0.5%) cases made up the smallest share of cases received by state programs in 2007. The CPDO, however, did not collect data from public defender offices that provided primarily juvenile or appellate case representation.

Variations in the number and type of cases received by public defender programs are due in part to differences between the resident population and offending patterns in each state. These variations may also be due in a larger part to the differences in how indigent defense cases are distributed among public defender offices and other contract and

assigned counsel programs in each state. The 2007 CPDO did not allow for enumeration of the total number of indigent cases received in each state or the percentage of indigent defense cases handled by the public defender office versus contract or assigned counsel attorneys. However, public documents allow for some examination of state variations in the percentage and type of cases that public defender offices receive.

An earlier BJS report, *State-Funded Indigent Defense Services, 1999*, revealed that the volume and type of indigent cases handled outside of the public defender office varies from state to state. Massachusetts' public defender program handled 3% of the approximately 208,000 indigent defense cases received in 1999, while assigned counsel attorneys handled the remaining 97%. During that same year, Connecticut's public defender programs handled 87% of the 64,500 indigent defense cases received, while assigned counsel handled 1%, and contract attorneys handled 11%.<sup>4</sup>

<sup>4</sup>See *State-Funded Indigent Defense Services, 1999*, BJS Web. September 2001 and National Survey of Indigent Defense Systems (NSIDS), BJS Web. 1999.)

Table 7.

Number of cases received by state public defender programs, by state and case type, 2007

State	Total cases received <sup>a</sup>	Felony capital	Felony non-capital	Misdemeanor/ violation <sup>b</sup>	Juvenile-related <sup>c</sup>	Civil <sup>d</sup>	Appeals
<b>Total</b>	1,491,420	436	378,440	640,230	208,400	47,620	10,870
<b>Median</b>	72,740	2	11,420	25,840	7,610	280	100
Arkansas	83,810	99	29,190	35,500	16,460	2,410	150
Colorado	90,620	13	55,160	26,670	8,780	0	0
Connecticut	83,100	56	/	27,520 <sup>e</sup>	5,900	100	320
Delaware	29,410	9	5,820	20,340	3,130	0	110
Hawaii	43,770	~	4,600	31,170	7,610	280	110
Iowa	70,150	~	10,000	25,000	35,000	110	60
Kentucky	148,520	181	33,170	86,700	21,850	4,430	2,230
Maryland	199,750	15	41,280	125,010	20,220	13,160	60
Massachusetts	16,820	~	12,830	3,180	490	50	270
Minnesota	139,120	~	28,000	83,020	26,900	0	1,200
Missouri	83,160	/	/	/	/	/	/
Montana	22,650	2	5,800	12,300	1,060	3,200	290
New Hampshire	24,130	1	7,420	13,350	3,250	10	90
New Jersey	100,240	18	65,110	/	17,760	16,090	1,260
New Mexico	72,740	6	/	/	/	/	/
North Dakota	2,270	~	800	650	500	280	50
Rhode Island	18,760	~	4,770	10,870	2,310	770	60
Vermont	11,690	~	2,290	6,850	2,130	370	60
Virginia	95,340	34	36,280	48,280	9,420	0	1,340
Wisconsin	142,400	~	35,800	71,810	25,240	6,390	3,160
Wyoming	12,980	2	120	12,000	400	0	60

Note: Numbers rounded to the nearest ten with the exception of felony capital case numbers. Number of cases may not sum to total due to rounding. Caseload data not reported for Alaska. Includes cases received by general trial public defender offices only. Any indigent defense cases handled by contract or assigned counsel attorneys within the state are not included.

~Not applicable. Alaska, Hawaii, Iowa, Massachusetts, Minnesota, North Dakota, Rhode Island, Vermont, and Wisconsin did not have the death penalty in 2007.

/Data not reported.

<sup>a</sup>Refers to cases that were assigned to and accepted for representation by the public defender program.

<sup>b</sup>Includes misdemeanors that carry a jail sentence and ordinance or municipal infractions or violations.

<sup>c</sup>Includes juvenile delinquency, delinquency appeals, and transfer or waiver hearing cases.

<sup>d</sup>Includes mental commitment, state post-conviction or habeas corpus, federal habeas corpus, status offense, child protection or dependency, termination of parental rights, or sexually violent predator cases.

<sup>e</sup>Includes only misdemeanors that carry a jail sentence. Data on number of ordinance or municipal infraction or violations were not provided.

Other documents reveal that some of the variation in the types of cases handled by state public defender programs in 2007 may also be due to variations in the types of indigent cases assigned to public defenders versus other indigent service providers. In 2007, misdemeanors and ordinance violations accounted for 92% of the public defender program caseload in Wyoming, while felony non-capital cases made up the majority of the caseloads in Massachusetts (76%). The 2009 Annual Report for the Wyoming Office of the State Public Defender reported that from 2006 to 2009 the public defender program has served over

80% of the state's indigent criminal defendants.<sup>5</sup> In contrast, Massachusetts typically assigned serious felony non-capital cases to the public defender offices, while state-assigned counsel attorneys handled misdemeanor cases.<sup>6</sup>

<sup>5</sup>See <<http://wyodefender.state.wy.us/files/2009Annual.pdf>>.

<sup>6</sup>See National Association of Criminal Defense Lawyers, Massachusetts Indigent Defense <<http://www.nacdl.org/public.nsf/defenseupdates/mass007>>.

## Public defender programs in states with death penalty statutes spent \$11.3 million providing capital case defense in 2007

Thirteen of the 22 states with state-based public defender programs had death penalty statutes (table 8). Of these states, 11 provided complete data on capital case representation and spent almost \$11.3 million to represent capital case defendants. Connecticut, Kentucky, and Virginia spent more than \$2 million each to provide capital case representation of indigent defendants in 2007.

Collectively, the 11 state-based programs represented 436 indigent defendants charged with capital offenses. Prosecutors filed for the death penalty in 209 of these cases. The number of cases in which the prosecutor filed for the death penalty ranged from 97 cases represented by public defenders in Kentucky to 1 case each in Arkansas and New Hampshire.

Eight of the 11 reporting public defender programs in death penalty states had specialized units for capital case defense. Six state programs provided indigent defense in more than 15 capital cases in 2007. Of these state programs, one program (Colorado) did not have a specialized unit.

All specialized capital defense units provided indigent representation for trial-level capital cases. Specialized units also provided representation for direct appeals and post-conviction capital cases in 4 states: New Jersey, Connecticut, Virginia, and Arkansas. Kentucky's death penalty unit represented capital defendants in trial-level cases and direct appeals, and Maryland's unit represented defendants in trial-level and post-conviction cases.

Table 8.

### Capital case representation among states with death penalty statutes that represented an indigent defendant facing the death penalty, 2007

State	Death penalty eligible cases			State has a specialized death penalty unit providing representation for—		
	Representation expenditures	Cases received <sup>a</sup>	Number of death penalty cases <sup>b</sup>	Trial level cases	Direct appeals	Post-conviction cases
<b>Total</b>	\$11,289,150	436	209	8	5	5
Arkansas	80,000	99	1	X	X	X
Colorado	896,820	13	17			
Connecticut	2,383,330	56	16	X	X	X
Delaware	276,430	9	8	X		
Kentucky	2,474,880	181	97	X	X	
Maryland	1,900,000	15	30	X		X
Missouri	/	/	/	/	/	/
Montana	100,000	2	2			
New Hampshire	171,690	1	1			
New Jersey	206,000	18	19	X	X	X
New Mexico	/	6	/	/	/	/
Virginia	2,600,000	34	16	X	X	X
Wyoming	200,000	2	2	X		

Note: The following states did not have death penalty statutes and were excluded: Alaska, Hawaii, Iowa, Massachusetts, Minnesota, North Dakota, Rhode Island, Vermont, and Wisconsin. Missouri and New Mexico provided indigent defendant death penalty representation but did not report data on number of cases, expenditures, or use of specialized death penalty units. Representation expenditures rounded to the nearest ten.

<sup>a</sup>Includes felony capital cases received in 2007.

<sup>b</sup>Includes felony capital cases in which the prosecutor actually filed for the death penalty. May be greater than the number of felony capital cases received in 2007 because of cases carried over from previous years.

The defense counsel's workload should be sufficiently controlled to allow defenders the time needed to provide quality representation in each case. Furthermore, public defenders are expected to decline appointments that exceed the established caseload limits.

The 1973 U.S. Department of Justice's National Advisory Commission (NAC) on Criminal Justice Standards and Goals specified that a public defender should not have more than 150 felony non-capital, 400 misdemeanor, 200 juvenile, or 25 appellate cases per year.

### Fifteen state public defender programs had caseload or workload limits, the authority to refuse cases, or both

In 2007, 11 of the 22 state programs had established formal caseload limits, and 8 had the authority to refuse appointments due to case overload (table 9). Four states—Massachusetts, Montana, New Hampshire, and Wyoming—had both formal caseload limits and the authority to refuse appointments. Seven states had neither caseload limits nor the authority to refuse appointments.

### Fifteen of the 19 reporting state programs exceeded the maximum recommended limit of felony or misdemeanor cases per attorney

State public defender programs received a median of 11,420 felony non-capital cases and 20,340 misdemeanor cases in 2007. These programs employed 4,321 full-time equivalent (FTE) litigating public defenders, with a median of 163 litigating attorneys in each state. Maryland employed the most FTE litigating attorneys (508) and North Dakota employed the fewest attorneys (10).

The National Advisory Commission (NAC) guidelines recommend a caseload for each public defender's office, not necessarily each attorney in the office. They state that "the caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding 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."<sup>7</sup> While 'caseload' can apply to the number of cases per attorney at a given time, BJS interprets the NAC standard as applicable to the sum of cases attorneys in an office are responsible for in a given year. Because the CPDO only collected data on cases received in 2007, these caseload numbers may understate the actual caseload of attorneys who are responsible not only for the new cases received in a given year but also cases pending from previous years.

<sup>7</sup>Department of Justice, National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts § 13.12 (1973).

**Table 9.** Caseload or workload limits, number of cases received, and estimated attorney caseloads, by state and case type, 2007

State	Program reported workload or caseload limits	FTE litigating attorneys	Cases received			
			Felony, non-capital		Misdemeanor <sup>a</sup>	
			Total	Per FTE litigating attorney <sup>b</sup>	Total	Per FTE litigating attorney <sup>b</sup>
<b>Total</b>		4,321	378,440	88	575,770	133
<b>Median</b>		163	11,420	82	20,340	217
Alaska	X	93	/	/	/	/
Arkansas	*	305	29,190	96	35,500	116
Colorado	X	241	55,160	229	26,670	111
Connecticut	X	127	/	/	27,520	217
Delaware		70	5,820	83	20,340	291
Hawaii		93	4,600	49	31,170	335
Iowa	*	96	10,000	105	25,000	262
Kentucky		327	33,170	101	86,560	265
Maryland	X	508	41,280	81	124,960	246
Massachusetts	X*	197	12,830	65	3,180	16
Minnesota		371	28,000	75	19,750	53
Missouri		261	/	/	/	/
Montana	X*	128	5,800	45	12,300	96
New Hampshire	X*	107	7,420	69	13,350	125
New Jersey	X	458	65,110	142	/	/
New Mexico		223	/	/	/	/
North Dakota	*	10	800	80	650	65
Rhode Island		40	4,770	119	10,870	272
Vermont	X	31	2,290	75	6,850	225
Virginia	*	305	36,280	119	47,280	155
Wisconsin	X	294	35,800	122	71,810	245
Wyoming	X*	38	120	3	12,000	316

Note: Total cases received rounded to the nearest ten.

\*Program reporting having the authority to refuse appointments due to caseload.  
/Data not reported.

<sup>a</sup>Includes misdemeanors that carry a jail sentence.

<sup>b</sup>Assumes that all cases and case types are evenly distributed across reported full-time equivalent (FTE) litigating attorneys. The 1973 U.S. Department of Justice's National Advisory Commission (NAC) on Criminal Justice Standards and Goals suggest that if a public defender carries both felony and misdemeanor cases, s/he should carry no more than 75 felony and 200 misdemeanor cases per year. See *Methodology* for definition of FTE litigating attorney.

One way to analyze the numeric caseload guideline is to estimate the number of cases received per FTE litigating attorney. Since the CPDO did not collect data on the caseloads of individual attorneys, it was assumed for estimation purposes that the felony and misdemeanor cases received in 2007 were equally distributed among FTE litigating attorneys.

Using this estimation method, a public defender program would meet the professional guideline for cases received in 2007 if FTE litigating attorneys received no more than 75 felony non-capital and 200 misdemeanor cases.<sup>8</sup>

This conservative measure also assumes that attorneys did not have any cases pending from previous years and did not handle any other type of case. Still, in 2007 attorneys in state public defender programs received a median of 82 felony and 217 misdemeanor cases, approximately 27 more cases in one year than recommended by the guideline.

Four states—Massachusetts, Minnesota, Montana, and New Hampshire—met the professional guidelines for cases per attorney based on this conservative

estimation. Rhode Island (391 cases per attorney) and Hawaii (384 cases per attorney) had two of the highest combined felony and misdemeanor caseloads per attorney in 2007.

Another way to examine caseloads is to calculate the number of defenders needed to meet the nationally accepted caseload guideline of 150 felony non-capital cases, 400 misdemeanor cases, 200 juvenile cases, or 25 appellate cases per defender each year. To calculate the total number of attorneys needed in each program, analysts first computed the number of attorneys needed to handle the cases received in each of the four case categories: felony non-capital, misdemeanor, juvenile-related, and appellate. The numbers of attorneys needed for each of the case types were then summed to get the total number of litigating attorneys recommended by the caseload guideline.

In order to meet the professional guideline, a state program would need a median of 151 attorneys to handle the median number of felony, misdemeanor, juvenile-related, and appellate cases received in 2007 (table 10). State public defender programs reported a median of 128 FTE litigating attorneys, and had a median of 67% of the estimated number of attorneys required by the guideline.

<sup>8</sup>The NAC guideline frames caseloads as though an attorney handles only one type of case. The misdemeanor and felony caseload guidelines were halved to follow the analytic assumption that attorneys handle both types of cases.

**Table 10.**  
**Number of full-time equivalent (FTE) litigating attorneys and estimated number of attorneys required to meet caseload guidelines, by state, 2007**

State <sup>a</sup>	FTE litigating attorneys on staff <sup>b</sup>	Attorneys needed to meet caseload guidelines <sup>c</sup>	Percent range of actual FTE litigating attorneys out of the estimated number needed <sup>b</sup>			
			<50%	51-75%	76-99%	100%+
<b>Total<sup>d</sup></b>	3,159	4,755		X		
<b>Median<sup>d</sup></b>	128	151		X		
Arkansas	305	372			X	
Colorado	241	479	X			
Delaware	70	110		X		
Hawaii	93	151		X		
Iowa	96	307	X			
Kentucky	327	636		X		
Maryland	508	692		X		
Massachusetts	197	107				X
Minnesota	371	419			X	
Montana	128	87				X
New Hampshire	107	103				X
North Dakota	10	12			X	
Rhode Island	40	73		X		
Vermont	31	46		X		
Virginia	305	461		X		
Wisconsin	294	671	X			
Wyoming	38	36				X

Note: The 1973 U.S. Department of Justice's National Advisory Commission (NAC) on Criminal Justice Standards and Goals specified that a public defender should not have more than 150 felony non-capital cases, 400 misdemeanor cases per year, 200 juvenile-related cases, or 25 appellate cases per year. Number of attorneys needed to meet the NAC standard is based on the total number of cases received across each of these four case types.

<sup>a</sup>Caseload data not available for Alaska, Missouri, and New Mexico. Connecticut did not report number of felony cases and New Jersey did not report number of misdemeanors and both were excluded from the table.

<sup>b</sup>See *Methodology* for definition of full-time equivalent (FTE) litigating attorney.

<sup>c</sup>All fractions rounded up.

<sup>d</sup>Total and median numbers include only the 17 states shown in the table.

There should be 1 managerial attorney for every 10 staff attorneys in an office to ensure effective attorney supervision.

Seventeen states reported complete caseload data in 2007. Of these states—Massachusetts, Montana, Wyoming, and New Hampshire—had enough litigating attorneys to handle the number of cases received without exceeding the caseload guideline. In the remaining 13 states, the actual number of litigating attorneys represented between 31% and 89% of the number required to meet professional caseload guidelines for the number of cases received in 2007.

### State public defender programs reported a median of about 2 managerial attorneys to supervise 10 assistant public defenders

State public defender programs reported a median of 163 litigating attorneys, 12 chief public defenders, and 5 supervisory attorneys in 2007 (table 11). Each

state reported having at least 1 managerial attorney for every 10 staff attorneys. Twelve states reported having a managing attorney to litigating attorney ratio of at least 2 managing attorneys for every 10 litigating attorneys.

### Nearly 3,000 employees provided support to attorneys in state public defender programs

In 2007, state public defender programs in 20 reporting states employed nearly 3,000 support staff (table 12). Support staff refers to employees—such as clerical and administrative staff, paralegals, investigators, social workers, indigency screeners, and interns—who typically are not attorneys, but provide case assistance for public defenders. Clerical and administrative positions accounted for more than half (56%) of the total support staff.

Table 11.

#### Full and part-time public defenders employed by state public defender programs, by state and position title, 2007

State	Total FTE litigating attorneys <sup>a</sup>	Full-time attorneys				Total part-time attorneys	Number of FTE managerial attorneys per 10 FTE assistant public defenders <sup>b</sup>
		Chief public defender	Managing attorneys	Supervisory attorneys	Assistant public defenders		
<b>Total<sup>c</sup></b>	4,321	369	62	336	3,508	345	1.2
<b>Median</b>	163	12	0	5	125	3	2.2
Alaska	93	1	0	15	76	4	2.1
Arkansas	305	9	0	24	240	68	1.2
Colorado	241	22	2	2	218	0	1.2
Connecticut	127	27	0	0	100	0	2.7
Delaware	70	1	1	8	61	2	1.6
Hawaii	93	5	6	0	89	0	1.2
Iowa	96	13	0	0	82	3	1.7
Kentucky	327	31	0	8	290	0	1.3
Maryland	508	26	0	89	400	5	2.9
Massachusetts	197	29	1	17	149	10	3.2
Minnesota	371	10	0	42	229	180	1.6
Missouri	261	36	0	0	261	0	1.4
Montana	128	21	5	26	81	/	6.4
New Hampshire	107	10	1	1	96	0	1.3
New Jersey	458	25	34	0	436	/	1.4
New Mexico	223	10	1	42	181	0	2.9
North Dakota	10	4	0	0	6	0	6.7
Rhode Island	40	4	5	0	35	0	2.6
Vermont	31	9	0	0	18	3	4.6
Virginia	305	30	0	52	215	18	3.7
Wisconsin	294	37	6	10	231	36	2.3
Wyoming	38	9	0	0	14	16	6.8

/Data not reported.

<sup>a</sup>See *Methodology* for definition of full-time equivalent (FTE) litigating attorney.

<sup>b</sup>FTE managerial attorney refers to all full and part-time attorneys in a supervisory position, including chief public defenders, managing attorneys, and supervisory attorneys.

<sup>c</sup>Includes only full-time attorneys for New Jersey and Massachusetts.

Investigators made up the next largest category of support staff, accounting for almost a quarter (24%) of the positions. The 20 programs also employed a median of 2 paralegals to provide assistance to all public defenders statewide.

Maryland received the most cases of any state program in 2007, employed the largest number of support staff, and exceeded all other states in the number of clerical staff (450), indigency screeners (100), paralegals (35), and interns (30). New Jersey was also among the top five states in terms of the number of cases received, and employed the highest number of investigators (233) of all state programs. Investigators accounted for 40% of New Jersey's

support staff. While Wyoming reported one of the lowest caseloads of the 22 programs, paralegals accounted for more than 60% of the public defender support staff in the state.

Five states—Hawaii, Iowa, Delaware, New Hampshire, and Virginia—reported no paralegals or interns on staff. North Dakota reported the lowest number of cases received, was 1 of 9 states that did not employ social workers or indigency screeners, and was the only state that did not employ investigators in 2007. The public defender program in Iowa employed only two types of support staff: investigators and administrative personnel.

Table 12.

**Full-time equivalent (FTE) support staff in state public defender programs, by state and position title, 2007**

State	FTE support staff									
	Total	Investigators	Social workers	Indigency screeners	Paralegals	Administrative	Clerical	Training	Interns	Other*
<b>Total</b>	2,963	714	166	109	117	672	976	14	87	110
<b>Median</b>	85	25	4	0	2	32	11	1	0	0
Alaska	56	15	0	0	6	5	31	0	0	0
Arkansas	27	6	6	0	4	5	6	0	0	0
Colorado	163	72	3	0	4	59	15	1	10	0
Connecticut	126	46	29	0	2	0	38	0	11	0
Delaware	74	14	14	0	0	35	5	1	0	5
Hawaii	31	7	0	0	0	23	2	0	0	0
Iowa	51	20	0	0	0	31	0	0	0	0
Kentucky	172	46	10	0	6	46	50	0	12	2
Maryland	716	30	20	100	35	50	450	1	30	0
Massachusetts	106	31	16	1	2	33	18	3	/	3
Minnesota	157	35	23	0	24	69	6	0	0	0
Montana	89	17	0	0	4	52	9	1	0	6
New Hampshire	81	29	0	0	0	44	7	1	0	0
New Jersey	577	233	0	0	12	0	279	0	0	53
North Dakota	9	0	0	0	1	4	2	0	2	0
Rhode Island	55	7	6	4	0	2	24	1	10	2
Wisconsin	212	43	13	4	2	92	17	3	10	29
Vermont	30	10	0	0	1	11	6	1	0	2
Virginia	210	51	27	0	0	109	14	1	0	9
Wyoming	25	3	0	0	16	5	0	0	2	0

Note: Data not available for Missouri and New Mexico. Numbers rounded to the nearest whole number. See *Methodology* for definition of full-time equivalent (FTE). /Data not reported.

\*Includes human resources staff, forensic specialists, clinical psychologists, information technology (IT) specialists, interpreters, and investigators hired on a contractual basis.

A public defender program should have at least 1 investigator for every 3 litigating attorneys.

Defender organizations should offer professional development opportunities to assist attorneys in providing quality representation for indigent clients. Public defense counsel should also have systematic and comprehensive training appropriate to specific areas of practice.

### State programs had 1 investigator for every 6 FTE litigating attorneys in 2007

In 2007, 18 of the 20 reporting public defender programs had a ratio of less than 1 investigator for every 3 FTE litigating attorneys (table 13). State programs in New Jersey and Connecticut exceeded the professional guidelines for the ratio of investigators to attorneys. New Jersey had about 15 investigators and Connecticut had about 11 investigators for every 30 FTE litigating attorneys. Conversely, Arkansas reported having less than 1 investigator per 30 FTE litigating attorneys.

State public defender programs had a median of about 1 paralegal per 60 FTE litigating attorneys. Wyoming reported the highest ratio of paralegals to

attorneys (about 2 paralegals for every 5 attorneys), followed by North Dakota (1 paralegal for every 10 attorneys).

### All state programs provided opportunities for public defense attorneys to improve trial skills

The CPDO collected data on policies related to continuing education for attorneys and the types of training provided by state public defender programs. Nearly all of the 19 reporting state programs had operating guidelines that included a policy on continuing education requirements (18 programs) and annual attorney performance review (17 programs) (table 14).

Table 13.

#### Full-time equivalent (FTE) support staff per 30 litigating attorneys in state public defender programs, by state and position title, 2007

State	FTE litigating attorneys	FTE support staff per 30 FTE litigating attorneys <sup>a</sup>		
		Investigators	Paralegals	All other positions <sup>b</sup>
<b>Median</b>	163	4.7	0.5	15.8
Alaska	93	4.7	1.9	11.5
Arkansas	305	0.6	0.4	1.7
Colorado	241	8.9	0.5	10.9
Connecticut	127	10.9	0.5	18.3
Delaware	70	6.0	--	25.7
Hawaii	93	2.3	--	7.7
Iowa	96	6.3	--	9.6
Kentucky	327	4.2	0.6	11
Maryland	508	1.8	2.1	38.5
Massachusetts	197	4.7	0.2	15.9 <sup>c</sup>
Minnesota	371	2.8	1.9	7.9
Missouri	261	/	/	/
Montana	128	4.0	0.9	15.9
New Hampshire	107	8.0	--	14.4
New Jersey	458	15.3	0.8	21.8
New Mexico	223	/	/	/
North Dakota	10	--	3.0	22.5
Rhode Island	40	5.3	--	36.4
Vermont	31	9.8	0.5	18.7
Virginia	305	5.0	--	15.6
Wisconsin	294	4.3	0.2	17.1
Wyoming	38	2.4	12.2	5.1

Note: Support staff data not available for Missouri and New Mexico. See *Methodology* for definition of full-time equivalent (FTE).

--Less than 0.5%.

/Data not reported.

<sup>a</sup>Ratio calculated from a base of 30 FTE litigating attorneys to allow comparison with the professional guidelines recommending at least 1 investigator for every 3 litigating attorneys. According to the guidelines, a program should employ at least 10 FTE investigators for every 30 litigating attorneys.

<sup>b</sup>Includes all support staff with the exception of paralegals and investigators. Includes social workers, indigency screeners, administrative staff, clerical staff, training staff, interns, and other support staff.

<sup>c</sup>Does not include interns. Data on interns not reported.

All of the state public defender programs provided opportunities for attorneys to improve trial skills. Nearly all (20) programs provided attorneys with professional development opportunities in the area of juvenile delinquency. In 17 public defender programs, attorneys could take training on handling defendants with mental illness. In 10 of the 13 states with the death penalty, public defender programs also provided professional development opportunities in the area of death penalty defense. Civil defense training, offered in 3 states, was the least common type of professional development offered by state public defender programs.

### State public defender programs had a median attrition rate of 10% for assistant public defenders

Minimum entry-level salaries for assistant public defenders ranged from about \$37,000 to \$58,000, with a median salary of \$46,000 per year. More experienced (6 years or more) assistant public defenders earned a median salary between \$60,000 and \$78,000. Connecticut had the highest salary range, with an entry-level salary of more than \$58,000 and a maximum salary for experienced public defenders of nearly \$122,000 per year.

Table 14.

#### Program operating guidelines and attorney professional development opportunities in state public defender programs, by state, 2007

State	Operating guidelines included a policy related to—		Areas of professional development training provided to attorneys							
	Continuing legal education for attorneys	Annual attorney performance review	Civil	Death penalty trial defense	Juvenile delinquency	Trial skills	Appellate cases	Dependency cases	Mental illness cases	Other
<b>Total</b>	18	17	3	10	20	22	16	11	17	8
Alaska	/	/	X	~	X	X	X	X	X	
Arkansas	X	X		X	X	X	X	X	X	
Colorado	X	X		X	X	X	X		X	
Connecticut	X	X		X	X	X	X		X	X
Delaware	X	X		X	X	X	X		X	X
Hawaii	X			~	X	X			X	
Iowa	X	X		~	X	X	X	X		
Kentucky	X	X	X	X	X	X	X		X	X
Maryland	X	X			X	X				
Massachusetts	X	X	X	~	X	X	X	X	X	
Minnesota		X		~	X	X			X	
Missouri	/	/			X	X			X	
Montana	X	X		X	X	X	X	X	X	X
New Hampshire	X	X		X	X	X	X		X	X
New Jersey	X	X		X	X	X	X	X		X
New Mexico	/	/			X	X	X		X	
North Dakota	X	X		~	X	X	X	X		
Rhode Island	X			~	X	X		X	X	
Vermont	X	X		~	X	X	X	X	X	X
Virginia	X	X		X		X				
Wisconsin	X	X		~	X	X	X	X	X	X
Wyoming	X	X		X		X	X	X	X	

/Data not reported.

~Not applicable. Alaska, Hawaii, Iowa, Massachusetts, Minnesota, North Dakota, Rhode Island, Vermont, and Wisconsin did not have the death penalty in 2007.

State public defender programs reported a median 10% turnover rate of assistant public defenders in 2007 due to resignation, termination, retirement, or illness (table 15). Virginia had the highest attrition rate (24%) and one of the lowest averages for assistant public defenders' length of service (3 years). Nearly all states with an attrition rate below 10% reported assistant public defender salaries that were at or above the median salary observed in the 22 states.

**From 1999 to 2007, public defender program caseloads increased by 20% while staffing increased by 4%**

Seventeen of the 22 states in this report had established a state public defender program in 1999. These states were included in the BJS National Survey of Indigent Defense Systems (NSIDS)

conducted from 1999 to 2000.<sup>9</sup> Data on caseloads, staffing, and expenditures from 1999 and 2007 can be compared for these 17 states. The 1999 expenditure data have been adjusted for inflation and are represented in 2007 dollars.

Overall, total expenditures, cases received and full-time equivalent (FTE) public defenders increased in the 17 states from 1999 to 2007 (table 16). The number of attorneys employed in state public defender programs increased by 4%, from approximately 2,700 to over 2,800. Additionally, criminal caseloads increased by 20% overall and total expenditures increased by 19% during this period. There was considerable variability in the caseload, expenditure, and staffing trends for individual states.

<sup>9</sup>See *State-Funded Indigent Defense Services, 1999*, <<http://bjs.ojp.usdoj.gov/content/pub/pds/sfids99.pdf>> for 1999 data on the 17 state public defender programs.

Table 15.

**Length of service, attrition rate, and base annual salary for assistant public defenders in state public defender programs, by state, 2007**

State	Mean years of service	Attrition rate <sup>b</sup>	Salary for assistant public defenders <sup>a</sup>					
			Entry level		5 years or less experience		6 years or more experience	
			Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
<b>Median</b>	9	10.0 %	\$46,000	\$58,400	\$54,800	\$64,900	\$60,300	\$77,700
Arkansas	5	10.0	39,400	47,500	/	/	/	/
Colorado	7	16.5	45,700	59,100	49,900	65,600	67,700	90,700
Connecticut	13	4.0	58,300	63,100	71,000	71,000	73,900	121,800
Delaware	18	4.8	52,700	52,700	56,900	76,400	79,000	97,700
Hawaii	6	11.0	57,100	57,100	65,300	78,300	78,300	89,600
Iowa	12	--	44,400	67,600	55,600	85,500	71,900	102,300
Kentucky	9	13.0	38,800	51,400	46,900	60,000	51,600	60,000
Maryland	10	4.0	53,000	77,400	56,500	90,700	60,300	96,800
Massachusetts	8	12.5	37,500	37,500	39,000	55,500	57,500	77,700
Minnesota	10	5.0	49,200	92,000	/	/	/	/
Montana	1	20.0	40,000	58,800	58,800	70,500	60,100	70,500
New Hampshire	5	15.3	42,900	42,900	44,500	56,600	63,600	74,700
New Jersey	11	6.6	54,500	77,400	68,600	97,900	78,800	112,700
North Dakota	2	0.0	46,000	60,000	46,000	60,000	50,000	62,000
Rhode Island	12	15.0	51,500	58,400	63,000	64,300	70,500	71,200
Vermont	11	13.3	37,200	47,400	44,300	56,500	52,800	67,500
Virginia	3	24.0	48,200	64,600	/	/	55,200	72,900
Wisconsin	16	7.9	47,000	47,000	49,700	49,100	49,100	113,000
Wyoming	6	10.0	45,000	45,000	54,000	57,000	57,000	66,000

Note: Data not provided by Alaska, Missouri, and New Mexico.

--Less than 0.5%.

/Not applicable. Respondent reported "no such position."

<sup>a</sup>Rounded to the nearest hundred dollars.

<sup>b</sup>Attrition rate is defined as the number of litigating attorneys who left the office in fiscal year 2007, divided by the total number of litigating attorneys employed on the first day of the fiscal year. Attrition rate includes supervisory attorneys as well as assistant public defenders.

Increases in the number of cases received were greater than increases in staffing or expenditures in five states from 1999 to 2007: Colorado, Massachusetts, New Hampshire, Rhode Island, and Virginia. Conversely, caseloads in state-based public defender offices stayed the same or decreased in five states during the same period: Delaware, Hawaii, Iowa, Minnesota, and Vermont.

After adjusting for inflation, Virginia's public defender program spent 67% more in 2007 than in 1999. Hawaii (down 20%), Missouri (down 12%), Minnesota (down 5%), and New Jersey (down 4%) had declines in expenditures during this period. From

1999 to 2007, Minnesota had greater declines in both criminal caseloads (down 20%) and FTE public defenders (down 30%) than in expenditures.

Of the states that reported data in 1999 and 2007, more state programs had a decline in the number of FTE public defenders than in the number of cases received or expenditures. Seven state programs reported a decrease in the number of FTE public defenders from 1999 to 2007, compared to four programs reporting a decrease in criminal caseloads and four state programs reporting a decline in expenditures during this period.

Table 16.

**Percent change in criminal caseloads, operating expenditures, and the number of full-time equivalent (FTE) attorneys in state public defender programs, by state, 1999 and 2007**

State	Criminal caseload <sup>a</sup>			Operating expenditures (in thousands)			Total FTE attorneys <sup>b</sup>		
	1999	2007	Percent change	1999 <sup>c</sup>	2007	Percent change	1999	2007	Percent change
<b>Total</b>	711,090	855,417	20%	634,851	752,825	19%	2,710	2,819	4%
Alaska	15,853	/	/%	14,021	17,231	23%	84	94	12%
Colorado	54,352	81,842	51	32,044	37,884	18	249	244	-2
Connecticut	56,327 <sup>d</sup>	83,100 <sup>d</sup>	48	32,197	47,600	48	169	127	-25
Delaware	30,460 <sup>e</sup>	26,285	-14	10,286	13,713	33	60	72	20
Hawaii	35,778	35,874	0	10,614	8,500	-20	94	100	6
Iowa	48,360	35,060	-28	43,246 <sup>f</sup>	48,533	12	126	97	-23
Maryland	/	166,367	/	55,304 <sup>f</sup>	77,519	40	/	518	/
Massachusetts	6,200	16,278	163	87,559 <sup>f</sup>	123,400	41	125	201	61
Minnesota	140,475	112,224	-20	65,318 <sup>f</sup>	61,800	-5	527	371	-30
Missouri	73,738 <sup>d</sup>	83,160 <sup>d</sup>	13	38,944	34,138	-12	337	297	-12
New Hampshire	8,812	20,865	137	11,362	12,668	11	65	108	66
New Jersey	58,165	66,391	14	102,727	99,000	-4	350	495	41
New Mexico	53,911 <sup>d</sup>	72,740 <sup>d</sup>	35	32,230 <sup>f</sup>	37,083	15	161	234	45
Rhode Island	10,500	15,686	49	6,696	8,782	31	48	44	-8
Vermont	10,344	9,202	-11	6,095	6,839	12	46	29	-37
Virginia	41,019	85,937	110	22,365	37,369	67	269	306	14
Wisconsin	82,649	110,773	34	54,058	80,766	49	/	302	/

Note: Arkansas, Kentucky, Montana, North Dakota, and Wyoming did not have state public defender programs in 1999 and are not included in the table. /Data not reported.

<sup>a</sup>Criminal caseload counts include felony capital, felony noncapital, misdemeanors that carry a jail sentence, ordinance infraction, appeal, and probation and revocation cases. Juvenile, civil, and other cases, including special proceedings, miscellaneous hearing, post conviction probation, and child protection cases, are excluded from the analysis because of changes in the way these data were collected in 2007. Numbers from 2007 do not include probation and revocation cases. Totals and percent changes are based on the 15 states that reported data in both 1999 and 2007.

<sup>b</sup>Includes full and part-time chief public defenders, managing attorneys, supervisory attorneys, and assistant public defenders. Totals and percent changes are based on the 15 states that reported data in both 1999 and 2007. See *Methodology* for definition of full-time equivalent (FTE).

<sup>c</sup>Expenditures from 1999 are adjusted for inflation according to the Consumer Price Index and presented in 2007 dollars.

<sup>d</sup>Includes total criminal, juvenile, civil, and other cases.

<sup>e</sup>Includes conflict cases.

<sup>f</sup>Expenditures reported for all indigent defense services in the state.

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## Methodology

The 2007 Census of Public Defender Offices (CPDO) collected office-level data from 957 publicly funded public defender offices located in 49 states and the District of Columbia. (Maine had no public defender offices in 2007 and provided all indigent defense services through assignment to and contract services with private attorneys.) The universe included all public defender offices principally funded by state or local governments to provide general criminal defense services, conflict services, or capital case representation.

Federal public defender offices and offices providing primarily contract or assigned counsel services with private attorneys were excluded from the data collection. Public defender offices funded privately or principally by a tribal government or by offices providing primarily appellate or juvenile services were also excluded.

### *Scope of Data Collection*

The Bureau of Justice Statistics (BJS), the National Legal Aid and Defender Association (NLADA), and a number of chief defenders and other experts in the field of indigent defense collaborated to develop the CPDO data collection instrument. The American Bar Association's Standing Committee for Legal Aid and Indigent Defense and the National Association of Criminal Defense Lawyers also had the opportunity to review and comment on the instrument. The data collection began in April 2008 and was completed in March 2009.

BJS had questionnaires sent to 1,046 public defender offices identified in the United States. Approximately 97% of the offices provided responses to at least some of the critical items identified on the survey instrument.

### *Organizational Structure of Public Defender Offices*

The CPDO included both state and county-based public defender offices. State-based offices functioned entirely under the direction of a central administrative office that funded and administered

all the public defender offices in the state. County-based offices were administered at the local level and funded principally by the county or through a combination of county and state funds. The Public Defender for the District of Columbia was funded by the Federal Government, but functions as a county-based office and was classified as such.

These variations in public defender systems dictated the distribution of the CPDO data collection instrument. In the District of Columbia and states with county-based public defender offices, each of 588 offices submitted one completed questionnaire via hardcopy or online submission. Only the 530 offices that served as the principal public defender office for the jurisdiction are included in table 1.

Data presented are primarily from the 22 central offices of the state public defender programs. The 22 states completed an online questionnaire and responded to questions pertaining to each of the local offices within the states. All 22 states provided responses to at least some of the critical items identified on the survey instrument. In select instances where respondents did not provide the information requested and the information was detailed in certain state statutes, BJS analysts used the statutes to supply missing data.

Because the state-based public defender offices often shared resources among local offices as needed, the state programs had the option of providing data on staffing, caseload, and expenditures either for the entire state or for each individual office. Six of the 22 state-based public defender programs were able to provide complete information at the local office level, covering 27% of the 427 local offices in state-based public defender programs. Sixteen state programs provided a portion of the data at the state level and a portion of the data at the local office level. Because of the variations in the level of data provided by each state public defender program, all local office data were aggregated to the state level for these 22 states.

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### *Measuring caseload versus workload*

The CPDO was designed to collect aggregate data from public defender offices or programs. Respondents were instructed to provide the number of cases received by the office or program in 2007. This caseload number is presented throughout the report as a measure of public defender office labor. While workload is generally considered a more accurate measure of the burden on public defenders than caseload, an assessment of workload requires data on the number and types of cases handled by individual attorneys within an office, as well as information about additional attorney responsibilities. The survey instrument and project design did not allow for assessment of the work of individual attorneys within an office. Providing data on individual attorneys would have been burdensome and time-consuming for the public defender offices and programs.

### *Calculating number of full-time equivalent (FTE) litigating attorneys*

Full-time equivalent (FTE) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. (See U.S. Census Bureau, Government Employment, 1997, Web. Updated annually. <[http://quickfacts.census.gov/qfd/meta/long\\_58632.htm](http://quickfacts.census.gov/qfd/meta/long_58632.htm)>.)

Included are litigating attorneys who carry a caseload (supervisory attorneys, assistant public defenders, and chief defenders). Excluded are managing attorneys who do not litigate cases. Data on whether chief public defenders carry a caseload were missing for Alaska, Arkansas, Missouri, and New Mexico. The total number of FTE litigating attorneys excludes chief public defenders in these 4 states.



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The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. James P. Lynch is director.

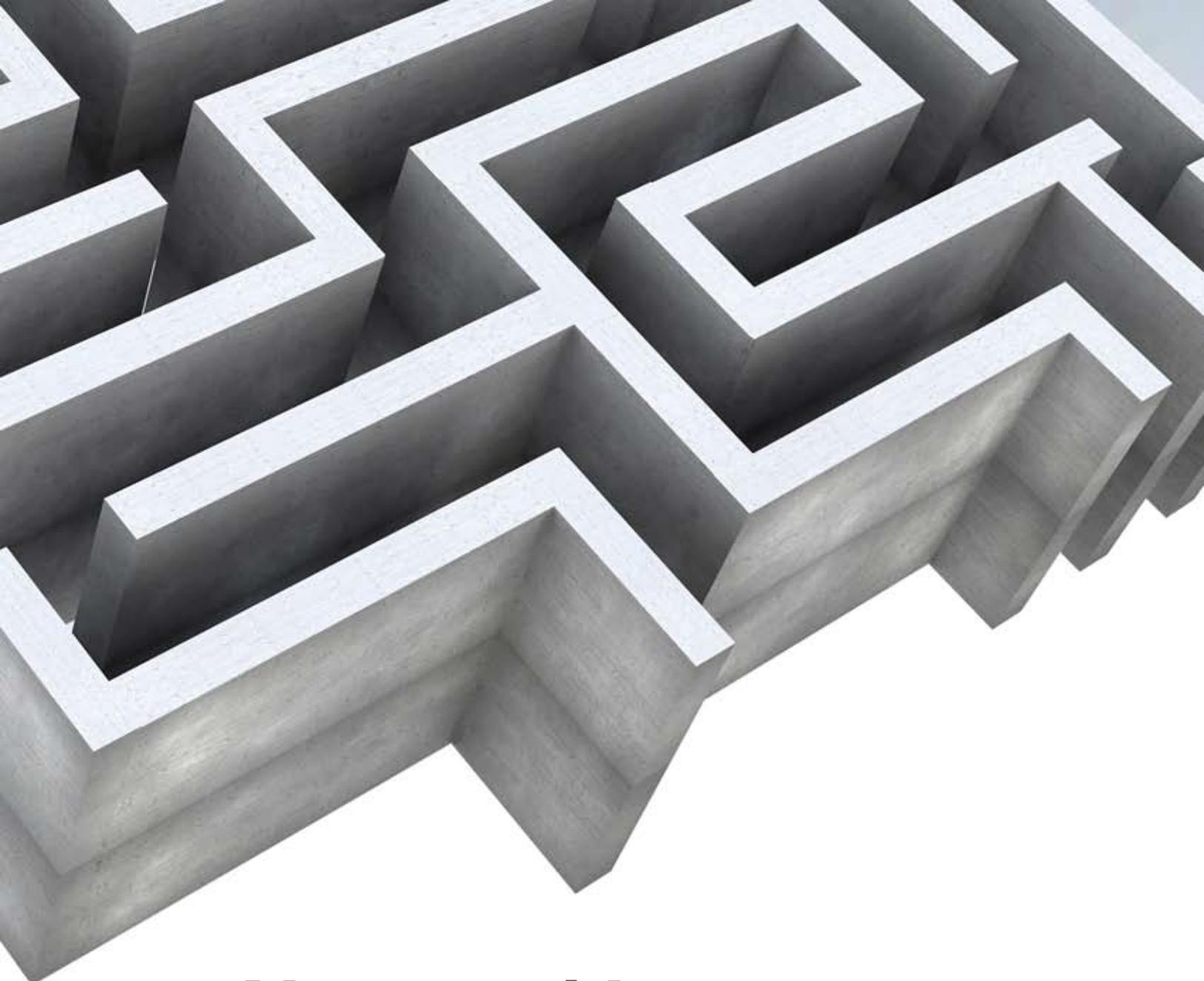
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# **Now and Later:** The Short and Long-Term Consequences of a Louisiana Conviction

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## FOREWORD

All across the United States, communities are destroyed by crime, but also by punishment. The lingering effects of a criminal conviction can have a multi-generational impact on an individual's family and community. While collateral consequences affect all convicted defendants, regardless of whether they serve a prison sentence, Louisiana's position as the state with the highest per capita rate of incarceration in the country makes us particularly vulnerable to community deterioration created by the collateral consequences of a criminal conviction.

Public defenders represent defendants who qualify for counsel because they lack the means to afford private attorneys. Economic insufficiency is an undeniable feature of the vast majority of clients that public defenders serve. As a result, the collateral consequences of criminal convictions hit public defender clients harder than those with the means to afford private counsel, even if the crimes and imposed penal or financial sanctions are the same.

First, many public defender-appointed clients depend on some measure of public assistance – assistance that they depend on for basic human needs including housing, dietary subsistence and medical treatment. Further, the collateral consequences of a conviction may obstruct an individual's attempt to improve her circumstances by interfering with her ability to complete his education, earn a living wage at a job that provides individual and family benefits or participate as a fully engaged community leader. Often times, despite good faith efforts to “break the cycle”, barriers at every turn substantially increase the likelihood that the individual may have future contact with the criminal justice system.

Second, because of the proven connection between crime and poverty, compounded by selective policing, collateral consequences have a severe effect on communities that are already traditionally underserved. Because of the highly interdependent and extremely fragile relationships within many of our client communities, the collateral consequences of a criminal conviction are often not borne only by the individual, but by the community as a whole. For example, a family's loss of a Section 8 voucher as a consequence of criminal conviction becomes a burden that affects the whole community, often splitting families, interrupting childrens' educations and violating the network of supports and monitors that should accompany any high-risk family unit. Denied access to needed mental health services, and its corresponding behavioral results, is often absorbed by the community where that individual lives. The ripples of a single conviction can have deep and long-lasting effects.

It is imperative that the attorney-client relationship be developed to gain a holistic appreciation of the client's circumstances. This relationship is a prerequisite for a public defender to competently represent the client against the criminal complaint. Recently, the Supreme Court ruled that defense counsel was ineffective when he failed to advise his client that his drug conviction was a presumptively mandatory deportable offense and inaccurately advised him that his length of time in the country would preclude deportation. The lawyer's lack of knowledge of

the collateral consequences on the client's immigration status resulting from the client's drug conviction was the basis of the finding of ineffectiveness.

Knowledge of the collateral consequences of a conviction inform the client's decision of whether to go to trial or to enter a plea. That knowledge is also imperative in the plea bargaining process. Representation on the issue of guilt or innocence is only one part of an effective defender's job. Public defenders must also ensure accurate sentencing, explore alternatives to incarceration and advocate for the least restrictive consequences of a conviction. When they do, resourced public defenders are able to achieve enduring solutions to their clients' legal issues, and are therefore, one of our communities' most valuable assets.

By providing high quality-defense services, public defenders minimize the likelihood of recidivism and wrongful conviction – saving tax dollars, protecting public safety and giving their clients the best opportunities to become valuable members of our community. We hope that this guide serves as a practical tool for public defenders to more effectively advocate for their clients by considering the myriad collateral consequences that affect their clients' lives.



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## **I. Introduction**

When a defendant is convicted of a criminal offense, the judge imposes a sentence upon the defendant that is the direct punishment for the crime. The defendant stands before the bar as the judge orally tells him what that punishment will be<sup>1</sup> and the terms are reduced to writing.<sup>2</sup> Traditionally, as far as the judge, prosecutor, and defense attorney are concerned, the specific punishments and restrictions imposed at the time of sentencing, typically time to be served in prison or jail, fines and costs of court, conditions of probation, restitution to any victim, and forfeiture of property and contraband, are the entirety of the concern of the criminal justice system. The moment the defendant leaves the courtroom, however, a hailstorm of other legal effects of the criminal conviction will rain down upon him without warning. These effects have come to be known as collateral consequences.

### **Definition of Collateral Consequences**

There are many unpleasant consequences for a person who is convicted of a crime. There is the actual sentence imposed by the judge, which may include spending time in jail, paying monetary penalties or bearing various limitations on freedom during a period of probation. For purposes of this guide, these sentencing components are referred to as the direct punishment. There is the social stigma that is imposed by the community within which one lives and works, and this is outside the purview of this guide. Finally, there are the myriad penalties and disabilities that are imposed or expressly allowed by law but which take effect outside of the criminal sentencing process. These are the subject of this guide and fall within the broad term of collateral consequences.

In August 2003, the American Bar Association (ABA) adopted criminal justice standards regarding collateral consequences of criminal convictions.<sup>3</sup> In so doing, the ABA divided collateral consequences into two categories: collateral sanctions, those imposed automatically even though not included in the sentence;<sup>4</sup> and discretionary disqualifications, those that some official has discretionary authority to impose.<sup>5</sup> The ABA noted that, while the variety, severity, and length of effect of collateral consequences have steadily increased during the past two decades,<sup>6</sup> there has nonetheless been no consistency in the application of these consequences nor has there been consensus about what is and is not collateral.<sup>7</sup>

### **Purpose of the Handbook**

The ABA Standards on Collateral Sanctions called upon state legislators to identify and collect all collateral sanctions in a single chapter or section of their jurisdiction's criminal code.<sup>8</sup> Until such time as the Louisiana Legislature acts upon that call, this handbook is a first effort to highlight the range of collateral consequences to which a defendant in Louisiana is exposed. The consequences addressed here affect housing, employment, civil rights, governmental benefits, family, education, and immigration status. Yet this is not an exhaustive study; in fact it is doubtful whether any report could ever claim to have delineated each and every collateral consequence of each and every type of criminal conviction within any jurisdiction. Readers are cautioned to review the entire text of any authority cited here upon which they intend to rely, and further cautioned that the laws cited were current only as of June 2010 and may have been changed since that time.

Rather, it is hoped that this handbook will be a beginning – to serve as a practical tool to assist criminal defense attorneys and their clients in making informed decisions about the entry of a guilty plea; to serve as a guide to prosecutors and judges in fashioning plea agreements and sentences that will achieve the intended goals of sentencing; and to serve as food for thought for legislators, policymakers, and citizens in achieving a fair, efficient, and effective criminal justice system.

## **II. Housing**

### **a. Does the state or federal government provide housing assistance to low or no income persons?**

Yes. Although the federal statutes mention several programs, there are basically two that are relevant to our clients: public housing and Section 8 housing.<sup>9</sup>

### **b. What is meant by the term “public housing?”**

“Public housing” refers to government-built housing units known colloquially as “the projects.” Families who live in public housing pay rent on an income-based sliding scale.

### **c. What is meant by “Section 8” housing?**

Section 8 housing refers to a situation where low-income persons choose where they will live among available privately owned and operated rental properties. Their rent is subsidized by governmental assistance.<sup>10</sup>

### **d. What body of law governs public housing?**

Although federal housing assistance funding is disbursed to the states, the federal government has established a basic framework of laws that every public housing agency must comply with regarding basic eligibility and grounds for termination.

In addition to the federal rules, the states are free to pass additional laws regarding who may receive housing assistance and under what circumstances as long as the state complies with federal housing assistance laws. In Louisiana, the Louisiana Housing Authority Law governs who is eligible to receive housing assistance and under what conditions that assistance must or may be terminated. These laws are augmented by another layer of policies and regulations promulgated by the state’s 167 local housing authorities.

### **e. How does a criminal arrest or record affect public housing eligibility?**

A criminal arrest or record can render an applicant and their entire household ineligible for public housing or housing assistance. In Louisiana, every person convicted of any felony or

misdemeanor and every person arrested for or reasonably suspected of engaging in criminal or otherwise prohibited behavior, and their entire household, may be permanently ineligible for housing assistance.<sup>11</sup>

Not only may a person be excluded from living in public housing or receiving housing assistance; they may also be permanently excluded from even visiting a friend or family member who does.<sup>12</sup>

**f. What type of activity can result in eviction from public housing?**

Drug-related criminal activity committed on or near the premises, or any criminal activity that threatens the health, safety or right to peaceful enjoyment of residents living in the immediate vicinity may result in eviction.<sup>13</sup> Illegal drug use or a pattern of illegal drug use or alcohol abuse that interferes with the health, safety, or right to peaceful enjoyment of the premises may result in eviction, although evidence of rehabilitation may be considered.<sup>14</sup> Persons violating probation or parole may also be evicted from federally-funded housing.<sup>15</sup> Local public housing authorities may have additional rules regarding eviction.

**g. Are there special rules for offenders who are parents or guardians of child victims?**

Yes. If a client's child is the victim of the offense and the client is intending to return to the residence or community where his or her child lives, then the child must receive psychological counseling before the client can be paroled. The counseling, paid for by the client, must include assistance to the child in coping with potential insensitive comments by the child's neighbors and peers. If the child is not provided counseling, the client cannot be released on parole.<sup>16</sup>

**h. May a private landlord deny housing or evict based upon a criminal record or criminal activity?**

Yes. Private housing is governed by the law of lease. Owners of rental properties can write into lease contracts many clauses that can be used as the basis for a search of the premises or eviction. Examples include the right to search the rental property based upon mere suspicion of drug activity and eviction for domestic violence. Owners of rental property may not discriminate on the basis of race, color, national origin, religion, sex, familial status or handicap,<sup>17</sup> but are well within their rights to run criminal background checks on potential tenants and deny housing based upon a criminal record.

**i. Can a juvenile record (or a household member's juvenile record) affect eligibility for public housing?**

Yes. Federal law bars juveniles adjudicated for a sex offense which carries with it lifetime sex offender registration from living in public housing.<sup>18</sup> Juveniles are banned from public housing for three years when they have been evicted for drug-related activity.<sup>19</sup> This includes drug

abuse.<sup>20</sup> The housing provider may make an exception if the juvenile successfully completes a supervised drug rehabilitation program approved by the local public housing authority or the circumstances leading to the eviction no longer exist. For example, the housing authority can make an exception if the juvenile is placed in a secured care facility.<sup>21</sup>

**j. Can the arrest or adjudication of a juvenile household member result in a family's eviction from public housing?**

Yes. A juvenile's delinquent acts may lead to a family's eviction from public housing; an adjudication of delinquency is not necessarily required. Federal law states that, for public housing, drug-related criminal activity by juvenile household members may result in the entire family being evicted, even if their delinquent conduct does not occur on public housing property.<sup>22</sup>

**k. Are there any other considerations to take into account when advising my client?**

Yes. When applying for public housing or housing assistance, it is important that the client be aware that furnishing false or misleading information on a housing assistance application is grounds for ineligibility under state law and cause for termination under federal law.

Violent criminal activity is also grounds for ineligibility under both state and federal law; however, violent criminal activity is not defined anywhere in the federal or state housing laws. It is safe to presume that the term could easily include all offenses defined as a crime of violence under La. R.S. 14:2(13).

### **III. Employment and Licensing**

**a. Are employers allowed to ask about past criminal convictions on employment applications?**

Yes. There is no law prohibiting employers from asking applicants about their criminal histories.

It is unlawful, however, for any public or private employer to require an applicant to pay for the cost of fingerprinting, a medical examination, drug test or the cost of furnishing any records required by the employer as a condition of employment.<sup>23</sup>

**b. What are the implications for clients working in professions requiring a license?**

The licensing implications are many and varied depending on the occupation, disposition of the crime, licensing board discretion and potential discipline. A conviction, plea or even an arrest

could prevent an applicant from licensure in the first instance or result in discipline or license forfeiture if already licensed.

A prior criminal record, alone, shall not disqualify any person to practice or engage in any trade, occupation, or profession for which a license is required. This standard does not apply, however, where the person has a felony conviction that directly relates to the sought position of employment or to the occupation, trade, or profession for which the license, permit or certificate is sought.<sup>24</sup> Furthermore, this section does not apply to an enumerated list of state agencies.<sup>25</sup>

**c. Can licensing boards take into consideration other factors when considering a license application or revocation?**

Yes. Often, along with a conviction or plea, licensing statutes provide that boards may consider addiction or excessive use of alcohol or drugs in deciding to discipline a licensee. Also, boards are often required to consider “good moral character” or “temperate habits” in determining whether or not an applicant should be licensed. There is no statutory provision for how a criminal conviction or plea, enrollment in a drug treatment program or a diversion program, or participation in drug court might bear on any of these considerations of a licensing board. However, these should be considerations for persons who are or desire to be licensed in certain professions.

**d. How do Louisiana’s licensing statutes treat offenses committed in other jurisdictions?**

Licensing statutes are often unclear as to how offenses that are misdemeanors in other jurisdictions but felonies in Louisiana affect a person’s license status. This vagueness is relevant when advising clients about exploring certain licenses rather than for pre-trial/pre-plea advising.

**e. Can a client’s arrest or conviction impact his/her employment, even if he or she is not required to be licensed?**

Yes. Some statutes provide that boards shall change the licensing status or otherwise reprimand some employers based upon the criminal actions or statuses of their employees. Thus, though a client may not be in a position to possess a license, his or her conviction or plea could potentially affect an employer’s licensing status and thus the desire of the employer to retain or hire the employee.

**f. Are there special restrictions concerning employment with children?**

Yes. The Louisiana Child Protection Act requires that any employer or others who supervise those who work with children request criminal background checks for all potential employees. The Bureau of Criminal Identification and Information is to supply reports containing the dates

of any convictions and *nolo contendere* pleas for a period not to exceed 10 years prior to the date of the request, surveying both its own records and those of the FBI.

**g. Does the school setting impose any special standards on employment?**

Yes. There are especially specific and stringent standards surrounding a person's ability to work in a school after criminal convictions or *nolo contendere* pleas.

Conviction of, or plea to, an offense under La. R.S. 15:587.1(C) will result in termination of teachers and other school employees.<sup>26</sup> Teachers receive a hearing before dismissal, but other school employees do not. Prior to hiring a teacher or school employee, the school board is required to conduct criminal background checks of all applicants.<sup>27</sup>

Statutory provisions prohibit hiring any person convicted of an offense under La. R.S. 15:587.1(C) by any city, parish, or local public school board or any nonpublic school or school system.<sup>28</sup> Included employees are: teachers, substitute teachers, bus drivers, substitute bus drivers, janitors, or temporary, part-time, or permanent school employees of any kind.<sup>29</sup> Also included in the prohibition are persons employed to provide cafeteria, transportation, janitorial, or maintenance services or an entity that contracts with a school or school system to provide such services,<sup>30</sup> unless a nonpublic school or school system determines that these employees will have "limited contact" with students and takes appropriate steps for student safety.<sup>31</sup>

**h. Will a criminal conviction or arrest impact employment in the oil and gas, chemical, shipping or related industries?**

Possibly. Working in these industries is often dependent on the ability to obtain a Transportation Worker Identification Credential (TWIC) card. This is a biometric security credential issued to individuals that allows them unescorted access to all Marine Transportation Security Act (MTSA) regulated facilities and vessels.<sup>32</sup> It also applies to mariners holding Coast Guard issued credentials.<sup>33</sup> To qualify for the card, the applicant must be a U.S. citizen or fall into an eligible immigration category and cannot have been convicted of certain crimes.

There are two categories of crimes: permanent disqualifying offenses and interim disqualifying offenses. Permanent disqualifying offenses include such crimes as espionage, sedition, treason, murder, crimes involving a transportation security incident and improper transportation of a hazardous material.<sup>34</sup>

Under the interim disqualifying offenses category, a conviction, guilty plea and/or acquittal by reason of insanity for listed offenses within seven years or release from prison within five years are disqualifying factors.<sup>35</sup> The list of offenses includes crimes such as felony drug convictions, rape or aggravated sexual abuse, arson and robbery.<sup>36</sup>

If the applicant has an otherwise disqualifying offense, (s)he can apply for a waiver.<sup>37</sup> The exception is applicants who are under warrant or indictment. These persons are barred from

issuance of a TWIC card until the warrant is released or the indictment is released.<sup>38</sup> The waiver request should explain why (s)he no longer poses a security threat. The factors in this determination are several and include such considerations as the circumstances surrounding the conviction, personal and work history, and payment of restitution and/or completion of “mitigation remedies” such as community service.<sup>39</sup> Applicants determined ineligible because of a criminal offense may appeal if the decision was based on incorrect court records or incorrect information provided at enrollment.<sup>40</sup>

**i. Can juvenile records be viewed by potential employers?**

Yes, for certain juveniles and for certain offenses. Juvenile records can be viewed for employment purposes for juveniles over the age of fourteen accused or adjudicated of specifically enumerated crimes of violence, a second or subsequent felony-grade act or (in cases of adjudication) possession with intent to distribute a controlled dangerous substance.<sup>41</sup> For other juveniles, employers will not be aware of a juvenile court record unless reported by the applicant. If reported, the employer may then petition the court for access to the record but may only obtain the record after showing good cause when the information is material and necessary to a specific investigation or proceeding.<sup>42</sup>

**j. Can employers view juvenile records that have been expunged?**

No. Juvenile records ordered expunged are to be destroyed in all forms in which they exist.<sup>43</sup> Notwithstanding the prior statement, limited references to the destroyed records may be maintained by the court but not distributed to anyone for employment purposes.

**k. How should juveniles respond to inquiries about their juvenile record on job applications?**

Louisiana law does not explicitly require a juvenile to report adjudications when asked about criminal convictions. Since juveniles in delinquency proceedings are not “convicted of crimes” but are adjudicated of delinquent acts, juveniles may truthfully answer “no” to questions asking if they have ever been convicted of or pled guilty or *nolo contendere* to a felony.

Nevertheless, juveniles should be advised of the possible negative consequences of answering “no” to this question. If the employer discovers the record through some other means, the juvenile may risk being denied employment or fired for providing false information.

**l. Which occupations require disclosure of juvenile arrests or adjudications?**

The law does not specify whether juveniles must disclose arrests or adjudications for any occupations. Licensing boards each have their own policies regarding disclosure of juvenile records. Juveniles should be advised to contact the licensing board to which (s)he is applying to learn its policy.

## **IV. Education**

### **a. Do the state's colleges and universities ask about criminal convictions on applications?**

Questions about criminal history vary among the state's institutions of higher learning and even within the same university system due to the lack of legislative oversight in this area. The questions can range from the general to the very specific, depending on the institution and the degree program. While the admission decision does not necessarily hinge on criminal history, violent offenses and sex crimes are scrutinized most closely.

The exception to this generally permissive admissions policy is found in the nursing profession. Nursing programs in Louisiana are required by statute to obtain criminal background checks from prospective students and if a criminal conviction exists, the applicant must obtain permission from the Louisiana State Nursing Board to attend classes.<sup>44</sup>

### **b. Will a criminal conviction or arrest prevent a student from receiving federal financial aid?**

Yes, if convicted of a drug offense. A person convicted of any drug offense under state or federal law while receiving federal aid (grant, loan or work study) will be barred from receiving future federal aid for statutorily mandated time periods.<sup>45</sup>

If the conviction was for possession of a controlled substance the student will be barred from receiving assistance for one year from date of conviction for the first offense, two years for the second offense and indefinitely for a third offense.<sup>46</sup> If the conviction was for sale of a controlled substance the student is barred from receiving assistance for two years after conviction for a first offense and barred indefinitely for a second offense.<sup>47</sup>

A student whose eligibility for federal aid has been suspended may regain eligibility before the end of the suspension period if (s)he satisfactorily completes drug rehabilitation that statutorily conforms to established criteria,<sup>48</sup> if the student passes two random drug tests administered by an approved drug rehabilitation program,<sup>49</sup> or if the conviction is reversed, set aside or otherwise rendered nugatory.<sup>50</sup>

### **c. Do the laws governing state financial aid differ significantly from their federal counterparts?**

Yes, the state rules are much stricter. The Louisiana Office of Student Financial Assistance (LOSFA) requires that applicants have no criminal convictions save for misdemeanor traffic violations. The rule applies to both past criminal activity and any criminal conviction rendered while receiving assistance and there is no rehabilitative clause as in the federal system. Finally,

LOSFA considers a criminal conviction to be a lifetime bar on receiving state financial aid benefits.<sup>51</sup>

If false or misleading information is provided to LOSFA, the administering agency may seek immediate reimbursement for aid already disbursed. If it is further determined that the award was made due to an intentional misrepresentation, the case is then referred to the Attorney General for investigation and prosecution. During the investigation, the student shall remain ineligible for future award consideration pending outcome of the investigation.<sup>52</sup>

**d. Can a delinquency petition filed against a juvenile affect his/her elementary or high school education?**

No. The mere existence of a delinquency petition will not cause a juvenile to be expelled or suspended from public school. Students may be disciplined for conduct “in school or on the playgrounds of the school, on the street or road while going to or returning from school, or during intermission or recess.”<sup>53</sup> Thus, the school disciplinary action may occur as a result of the same acts alleged in a delinquency petition, but not due to the existence of the petition itself.

Private schools may expel or suspend a student for any violation.

**e. For delinquent acts committed at an elementary or secondary school, how long can a juvenile be suspended or expelled?**

It depends on the age of the juvenile and the offense in question.

If found guilty after a school hearing for possession of a firearm, juveniles sixteen or older, or in grades six through twelve, will be expelled for a minimum of two full school years.<sup>54</sup> Juveniles in kindergarten through grade five will be expelled for a minimum of one full school year.<sup>55</sup>

If found guilty after a school hearing of possession of any illegal drug or of possession with intent to distribute any illegal drug, juveniles sixteen and older will be expelled for a minimum of two full school years.<sup>56</sup> Those who are under sixteen years old and in grades six through twelve will be expelled for a minimum of one full school year.<sup>57</sup> For juveniles in kindergarten through grade five, the school board is allowed discretion in taking disciplinary action.<sup>58</sup>

Juveniles adjudicated delinquent in a juvenile court for a felony grade delinquent act or incarcerated in a juvenile institution may be expelled for a period of time to be determined by the school board. The expulsion requires the vote of two-thirds of the elected members of the school board.<sup>59</sup>

Juveniles found guilty of committing an assault or battery on a school employee cannot attend school where that employee works.<sup>60</sup> For damages to school property (or a school bus), a juvenile who has been suspended for the act cannot return to any school in that school system (or ride any school bus) until (s)he has fully paid for the damages.<sup>61</sup>

Juveniles who have been expelled cannot re-enroll in any public school in any other school system in the state without the approval of the school board for the new school.<sup>62</sup>

**f. Is there any relief available if a youth has been suspended or expelled for delinquent acts committed at school?**

Yes, for some students.

For students found guilty by the school of possession of a firearm, the superintendent of a city, parish or other local public school system may modify the length of a minimum expulsion requirement on a case-by-case basis, provided that such modification is in writing.<sup>63</sup>

Students found guilty by the school of a drug offense may not have their minimum periods reduced.<sup>64</sup>

**g. If a youth applies for state financial aid, must (s)he disclose juvenile arrests or adjudications?**

No. The Louisiana Office of Student Financial Assistance (LOSFA) recognizes that juvenile adjudications are not the same as adult convictions. Applicants do not have to report them on their applications for scholarships and other aid.

**h. How should a juvenile respond to inquiries about his/her juvenile record on post-secondary school applications?**

In Louisiana, there is no law prohibiting colleges or universities from asking applicants about their confidential juvenile court records. Louisiana law does not specifically state whether a juvenile must report adjudications when asked about criminal convictions.

Since juveniles in delinquency proceedings are not “convicted of crimes” but are adjudicated of delinquent acts, juveniles adjudicated guilty of a felony-grade delinquent act may answer “no” to questions about whether they have ever been convicted of or pled guilty or *nolo contendere* to a felony.

Nevertheless, juveniles should be advised of the possible negative consequences of answering “no” to this question. If the college or university discovers the record through some other means, the juvenile may risk being expelled for providing false information on the application.

## **v. Family Matters**

**a. Can a criminal conviction have an impact on marital status?**

Yes. A felony conviction in any state that results in a sentence of death or imprisonment at hard labor constitutes grounds for an immediate divorce in Louisiana. The otherwise applicable waiting periods of 180 days if there are no minor children of the marriage and 365 days if there are minor children of the marriage do not apply in cases of divorces granted on the grounds of a felony conviction.<sup>65</sup>

**b. In what circumstances can a criminal conviction result in termination of parental rights?**

Parental rights may be involuntarily terminated for such crimes as murder, rape or a felony that resulted in serious bodily injury. Parental rights may also be terminated if the incarcerated parent has abandoned the child as demonstrated by a failure to provide significant contributions to the child's support for six consecutive months or by a failure to maintain contact with the child for six consecutive months.<sup>66</sup>

Parental rights may also be terminated if an incarcerated parent does not provide a care plan to the Department of Children and Family Services (DCFS). If the client is the sole caretaker of the minor child (s)he is required to submit a plan to DCFS for the care of the child during any period of incarceration. After DCFS receives notification that a parent is incarcerated, it must send a representative to visit the incarcerated parent and give written notice of the parental obligation to provide a care plan for the child within a 60 day period. The plan is to consist of the names and contact information of proposed caregivers subject to assessment and approval by DCFS. Failure to provide an appropriate plan may result in an action to terminate parental rights.<sup>67</sup>

**c. How can the diligent practitioner help her client avoid termination of his/her parental rights?**

It is very important for your client to maintain contact with his or her child if incarcerated. Contact can come in the form of telephone calls or letters. Even if the custodial parent or guardian refuses to accept the calls or letters, it is important to demonstrate to the court that your client is making a good faith effort to maintain his or her relationship with the child in order to avoid the involuntary termination of parental rights.

**d. Are potential foster and adoptive parents asked about criminal convictions in the application process?**

Yes. The Department of Children and Family Services is required to investigate the background of each person who applies to be a foster or adoptive parent. The investigation must include inquiries into criminal activity and the disposition of any charges. In order to qualify as a foster or adoptive parent, applicants and all members of their household over the age of 18 must provide fingerprints and such authorization as is required to conduct a criminal background check.<sup>68</sup>

**e. If a client is currently a foster parent, how will a criminal conviction affect his or her status?**

The state may revoke his or her foster parent license. All foster parents must be free of convictions, indictment, or substantial evidence of involvement in any criminal activity involving violence against a person, serious sexual misconduct, gross irresponsibility, or disregard for the safety of others or serious violations of accepted standards of ethical conduct.<sup>69</sup> Exceptions may be made, at the discretion of the placing agency, if the criminal activity is not recent or is not sufficiently serious to warrant disqualification and poses no current or future threat to the health, safety, or well-being of children placed in their care.<sup>70</sup>

**f. Are the effects of the conviction confined to the foster parent or do they extend to other household members?**

No. All adult members of the household must be free of convictions, indictment or substantial evidence of involvement in any criminal activity.<sup>71</sup>

**g. Are child support payments suspended while incarcerated?**

No. If a child support order is already in place at the time of incarceration, the obligation to pay the support is not extinguished. While serving the sentence, the child support payments will accrue, without interest, and will become payable upon release. If the incarcerated parent is allowed work-release, the child support payment will be deducted from monies earned.<sup>72</sup>

**h. Can non-payment of child support result in any adverse consequences for the client on probation or parole?**

Yes. Child support is a legal obligation which cannot be discharged in bankruptcy and non-payment is considered contempt of court. Contempt of court is punishable by imprisonment, a \$500 fine or both.<sup>73</sup> If the client is on probation, non-payment of child support is considered a violation that could result in revocation.<sup>74</sup>

**i. Will a juvenile record affect a juvenile's custody of his/her children?**

Yes, if a juvenile committed a rape that resulted in the conception of a child, he may have his parental rights to that child involuntarily terminated.<sup>75</sup> Otherwise, visitation and parental rights issues are determined on a case-by-case basis by the court.

## **VI. Voting**

**a. Can a person with a felony conviction vote in Louisiana?**

Yes, as long as (s)he is not currently incarcerated or on probation or parole.<sup>76</sup>

Legally, those who are awaiting trial on either felony or misdemeanor charges and those who have completed their sentences, including the completion of periods of probation or parole, and the payment of all legal financial obligations, are entitled to vote. Practically, however, pre-trial detainees may find it virtually impossible to register and cast a vote. Similarly, a person who has completed his or her felony sentence may encounter difficulty from the registrar of voters in attempting to register.

If your client is having difficulty exercising his or her right to vote, you should advise them to consult with Voice of the Ex-Offender (VOTE) at 1-504-943-1901 or 1-800-552-VOTE.

**b. Will a juvenile adjudication prevent an adult from registering to vote?**

No. A juvenile adjudication or period of juvenile incarceration will not prevent an adult from registering to vote. Adjudications are not the same as convictions; therefore, adjudications do not fall within the ambit of the statute.<sup>77</sup>

## **VII. Jury Service**

**a. Can a person with a criminal record serve on a federal jury?**

No. If the client was convicted in either state or federal court for a crime punishable by imprisonment for more than one year (s)he is barred from serving on a federal jury.<sup>78</sup>

**b. Is there any way to restore the right at the federal level?**

Yes, the right must be restored through an affirmative act.

Restoration of civil rights that were lost due to a federal conviction can only be accomplished through a presidential pardon.

If the loss of the right to serve on a federal jury occurred as the result of a state conviction, the federal courts and the Administrative Office of the United States Courts have generally interpreted federal law to require an affirmative act, such as a pardon by the state Pardon Board or the Governor, by the state before the jury right will be reinstated.<sup>79</sup> The automatic first offender pardon available in Louisiana is likely insufficient to restore the jury right since it is not considered an affirmative act.

**c. Does Louisiana state law allow a person with a felony criminal record to sit on a state jury?**

No. In Louisiana, a prospective juror must be free of felony convictions in order to sit on a state jury. The prohibition includes those persons who are under indictment for a felony or who have been arrested for a felony on which a bill of information has been filed.<sup>80</sup>

Just as in the federal system, the automatic first offender pardon does not restore the right to sit on a jury because it is not an affirmative act, but the right may be restored by pursuing the formal pardon process.<sup>81</sup>

**d. If a person has been convicted two or more times of a felony, is there any way to restore the jury right at the state level?**

Yes. Any person having been convicted two or more times of a felony can regain his/her state jury right by successfully pursuing the formal pardon process; pardon is considered an act of mercy to which no defendant has a right.<sup>82</sup>

**e. Will a juvenile adjudication affect the right to sit on a jury?**

No. Since juveniles are not convicted of crimes, but adjudicated of delinquent acts the jury right is not affected by a juvenile adjudication.

## **VIII. Firearm Possession**

**a. What type of offenses trigger the federal firearms ban?**

Any type of offense can trigger the ban as long as the offense is punishable by a term of imprisonment exceeding one year. If convicted of a qualifying offense the ban includes both firearms and ammunition.<sup>83</sup> The definition of firearm includes both long guns and handguns.<sup>84</sup>

**b. Are there any exceptions to the ban?**

Yes, there are three general exceptions to the federal firearms ban. Persons convicted of federal and state offenses related to antitrust violations, unfair trade practices, restraints of trade, or other similar offense relating to the regulation of business practices,<sup>85</sup> or of any state offense classified by the laws of that state as a misdemeanor and punishable by a term of imprisonment of two years or less (excluding some persons convicted of misdemeanor domestic violence offenses)<sup>86</sup> retain their right to own a firearm. Any person who has had their conviction expunged, set aside, or pardoned may own a firearm unless the pardon, expungement or restoration of rights order expressly prohibits it.<sup>87</sup>

**c. How is the right to own a firearm restored under federal law?**

The conviction must be expunged or set aside or the person must have been pardoned for the offense or had his civil rights restored in order to regain the right to possess a firearm.<sup>88</sup> These rights must be restored through a federal procedure.<sup>89</sup> Currently, however, there is no federal statutory procedure for restoring civil rights to federal felons.<sup>90</sup> In light of this fact, the Fifth

Circuit has held that the only way a federal felon can regain his or her right to possess a firearm is through a presidential pardon.<sup>91</sup>

**d. Is this procedure different if the client is convicted under state law?**

No, restoration of the right to own a firearm must still be accomplished through expungement, pardon or having the conviction set aside. A conviction under state law differs from conviction under federal law in that the determination as to whether a person's civil rights have been restored is governed by the law of the convicting jurisdiction.<sup>92</sup> In other words, there is a procedure in place in state law for restoration of rights. To wit, a person can have the conviction expunged or pursue the formal pardon process through the Board of Pardons or the Governor.<sup>93</sup>

The automatic first offender pardon does not satisfy the federal statute because, since it does not require action by the Board of Pardons or the Governor, it does not qualify as an affirmative act.

**e. What type of offenses will result in a loss of the right to bear a firearm under state law?**

The list of disqualifying offenses<sup>94</sup> includes a felony which is a crime of violence,<sup>95</sup> simple burglary, burglary of a pharmacy, burglary of an inhabited dwelling, felony illegal use of weapons or dangerous instrumentalities, manufacture or possession of a delayed action incendiary device, manufacture or possession of a bomb, any felony in violation of the Uniform Controlled Dangerous Substances Law,<sup>96</sup> or any sex offense.<sup>97</sup>

**f. How long is someone convicted of a disqualifying offense prevented from owning a firearm under state law?**

A person is prohibited from owning a firearm under state law for ten years following the date of completion of sentence, probation, parole, or suspension of sentence.<sup>98</sup>

**g. What is the procedure for restoring the right under Louisiana law?**

Once the ten year period has passed, a person may apply to the sheriff of his/her home parish or, in Orleans Parish, to the superintendent of police, for a permit to possess firearms. When the sheriff issues the permit, the person is then allowed under Louisiana law to possess a firearm.<sup>99</sup>

The diligent practitioner should advise his/her client that restoration of the right using the state procedure does not entitle them to then possess a firearm under federal law.

**h. Under Louisiana law, must a person be in actual possession of a firearm in order to violate the prohibition?**

No. In Louisiana, constructive possession is treated the same as actual possession for purposes of illegal firearm possession. Constructive possession has several elements. It occurs when the

firearm is 1) subject to a person's dominion and control; 2) the person is aware of or has knowledge that the firearm is there; and 3) the person has a general intent to possess it.

A person can be found in constructive, and therefore illegal, possession of a firearm if the prohibited person's family member or roommate owns a firearm that is kept in an area of the home to which (s)he has ready access.<sup>100</sup> Constructive firearm possession happens most frequently in cars. The diligent practitioner will inform his/her client of this aspect of the prohibition and counsel the client to ask the driver of the car if (s)he or anyone else in the car is in possession of a gun or ammunition.

**i. Will a juvenile adjudication prevent an adult from purchasing a firearm under either federal or state law?**

There may be a prohibition based upon federal law. Federal law remains split on this issue, thus there may be restrictions based on federal prohibitions.<sup>101</sup>

No, there is no prohibition under state law. Under state law, a juvenile adjudication does not prevent an adult from purchasing a firearm<sup>102</sup> or obtaining a concealed handgun permit.<sup>103</sup>

## **IX. Military Service**

**a. Does the U.S. military ask applicants about their criminal record?**

Yes. The Department of Defense requires criminal history record information from applicants to determine suitability for service.<sup>104</sup>

**b. How is "criminal history" defined?**

It is defined as any juvenile or adult arrest, citation, or conviction.<sup>105</sup> An applicant's full and complete criminal history must be given to the Armed Forces, including disclosure of convictions and adjudications that have been expunged.<sup>106</sup>

**c. Will a client's criminal history preclude service in the U.S. military?**

Maybe. Criminal convictions, particularly felony convictions, are usually a bar to military service; however, each branch has the discretion to make exceptions by granting waivers. The standards for waivers can be complex and should be obtained directly from a recruiter.

**d. Will a juvenile adjudication prevent an adult from enlisting in the military?**

Maybe. Juvenile court records are generally confidential; however Louisiana law allows a court to order the release of the records to the petitioner for good cause when the information is material and necessary to a specific investigation or proceedings.<sup>107</sup> A military recruiter may

petition the court for access to an applicant's juvenile court records in order to process the application.

A juvenile adjudication for a felony-grade delinquent act will generally preclude military service.<sup>108</sup> This is so because the U.S. military defines criminal history record information to include juvenile arrests and convictions.<sup>109</sup>

## **X. Driving Privileges**

### **a. Are there any collateral consequences impacting driving privileges for adults?**

No. Any infringement on driving privileges for adults is a direct consequence of the sentence imposed.

### **b. Can the existence of a juvenile record affect obtaining or maintaining a driver's license or permit?**

Yes. A juvenile driver's license will be suspended for one year if (s)he is suspended, expelled, or assigned to an alternative school for ten or more consecutive days for illegal substances, firearms, or for assault or battery on a school employee.<sup>110</sup> If (s)he does not yet have a driver's license but obtains one during that one year period, it will be suspended.<sup>111</sup>

A court may impose, as a condition of probation, restrictions on or suspension of driving privileges for the duration of the probationary period.<sup>112</sup> In such cases, a copy of the order is sent to the Department of Public Safety and Corrections, which shall suspend the license or issue a restricted license in accordance with the order of the court.<sup>113</sup>

The juvenile must pay to get his/her license reinstated.<sup>114</sup> It may be possible for the juvenile to get a hardship license or apply for reinstatement of his/her license before the one year suspension period is over.<sup>115</sup>

## **XI. Governmental Benefits**

### **a. Medicaid**

#### **i. Under what circumstances can Medicaid benefits be suspended?**

Benefits are suspended if a person otherwise eligible is an inmate in a public institution.<sup>116</sup>

An individual is an inmate if serving time for a criminal offense or is confined involuntarily in a state or federal prison, jail, detention facility, or other penal facility.<sup>117</sup>

Public institutions include penal or correctional institutions under the control of the government agency in charge of penal facilities, or a facility in which convicted criminals can be incarcerated, such as a hospital for the criminally insane. This includes state prisons that operate their own hospitals and privately owned prisons under contract to a correctional facility.<sup>118</sup>

**ii. For how long are these benefits suspended?**

Benefits are suspended for as long as a person is an inmate in a public institution.

Inmate status is not terminated until the individual is no longer residing in a penal institution and is released from the penal system due to the completion of sentence, pardon, probation or parole, or unconditional release.<sup>119</sup>

**iii. Can a period of juvenile incarceration affect receipt of Medicaid benefits?**

Yes. There is no difference between adults and juveniles when applying this policy therefore benefits will be suspended for any period of time a juvenile is an inmate in a public institution.<sup>120</sup>

**b. Social Security**

**i. Under what circumstances can Social Security benefits be suspended?**

Broadly speaking, benefits are suspended upon incarceration for commission of a criminal offense, upon institutionalization in relation to a criminal offense or for an outstanding arrest warrant.

Benefits are withheld for any month or any part of a month in which a person is confined for more than thirty days in a correctional institution.<sup>121</sup> Benefits are also withheld for those persons who, after completing a sentence for a sex offense, are found to be sexually dangerous and confined for more than thirty days in an institution at public expense.<sup>122</sup> Finally, benefits are withheld if a person is confined by court order for more than thirty continuous days in an institution in connection with a finding of any of the following: guilty but insane with regard to a criminal offense;<sup>123</sup> not guilty of a criminal offense by reason of insanity;<sup>124</sup> incompetent to stand trial under an allegation of a criminal offense;<sup>125</sup> or found to be under similar conditions (such as mental disease, mental defect, or mental incompetence) with respect to a criminal offense.<sup>126</sup>

Benefits will not be paid for any month when an individual has an unsatisfied arrest warrant for more than thirty days for violation of a condition of probation or parole, a crime or attempted crime of flight to avoid prosecution or a crime that is punishable by death or imprisonment of more than one year, regardless of the sentence actually imposed.<sup>127</sup>

**ii. For how long are benefits suspended?**

Benefits are suspended for the duration of the confinement or as long as the arrest warrant remains outstanding.

**iii. Can the Social Security Administration find an exception for non-payment?**

Yes. The Social Security Administration (“SSA”) will find a good cause exception upon acquittal, dismissal of charges, if the arrest warrant is vacated or in other similar exonerating circumstances. The good cause exception will also apply to those persons who can demonstrate to SSA that they were victims of identity fraud and a warrant was issued on that basis.<sup>128</sup>

SSA may also apply the good cause exception if the arrest warrant was for a crime that was non-violent and non-drug related, and in the case of probation or parole violators, both the violation and the underlying offense were non-violent and not drug-related.<sup>129</sup>

**iv. Can a juvenile record affect receipt of Social Security benefits?**

Yes. Juveniles receiving Supplemental Security Income (“SSI”) may not receive benefits for the time they are residents of a public institution, such as a secure care facility.<sup>130</sup> The exception to the general prohibition is if the child is placed in a facility, such as a group home, that serves less than seventeen people.<sup>131</sup>

**c. Supplemental Nutrition Assistance Program (“SNAP”)**

**i. May eligibility for this program be impacted by a criminal arrest or conviction?**

Yes. Benefits will be suspended for those persons who have an outstanding felony warrant, who are fleeing felons and probation and parole violators.<sup>132</sup>

In addition, benefits will be denied for one year for any person convicted under either state or federal law for a drug offense.<sup>133</sup> The suspension period commences on the date of conviction if not incarcerated and from date of release if held in state custody.<sup>134</sup>

**d. Temporary Assistance to Needy Families (“TANF”)**

**i. Under what circumstances can aid be suspended?**

Aid will be suspended for persons fleeing to avoid prosecution or confinement for a felony or attempted felony.<sup>135</sup> In addition, cash assistance is suspended for those who violate the terms of their probation or parole.<sup>136</sup>

Assistance will be denied for one year to any person convicted under state or federal law for a drug offense.<sup>137</sup> The suspension period commences on the date of conviction if not incarcerated and from date of release if held in state custody.<sup>138</sup>

**e. Unemployment**

**i. Under what circumstances can a person be disqualified from receiving unemployment insurance?**

There are two broad disqualifying categories that could affect clients: leaving employment without good cause<sup>139</sup> and misconduct relating to employment.<sup>140</sup>

**ii. If the basis is leaving employment without good cause, are there any situations in which incarceration would not result in a loss of unemployment insurance?**

Maybe. In a 1982 case,<sup>141</sup> the Louisiana First Circuit Court of Appeals held that an employee who was terminated while he was jailed for fourteen days could nevertheless collect unemployment. In that case, the employee called his employer upon arrest, left word of his incarceration and his inability to post bond. Immediately upon release, he contacted his employer again only to discover that he had been terminated. Because the Court decided that he did not voluntarily leave his employment, the prohibition under La. R.S. 23:1601(1) was not applicable and he was allowed to collect unemployment benefits despite his incarceration.

It should be noted that the court, in note 4, specifically limited the holding the facts of the case, pointing out that in other circumstances incarceration could result in a loss of unemployment benefits.<sup>142</sup>

**iii. If the basis is misconduct relating to employment, what type of misconduct can disqualify a person from receiving unemployment?**

Misconduct can include any off-duty personal activity and any act which renders the employee incapable of performing his duties for an unreasonable length of time. If the employee was discharged for this activity, that fact will disqualify him or her from receiving unemployment benefits.<sup>143</sup>

**iv. Is the scope of “work-related” construed narrowly by Louisiana courts?**

No. Although the misconduct must be work-related, Louisiana courts have given the work-related requirement an increasingly expansive scope, including finding criminal activity off the job to be disqualifying misconduct.<sup>144</sup>

Drug use is the most common example of “work-related” misconduct. Even an “unwritten policy” prohibiting drug use has precluded disbursement of benefits for an employee discharged for pleading guilty to a drug offense.<sup>145</sup> Certain types of employment, such as teaching, that are “sensitive” or those that involve “family” establishments can result in denial of benefits after termination for drug convictions.<sup>146</sup>

**v. Does the disposition of the criminal charge determine disqualification?**

No. It is the facts of the conduct rather than the disposition of the criminal charge that determine whether the person is disqualified from benefits.<sup>147</sup>

**f. Disability**

**i. In what circumstances may disability benefits be denied?**

There are two circumstances in which disability benefits will be denied: when the impairment occurred during the commission of a felony<sup>148</sup> or if the impairment arose in connection with a period of incarceration.<sup>149</sup>

There is a permanent exclusion for those disabilities which arise during the commission of a felony. This prohibition includes any physical or mental impairment or aggravation of a preexisting impairment.<sup>150</sup> A felonious offense is a felony as defined under applicable law or, if no crime is defined as a felony in that jurisdiction, any offense punishable by death or imprisonment for a term exceeding one year.<sup>151</sup>

There is also an exclusion of impairments which occur during a period of incarceration. The exclusion includes any physical or mental impairment or aggravation of a preexisting impairment. It is important to note, however, that the exclusion only applies in determining eligibility for any month a person is held in state custody. An individual may become entitled to disability benefits upon release provided that (s)he applies and is under a disability at that time.<sup>152</sup>

**g. Veteran's Benefits**

**i. Will clients receiving VA disability benefits have those payments suspended if convicted of a crime?**

No, but they will be reduced.

Under the Incarcerated Veteran's Program, Veteran's Administration (VA) disability payments are reduced if a veteran is convicted of a felony and imprisoned for more than 60 days. Veterans rated at 20% or more are reduced to a 10% disability rate. For a veteran whose disability rating is 10%, the payment is reduced by one half.<sup>153</sup>

Payments are not reduced for veterans participating in a work release program, residing in a halfway house or on probation or parole.<sup>154</sup>

**ii. Will those payments be reinstated upon release?**

Yes. Once a veteran is released from custody, compensation payments may be reinstated based on the severity of the service related disability at that time.<sup>155</sup>

**iii. May dependents continue to receive VA benefits while the client is incarcerated?**

Yes, as long as the veteran is not incarcerated for the commission of a felony.<sup>156</sup>

The diligent practitioner will inform his or her client that the VA will only apportion veteran's benefits to a spouse, child or dependent parents if the VA is aware of their existence and after the filing of a claim. Since the VA communicates directly with the incarcerated veteran it is important that the incarcerated veteran notify the VA of the existence of dependents and then instruct his or her dependents to file a claim for apportionment with the VA.<sup>157</sup>

**iv. Can VA pension payments be suspended?**

Yes. A veteran's pension payments will be terminated sixty-one days after imprisonment for commission of either a felony or misdemeanor. Payments can be resumed upon release if (s)he meets eligibility requirements. If an incarcerated veteran fails to notify the VA of a period of incarceration, financial benefits may be suspended until the overpayment is recovered.<sup>158</sup>

**v. Can VA educational benefits be suspended?**

Yes. The VA will not make educational payments if these costs are paid by another state, federal or local program (such as a prison) pays them in full.<sup>159</sup>

**vi. What portion of educational benefits will be paid during a period of incarceration?**

Veterans incarcerated for an offense other than a felony and convicted felons residing in a halfway house or participating in a work release program can receive full monthly educational benefits. Claimants incarcerated for a felony can be paid only the costs of tuition, fees, and necessary books and supplies.<sup>160</sup>

## **XII. Immigration**

**a. What are the facts of *Padilla v. Kentucky*?**

Jose Padilla was a forty-year old lawful permanent resident and Vietnam veteran who was charged with drug possession and trafficking for having marijuana in his commercial truck. Mr. Padilla pled guilty to drug trafficking – an aggravated felony – after his attorney said he need not worry about deportation because he had lived in the U.S. so long.

The *Padilla* Court held that the Sixth Amendment requires counsel to provide affirmative, competent advice regarding the immigration consequences of a guilty plea where those

consequences are clear and that failure to provide such advice is ineffective assistance of counsel.<sup>161</sup>

The Court emphasized the increasing reach and complexity of the system of immigration law and noted that the deportation consequence was clear from the removal statute, which expressly subjects those convicted of controlled dangerous substance offenses deportable.<sup>162</sup> The Court also noted, however, that only when the consequences are “truly clear” must counsel notify the client of the exact consequences of a plea.<sup>163</sup> In the numerous cases in which the consequences are unclear, counsel must only advise the client that there may be immigration consequences with the plea.<sup>164</sup>

#### **b. What did *Padilla* change?**

This decision changed consequences for defense attorneys who fail to advise clients of immigration consequences.

Before *Padilla*, failure to advise a client of immigration consequences where those consequences are clear was generally not considered ineffective assistance of counsel.<sup>165</sup> Now, failure to advise a client of immigration consequences where those consequences are clear can not only form the basis of an ineffective assistance of counsel claim; it is also a violation of the performance standards set by the American Bar Association and the Louisiana Public Defender Board.<sup>166</sup>

It is very seldom, however, that immigration consequences are “truly clear” and the explicit language for drug offenses is the exception rather than the rule.<sup>167</sup> It is for this reason that *expert immigration advice is absolutely necessary unless you possess such expertise yourself and have researched the immigration issues.*

#### **c. What immigration statuses should defense counsel be aware of?**

There are seven categories that defense attorneys should be mindful of when interviewing clients. They are: citizen (both natural born or naturalized), legal permanent resident (also known as green card holders), asylee or refugee, non-immigrant visa holders (such as student, visitor, temporary worker or diplomat), temporary protected status, previously documented but out of status and undocumented.

#### **d. How will an arrest or conviction affect a client’s immigration status?**

The consequences of an arrest or conviction depend on the client’s immigration status.

An arrest or conviction could result in removal for admitted aliens based on enumerated grounds of deportability.<sup>168</sup> If the client has not been admitted to the U.S. or is seeking permanent residency then (s)he could not be admitted to the country; therefore grounds of inadmissibility apply.<sup>169</sup>

The arrest or conviction could also affect eligibility for naturalization and future legalization as well as a client's ability to travel even if (s)he is not removable.

**e. What difficulties should the diligent practitioner be aware of when inquiring about a client's immigration status?**

Immigration status cannot be easily ascertained through superficial interviews. Some clients will speak without an accent or use colloquial English. Some clients will conceal immigration status in the mistaken belief that they will not qualify for public defender services as non-citizens. Finally, some clients will not be aware of, or be mistaken about, their own immigration status.

It is for these reasons that it is important to ask a number of follow-up questions such as place of birth and, if born elsewhere, how long (s)he has been in the country.

**f. In what ways might a person be a U.S. citizen?**

Clients could be a citizen if born in the U.S., Puerto Rico, American Samoa, U.S. Virgin Islands, Guam or Swains Islands. A person could also be a citizen if (s)he was born abroad to a U.S. citizen or derived citizenship from naturalization of a parent before the client's 18<sup>th</sup> birthday. Finally a person could be a citizen if (s)he has naturalized him or herself which generally means they have been a lawful, permanent resident for five years. It is important to note that there are circumstances, through marriage or military service, where the periods of time are shorter.

**g. What is naturalization?**

Naturalization is the process by which recent immigrants become U.S. citizens. The naturalization process includes a naturalization application, an interview and a formal swearing-in ceremony conducted by a federal judge. Make sure each of these has occurred before accepting a quick "yes" answer to the citizenship question.

**h. What types of crimes trigger adverse immigration consequences?**

There are a number of categories of crimes that trigger adverse immigration consequences. Major categories include: crimes involving moral turpitude, domestic violence, aggravated felonies, drug offense and certain firearms offenses.<sup>170</sup>

Only crimes of moral turpitude committed within five years (or ten years for aliens with permanent resident status after the date of admission)<sup>171</sup> AND carrying a possible sentence of one year or more are deportable.<sup>172</sup>

Another subsection makes deportable any non-citizen who, after admission, is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefore and regardless of whether the convictions were in a single trial.<sup>173</sup>

Persons may also be deported for the federal offenses of high speed flight from an immigration checkpoint and failure to register as a sex offender.<sup>174</sup>

**i. How does the classification of the offense factor into plea bargaining discussions?**

Proper classification of the offense can spare the client adverse immigration consequences.

The task for counsel in plea bargaining discussions is identifying the adverse immigration consequences that will flow from disposition of an offense that must be avoided and identifying related offenses that do not involve those consequences.

**j. What factors are relevant when counseling non-citizen clients during plea bargaining negotiations?**

It is important to determine the client's priorities during the plea bargaining process. Sometimes, a difficult trade-off may become necessary. For example, avoiding immigration consequences may involve serving more time in custody but on a different offense not producing the adverse immigration consequences.

Clients should be made aware that an arrest will show up if the U.S. Immigration and Customs Enforcement Agency (ICE) does an FBI check, which occurs in many types of immigration relief proceedings. The client may be asked about the arrest and their answer may be used to assess good moral character or deny admission based on being a substance abuser, depending on what the charge was and how the client explains it.

**k. Will there be a separate proceeding to address the client's immigration status?**

Yes. ICE will place an immigration hold (see discussion *infra*) on the client while criminal proceedings are pending. At the conclusion of criminal proceedings, if the client is convicted, ICE will take custody of the client and hold a separate immigration hearing.

**l. Is the client entitled to representation at an immigration hearing?**

No. Since immigration hearings are considered administrative proceedings, there is no constitutional right to counsel. Counsel should notify clients with an immigration hold that (s)he will need to secure separate immigration counsel to represent him or her in immigration court.

**m. What are I.C.E. Detainers?**

These are known by the more common term, “immigration holds.” Immigration holds are notifications that ICE intends to arrest an individual as well as requests to the state agency having custody to provide information about release and to maintain custody of the individual for 48 hours after release in order for ICE to assume custody.

ICE holds are in effect for 48 hours, exclusive of weekends and holidays, from release from criminal custody.<sup>175</sup>

**n. Where does a client with an I.C.E. hold sent?**

Clients go to federal booking where they are temporarily detained in a criminal facility. Afterwards they are sent to an immigration detention center.

There are four immigration detention centers in Louisiana: LaSalle Detention Center in Jena, Oakdale Federal Detention Center, Tensas Parish Detention Center, and South Louisiana Correctional Center in Basile.

A client could be sent to any one of these detention centers or another detention center out of state.

**o. What types of crimes trigger mandatory detention?**

If the client is a non-citizen who is inadmissible under criminal grounds of the Immigration Nationality Act (“INA”) § 212(a)(2) the crimes are: crime involving moral turpitude, drug conviction, reason to believe (s)he is a drug trafficker, and prostitution.

If the client is a non-citizen who is deportable, the crimes are any aggravated felony, one crime of moral turpitude within five years of admission where the sentence is more than one year, two crimes of moral turpitude anytime, drug conviction, drug abuse or addiction, firearms offenses and espionage or terrorism convictions.

**p. What is the strategy for posting bond for a client who has an immigration hold?**

The basic strategy is to post bond for the client on the criminal charge and the immigration hold separately. If the client cannot post bond on the ICE hold, it may be unwise to post bond for him or her on the criminal charge since ICE can take the client to some inconvenient location, making it difficult to defend the criminal case and forfeiting the right to credit for time served on the charge while the client is held in ICE custody.

If the client posts bond on the criminal charge, ICE will usually arrest him or her within 48 hours, excluding weekends and holidays. Once in ICE custody, (s)he can attempt to post bond on the immigration hold. If ICE detains the client more than 48 hours after client has paid the criminal bond, then the client should be immediately released or the custodian could face a lawsuit for false imprisonment.

Some types of offenses involve mandatory detention, without bond. Sometimes, even if detention is not mandatory, ICE will set a “no bond” which results in a situation where the only way to obtain release of the client from immigration detention is to request that the immigration judge re-determine the bond.

**q. What considerations should be taken into account when determining if a client with an immigration hold should post bond on the criminal charge?**

It is critical to determine whether the client will be released from ICE custody on an immigration bond. This determination should be made after consultation with immigration counsel.

If the client is released from criminal custody, and ICE is prohibited from releasing the client on immigration bond, the client may be transferred overnight to an ICE detention facility in another state and deportation proceedings initiated, regardless of counsel’s desire to secure his presence at the criminal proceedings.

**r. What considerations should defense counsel be aware of if the client has been deported in the past or is deported before conviction?**

If a client has a prior order of deportation that was not executed, or re-entered the country within 10 years of an order of deportation, (s)he is not entitled to an immigration hearing and ICE can deport him or her by simply reinstating the prior order of deportation.

If the client is deported before trial, the fact of deportation will avoid conviction. However, the client will still have an outstanding arrest warrant that will be highly problematic if the client ever petitions for re-entry to the U.S.

**s. Will a juvenile adjudication trigger deportation proceedings?**

Generally speaking, a juvenile adjudication will not trigger removal or prevent a juvenile from becoming a citizen because, under federal immigration laws, juvenile dispositions are not considered convictions.<sup>176</sup>

**t. Despite the fact that juvenile adjudications are not considered convictions, may there still be adverse immigration consequences?**

Yes. The consequences depend on the offense and the juvenile’s immigration status in the United States.

**i. What are the consequences for a non-citizen juvenile with a lawful permanent residence card (i.e. “green card”)?**

A juvenile adjudication for violation of a domestic violence restraining, protective, or no-contact order will likely trigger removal.<sup>177</sup> An adjudication for the delivery of a controlled substance will make the juvenile ineligible for visas or citizenship.<sup>178</sup>

**ii. What are the consequences for juveniles who are legal residents but have not yet obtained permanent legal residence or citizenship?**

An adjudication will not automatically prevent a juvenile from getting a lawful permanent residence card. However, an adjudication will be considered by ICE in making the decision whether to grant an application for citizenship where “good moral character” is required.<sup>179</sup>

**iii. What are the consequences for undocumented juveniles?**

While adjudication will not trigger automatic deportation,<sup>180</sup> any undocumented juvenile may be subject to deportation proceedings at any time regardless of his or her delinquency history.

An adjudication may preclude the granting of certain types of immigration relief such as asylum<sup>181</sup> or immigrant juvenile status.<sup>182</sup>

The careful practitioner will note that drug abuse and drug addiction are both grounds for inadmissibility and deportability.<sup>183</sup> It is important to be aware of this consequence when considering guilty pleas for drug offenses or agreeing to dispositions for purposes of drug treatment.

**u. What resources are available to defenders with non-citizen clients?**

Defenders are **strongly encouraged** to consult with immigration counsel when representing non-citizen clients. Defenders should be prepared to provide to immigration counsel a detailed immigration history, detailed criminal history, information regarding family equities and records of conviction for prior convictions for the client.

In addition, diligent practitioners can access a number of resources that will assist them in representing the non-citizen client.

The Immigrant Defense Project has published an *Immigration Consequences of Crimes Summary Checklist* and has a hotline for consultation. The number is (212) 725-6422 and the checklist can be accessed at [www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org).

The Defending Immigrants Partnership has published a manual, *Representing Noncitizen Defendants: A National Guide*, that can be found at [www.defendingimmigrants.org](http://www.defendingimmigrants.org).

The Law Offices of Norton Tooby has published *Tooby's Guide to Criminal Immigration Law* which can be downloaded for free at [www.criminalimmigrationlaw.com/offers/2010-01/](http://www.criminalimmigrationlaw.com/offers/2010-01/).

There are Immigration Law clinics at Loyola Law School and LSU Law Center and Catholic Charities provides immigration law services in Baton Rouge and New Orleans.

### **XIII. Sex Offenses**

#### **a. What constitutes a sex offense in Louisiana?**

The list of sex offenses is long and subject to near constant revision by the legislature. Qualifying offenses include such crimes as aggravated rape and trafficking of children for sexual purposes as well as offenses such as crime against nature and video voyeurism.<sup>184</sup>

The registration requirements apply to all persons who are convicted, plead guilty to or accept a deferred adjudication for the perpetration, attempted perpetration or conspiracy to commit any sex offense.<sup>185</sup>

#### **b. Is the court obligated to inform the client of the consequences which flow from conviction of a sex offense?**

Yes. The court is required to provide written notification of such duties as community notification and in person verification and furnish a copy of registration and notification statutes to every person convicted of a qualifying offense.<sup>186</sup>

#### **c. How long is a person required to register?**

Depending on the offense, a person can be required to register for finite time periods of fifteen<sup>187</sup> or twenty-five years<sup>188</sup> or, upon a showing by a preponderance of the evidence of a substantial risk of reoffending or as part of a plea agreement, for life.<sup>189</sup>

A person convicted of an aggravated offense or who has a prior conviction for an offense mandating registration is required to register as a sex offender for life.<sup>190</sup>

#### **d. Who will be notified of the client's status as a sex offender?**

In addition to persons such as law enforcement and school district personnel, at least one person in every residence or business within a one-mile radius in a rural area and a three-tenths of a mile radius in an urban or suburban area of the address of the residence where the offender will reside upon release must be notified of the presence of the client, the crime of which (s)he was convicted and a physical description including photograph.<sup>191</sup>

The client will also be listed in the State Sex Offender and Child Predator Registry.<sup>192</sup> This registry is a public database with field search capabilities and internet based access.<sup>193</sup>

Finally, any state issued identification, such as a driver's license, will have a restriction code of "Sex Offender" embossed on it in bright orange letters and this license must be renewed annually.<sup>194</sup>

#### **e. How will a conviction for a sex offense affect housing options?**

Any person convicted of a sex offense that requires registration will find it very difficult to obtain housing that does not violate the provisions of the sex offender registration law. In addition, due to the social stigma attached to a conviction for a sex offense and the community notification requirements, many sex offenders find it difficult to rent appropriate housing.

Any lessor, landlord or owner of a residence or property where the person lives must be notified that (s)he is a sex offender.<sup>195</sup>

A person convicted of a sex offense involving a victim under the age of thirteen cannot live within one thousand feet of any public or private elementary or secondary school or public park or recreational facility.<sup>196</sup>

A sexually violent predator<sup>197</sup> cannot live within one thousand feet of any public or private elementary or secondary school, a day care facility, playground, public or private youth center, public swimming pool or free standing video arcade facility.<sup>198</sup>

A sex offender whose offense involved a minor child cannot live, while on probation or parole, within one thousand feet of a public or private elementary or secondary school, day care facility, playground, public or private youth center, public swimming pool, or free-standing video arcade facility.<sup>199</sup>

#### **f. How will conviction of a sex offense affect employment options?**

Many employment options are restricted by law based upon conviction of a sex offense.

Examples of professions that are foreclosed to those with sex offenses are medication attendants, nursing administrators, certain classes of counselors, gaming occupations, private investigators, pawnbrokers, and private security company workers.

This list is illustrative, not exhaustive, so it is important for the defender to check the relevant licensing statute when advising the client.

#### **g. Are there any occupations that are completely foreclosed to sex offenders?**

Yes. Any person required to register as a sex offender is prohibited from operating a bus, taxicab or limousine for hire.<sup>200</sup> It is unlawful for a registered sex offender to engage in employment as a service worker who enters a residence to provide service.<sup>201</sup> Any person whose offense involved a minor child is barred from operating any carnival or amusement ride.<sup>202</sup>

#### **h. Can sex offenses be expunged or pardoned?**

Sex offenses cannot be expunged,<sup>203</sup> but a sex offense can be pardoned although the registration requirements will remain in place.<sup>204</sup>

A person will be released from the registration obligation if the underlying conviction is reversed, set aside, or vacated.<sup>205</sup>

The client can also petition the court to be relieved of the registration obligation. If the petition for a contradictory hearing is granted, the client must show by clear and convincing evidence that the (s)he has had a “clean record” for the minimum time period required by statute for the offense and that (s)he does not pose a substantial risk of committing another offense requiring registration.<sup>206</sup>

**i. When would a juvenile have to register as a sex offender?**

Any juvenile who is at least 14 years old at the time of the offense and is adjudicated delinquent of one of the qualifying offenses must register.

These offenses are aggravated rape (including adjudications for aggravated oral sexual battery occurring prior to August 15, 2001), forcible rape, second degree sexual battery, aggravated kidnapping of a child under thirteen, second degree kidnapping of a child under thirteen, aggravated incest and aggravated crime against nature.<sup>207</sup>

These include adjudications based on the perpetration, attempted perpetration, or conspiracy to commit any of these offenses.

**j. What are the registration requirements for juvenile sex offenders?**

The registration requirements are the same for juvenile offenders as their adult counterparts<sup>208</sup> with the exception of the community notification requirements. All juveniles are exempt from community notifications (e.g., to neighbors and the local school superintendent).<sup>209</sup>

**k. How long must a juvenile register if adjudicated delinquent of a qualifying sex offense?**

Juveniles must register for life<sup>210</sup> for these offenses, even if granted a first offender pardon,<sup>211</sup> unless the underlying conviction is reversed, set aside, or vacated.<sup>212</sup>

**l. Are juvenile sex offense records confidential?**

No, there is no separate juvenile sex offender registry. Juvenile registrants’ personal information is not given special protection because they are under the age of 17.

**m. What information concerning a juvenile sex offender is disclosed to the public?**

The public information made available on registered sex offenders is the same for all clients (e.g. names and aliases; physical description; date of birth; work, home and school addresses; vehicle make, model and color and plate number; offense and date; and a current photograph).<sup>213</sup>

**n. Is there any relief available to juveniles who are in the sex offender registry?**

Generally, Louisiana makes registration mandatory and unable to be waived or suspended by any court.<sup>214</sup> Any order waiving or suspending sex offender registration shall be null, void, and of no effect.

The registration period may be reduced, however, from lifetime to twenty-five years if the client maintains a “clean record”<sup>215</sup> for twenty-five years.<sup>216</sup>

The client must then petition the court of adjudication to be relieved of the sex offender registration.<sup>217</sup> The district attorney must be served a copy of the petition. The court shall order a contradictory hearing to determine if the client is entitled to be released from the registration requirements.<sup>218</sup> This relief is not available to persons who are convicted of more than one offense that requires registration.<sup>219</sup>

## **XIV. Restoration of Rights**

### **a. Automatic First Offender Pardon**

#### **i. What is an automatic first offender pardon?**

It is a pardon that issues upon operation of law rather than as an affirmative act either by the governor or the Board of Pardons.

Louisiana provides for automatic first offender pardons both constitutionally<sup>220</sup> and statutorily<sup>221</sup> and restores full rights of citizenship upon completion of any period of probation or parole following conviction.<sup>222</sup>

Once an offender entitled to an automatic pardon completes his or her sentence (s)he receives a certificate reflecting that she is “fully pardoned” for the offense and has “all rights of citizenship and franchise.”<sup>223</sup>

#### **ii. What is the scope of the pardon?**

The scope of the automatic first offender pardon is very limited. The Louisiana Supreme Court has held that the full rights of citizenship restored by this pardon includes only basic rights such as the right to vote, work or hold office.<sup>224</sup>

#### **iii. Can a person granted an automatic first offender pardon hold elected office?**

No. Since the *Adams* decision mentioned in the prior answer, the Legislature has amended the Constitution to disqualify from public office any convicted felon who has not been pardoned by the governor.<sup>225</sup> Louisiana courts have held that the later constitutional amendment overrules

language in *Adams* suggesting that the automatic pardon restores the right to run for public office.<sup>226</sup>

The amended provision does allow a person convicted of a felony but not pardoned by the governor to qualify if the date of qualifying is more than fifteen years after the date of the completion of sentence.<sup>227</sup>

**iv. Can a person granted a pardon under this provision legally own a firearm?**

No. The prohibition against a felon carrying a firearm applies equally to felons who have received an automatic pardon.<sup>228</sup> A difficult issue has arisen, however, regarding whether a felon relying on language on the certificate may raise a mistake of law defense to a charge of felon in possession of a firearm.<sup>229</sup>

**v. May a client be subjected to multiple offender sentencing for an offense pardoned under this provision?**

Yes. (S)he is still eligible for multiple offender sentencing based on the offense that was the subject of the automatic pardon.<sup>230</sup>

**vi. Are licensing boards and agencies allowed to consider an offense covered by this provision in denying or revoking licenses?**

Yes. Boards and agencies are allowed to deny or revoke licenses or permits based on prior convictions under agency rules even when the applicant or permit holder has received an automatic pardon. This includes applications for and revocations of gaming permits.<sup>231</sup>

**vii. Does the automatic first offender pardon restore the right to sit on a jury?**

No. Restoration of rights under an automatic pardon does not include the right to sit on a jury.<sup>232</sup>

**viii. Does this pardon furnish a basis for expungement?**

No. The automatic first offender pardon does not furnish a basis for expungement under La. R.S. 44:9.<sup>233</sup>

**ix. Is the right to vote restored by this pardon?**

Yes. The current state of the law would suggest that the only reliable benefit obtained from an automatic pardon is the right to vote.

**b. Full Pardon**

**i. What is a full pardon?**

Also known as an executive pardon, a full pardon refers to the official act of forgiving a crime. This type of pardon, granted under the executive powers of the governor, “reaches both the punishment prescribed for the offense and the guilt of the offender.”<sup>234</sup>

Absent limitations imposed by the governor,<sup>235</sup> a pardon erases the conviction from the public record, frees the person from further punishments and penalties and precludes consideration of the offense in subsequent sentencing decisions.<sup>236</sup> Put another way, the person pardoned is returned to the status of an innocent person.

## **ii. What is the scope of a full pardon?**

A full pardon is sweeping in scope encompassing any offense and restoring all rights to the offender.

For example, an executive pardon restores the right to hold public office.<sup>237</sup> This even includes a pardon by the governor for a conviction of a *federal* offense.<sup>238</sup>

The protections flowing from an executive pardon with regard to licenses and permits are also far more extensive. Licensing boards cannot consider in licensing matters a prior conviction for which the applicant has received an executive pardon.<sup>239</sup> The board also cannot consider the underlying facts of the prior pardoned conviction under the rubric of a different provision addressing the character of the applicant.<sup>240</sup> Since the pardon power is a function of the executive branch, it is a violation of separation of powers for the other branches (i.e., licensing boards) to control or limit the power.<sup>241</sup>

## **c. Expungement**

### **i. Expungement of Arrests**

Louisiana law provides for the expungement of arrest and conviction records under certain defined circumstances. The provisions for expungements appear in La. R.S. 44:9. It is important for counsel to understand the rules of expungement for both arrests and convictions. It is also important to know the distinction between expungement of records and destruction of records.

#### **1. Are expungement of arrests differentiated based upon misdemeanor and felony arrests?**

Yes. The statute divides arrest into expungements of misdemeanor and felony arrests, but both types of expungements require the filing of a motion with the district court.<sup>242</sup>

#### **2. What are the grounds for expungement of a municipal ordinance or misdemeanor arrest?**

The grounds are that either the time limitation for prosecution has expired without any institution of prosecution or prosecution has been instituted and finally resolved by dismissal, grant of a motion to quash, or acquittal.<sup>243</sup>

### **3. What happens to the arrest record if the court finds that grounds exist for an expungement?**

The court will issue an order directing all law enforcement agencies having any record of the arrest to destroy all information regarding the arrest “of any and all descriptions,” including, but not limited to, fingerprints, photographs, and electronically stored data. The agency must also issue an affidavit averring that this destruction has taken place. The certificate is kept for the purposes of internal record-keeping only and may not be used for any investigative purpose.<sup>244</sup>

### **4. Are there any exceptions for misdemeanor expungement?**

No. Although the terms of the statute excludes any arrest for first or second DWI under either municipal ordinance or state statute,<sup>245</sup> the Louisiana Supreme Court ruled in 1978 that segregating DWI arrests in this way violates Equal Protection and is unconstitutional.<sup>246</sup> Louisiana thus allows for expungement and destruction of all misdemeanor arrests, including first or second offense DWI arrest, so long as the conditions of the statute are met.

There is a caveat, however, to this general rule. A separate statute applies to misdemeanor DWI arrestees who enter and complete a pretrial diversion program. In such cases, the arrest record and placement into pretrial diversion become public record when the person successfully completes or is terminated from the program. This record is maintained for a period of five years from the date of arrest and is not subject to expungement or destruction during this five year period.<sup>247</sup> The Louisiana Supreme Court has held that this statute does not violate Equal Protection and is therefore constitutional.<sup>248</sup>

### **5. What are the grounds for expungement of a felony arrest?**

The statute takes a much more stringent approach to all felony arrests and three misdemeanors (simple battery on a police officer, battery on a teacher, and aggravated assault).

The grounds for the expungement must be that the district attorney declined to prosecute or if prosecution was instituted, that the charges have been finally disposed of by acquittal, dismissal, or granting of a motion to quash.<sup>249</sup>

A separate paragraph, addressing the ground that the time for institution of prosecution has expired, does not include any specified misdemeanors and presumably applies only to felonies.<sup>250</sup>

### **6. Is a hearing required?**

Yes. Regardless of the grounds, a contradictory hearing is required either with the district attorney and arresting agency or, in the case of expiration of time limitations, the arresting agency only.<sup>251</sup>

**7. Are there any circumstances where law enforcement may retain and use the arrest record after expungement?**

Yes. If the applicant relies on the grounds that the district attorney failed to prosecute or the charge was disposed of through dismissal, acquittal or granting of a motion to quash, law enforcement may still use the arrest to ascertain or confirm the qualifications for any privilege or license authorized by law.<sup>252</sup>

If the expungement is based on a claim of prescription, the arresting agency may maintain the name and address of the person arrested and the facts of the case for investigative purposes only.<sup>253</sup>

It is important to note, however, that the later enactment of La. R.S. 44:9(G) has expanded the availability of all expunged felony arrests to a number of public agencies, regardless of the grounds for expungement.<sup>254</sup> This is one of several instances in the statute where a provision ruled unconstitutional or modified by subsequent amendments nevertheless remain in the statute. Thus, practitioners should use extreme care in advising clients of the impact of expungement of felony arrests.

**8. What is the main difference between misdemeanor and felony expungement?**

The expungement order expunging a felony (or specified misdemeanor) arrest does not include destruction of the records, which remain extant.<sup>255</sup>

The only exception is for the person who obtains an expungement and then successfully petitions the court for an order directing destruction based on a claim of actual innocence of the offense. The court, however, may not entertain such a petition without the express, written consent of the district attorney.<sup>256</sup>

**9. What entities retain the right to access an expunged felony record?**

Upon expungement, the record remains confidential but remains available for use by the following entities: law enforcement agencies, criminal justice agencies, the Louisiana State Board of Medical Examiners, the Louisiana State Board of Nursing, the Louisiana State Board of Dentistry, the Louisiana State Board of Examiners of Psychologists, the Emergency Medical Services Certification Commission, the Louisiana Attorney Disciplinary Board, Office of the Disciplinary Counsel and the Louisiana Supreme Court Committee on Bar Admissions.<sup>257</sup>

**10. Must a person disclose the arrest record or the fact that the record was expunged?**

With the exception of the agencies listed in the prior question, no person need disclose that he was arrested or that the record of the arrest has been expunged.

### **11. Who maintains the expunged arrest record?**

The expunged arrest record may be maintained by the Department of Corrections and may be released upon specific request to the agencies listed above, which have an obligation to maintain the confidentiality of such records.<sup>258</sup>

#### **ii. Expungement of Convictions**

##### **1. Are convictions differentiated on the basis of misdemeanor and felony convictions?**

Yes. The availability of expungement is governed by different articles of the Louisiana Code of Criminal Procedure. The statute requires dismissal of the conviction under Article 894 for misdemeanors or under Article 893 for felonies.<sup>259</sup>

##### **2. Are the procedures for expungement of convictions similar to those that govern expungement of arrests?**

Yes. The statute requires a contradictory hearing with the district attorney for felony convictions only and just as a court cannot order destruction of the record of a felony arrest, it can order expungement but not destruction of the record of a felony conviction.<sup>260</sup>

##### **3. Are there exceptions to expungements of misdemeanor convictions?**

Yes. The court may order both expungement and destruction of a misdemeanor conviction, except for convictions of first or second offense of driving while intoxicated or driving while under the influence of narcotics.<sup>261</sup>

##### **4. Are there any circumstances where expungement is prohibited?**

Yes. Neither expungement nor destruction is available when the offense is a sex offense under La. R.S. 15:541 involving a child under the age of seventeen, regardless of the sentence imposed.<sup>262</sup>

##### **5. Can an expunged conviction serve as the basis for a multiple offender prosecution?**

Yes. The expunged conviction can still serve as the basis for multiple offender prosecutions.<sup>263</sup>

##### **6. Who may access expunged conviction records?**

Health care providers may access expunged convictions, including misdemeanor convictions, by requesting a background check in accordance with La. R.S. 40:1300.51 *et seq.* and La. R.S. 44:9(E)(4).

In addition, expunged conviction records are available to those agencies listed in paragraphs (F) and (G) of the statute.

### **7. Who maintains expunged conviction records?**

Expunged convictions, just like expunged arrests, remain in the files of the Department of Corrections.

### **8. Which rights are restored upon order of expungement?**

All rights which were lost or suspended by virtue of the conviction are restored and the person “shall be treated in all respects as not having been arrested or convicted unless otherwise provided in this Section or otherwise provided in the Code of Criminal Procedure Article 893 and 894.”<sup>264</sup>

Counsel should approach this broad language cautiously, however, in light of the increasingly narrow jurisprudence in this area. For instance, it is far from clear that expungement of a felony conviction would entitle the client to carry a firearm if convicted of prohibited felonies listed in La. R.S. 14:95.1.<sup>265</sup>

#### **iii. What is the importance of proper articulation of the felony or misdemeanor sentence?**

The availability of expungement of convictions is a function of the proper articulation of the felony or misdemeanor sentence. The judge must *defer* imposition, not just execution, of sentence under Article 893(E) or 894(B) for the person to later qualify for expungement of the conviction.

Merely articulating that the sentence is occurring “under 893” does not achieve the desired result if followed by the imposition of a determinate number of years and suspension of that term.<sup>266</sup>

Both the sentencing judge and client benefit from properly articulating the sentence. The selling point for the sentencing judge is that by deferring imposition of the sentence, the court maintains the ability to impose the maximum sentence if the client does not successfully complete probation. At the same time, the client receives the benefit of the availability of expungement of the conviction if he does.

#### **iv. What happens if the court improperly articulates the sentence?**

The expungement order is invalid even if the prosecutor does not object.

This is so because the Department of Corrections has standing to oppose the expungement or have it nullified if the court suspended rather than deferred the sentence.<sup>267</sup>

It is for this reason that it is crucial for counsel to confer with the judge prior to the articulation of any sentence under Article 893 or 894 to preserve access to expungement upon completion of probation.

**v. In what context does the question of expungement most often arise?**

Expungement most often arises in the context of job applications. The wording of such applications has become more specific over time, for example asking not just whether the applicant is a convicted felon but including in the question convictions that have been “expunged under state law.”

As job applications ask more specific questions, the decision of how to answer becomes more problematic for both attorney and client. The attorney should advise the client to provide the specific question and seek counsel’s advice about how to answer.

**vi. What is the current trend in state law with respect to expungements?**

Legislative amendments to the statute and the jurisprudence have trended toward limiting the availability and impact of expungement. It is especially important to consult the latest version of the statute and the most recent interpretations of it before advising the client.

**vii. What is the cost of an expungement?**

The cost varies by judicial district. A \$250 fee is to be paid as a fee to the Bureau of Criminal Identification and Information,<sup>268</sup> the clerk of court may charge \$10<sup>269</sup> and the sheriff and the district attorney in the jurisdiction where the offense was committed may each charge \$50.<sup>270</sup> Local jurisdictions may also impose fees which oftentimes results in the final cost being much more than is statutorily mandated by the legislature.

**viii. Expunging Delinquency Records**

**1. How is expungement defined?**

Expungement of a juvenile court record is the destruction of documents or information mentioning conduct that the individual seeks to have erased, and, in the case of items that cannot be destroyed, a prohibition against their release.<sup>271</sup>

**2. Are juvenile public defenders required to assist clients in filing an expungement application?**

No. Expungement is a civil procedure; therefore there is no right to counsel for expungement proceedings. However, practitioners should advise their clients of their ability to expunge their juvenile record.

### **3. Do juveniles have the right or opportunity to expunge their court records?**

Yes. Persons seventeen years of age or older may move for expungement of their juvenile delinquency record, but only for certain offenses depending on the ultimate disposition of the case.<sup>272</sup>

See the following question for a more complete explanation.

### **4. What types of records may be expunged?**

Records concerning conduct that did not result in adjudication may be expunged.<sup>273</sup>

Records concerning conduct that resulted in a misdemeanor adjudication may be expunged only if two or more years have elapsed since the person satisfied the most recent judgments against him/her.<sup>274</sup>

Records concerning conduct that resulted in a felony adjudication may be expunged only if the adjudication was not for murder, any sexual crime, kidnapping, or armed robbery. In addition, five or more years must have elapsed since the person satisfied the most recent judgment against him/her, the person has no criminal court felony convictions and no criminal court convictions for misdemeanors involving a weapon and the person has no outstanding indictment or bill of information charging him/her with a crime.<sup>275</sup>

Formerly, the law provided that a juvenile's fingerprint card would be destroyed if (s)he did not have a conviction in adult court and had not been adjudicated of a felony-grade delinquent act. This provision was repealed in 2009. Now, fingerprint cards are no longer destroyed along with other juvenile court records.<sup>276</sup>

### **5. How does a juvenile expunge his/her court record?**

The person seeking expungement must make a written motion and state facts that constitute one or more of the enumerated grounds.<sup>277</sup> The motion must be filed with the court possessing the records the person seeks to expunge, or with the court having jurisdiction over the arresting agency.<sup>278</sup>

The motion must be served on the district attorney, the clerk of the court whose records are sought to be expunged, and the head of any agency whose reports and records are sought to be expunged, including but not limited to the Federal Bureau of Investigation, the Louisiana Board of Criminal Identification and Information, the Department of Public Safety and Corrections, and local law enforcement agencies.<sup>279</sup>

Unless waived by the consent of the parties, a contradictory hearing must be conducted with the district attorney and any agency whose records are sought to be expunged.<sup>280</sup> If the court finds that grounds for expungement have been met, it may issue an order of expungement.<sup>281</sup>

A juvenile may also request that his/her DNA profile be removed from the state database on the grounds that the adjudication which necessitated the taking of the DNA sample has been reversed and the case dismissed.<sup>282</sup> The state will remove the records upon receipt of the written request and court order of expungement.<sup>283</sup>

#### **6. How should a juvenile describe a record that has been expunged?**

It should be described as nonexistent.<sup>284</sup>

#### **7. Are juvenile records maintained by any entity?**

Yes. The court may maintain a confidential record, such as a minute entry, of the fact of an adjudication.<sup>285</sup> This information may be released only upon written motion of a court exercising criminal jurisdiction over the person whose record is sought and then only for the purposes authorized by the Louisiana Code of Criminal Procedure.<sup>286</sup>

Where there are references, documents, records, or other materials that cannot be destroyed, they must be maintained by the court, but may not be released under any circumstances.<sup>287</sup> Fingerprint and arrest cards are maintained by the arresting agency. They may be maintained and used in the same manner as they would be if the court records had not been expunged, though this is not specifically addressed in the law. There is a risk that these records may be accessible through a fingerprint-based background check.

No one will have access to expunged DNA samples. They must be destroyed by state police.<sup>288</sup>

#### **8. Who has access to expunged juvenile records?**

For investigative purposes only, the Department of Public Safety and Corrections may maintain a confidential, nonpublic record of the arrest and disposition. The information contained in this record may be released, upon specific request, to any law enforcement or criminal justice agency and the following entities: the Louisiana State Board of Medical Examiners, the Louisiana State Board of Nursing, the Louisiana State Board of Dentistry, the Louisiana State Board of Examiners of Psychologists, the Emergency Medical Services Certification Commission, Louisiana Attorney Disciplinary Board, Office of Disciplinary Counsel, or the Louisiana Supreme Court Committee on Bar Admissions.<sup>289</sup>

## **XV. Conclusion**

## Need for Awareness by Policymakers, Criminal Justice Practitioners, and Defendants

*[I]t is neither fair nor efficient for the criminal justice system to label significant legal disabilities and penalties as collateral and thereby give permission to ignore them in the process of criminal sentencing, when in reality those disabilities and penalties can be the most important and permanent results of a criminal conviction.<sup>290</sup>*

The imposition of collateral consequences upon a person convicted of a crime cannot be said to be an unintended consequence, because these collateral consequences are expressly enacted by law. As a society, we have chosen to impose these consequences. It seems, however, that we have failed to consider the effect of our decisions and whether the imposition of these consequences is beneficial to our society and achieves our intended goals. Without an awareness of the full spectrum of collateral consequences of conviction<sup>291</sup> and the manner in which they play out, it is impossible to assess their effectiveness and continued desirability. This handbook is a first step to elevate public discourse about criminal justice policies relating to policing, court practices, incarceration, re-entry and collateral consequences.

Collateral consequences have several characteristics that appear contrary to our American system of justice. They are imposed without warning, in that a defendant is seldom if ever told she will be subject to these penalties, and indeed without any requirement that the judge, prosecutor, defense attorney, or defendant even be aware that they exist.<sup>292</sup> They are imposed across the board as a result of a criminal conviction, most often without taking into consideration the circumstances of the individual offender or offense.<sup>293</sup> The effects frequently extend well beyond the completion of any criminal sentence and may apply for the person's entire life, giving lie to the belief that a person can ever repay her debt to society.<sup>294</sup> Often there is no mechanism for relief from the application of a collateral consequence. They are automatic, mandatory and not subject to judicial review.<sup>295</sup> At minimum, we should catalogue and acknowledge the consequences being imposed daily upon those convicted of crime, in order to determine whether these apparent abrogations of our basic American standards of justice and fair play are justified.

At the most basic level, criminal defense attorneys and their clients should be aware of the collateral consequences attendant upon conviction in determining whether to plead guilty to an offense or proceed to trial. The United States Supreme Court has held that a guilty plea must be knowing, voluntary and intelligent in order to be valid.<sup>296</sup> Louisiana law provides that a court shall not accept a plea of guilty or *nolo contendere* to either a felony or a misdemeanor without first determining that the defendant understands the maximum possible penalty provided by law.<sup>297</sup> The ABA Standards on Collateral Sanctions provide that a court should, before accepting a guilty plea, ensure a defendant has been informed of all applicable collateral sanctions under the law of the state and federal law, and the Standards suggest this requirement may be satisfied by confirming that defense counsel has properly advised the defendant.<sup>298</sup>

The ABA Standards for Criminal Justice governing pleas of guilty require that defense counsel advise a defendant to the greatest extent possible of collateral sanctions in advance of the entry of a plea of guilty.<sup>299</sup> Defense counsel is in the best position to know the circumstances of a defendant and to determine which of many collateral consequences will be applicable. Of course, defense counsel can only carry out this duty if she is herself aware of the extant buffet of

potential collateral consequences. The Louisiana Rules of Professional Conduct, under which every Louisiana attorney is bound, imply a duty on the part of defense counsel to be aware of and advise a defendant regarding all potential collateral consequences.<sup>300</sup>

Prosecutors cannot seek justice and Judges cannot mete out justice while standing in ignorance of the effects of the convictions they respectively seek and impose. In 2001, the then President of the National District Attorneys Association articulated several arguments for why prosecutors should consider the consequences outside of the justice system that are imposed upon conviction.<sup>301</sup>

First, as the degree of collateral consequences becomes increasingly onerous, it reduces the possibility that convicts can return to be productive members of our society, such that defendants may believe they have no recourse but to continue to live outside the law.<sup>302</sup> Second, as consequences become increasingly severe and with no mechanism to restrain them, there is practical push-back inside of the criminal justice system: victims and witnesses are less likely to cooperate; defendants are more likely to go to trial than to enter into plea agreements; and judges may circumvent and attempt to avoid what they perceive as unjust results over which they have no control. With 95% of all state court felony convictions nationwide being obtained by guilty plea,<sup>303</sup> clearly prosecutors hold the heaviest hand in determining the outcome of a criminal prosecution; to fashion appropriate and efficacious plea agreements and agreed sentences, they must be informed as to collateral consequences.

The primary goals of sentencing are generally considered to be punishment, rehabilitation, and/or deterrence, and sentencing is peculiarly the province of the judiciary. Yet a judge cannot hope to achieve any of these goals in the absence of complete information about the collateral consequences that will combine with whatever sentence the judge imposes on a particular defendant. In particular, to the extent that there is a rehabilitative component to sentencing, the interplay of direct punishment and collateral consequences of a criminal conviction must be considered by the judge in fashioning an appropriate sentence.

It is necessary that citizens, legislators, and policymakers be aware of the costs and benefits to society in imposing collateral consequences. The community has a strong interest in seeing that former offenders are reintegrated into society as working, tax-payers capable of supporting their families. The Bureau of Justice reported that in 2009 there were over 7.2 million adults who were in jail or prison or supervised in the community either on probation or parole which translates into 1 in 32 U.S. adults under the supervision of state or federal corrections officials.<sup>304</sup> Where collateral consequences of conviction impede the ability of offenders to reintegrate into society, the law-abiding tax-paying citizenry bear the economic and public safety costs.<sup>305</sup> At times, the collateral consequences of a conviction are so severe that prosecutors and judges are unable to deliver a proportionate penalty in the criminal justice system without disproportionate collateral consequences.<sup>306</sup> Every time a politician is tough on crime, without being smart on crime, the ripple spreads throughout society.

## ENDNOTES:

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<sup>1</sup> “In felony cases the defendant shall always be present when sentence is pronounced. In misdemeanor cases the defendant shall be present when sentence is pronounced, unless excused by the court. If a sentence is improperly pronounced in the defendant’s absence, he shall be resentenced when his presence is secured.” LA. CODE CRIM. PROC. art. 835 (2010).

<sup>2</sup> “Sentence shall be pronounced orally in open court and recorded in the minutes of the court.” LA. CODE CRIM. PROC. art. 871(A) (2010).

<sup>3</sup> AMERICAN BAR ASSOCIATION, STANDARDS FOR CRIMINAL JUSTICE THIRD EDITION: COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS (2003) [hereinafter ABA STANDARDS ON COLLATERAL SANCTIONS ].

<sup>4</sup> “The term ‘collateral sanction’ means a legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.” ABA STANDARDS ON COLLATERAL SANCTIONS Standard 19-1.1(a).

<sup>5</sup> “The term ‘discretionary disqualification’ means a penalty, disability or disadvantage, however denominated, that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense on grounds related to the conviction.” ABA STANDARDS ON COLLATERAL SANCTIONS Standard 19-1.1(b).

<sup>6</sup> ABA STANDARDS ON COLLATERAL SANCTIONS cmt. at 8.

<sup>7</sup> ABA STANDARDS ON COLLATERAL SANCTIONS cmt. at 10-11.

<sup>8</sup> ABA STANDARDS ON COLLATERAL SANCTIONS Standard 19-2.1.

<sup>9</sup> See 42 U.S.C. § 1436a(b)(1)(2011).

<sup>10</sup> See 42 U.S.C. § 1437f(a)(2011).

<sup>11</sup> See LA. REV. STAT. ANN. § 40:501(A)(1)(c)(2011).

<sup>12</sup> LA. REV. STAT. ANN. § 40:510 (2011).

<sup>13</sup> 42 U.S.C. § 1437f(d)(1)(B)(iii)(2011).

<sup>14</sup> 42 U.S.C. § 13662 (2011).

<sup>15</sup> 42 U.S.C. § 1437f(d)(1)(B)(v)(2011).

<sup>16</sup> LA. REV. STAT. ANN. § 15:574.4.2(A)(3)(2011).

<sup>17</sup> Fair Housing Act, 42 U.S.C.S. §§ 3601 *et. seq.* (2011).

<sup>18</sup> 42 U.S.C. § 13663(a)(2011).

<sup>19</sup> 42 U.S.C. § 13661(2011).

<sup>20</sup> 42 U.S.C. § 13661(b)(2011).

<sup>21</sup> *Id.*

<sup>22</sup> 42 U.S.C. § 1437d(l)(6)(2011); 24 C.F.R. § 966.4(f)(12)(i)(2011).

<sup>23</sup> LA. REV. STAT. ANN. § 23:897(A)(2011).

<sup>24</sup> LA. REV. STAT. ANN. § 37:2950(A)(2011).

<sup>25</sup> LA. REV. STAT. ANN. § 37:2950(D)(1)(a)(2011). This section does not apply to any law enforcement agency, the Louisiana State Board of Medical Examiners, the Louisiana State Board of Dentistry, the Louisiana State Board of Nursing, the Louisiana State Board of Practical Nurse Examiners, the State Racing Commission, the State Athletic Commission, the Louisiana State Board of Pharmacy, the Louisiana State Bar Association, the Louisiana Professional Engineering and Land Surveying Board, the Louisiana State Board of Architectural Examiners, the Louisiana State Board of Private Investigator Examiners, the Louisiana State Board of Embalmers and Funeral Directors, and the Louisiana State Board of Elementary and Secondary Education.

<sup>26</sup> LA. REV. STAT. ANN. § 17:15(A)(2) (2011).

<sup>27</sup> LA. REV. STAT. ANN. § 17:15(2011).

<sup>28</sup> LA. REV. STAT. ANN. § 17:15(A)(1)(a)(2011).

<sup>29</sup> *Id.*

<sup>30</sup> LA. REV. STAT. ANN. § 17:15(A)(1)(b)(2011).

<sup>31</sup> LA. REV. STAT. ANN. § 17:15(A)(1)(c)(2011).

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- <sup>32</sup> See 46 U.S.C. § 70105(b)(1) & (2)(A)(2011).
- <sup>33</sup> See 46 U.S.C. § 70105 (b)(2)(B)(2011).
- <sup>34</sup> 46 U.S.C. § 70105 (c)(1)(A)(i-ix)(2011).
- <sup>35</sup> 46 U.S.C. § 70105(c)(1)(B)(2011).
- <sup>36</sup> 46 U.S.C. § 70105(c)(1)(B)(i-xv)(2011).
- <sup>37</sup> 46 U.S.C. § 70105(c)(2)(2011).
- <sup>38</sup> 46 U.S.C. § 70105(c)(1)(C)(2011).
- <sup>39</sup> See 46 U.S.C. § 70105(c)(2)(A)(2011).
- <sup>40</sup> See 46 U.S.C. § 70105 (c)(4)(2011).
- <sup>41</sup> LA. CHILD. CODE ANN. art. 412(H)(2011).
- <sup>42</sup> LA. CHILD. CODE ANN. art. 412(E)(2011).
- <sup>43</sup> LA. CHILD. CODE ANN. art. 921(A)(1)(2011).
- <sup>44</sup> See LA. REV. STAT. § 37:921(2011). Rule 3517 of the Louisiana State Board of Nursing requires nursing programs to establish criteria that bar applicants from enrollment in a clinical nursing program on evidence of grounds for denial of licensure under R.S. 37:921. LA. ADMIN. CODE tit. 46, pt. XLVII, § 3517(I)(2011).
- <sup>45</sup> 20 U.S.C.S. § 1091(r)(1)(2011).
- <sup>46</sup> *Id.*
- <sup>47</sup> *Id.*
- <sup>48</sup> 20 U.S.C. § 1091(r)(2)(A)(2011).
- <sup>49</sup> 20 U.S.C. § 1091(r)(2)(B)(2011).
- <sup>50</sup> 20 U.S.C. § 1091(r)(2)(C)(2011).
- <sup>51</sup> *E.g.*, LA. ADMIN. CODE tit. 28, pt. IV, §§ 705(A)(3), 805(A)(3), 903(A)(6), 907(A)(8)(2011); LA. REV. STAT. ANN. § 17:3048.1(A)(4)(e)(2011).
- <sup>52</sup> See *e.g.*, LA. ADMIN. CODE tit. 28, pt. IV, § 705(C)(2011).
- <sup>53</sup> LA. REV. STAT. ANN. § 17:416(A)(1)(a)(2011).
- <sup>54</sup> *Id.* at (C)(2)(a)(i), (C)(2)(b)(i).
- <sup>55</sup> *Id.* at (C)(2)(c)(i).
- <sup>56</sup> *Id.* at (C)(2)(a)(ii).
- <sup>57</sup> *Id.* at (C)(2)(b)(ii).
- <sup>58</sup> *Id.* at (C)(2)(c)(ii).
- <sup>59</sup> *Id.* at (D)(1).
- <sup>60</sup> *Id.* at (A)(1)(c)(vii)(cc).
- <sup>61</sup> *Id.* at (A)(3)(d).
- <sup>62</sup> *Id.* at (B)(3)(a)(i).
- <sup>63</sup> *Id.* at (C)(2)(a)(i).
- <sup>64</sup> See *id.* at (C)(2)(a)(ii), (C)(2)(b)(ii), (C)(2)(c)(ii).
- <sup>65</sup> LA. CIV. CODE ANN. art. 103(3), 103.1 (2011).
- <sup>66</sup> LA. CHILD. CODE ANN. art. 1015(4)(b)-(c)(2011).
- <sup>67</sup> LA. CHILD. CODE ANN. art. 1036.2(A)-(C)(2011).
- <sup>68</sup> LA. REV. STAT. ANN. § 46:282(A)(2011).
- <sup>69</sup> LA. ADMIN. CODE tit. 67, pt. V, § 6305(B)(1) (2011).
- <sup>70</sup> *Id.*
- <sup>71</sup> *Id.*
- <sup>72</sup> LA. REV. STAT. ANN. §§ 15:1199.9(E)(6), 1199.10(F)(6)(2011); LA. ADMIN. CODE tit. 22, pt. I, § 331(D)(15)(2011).
- <sup>73</sup> LA. REV. STAT. ANN. § 46:236.6(B)(1)(2011).
- <sup>74</sup> LA. CODE CRIM. PROC. ANN. art. 895(A)(2)(2011).
- <sup>75</sup> LA. CHILD. CODE ANN. art. 1015(8)(2011).
- <sup>76</sup> LA. REV. STAT. ANN. § 18:2(8)(2011).
- <sup>77</sup> LA. REV. STAT. ANN. § 18:102(2011).
- <sup>78</sup> 28 U.S.C. § 1865(b)(5)(2011).
- <sup>79</sup> See *e.g.* *U.S. v. Hefner*, 842 F.2d 731, 732 (4<sup>th</sup> Cir. 1988)(relying on the legislative history of section 1865 to hold that some affirmative act recognized in law must first take place to restore one's civil rights to meet the eligibility requirements of section 1865(b)(5)).
- <sup>80</sup> See LA. CODE CRIM. PROC. ANN. art. 401(A)(5)(2011).

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<sup>81</sup> *State v. Jacobs*, 04-1219, p. 19-20 (La. App. 5 Cir. 5/31/05); 904 So. 2d 82, 91.  
<sup>82</sup> See LA. REV. STAT. ANN. § 15:572 (2011).  
<sup>83</sup> Gun Control Act of 1968, as amended, 18 U.S.C.S. §§ 921-930 (2011).  
<sup>84</sup> 18 U.S.C. § 921(a)(3)(2011).  
<sup>85</sup> 18 U.S.C. § 921(a)(20)(A) (2011).  
<sup>86</sup> 18 U.S.C. § 921(a)(20)(B) (2011); *see also* 18 U.S.C.S. § 921(a)(33)(B)(i).  
<sup>87</sup> 18 U.S.C. § 921(a)(20) (2011).  
<sup>88</sup> 18 U.S.C. § 921(a)(20)(B)(2011); 18 U.S.C. § 921(a)(33)(B)(ii)(for a misdemeanor crime of domestic violence).  
<sup>89</sup> *Beecham v. U.S.*, 511 U.S. 368, 374 (1994).  
<sup>90</sup> Though the Bureau of Alcohol, Tobacco and Firearms is authorized to restore federal firearms privileges to convicted felons, it has not been permitted to expend funds for this purpose since 1992. 18 U.S.C.S. § 925(c)(2011).  
<sup>91</sup> *U.S. v. McGill*, 74 F.3d 64 (5<sup>th</sup> Cir. 1996).  
<sup>92</sup> *Beecham*, 511 U.S. at 371.  
<sup>93</sup> See Section XIV of this document for a complete discussion of expungements and pardons.  
<sup>94</sup> LA. REV. STAT. ANN. § 14:95.1 (2011).  
<sup>95</sup> As defined in LA. REV. STAT. ANN. § 14:2(B)(2011).  
<sup>96</sup> LA. REV. STAT. ANN. § 40:961(2011).  
<sup>97</sup> As defined in LA. REV. STAT. ANN. § 15:541(14.1)(2011).  
<sup>98</sup> LA. REV. STAT. ANN. § 14:95.1(C)(2011).  
<sup>99</sup> *See generally id.*  
<sup>100</sup> *See State v. Brown*, 42,188 (La. App. 2 Cir. 09/26/07); 966 So.2d 727, 744.  
<sup>101</sup> *See U.S. v. Ellis*, 604 F. Supp. 2d 346 (D. Mass. 2009); *U.S. v. Wells*, 473 F.3d 640 (6<sup>th</sup> Cir. 2007); *U.S. v. Flores*, 118 F. App'x 49 (6<sup>th</sup> Cir. 2004); *U.S. v. Gispert*, 864 F. Supp. 1193 (S.D. Fla. 1994); *U.S. v. Thompson*, 756 F. Supp. 1492 (N.D. Fla. 1991).  
<sup>102</sup> La. Op. Att'y Gen. No. 94-141 (Feb. 9, 1995), 1995 La. AGLEXIS 48.  
<sup>103</sup> *See* LA. REV. STAT. ANN. § 40:1379.3(C)(2011).  
<sup>104</sup> 32 C.F.R. § 96.1 (2011); 10 U.S.C.S. § 504(a)(2011).  
<sup>105</sup> 32 C.F.R. § 96.3(a)(2011).  
<sup>106</sup> 5 U.S.C. § 910(b)(2011).  
<sup>107</sup> LA. CHILD. CODE ANN. art. 412(E), comment (e)(2011).  
<sup>108</sup> 10 U.S.C. § 504(a)(201); *see* 32 C.F.R. § 96.3(a)(2011).  
<sup>109</sup> 32 C.F.R. 96.3.  
<sup>110</sup> LA. REV. STAT. ANN. § 32:431(B)(1)(a)(2011); *see also* LA. REV. STAT. ANN. § 17:416.1(D)(1)-(2)(2011).  
<sup>111</sup> LA. REV. STAT. ANN. § 32:431(B)(1)(b)(2011).  
<sup>112</sup> LA. CHILD. CODE ANN., art. 897 (2011).  
<sup>113</sup> LA. CHILD. CODE ANN., art. 899(B)(2)(e)(2011).  
<sup>114</sup> LA. REV. STAT. ANN. § 32:431(C)(2)(b) (2011).  
<sup>115</sup> *Id.* at (D)-(E).  
<sup>116</sup> LA. DEP'T OF HEALTH AND HOSPS., MEDICAID ELIGIBILITY MANUAL § 9-910 (July 28, 2010), <http://bhsfweb.dhh.la.gov/oninemanualspublic>.  
<sup>117</sup> *Id.* at § I-930.  
<sup>118</sup> *Id.* at § I-920.  
<sup>119</sup> *Id.* at § I-940.  
<sup>120</sup> *Id.* at § I-930.  
<sup>121</sup> U.S. SOC. SEC. ADMIN., ONLINE SOCIAL SECURITY HANDBOOK § 1850.1 (July 28, 2006), [http://www.ssa.gov/OP\\_Home/handbook](http://www.ssa.gov/OP_Home/handbook).  
<sup>122</sup> *Id.* at § 1850.3.  
<sup>123</sup> *Id.* at § 1850.2(A).  
<sup>124</sup> *Id.* at § 1850.2(B).  
<sup>125</sup> *Id.* at § 1850.2(C).  
<sup>126</sup> *Id.* at § 1850.2(D).  
<sup>127</sup> *Id.* at § 1854.  
<sup>128</sup> *Id.*  
<sup>129</sup> *Id.*  
<sup>130</sup> 20 C.F.R. § 416.211(a)(2011); *see also* 20 C.F.R. § 416.201 (2011).

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- <sup>131</sup> 20 C.F.R. § 216.211(c)(2011).
- <sup>132</sup> LA. ADMIN. CODE tit. 67, pt. III, § 1988(A) (2011).
- <sup>133</sup> See “controlled substance” as defined in section 802(6) of the Controlled Dangerous Substances Act, 21 U.S.C.S. § 802(6)(2011), LA. ADMIN. CODE tit. 67, pt. III, § 1988(B)(2011).
- <sup>134</sup> LA. ADMIN. CODE tit. 67, pt. III § 1988(B)(2011).
- <sup>135</sup> LA. ADMIN. CODE tit 67, pt. III § 1251(A)(2011).
- <sup>136</sup> LA. ADMIN. CODE tit. 67, pt. III § 1251(B)(2011).
- <sup>137</sup> See “controlled substance” as defined in section 802(6) of the Controlled Dangerous Substances Act, 21 U.S.C.S. § 802(6)(2011), LA. ADMIN. CODE tit. 67, pt. III, § 1255(A)(2011).
- <sup>138</sup> LA. ADMIN. CODE tit. 67, pt. III § 1255(A)(2011).
- <sup>139</sup> LA. REV. STAT. ANN. § 23:1601(1)(a)(2011).
- <sup>140</sup> LA. REV. STAT. ANN. § 23:1601(2)(a)(2011).
- <sup>141</sup> *Schoennagel v. La. Office of Emp’t Sec.*, 413 So. 2d 652, 653 (La. App. 1 Cir. 1982).
- <sup>142</sup> *City of Monroe v. Tolliver*, 41,969, p. 5-11 (La. App. 2 Cir. 3/7/07); 954 So. 2d 203, 206-207.
- <sup>143</sup> See *Grimble v. Brown*, 171 So. 2d 653, 655-56 (La. 1965)(loss of driver’s license for a truck driver subsequent to a DWI conviction constituted “misconduct which renders the employee ineligible to perform the tasks of his employment” thereby justifying the denial of his unemployment benefits); *Mattox v. Adm’r. Div. of Emp’t. Sec., Dep’t. of Labor*, 528 So.2d 661, 664-65 (La. App. 2 Cir. 5/4/88)(unemployment benefits were properly denied where a DWI arrest, even without conviction, was found to constitute misconduct that is connected with or related to the employment).
- <sup>144</sup> See *Moore v. La. State Univ.*, 517 So.2d 993 (La. App. 3 Cir. 1987)(upholding statute which declares a felony conviction of a state employee constitutes disqualifying misconduct for the purpose of unemployment compensation law).
- <sup>145</sup> See *Landry v. Shell Oil Co.*, 597 So.2d 521 (La. App. 1 Cir. 1992)(employee discharged for pleading guilty to possession with intent to distribute marijuana in accordance with an unwritten company policy prohibiting drug use).
- <sup>146</sup> See e.g. *Dubuclet v. Div. of Emp’t Sec. of Dep’t of Labor*, 483 So. 2d 1183, 1185 (La. App. 4 Cir. 1986)(teachers); *Sensley v. Adm’r. Office of Em;t Sec.*, 552 So. 2d 787 (La. App. 1<sup>st</sup> Cir. 1989)(assistant manager at McDonald’s).
- <sup>147</sup> See *Dubuclet*, 483 So.2d at 1185; *Johnson v. Bd. Of Comm’rs.*, 348 So.2d 1289, 1290-91(La. App. 4 Cir. 1977)(reduction for plea of weapons charge to disturbing the peace where regulations prohibited carrying of weapons off-duty by police officer).
- <sup>148</sup> 20 C.F.R. § 404.1506(a)(2011).
- <sup>149</sup> *Id.* at (b)(2011).
- <sup>150</sup> *Id.* at (a).
- <sup>151</sup> *Id.* at (c).
- <sup>152</sup> *Id.* at (b).
- <sup>153</sup> See *Incarcerated Veteran Program – Benefits Program Fact Sheet*, U.S. DEP’T OF VET AFFAIRS, <http://www.vba.va.gov/bh/21/Benefits/Incarcerated/benprogfact.htm> (last updated Mar. 16, 2009). [Last visited April 1, 2011].
- <sup>154</sup> *Id.*
- <sup>155</sup> *Id.*
- <sup>156</sup> *Id.*
- <sup>157</sup> *Id.*
- <sup>158</sup> *Id.*
- <sup>159</sup> *Id.*
- <sup>160</sup> *Id.*
- <sup>161</sup> *Padilla v. Kentucky*, 130 S. Ct. 1473 (2011).
- <sup>162</sup> *Id.*; 8 U.S.C.S. § 1227(a)(2)(B)(i)(2011).
- <sup>163</sup> *Padilla*, 130 S. Ct. at 1483.
- <sup>164</sup> *Id.* at 1483.
- <sup>165</sup> See e.g. *State v. Montalban*, 2000-2739 (La. 02/26/02); 810 So.2d 1106.
- <sup>166</sup> See ABA Criminal Justice Standard 14-3.2, Responsibility of Defense Counsel and LPDB Trial Performance Standards §753(B).

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- <sup>167</sup> See e.g. 8 U.S.C.S. § 1227(a)(2)(B)(i)(2011)(the only exception to mandatory deportation for drug offenses – a single offense involving possession for one’s own use of 30 grams or less of marijuana).
- <sup>168</sup> INA § 237, 8 U.S.C. § 1227 (2011).
- <sup>169</sup> INA § 212, 8 U.S.C. § 1182 (2011).
- <sup>170</sup> 8 U.S.C. § 1227(a)(2)(A)(i), (A)(iii), (B)(i), (C)(2011).
- <sup>171</sup> 8 U.S.C. § 1255(j)(2011).
- <sup>172</sup> 8 U.S.C. § 1227(a)(2)(A)(i)(2011).
- <sup>173</sup> 8 U.S.C. § 1227(a)(2)(A)(ii)(2011).
- <sup>174</sup> 8 U.S.C. § 1227(a)(2)(A)(iv)-(v); see also, 18 U.S.C.S. §§ 758, 2250(a)(2011).
- <sup>175</sup> 8 C.F.R. § 287.7(d)(2011).
- <sup>176</sup> See e.g., *Matter of Ramirez-Rivero*, 18 I. & N. Dec. 135 (B.I.A. 1981); *Matter of Devison*, 22 I.&N. Dec. 1362 (B.I.A. 2000).
- <sup>177</sup> 8 U.S.C. § 1227(a)(2)(E)(ii)(2011).
- <sup>178</sup> 8 U.S.C. § 1182(a)(2)(C)(2011).
- <sup>179</sup> See 8 U.S.C. § 1427(e)(2011); 8 C.F.R. § 316.10(2011).
- <sup>180</sup> See *Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577 (2010).
- <sup>181</sup> 8 U.S.C. § 1158 (2011).
- <sup>182</sup> 8 U.S.C. § 1101(a)(27)(J)(2011).
- <sup>183</sup> 8 U.S.C. § 1182(a)(1)(A)(iv)(2011); 8 U.S.C.S. § 1227(a)(2)(B)(ii)(2011).
- <sup>184</sup> LA. REV. STAT. ANN. § 15:542(A)(1)(a) and (b)(2011).
- <sup>185</sup> LA. REV. STAT. ANN. § 15:542(A)(1)(a) (2011).
- <sup>186</sup> LA. REV. STAT. ANN. § 15:543(A) and (B) (2011).
- <sup>187</sup> LA. REV. STAT. ANN. § 15:544(A) (2011).
- <sup>188</sup> LA. REV. STAT. ANN. § 15:544(B) (2011).
- <sup>189</sup> LA. REV. STAT. ANN. § 15:544(E) (2011).
- <sup>190</sup> LA. REV. STAT. ANN. § 15:544(B)(2)(a) and (c)(2011).
- <sup>191</sup> LA. REV. STAT. ANN. § 15:542.1(A)(1)(a)-(b) and (2)(a)(2011).
- <sup>192</sup> LA. REV. STAT. ANN. § 15:542.1.5(A)(1)(2011).
- <sup>193</sup> LA. REV. STAT. ANN. § 15:542.1.5(A)(2)(a)(2011).
- <sup>194</sup> LA. REV. STAT. ANN. § 32:412 (I)(1)-(5)(2011).
- <sup>195</sup> LA. REV. STAT. ANN. § 15:542.1(A)(1)(c)(2011).
- <sup>196</sup> LA. REV. STAT. ANN. § 14:91.2(A)(2), (4) (2011).
- <sup>197</sup> Defined in LA. REV. STAT. ANN. § 15:560.1(5) (2011).
- <sup>198</sup> LA. REV. STAT. ANN. § 14:91.1(A)(2) (2011).
- <sup>199</sup> LA. REV. STAT. ANN. § 15:538(D)(1)(c) (2011).
- <sup>200</sup> LA. REV. STAT. ANN. § 15:553(A) (2011).
- <sup>201</sup> LA. REV. STAT. ANN. § 15:553(B)(2011).
- <sup>202</sup> LA. REV. STAT. ANN. § 15:553(C)(2011).
- <sup>203</sup> LA. REV. STAT. ANN. § 44:9(E)(2)(2011).
- <sup>204</sup> LA. REV. STAT. ANN. § 15:544 (A) and (B) (2011).
- <sup>205</sup> *Id.*
- <sup>206</sup> LA. REV. STAT. ANN. § 15:544(E)(2)(2011).
- <sup>207</sup> LA. REV. STAT. ANN. § 15:542(A)(3)(2011).
- <sup>208</sup> See LA. REV. STAT. ANN. §§ 15:542(B)-(D); 15:542.1(B)-(C); 15:542.1.1; 15:542.1.2; 15:542.1.3; 15:542.1.4; 15:543.2 and 32:412(I)(2011).
- <sup>209</sup> LA. REV. STAT. ANN. §§ 15:542.1(C) and 15:543.1(6)-(8)(2011).
- <sup>210</sup> LA. REV. STAT. ANN. § 15:544(B)(2)(b)(2011).
- <sup>211</sup> LA. REV. STAT. ANN. § 15:572(D)(2011).
- <sup>212</sup> LA. REV. STAT. ANN. § 15:544(B)(2)(2011).
- <sup>213</sup> LA. REV. STAT. ANN. § 15:542(2011).
- <sup>214</sup> LA. REV. STAT. ANN. § 15:542(F)(1)(2011).
- <sup>215</sup> LA. REV. STAT. ANN. § 15:544(D)(3)(2011).
- <sup>216</sup> LA. REV. STAT. ANN. § 15:544(D)(2)(2011).
- <sup>217</sup> *Id.*
- <sup>218</sup> LA. REV. STAT. ANN. § 15:544(D)(4)(2011).

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<sup>219</sup> LA. REV. STAT. ANN. § 15:544 (D)(4)(c)(2011).

<sup>220</sup> LA. CONST. art. IV, § 5(E)(1)(2011).

<sup>221</sup> LA. REV. STAT. ANN. § 15:572(B)-(E)(2011). Section B contemplates an automatic pardon for any first offender never convicted of a felony. However, the more recent constitutional amendment, enacted in 1999, limits availability to convictions of certain offenses and would override the broader availability in the statute which mirrored constitutional language prior to the 1999 amendment. Act 1401, 25<sup>th</sup> Leg., 1999 Reg. Sess. (La).

<sup>222</sup> LA. CONST. art. I, § 20.

<sup>223</sup> LA. REV. STAT. ANN. § 15:572(D)(2011).

<sup>224</sup> See *State v. Adams*, 355 So. 2d 917, 922(La. 1978); cf. *Williams v. Board of Alcoholic Beverages*, 317 So.2d 247 (La. 1975)(suggesting in dictum that automatic pardon would not restore the right to a liquor license).

<sup>225</sup> LA. CONST. art. I, § 10(B)(1).

<sup>226</sup> See e.g., *State v. Castillo*, 07-1865 (La. App. 1 Cir. 9/21/07); 971 So.2d 1081; *Malone v. Tubbs*, 36,816 (La. App. 2 Cir. 9/6/02); 825 So.2d 585; *Cook v. Skipper*, 99-1448 (La. App. 3 Cir. 9/27/99); 749 So.2d 6.

<sup>227</sup> LA. CONST. art. I, § 10(C).

<sup>228</sup> LA. REV. STAT. ANN. § 14:95.1; see also, *State v. Wiggins*, 432 So.2d 234 (La. 1983).

<sup>229</sup> See *State v. Riser*, 30,201 (La. App. 2 Cir. 12/12/97); 704 So.2d 946(suggesting in dictum that offender who can prove he has received the certificate and relied upon it may raise mistake of law defense); *State v. West*, 33,133 (La. App. 2 Cir 3/1/00); 754 So.2d 408 (finding *Riser* “erroneous” and holding that felon granted automatic pardon could not raise mistake of law as defense in felon in possession of firearm prosecution).

<sup>230</sup> LA. REV. STAT. ANN. § 15:572(E)(2011); see also *State v. Rollins*, 32,686 (La. App. 2 Cir. 12/22/99), 749 So.2d 890, 898.

<sup>231</sup> See e.g. *Catanese v. La. Gaming Control Bd.*, 97-1426 (La. App. 1 Cir. 5/15/98); 712 So.2d 666; *Eicher v. La. State Police*, 97-0121 (La. App. 1 Cir. 2/20/98); 710 So. 2d 799 (application for a gaming permit); *Davis v. Louisiana State Bd. Of Nursing*, 96-0805 (La. App. 1 Cir. 2/14/97); 691 So.2d 170 (application for a nursing license); *Dear v. State*, 28,852 (La. App. 2 Cir. 10/30/96); 682 So.2d 862 (restoration of driving privileges after multiple DWI convictions).

<sup>232</sup> *State v. Jacob*, 04-1219 (La. App. 5 Cir. 5/31/05); 904 So.2d 82, 91.

<sup>233</sup> See *State v. Daniel*, 39,633, p. 8-11 (La. App. 2 Cir. 5/25/05); 903 So.2d 644, 648.

<sup>234</sup> *Ex Parte Garland*, 71 U.S. 333 (1866), cited in *State v. Lee*, 132 So. 219, 219-20 (La. 1931).

<sup>235</sup> See *Malone v. Shyne*, 06-2190, p. 3-7 (La. 9/13/06); 937 So. 2d 343, 347; see also La. Op. Att’y Gen. No. 88-11 (Jan. 7, 1988), 1988 La. AGLLEXIS 30.

<sup>236</sup> For example, barring a limitation in the executive pardon document prohibiting possession of firearms, the executive pardon insulates the pardoned individual from prosecution under the state felon in possession of a firearm statute. See LA. REV. STAT. ANN. § 14:95.1 (2011). Such a pardon even insulates the person from prosecution under the federal in possession of a firearm statute. See 18 U.S.C.S. § 922(g)(1)(2011). This is because the federal statute specifically excludes any conviction for which a person has been pardoned. 18 U.S.C.S. § 921(a)(20)(2011).

<sup>237</sup> See *State v. Castillo*, 07-1865 (La. App. 1 Cir. 9/24/07); 971 So.2d 1081.

<sup>238</sup> *Malone v. Shyne*, 06-2190 (La. 9/13/06); 937 So.2d 343.

<sup>239</sup> *Gordon v. Louisiana State Bd. Of Nursing*, 00-0164, p. 7-11 (La. App. 1 Cir. 6/22/01); 804 So.2d 34, 38.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at 40.

<sup>242</sup> LA. REV. STAT. ANN. § 44:9(A)(1) (2011).

<sup>243</sup> *Id.* at (A)(1)(b)(2011).

<sup>244</sup> *Id.* at (A)(2).

<sup>245</sup> *Id.*

<sup>246</sup> *State v. Bradley*, 360 So.2d 858, 862 (La. 1978).

<sup>247</sup> LA. REV. STAT. ANN. § 15:578.1(2011); see also LA. REV. STAT. ANN. § 15:242(2011).

<sup>248</sup> *State v. Granger*, 07-2285, p. 26-42 (La. 5/21/08); 982 So. 2d 779, 790-95.

<sup>249</sup> LA. REV. STAT. ANN. § 44:9(B)(1)(a)(2011). Paragraph B by its terms requires that in addition, the applicant for expungement must show that “the record of arrest and prosecution is without substantial probative value as a prior act for any subsequent prosecution.” *Id.* at (B)(1)(b). The legislature enacted this requirement in 1996 and then added R.S. 44:9(G), which distinguishes between expungement and destruction and allows expunged records to remain available to law enforcement agencies and criminal justice agencies three years later. LA. REV. STAT. ANN. § 44:9(G)(2011). Because an expunged felony record is still available to law enforcement and prosecutors under paragraph G, the requirement of establishing that the arrest is “without substantial probative value” is now

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essentially meaningless as a barrier to expungement. *See e.g., State v. Tillman*, 42,688 (La. App. 2 Cir. 11/14/07); 969 So.2d 824. *See also* discussion *infra* of difference between destruction and expungement.

<sup>250</sup> LA. REV. STAT. ANN. § 44:9(C)(1)(2011).

<sup>251</sup> *Id.* at (B)(2), (C)(2).

<sup>252</sup> *Id.* at (A)(5)(d).

<sup>253</sup> *Id.* at (C)(2).

<sup>254</sup> LA. REV. STAT. ANN. § 44:9(G)(2011).

<sup>255</sup> *Id.* at (G).

<sup>256</sup> *Id.* at (J)(3).

<sup>257</sup> *Id.* at (G).

<sup>258</sup> *Id.* at F.

<sup>259</sup> *Id.* at (E)(1)(b), (E)(3)(a).

<sup>260</sup> *Id.* at (E)(1)(a)-(b).

<sup>261</sup> *Id.* at (E)(3)(a).

<sup>262</sup> *Id.* at (E)(2).

<sup>263</sup> *Id.* at (B)(2).

<sup>264</sup> *Id.* at (E)(1)(b).

<sup>265</sup> *See e.g., State v. Jones*, 539 So.2d 866, 868 (La. App. 2 Cir. 1989)(conviction vacated and dismissed under Article 893 can serve as a basis for felon in possession of a firearm charge).

<sup>266</sup> *See State v. Green*, 08-273 (La.App. 5 Cir. 9/30/08); 997 So.2d 42.

<sup>267</sup> *See id.; State v. Daniel*, 39,633 (La.App. 2 Cir. 5/25/05); 903 So.2d 644.

<sup>268</sup> LA. REV. STAT. ANN. § 44:9(A)(3)(a)-(b)(2011).

<sup>269</sup> *Id.*

<sup>270</sup> LA. REV. STAT. ANN. § 44:9(A)(4)(2011).

<sup>271</sup> LA. CHILD. CODE ANN. art. 920 (2011); *see also* LA. CHILD. CODE ANN. art. 917, comment (b)(2011) and LA. CHILD. CODE ANN. art. 922 (2011).

<sup>272</sup> LA. CHILD. CODE ANN. art. 917 (2011).

<sup>273</sup> LA. CHILD. CODE ANN. art. 918(A)(2011).

<sup>274</sup> *Id.* at (B).

<sup>275</sup> *Id.* at (C).

<sup>276</sup> Act 158, 35<sup>th</sup> Leg. 2009 Reg. Sess. (La.).

<sup>277</sup> LA. CHILD. CODE ANN. art. 919(B)(2011).

<sup>278</sup> *Id.* at (C).

<sup>279</sup> *Id.* at (D).

<sup>280</sup> *Id.* at (E).

<sup>281</sup> *Id.* at (F).

<sup>282</sup> LA. REV. STAT. ANN. § 15:614(A)(2)(2011).

<sup>283</sup> *Id.* at (B).

<sup>284</sup> LA. CHILD. CODE ANN. art. 922(2011).

<sup>285</sup> LA. CHILD. CODE ANN. art. 920(C)(2011).

<sup>286</sup> *Id.*

<sup>287</sup> *Id.* at (B).

<sup>288</sup> LA. REV. STAT. ANN. § 15:614(B)(2011).

<sup>289</sup> LA. REV. STAT. ANN. § 44:9(F)(2011).

<sup>290</sup> ABA STANDARDS ON COLLATERAL SANCTIONS cmt. at 11.

<sup>291</sup> In some instances, even mere arrest can result in severe and far-reaching consequences. *See supra*: Immigration and Employment Sections.

<sup>292</sup> ABA STANDARDS ON COLLATERAL SANCTIONS cmt. at 8.

<sup>293</sup> ABA STANDARDS ON COLLATERAL SANCTIONS cmt. at 7. The application of a collateral consequence to a person without consideration of the individual circumstances of the offender may be argued to violate the Louisiana constitutional prohibition against cruel, excessive, or unusual punishments. LA. CONST. art. I, § 20.

<sup>294</sup> ABA STANDARDS ON COLLATERAL SANCTIONS cmt. at 7.

<sup>295</sup> This is true of most collateral sanctions under the ABA definitions and is one of the reasons for distinguishing them from discretionary disqualifications. ABA STANDARDS ON COLLATERAL SANCTIONS Standard 19-1.1. It could be argued that the unreviewable nature of collateral consequences violates several provisions of the

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Louisiana Constitution. “No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based.” LA. CONST. art. I, § 19. “[E]very person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.” LA. CONST. art. I, § 22.

<sup>296</sup> See *Brady v. U.S.*, 397 U.S. 742, 758 (1970); *Brookhart v. Janis*, 384 U.S. 1, 4-5 (1966); *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 275 (1942).

<sup>297</sup> E.g. LA. CODE CRIM. PROC. arts. 556 and 556.1 (2010).

<sup>298</sup> ABA STANDARDS ON COLLATERAL SANCTIONS Standard 19-2.3(a).

<sup>299</sup> AMERICAN BAR ASSOCIATION, STANDARDS FOR CRIMINAL JUSTICE, PLEAS OF GUILTY 3 (1999), Standard 14-3.2(f).

<sup>300</sup> “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” LA. R. PROF. CONDUCT 1.1(a) (2011). “The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.” LA. R. PROF. CONDUCT 1.4(b) (2011). “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.” LA. R. PROF. CONDUCT 2.1 (2011).

<sup>301</sup> Robert M.A. Johnson, *National District Attorneys Association, Message from the President: Collateral Consequences*, (May-June 2001), <[http://ndaa.org/ndaa/about/president\\_message\\_may\\_june\\_2001.html](http://ndaa.org/ndaa/about/president_message_may_june_2001.html)>.

<sup>302</sup> *Id.* See also ABA STANDARDS ON COLLATERAL SANCTIONS, cmt. at 10 (“If promulgated and administered indiscriminately, a regime of collateral consequences may frustrate the chance of successful re-entry into the community, and thereby encourage recidivism.”).

<sup>303</sup> See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *State Court Sentencing of Convicted Felons 2004-Statistical Tables, Felony Case Processing in State Courts, Table 4.1: Distribution of types of felony convictions in State courts, by offense, 2004* (last modified July 2007). <<http://bjs.ojp.usdoj.gov/content/pub/html/scscf04/tables/scs04401tab.cfm>>.

<sup>304</sup> See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Total Correctional Population 2009*. <<http://bjs.ojp.usdoj.gov/index.cfm?ty=p&tid=11>>.

<sup>305</sup> For example, more than half of all adults incarcerated in state and federal prisons are parents of minor children, see P. Harrison and A. Beck, *Prisoners in 2001*, BJS Bulletin, U.S. Dept. of Justice Statistics, BJS (2002), and over half (58%) of the minor children of incarcerated parents are less than 10 years old, see C. Mumola, “Incarcerated Parents and Their Children”, BJS Special Report, U.S. Dept. of Justice, BJS (2000). The support of these children falls to society, at the same time that taxpayers bear the cost of incarcerating their parents.

<sup>306</sup> *Supra* note 302.



**Louisiana Justice Coalition**  
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**REPORT ON THE EVALUATION OF THE**  
**OFFICE OF THE ORLEANS PUBLIC DEFENDERS**

**JULY 2012**

**Summary of the observations, findings, and recommendations prepared by:**

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# REPORT ON THE OFFICE OF THE ORLEANS PUBLIC DEFENDERS

## Background of this Consultancy

This report provides a summary of the observations, findings, and recommendations of the undersigned consultants based upon an extensive review of numerous reports, documents, and data relating to the operation of the office of the Orleans Public Defenders (OPD), and two and one-half weeks of site visits to New Orleans, Louisiana during April and May of 2012. During that time, dozens of interviews were conducted with representatives of virtually every segment of the criminal justice system. This evaluation was performed pursuant to a contract between the consultants and the Louisiana Public Defender Board (LPDB). The scope of the evaluation under the contract included an assessment of the following: the structure of OPD; its leadership, management, and supervision; budget and expenditures; parity of funding with other criminal justice agencies, partners and stakeholders; the quality of legal services provided by OPD, including the effectiveness and efficiency of service delivery; caseloads of staff attorneys and caseload distribution; and compliance with recognized professional benchmarks. Other additional observations and findings were made based upon the data and site visits.

## Consultants

The Louisiana Public Defender Board contracted in the winter of 2012 with two consultants. One of the consultants, **Ernie Lewis**, spent 31 years as a Kentucky public defender. He was an appellate and trial attorney, ran a rural trial office for 13 years, and served as the Public Advocate for Kentucky's statewide public defender system, the Department of Public Advocacy. He served two terms as the Chair of the American Council of Chief Defenders. Since retirement, he has worked with public defender systems in Louisiana, Indiana, Ohio, Tennessee, and Massachusetts. He is presently on the Board of the Southern Public Defender Training Center. He was the recipient of the *Outstanding Lawyer Award* by the Kentucky Bar Association in 2000. He was given the *Champion of Indigent Defense Award* by the National Association of Criminal Defense Lawyers in 2007. He has served as a consultant for BJA over the past 2 years in assessments in two other Louisiana districts, the 22<sup>nd</sup> in St. Tammany and Washington Parishes, and the 14<sup>th</sup> in Calcasieu Parish.

The second consultant is **Dan Goyette**. He has been a public defender for 38 years. He has served as Chief Public Defender and Executive Director of the Louisville-Jefferson County Public Defender's Office since 1982. He is a former President of the Louisville Bar Association (LBA) and a current member of its board of directors. He has been honored by the Kentucky Bar Association with its *Outstanding Lawyer Award*, and he was one of the first recipients of the American Bar Association's prestigious *Dorsey Award*. He is a current member of the ABA's House of Delegates, the ABA Standing Committee on Legal Aid and Indigent Defendants, and a former member of the ABA Standing Committee on Ethics and Professional Responsibility. He was a longtime member of the KBA Ethics Committee and a past chair of the LBA Committee on

Professional Responsibility. Since 1979, he has been a member of the adjunct faculty at the Brandeis School of Law at the University of Louisville, and he was presented the *Dean's Service Award* in 2003. In 2005, he initiated organization of "Louisville Lawyers Helping Louisiana Lawyers" in an effort to assist and support the legal community in New Orleans in the wake of Hurricane Katrina.

### History of the Orleans Public Defender Office

**Pre-Katrina.** As any visitor to New Orleans soon learns, the history of modern New Orleans both ends and begins with Hurricane Katrina. Prior to the storm, the Orleans Indigent Defender Program (OIDP) was a part-time public defender's office. It was run by a local board appointed by the Chief Criminal Court Judge. The office was located in a small area on the first floor of the criminal courthouse at Tulane and Broad. The office itself has been described as "a single room in the courthouse where coats, briefcases, and umbrellas could be left. There was no privacy for attorneys to meet with clients, families, or witnesses, and the attorneys did not have their own computers, telephones, or desks. Of the four working computers, only two had Internet access, and the two phone lines did not have voice mail. The office consisted of a few file cabinets, several shared desks, and a single copier for the entire staff of forty-two attorneys." *Indigent Defense in New Orleans: Better than Mere Recovery* by Steve Singer (2006) [hereinafter *Singer 2006*]. The office had no case management system. The office was led by a Chief Defender, an Assistant Chief Defender, and a Juvenile Chief Defender. There were 42 part-time adult felony lawyers, 6 part-time Traffic and Municipal Court lawyers, and 6 part-time juvenile court lawyers. Lawyers were assigned to a specific section of criminal court. The lawyers all maintained private practices and did not use the office at the courthouse. They had a "perverse financial incentive to spend as little time as possible on their public cases so they could devote more time to private ones." (*Id.*) Cases were "rarely investigated." (*Id.*) OIDP lawyers "almost never met with their clients outside the courtroom to discuss their cases." (*A Report on Pre-and Post-Katrina Indigent Defense in New Orleans, Southern Center for Human Rights* (2006) [hereinafter *SCHR Report 2006*]. A horizontal approach to handling of indigent clients' cases was in effect at the time, resulting in little continuity of representation. Motions that were filed were *pro forma*. Counsel did not take calls from the jail. Overall there was a lack of vigorous representation. (*Id.*) As of 2005, OIDP had changed very little since a similar assessment was made in 1997 by the Spangenberg Group, which observed that OIDP attorneys spent little time on their cases and viewed satisfying the judges as extremely important.

Funding came from the same sources then as they do today. The primary source of funding for the office was from traffic fines and court costs. The state public defender organization was known as the Louisiana Indigent Defense Assistance Board (LIDAB), which had no regulatory authority. It was created in 1993 in response to the case of *State v. Peart*, 621 So. 2d 780 (La. 1993), in which the Louisiana Supreme Court had noted a "general pattern...of chronic underfunding of indigent defense programs in most areas of the state." LIDAB was funded at \$7 million for the entire state. The local OIDP was funded at approximately \$2 million. A later report would conclude that LIDAB "has failed to improve the quality of trial level indigent defense services..." for several reasons, including the fact that the funding system "is reliant on

court costs as the primary revenue stream.” (NLADA Report entitled *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years after Gideon* (2004) [hereinafter *NLADA 2004*]).

**2006 BJA Report.** Hurricane Katrina struck on August 29, 2005. It “left almost complete devastation of civil infrastructures, including hospitals, schools, and the justice system.” (*SCHR Report 2006*). Virtually the entire city was flooded, as was the public defender’s office. Almost as soon as the flood waters receded, the federal government focused its attention on the devastated civil infrastructure left in the storm’s wake. One of its efforts involved both financial and technical assistance by the Department of Justice’s Bureau of Justice Assistance. This assistance was requested by the Louisiana Commission on Law Enforcement and the Southeast Louisiana Criminal Justice Recovery Task Force. Their efforts resulted in a report entitled *An Assessment of the Immediate and Longer-Term Needs of the New Orleans Public Defender System* (April 2006) [hereinafter *BJA 2006*].

The Report focused on the shortcomings of OIDP. The most significant of these shortcomings were:

- The office was underfunded, primarily because it was dependent upon traffic tickets. This funding mechanism resulted in revenue drying up post-Katrina, causing a severe reduction in staff. The effect was dramatic: “Without indigent defense lawyers, New Orleans today lacks a true adversarial process, the process to ensure that even the poorest arrested person will get a fair deal, that the government cannot simply lock suspects up [sic] and forget about them.”
- The system of indigent defense was “court-based, rather than client-based.” “Under these circumstances, the attorney tends to focus on the preferences and work patterns of the particular judge to whom s/he is assigned and with whom s/he works every day, rather than on the indigent defendants who pass through the courts.”
- Few cases were disposed of at an early point in time in the prosecutorial process.
- OIDP lawyers rarely met their incarcerated clients.
- OIDP lawyers rarely met their clients between first appearance and the subsequent 45-60 days during which the prosecutor made a charging decision.
- OIDP lawyers were paid only \$29,000 per year for a mostly less-than-halftime job. OIDP lawyers were allowed to maintain a private practice.
- Few preliminary hearings were requested or conducted.
- Data regarding the caseload of the office and the workload of individual attorneys were not compiled or kept.
- There were no client files, no office phone number, and clients were not able to come to the office. Attorney performance evaluations were based on judicial satisfaction rather than supervisory reviews and appraisals of the quality of client representation. There was little accountability within the office.

The Report made numerous recommendations. Many of the recommendations attacked the most acute of the problems, including the backlog of cases, the absence of staff, and the lack of

independence of the local board. The most significant of the longer-term recommendations were:

- Change the “philosophy and structure” of the office from “court-and-process-centered to a client-centered public defender program.”
- Hire “full-time, client-centered public defenders.” These full-time defenders “should have parity with the District Attorney’s Office as to pay, benefits and retirement.”
- Create a criminal justice system that is “working together as a system instead of cloistered and disconnected parts.”
- “Ensure the long-term independence of the ODP.”
- The State and the City should work together to provide “funding in a manner that is adequate, predictable, and data-driven.” “Strong consideration should be given to a system of state funding; programs that rely on local funding often result in having the least resources in economically-challenged areas...”
- The office should have “professional offices where staff can conduct legal research, meet with clients and witnesses, and brainstorm cases.”
- “[M]anageable workloads, reasonable performance standards, and skilled and data-driven management.”
- Supervisors with adequate time to perform their necessary function.
- Build training and mentoring within the office, including leadership training.
- Improve the system in which private lawyers are participating. This includes conflict situations as well as caseload overload.
- Full-staffing was recommended. The Report recommended a staff of 70 attorneys to handle 91% of the cases. It further recommended that 23 secretaries should be hired to support the attorneys; 10 investigators (or a ratio of 7 to 1) should be hired; 3 client services specialists were needed, as were 4 attorney supervisors. The Report included a recommendation of 2 Deputy Public Defenders assisting the Chief Public Defender. Funds in the amount of \$770,000 were needed to pay for private attorneys in conflict cases and overload situations. Total recommended program funding was \$8.2 million per year. Additional funding was recommended to purchase computers, to develop a management information system, and to pay private lawyers to handle the backlog of cases.

**NLADA Report.** Several months after the BJA Assessment was released, the NLADA released a report entitled *A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana’s Criminal Courts* (2006). The report looked at the broader issues of indigent defense reform in Louisiana.

The report also noted the impact of the hurricane on the Orleans criminal justice system: “the New Orleans justice system had to contend with, among other things: a flood damaged evidence room; the shutting down of the district attorney’s office and courthouse; the evacuation of people held in the local jail to available correctional facilities across the state; and, the dispersing of the people of New Orleans – including eyewitnesses, victims, defendants, former police officers, and potential jurors – throughout the country. Many justice employees

lost their jobs as citywide tax revenues disappeared. And those that remained had increased workloads while dealing with their own personal issues - be it the loss of a home, the death of a loved one, or the logistical problems associated with finding their child an appropriate school placing.” The impact of Katrina on the public defender system was also highlighted: “nowhere are the New Orleans systemic justice deficiencies more glaring, both pre- and post-Katrina, than in the delivery of defense services to people of insufficient means.” NLADA placed much of the blame on the funding mechanism used in Louisiana.

The Report’s recommendations that were specific to Orleans Parish included:

- Create reasonable jurisdiction-specific caseload standards.
- Begin vertical representation. Perhaps anticipating conflict with the judiciary over this recommendation, NLADA noted that they recognize that “institution of this recommendation will result in a major cultural change for the criminal courts of New Orleans. OADB should work in concert with the court to make changes in court structure and administration to reduce the current fragmentation and to facilitate continuous representation. We believe that having a sufficient staff with a full complement of attorneys will ease the court’s trepidation over this move.”
- Emphasize supervision by hiring supervisors with little or no caseload, utilizing performance measures, writing job descriptions for all positions, and adopting the LIDAB Performance Guidelines.
- Create a Juvenile Division with an experienced juvenile supervisor with a small caseload, hire dedicated juvenile attorneys who receive specialized juvenile training, tailor performance evaluations to juvenile practice, and hire a District Defender who appreciates strong juvenile advocacy.
- Establish a full-time office that is client-centered and begins to move toward the community defender model.

**2006-2009.** The rebuilding of OADB began in the fall of 2005. The situation was chaotic in the days following the hurricane. Persons incarcerated at the time of the hurricane had been dispersed all over the state, and finding them was a complex task. A huge backlog of public defender cases, with few attorneys to staff them, was of immediate concern. Case files for those cases were virtually nonexistent. The office itself was “reduced to six attorneys and one support person to handle more than 6,000 open cases.” The local board resigned.

Gradually, the office began to rebuild. Chief Judge Calvin Johnson appointed a new reform-minded board and the rebuilding of the office started. The office soon changed its name to the Orleans Public Defender office (OPD). Advised by the new reform board, as well as the 2006 BJA Report and the NLADA Report, immediate changes were soon made. New staff was hired to manage the office, including in July 2006 a law professor, who was brought in as a consultant to lead the rebuilding effort. An out-of-courthouse office was opened across Tulane Avenue. It was furnished with donations by the Minnesota Bar Association. Attorneys had private offices to use when interviewing clients. Each attorney had a desk, a telephone with voicemail, a laptop, office-wide email, all of which were donated by the Louisiana Bar Association. The DC Public Defender Service donated a case management system (although it turned out to be

incompatible, unable to be adapted and thus never used). All attorneys were required to give up their private practice and begin to work full-time. Salaries were increased. The juvenile caseload was contracted out to Juvenile Regional Services. Capital cases were contracted out to several local non-profits. Vertical representation was implemented throughout the criminal courts. Attorneys began to represent their clients pre-acceptance (the 45-60 days time period between arrest/first appearance and the filing of charges by the District Attorney). Investigation also began pre-acceptance. Office policies and protocols were developed. Attorneys from around the country, and particularly Minnesota, Philadelphia, and Washington, D.C., volunteered their time to assist with the case backlog. Law students from around the country also agreed to help with the backlog. Gradually, new lawyers were hired and trained by a new training director.

During this time, client representation changed dramatically. While it is not an exaggeration to say that the Constitution was often being violated by ODP and the manner in which it provided representation, this can no longer be said since the creation of OPD (with the exceptions noted elsewhere in this report). One lawyer in leadership reflected that “we’ve changed how New Orleans public defenders are representing clients.”

Significant political pushback to the changes in OPD soon surfaced. The local board was held in contempt on multiple occasions. One of the new OPD leaders was held in contempt because of the judge’s dissatisfaction with how his courtroom was being staffed. Some of the more experienced attorneys quit over the requirement of working full-time. The Criminal District Court attempted to remove and replace the new board, prompting legal action by the board. In November of 2006, the Court issued an order saying that it was the opinion of the collective court that “the failure of [OPD]...to deliver effective assistance of counsel to their clients is in large part due to the policies and practices that it has recently implemented.” A few days later, staff writer James Gill wrote an article entitled *Judges’ Order Defies Law, Reality* in the Friday, November 24, 2006 issue of *The Times-Picayune*, opining that it was “impossible to avoid the conclusion that the judges want to bring back the system as it was before Katrina forced its inadequacies to the forefront...” By May of 2007, the judges of the Criminal District Court voted to remove four members of the newly constituted local board, reduced the size of the board, and appointed new members to the board. The board responded by filing a lawsuit in federal court, accusing the courts of interfering with the provision of indigent defense services.

The political standoff between the local board and the courts ended in August of 2007 when the Louisiana Public Defender Act 307 was passed by the Louisiana legislature. This eliminated the local board and established the Louisiana Public Defender Board (hereinafter LPDB) with significant new powers. LPDB had a significantly increased budget as well as regulatory authority over all of the local public defender systems. Jean Faria was appointed the new Louisiana Public Defender. Christine Lehmann became the first acting District Defender for OPD under Act 307. She left in October of 2008, and was replaced on an interim basis by Christopher Flood.

Staff turnover during these years was significant. In 2006-7, turnover was 80-85%. This was reduced in 2007-2008 to 50-60%, and again in 2009-2010 to 40%. (2009 BJA Report).

**2009 BJA Report.** BJA once again provided technical assistance to OPD during 2009, culminating in a report published in January of 2010. This report observed that the 2006 BJA Report had been used by the local board and by OPD as a “blueprint for change.” The scope of this second BJA assessment was to review the leadership and structure for efficiency, staffing needs, caseloads, and the need for any special positions. The methodology used was similar to the 2006 assessment, including review of the previous report, staff interviews, an interview with one judge and one LPDB Board member, file reviews, and a focus group. A major focus of the 2009 assessment was the case management system then in use at OPD.

The Report compared the service delivery system at OPD to the ABA’s *Ten Principles of a Public Defense Delivery System* (2002). It made the following findings: there was “limited adherence” to Principle #1, that of independence from the judiciary; Principle #2, that of a full-time system with participation by the private bar, was being undercut by unstable funding ; compliance with Principle #3, the screening of clients for eligibility, was said to have greatly improved; Principle #4, sufficient time and confidential space to meet with clients, was not being followed; control of workloads, as required by Principle #5, was not occurring at OPD; Principle #6, assignment of cases based upon the level of expertise of the attorney and the complexity of the case, was said to be in process; Principle # 7, vertical representation, was said to be a “major accomplishment of the Office...a huge change and victory for the OPD.” It was noted, however, that several of the district judges were “still fighting” this change; Principle # 8, parity between the defense and prosecution with respect to resources was said to be lacking; however, the Report noted the progress made in OPD’s becoming more of an equal partner in the criminal justice system; the Report noted that while there was a Training Director, his “talents are being diverted to trying cases,” in contravention of Principle #9 requiring the provision of continuing legal education; finally, it was determined that, the requirement of supervision and systemic review required by Principle #10, was not being followed.

The 2009 BJA Report made numerous recommendations, the most significant of which are as follows:

- Create a Strategic Plan, with a Vision and a Mission Statement.
- Create a Leadership Team consisting of the heads of the various professional and administrative functions.
- Create 5 attorney teams headed by an attorney supervisor as well as a deputy attorney supervisor.
- Create a policy and procedure manual accessible to all staff.
- Develop a budget “based on adequate, relatively stable resources with accurate data and external support.” This budget must be “stable, dependable, and adequate.”
- Improve transparency of OPD with other agencies and with LPDB. The recommendation of transparency with other agencies was made with a significant caveat: “we understand the difficulty and hazards of implementing this

recommendation, given the current self-centered, silo culture of the other criminal justice components.”

- Hold regular staff meetings as well as periodic focus group meetings.
- Improve significantly the case management system.
- Improve the office space.
- Create a competitive salary structure, including retirement benefits. The Report observed that the turnover rate was “destructively high” and that a competitive salary and benefits structure was essential for the long-term growth of the office.
- Add additional staff positions to replace volunteers.
- Add a Training Director, Public Information Officer, Information Technology Director, and a Legislative Liaison.
- Obtain funding for the Defender Services Division, the division that addresses bail, client and family needs.
- Conduct regular staff evaluations “consistent with job descriptions and other expectations.”
- Create a “multi-faceted” training plan for all office staff under the direction of the Director of Training and Staff Development.
- “Juvenile representation should be brought into the OPD.”
- Continue to contract out capital representation.
- Contract out conflict cases.
- OPD should lead the effort to address “dysfunctions” in the local justice system. Included in this recommendation was the establishment of a special litigation section as well as “systemic reform of Municipal Court practice.”
- Develop a “regular communication plan with the State Public Defender.”

**2009-2011.** Derwyn Bunton was hired by the Louisiana Public Defender Board to become the Chief Defender for the 41<sup>st</sup> District in October of 2008. He began serving in his new capacity in January of 2009. At that point in time, there was virtually no structure in OPD and no organizational chart. Staff felt “unsupervised, and with no clear lines of authority, staff morale and commitment were waning.” (See D. Bunton Memo). There was a “subjective” system of evaluating attorneys with no criteria for promotion, which produced “allegations of arbitrariness, favoritism, elitism and incompetence.” (*Id.*). Shortly thereafter, an invitation initially extended by Chris Flood to BJA to perform another assessment of OPD, was renewed by Derwyn Bunton. The assessment was conducted during 2009 and completed in 2010.

During these three years (2009-11), OPD made substantial progress in building a full-time office by adopting written policies, building structure, and creating protocols. By the time the BJA Report was issued, the office had grown to 86 employees, including 45 attorneys and 41 support and investigatory staff. Many of the changes made during these years were in response to the recommendations made in the 2009 BJA Report. Leadership created job descriptions for every position. The attorneys in the criminal district courts were divided into clusters, with supervisors over each of the clusters. Each training class also had supervisors overseeing their work. A Special Litigation Division was created to handle the inordinate

number of attorney contempt citations, as well as to handle writ practice and other systemic litigation. A Leadership Team was created consisting of the Chief Defender, the Deputy Chief, the Chief of Trials, the Training Director, Special Litigation Counsel, and the Director of Administration. A Management Team was created that included the Leadership Team plus all of the supervisors. Leadership created attorney practice levels, from 1 to 5, and began to assign cases based upon the practice levels. Leadership initiated a system of evaluating staff, and used that system in determining the practice levels. Leadership also completed a policy and procedure manual with the help of the private law firm, Phelps Dunbar.

In addition to the policies, structure, and protocols, the professional accomplishments of OPD during these last 3-4 years have been significant. In partnership with LPDB, OPD has increased its funding significantly, particularly through advocacy with the City of New Orleans. In 2009, OPD obtained \$500,000 from the City for the first time. With the assistance of LPDB, this increased to \$750,000 in 2010, and to \$1.2 million in 2011. OPD worked with the City Council to pass an ordinance dedicating a portion of traffic camera revenue to OPD. LPDB and OPD sued the Judiciary to enforce assessments of the \$35 public defender fee. Over a three-year period, OPD obtained over \$1.2 million in grant and fellowship revenue. OPD was able to grow its budget to over \$9 million in 2011. Unfortunately, by February of 2012, OPD had to cut back its expenditures to \$7.2 million, and it appears that this will continue to be the budget level for the near future.

OPD also has been successful at collaboration with numerous entities in the broader community. Specifically, OPD has a position on the board of Unified Non-Profits of New Orleans, the Mayor's Task Force on Criminal Justice, the Mayor's Criminal Justice Working Group, the City of New Orleans Criminal Justice Coordinating Council and the Mayor's Strategic Command to Combat Homicide. OPD participates in the Greater New Orleans Drug Demand Reduction Coalition. OPD has been included as a member of the Louisiana State Bar Association Criminal Justice Committee. Derwyn Bunton has been named to the NLADA Defender Policy Group.

OPD has had considerable success litigating specific systemic issues. In the case of *State v. Wallace*, OPD forced prompt probable cause determinations within 48-hours of first appearance. OPD successfully sued over the use of New Orleans Commissioners in Magistrate's Court. OPD litigated the issue of the independence and authority of OPD related to the power to assign counsel. OPD worked with the District Attorney's Office to change the allotment system, thereby making it possible for public defenders to begin representing their clients earlier in the prosecutorial process while maintaining vertical representation. OPD sued the Orleans Parish Sheriff for the failure to provide constitutionally adequate access to their clients, and is currently operating under a stipulated judgment that provides all the concessions sought by OPD. OPD joined as *amici* in several significant U.S. Supreme Court cases, including *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011), and *Smith v. Cain*, 132 S.Ct. 627 (2012).

## **Context for the current evaluation and assessment request**

This consultancy was requested in the late winter of 2012 as a direct result of a financial crisis that developed with OPD's operating budget in the current fiscal year, which reached a critical point toward the end of calendar year 2011. OPD had requested a budget in FY 12 that was similar to its FY 11 budget. That budget request assumed revenues consistent with the previous year, relying upon unusually high levels of contributions from the LPDB, the City of New Orleans, or both. In budget presentations before the City Council in June and November of 2011, Derwyn Bunton informed the Council that because LPDB's contributions were decreasing, it would be necessary for the City to increase its contributions in order to continue services at the previous year's level. Based upon OPD's revenue projections, LPDB approved OPD's proposed FY12 budget, but also made clear that its contribution would be at a lower level than in FY11. OPD continued to spend at the previous year's level of over \$9 million despite LPDB's reduction in funding. In the fall of 2011, OPD brought in a new class of 8 attorneys and began to train them. At almost the same time, the Leadership Team was discussing a plan to begin restricting services and reducing expenditures due to funding concerns. OPD leadership apparently thought there was reason to believe that increased funding would be forthcoming from the City of New Orleans, despite direct communication to the contrary. As for planning and implementing service restrictions, those in leadership at OPD stated they believed LPDB had discouraged such restrictions until after the close of the calendar year. The staff of OPD was kept largely uninformed about what was occurring. As soon as calendar year 2011 ended, the fiscal crisis became acutely worse. Immediate steps had to be taken to ensure that OPD did not significantly overspend its budget. The shortfall amounted to over \$2 million of a \$9.2 million budget. Failure to immediately institute measures to decrease spending earlier in the fiscal year mandated that more draconian corrective steps had to be taken to curtail spending and balance the budget. In late January, Derwyn Bunton announced the layoffs of 27 people and the restriction of various services, the details of which will be discussed below. The Judiciary was alarmed, OPD staff was shocked, and many others in the criminal justice system and the legal community were deeply concerned by these developments. As a result of this course of events, LPDB contacted the consultants and asked them to conduct an evaluation and assessment of OPD, and to make recommendations for improvement.

## **Demographics of Orleans Parish**

OPD is located in Orleans Parish, Louisiana. The population of Orleans Parish as of January 2010 was 343,829 according to the U.S. Census Bureau, a decline of 29.1% over the census figures of 2000. Of that population, 60.2% is Black and 33.0% is White, and 24.4% of the population falls below the poverty line (compared to 18.1% for the State of Louisiana), with 41% of children in Orleans Parish living below the poverty line. Unemployment for adults is at 8.3% in Orleans Parish, compared to 7.1% for the rest of the state (Bureau of Labor Statistics). The median household income is \$35,243.

## Methodology

This report is a summary of our observations, findings, conclusions and recommendations. It is primarily based upon interviews conducted in-person on site, by telephone, and through e-mail communications, all of which are detailed and listed in the Appendix attached to this Report. Previous reports and evaluations were also reviewed and considered, as was caseload, financial and other data provided by both OPD and LPDB. Final recommendations were formulated and submitted only after a consensus decision was reached by the consultants.

## Observations and Findings

**Office Progress.** This report is written at a time of financial crisis and real or perceived leadership problems at OPD. It would be easy to simply attribute this crisis to a failure of the leadership of OPD. However, that would be short-sighted and simplistic considering the complex array of contributing factors involved, not to mention the history and cultural influences that helped produce this serious situation. Rather than just issue criticisms, it is important to recognize LPDB and OPD, their leaders as well as their staffs, for the extraordinary progress made in building a public defender's office that, for the most part, is meeting high standards and effectively achieving compliance with what the Sixth Amendment to the U.S. Constitution requires. This office was built out of the shambles of Hurricane Katrina. Progress has been made despite persistent opposition from the Judiciary, notwithstanding a paucity of resources, and in the face of poverty, despair, and cynicism. In speaking of the post-Katrina office, one longtime staff member said, "Coming in on weekends, seeing attorneys in the conference room working, reading about the trial victories, it's what I always dreamed it would be." One outside observer stated that the biggest achievement is that pre-Katrina, no one in the system had an idea what a properly functioning public defender's office was, and that since 2006, a true public defender's office has been created. Nothing that is said in this report should take away from what we perceive to be an undeniable fact: the leaders and staff of LPDB and OPD have done a phenomenal job building OPD in a short period of time, less than 7 years after Katrina.

**Systems problems.** As stated in a BJA Report on Case Management in 2009, "the most significant issue is the absence of collegial relationships and cooperative problem-solving among the principal actors in the criminal justice system. This is the fundamental problem..." OPD operates in an interdependent system. Its problems are not confined to itself. Rather, just as in 2009, the current problems in OPD are inextricably connected to the problems in the Orleans Parish criminal justice system. Recognition of that fact carries with it many of the solutions to these problems.

**Strengths.** We identified the following general strengths of the OPD (note that both the strengths and weaknesses identified here focus on OPD; how other parts of the criminal justice system relate to OPD will be detailed below):

- The District Defender has a strong vision for creating a high quality client-centered office in Orleans Parish, and the OPD Leadership Team is committed to providing high quality client-centered representation of indigent clients.
- The staff is highly committed to the mission of OPD, which is fundamentally client-centered.
- OPD is able to recruit talented, high quality young lawyers from Louisiana and around the country.
- Staff attorneys are trained extensively during their first year and thereafter. This includes intensive supervision of new lawyers during their first year training period.
- Caseloads are controlled in the felony division.
- The OPD case assignment system is intended to match the seriousness of the case with the practice level and experience of the attorney.
- Staff attorneys are trying and winning many of their cases.
- Attorneys are usually present at first appearance and establish an attorney-client relationship with their clients virtually from the beginning of the case, which continues to final disposition through a vertical representation system.
- Staff attorneys are meeting with their clients, filing motions, investigating their cases, and in general representing their clients zealously.
- Attorneys are regularly holding preliminary hearings.
- A supervisory structure has been created in which supervisors perform their function of oversight and mentoring. Supervision of attorneys has become the norm rather than the exception.
- All staff members are evaluated twice annually utilizing a sound process and evaluation form.
- A new policy and procedure manual has been produced, which is being refined.
- OPD has been responsive to previous reports and has implemented many of the recommendations made by BJA.
- OPD has been successful at increasing its funding, particularly through appropriations from the City.
- OPD utilizes a lot of volunteer services, thereby growing its capacity. This includes a large summer intern class and volunteers in the Defender Services Division. OPD appears to have a good relationship with local law schools.
- OPD has cultivated allies in the wider community, particularly on the City Council as well as with the Business Alliance.
- The number and quality of investigators has improved.

**Weaknesses.** We identified the following general weaknesses of the OPD:

- The budget process is complex and revenue is unpredictable and unreliable. The City of New Orleans and the Louisiana Public Defender Board operate on different fiscal years.
- Far too few attorneys represent far too many people in Municipal Court. As a general matter, attorneys are handling 5 times as many misdemeanor cases as recommended by the National Advisory Commission Standards.

- Despite a well-intended and designed system for the assignment of cases, relatively young and inexperienced lawyers are still handling very serious cases, including those carrying life without parole sentences.
- OPD spends a lot of money on training and much of it is lost by virtue of early attrition.
- Many lawyers feel ground down and burned out. Generally, morale needs to improve.
- There is a high level of turnover among staff attorneys.
- The Leadership Team does not meet on a regular basis.
- The Leadership Team does not communicate well with the staff.
- Leadership permits issues to fester rather than dealing with them on a timely, proactive basis.
- OPD is embattled with the Judiciary.
- All too often collaboration between OPD and LPDB is lacking, with OPD failing to share information on a timely basis, resulting in a tense and often dysfunctional relationship.
- At the time of this evaluation and assessment, there are no provisions for representing conflicts other than an insufficient *pro bono* panel.
- At the time of this evaluation and assessment, representation in capital cases is not provided at OPD.
- At the time of this evaluation and assessment, representation in juvenile cases is not provided at OPD (other than in transfer cases). Rather, JRS, which previously contracted with OPD, now handles juvenile cases in Orleans Parish under a contract with LPDB.
- There are insufficient numbers of social workers to provide alternatives to incarceration.
- The office building and physical space is unattractive, uninviting, and unprofessional in appearance.

**Structure.** OPD has implemented previous BJA recommendations regarding its structure. The structure is relatively simple and appropriate for the size of the organization. At the top of the organization is Derwyn Bunton, Chief District Defender. Below him is Michael Bradley, the Deputy Chief District Defender. On the organizational chart, all major entities in OPD report to the Deputy, including OPD Conflict Representation; Megan Faunce, the Special Projects Administrator; the Contract Programs; the Office and Court Support Services; Kendall (Kenny) Green, the Assistant Chief District Defender and Chief of Trials; William (Willie) Boggs, the Training Director; Jee Park, Special Litigation Counsel; Lindsey Hortenstine, Director of Media and Communications; and Dannielle Berger, Director of Administration. Below the Chief of Trials are four clusters in the Adult Trial Division, each of which is directed by a supervisor. The Child in Need of Care unit is also run by a supervisor who reports to the Chief of Trials. The Investigation Unit is led by a supervisor who reports to the Chief of Trials. OPD has 9 investigators along with 1 supervisor. OPD also has a small Defender Services Division consisting of 1 social worker, 1 social worker intern, and 6 pre-trial services workers. The Defender Services Division reports to the Chief of Trials, although it does not have a supervisor listed on the organizational chart. Three supervisors who oversee 8 attorneys covering Municipal Court report to Willy Boggs, Training Director.

Following the February 2012 layoffs, the Conflict Division was eliminated. Conflict cases are now being handled by *pro bono* counsel, at least until July 1, 2012. Michael Bradley oversees the conflict program and the current method of providing counsel in conflict cases. Juvenile cases are handled by the Juvenile Regional Services Office run by Josh Perry. No one in OPD oversees JRS. Capital cases are handled by two non-profits located in New Orleans. No one in OPD oversees capital representation; rather, that function is being handled by the state. OPD has not filled an IT Manager's position, nor have they filled the Deputy Chief of Trials position. OPD has eliminated the General Counsel's position.

The staff has now been reduced to 83 staff members, including 51 lawyers (50 full-time & 1 part-time), 10 investigators, 17 administrators (business office, social work, court & client support), and 5 volunteers (full-time administrators from Delta Corp and JVC). The volunteers include 1 in Defender Services (case manager for 2 social workers), 1 in Traffic Court (client services and some representation provided by a member of the LA Bar), and 3 in Client Services CDC & Municipal Court.

OPD does not have an advisory board. The Chief District Defender is responsible for reporting to and communicating with the LPDB. He also communicates regularly with the staff of LPDB.

The structure of OPD makes sense. It is reasonably flat and not overly hierarchical. There is nothing inherent in the structure that impedes either internal or external communication. Two structural/organizational issues were noted that deserve attention and reconsideration: (1) the existence of three supervisors over eight attorneys in Municipal appears to be excessive. One attorney should be able to perform that function; (2) the Municipal Court Unit should logically report to the Chief of Trials rather than to the Training Director.

**Leadership and Management.** Pre-Katrina, leadership consisted of a Chief Defender, his Assistant, and a Juvenile Defender. They were overseen by a local indigent defense board. Post-Katrina, the leader of OPD is the District Defender along with those he has chosen to be a part of his leadership team. It is their job to create the vision of OPD, write and implement policies, and oversee the implementation of those policies. The Leadership Team consists of Derwyn Bunton, Michael Bradley, Kenny Green, Willie Boggs, Jee Park, and Dannielle Berger. This team does not meet regularly nor do they have an agenda when they do. There is also a Management Team which consists of the Leadership Team plus the supervisors.

There is a need for strong leadership from the District Defender and his Leadership Team. OPD continues to operate in a post-Katrina environment. The office is still building from the remains of Katrina, creating systems, establishing protocols, and constructing a culture. It is doing so amidst vitriolic criticism from the Judiciary. The Judiciary criticizes OPD leaders for a lack of presence in the courthouse, for their decision-making, for their office structure and method of providing representation, and generally for a failure to lead. Some of the criticism is well-taken; some is unfair and inaccurate. Under the prevailing circumstances, more forceful leadership by the District Defender, as well as his Leadership Team, is absolutely essential. Derwyn Bunton needs to exhibit more strength and presence as a leader; he needs to educate the criminal

justice community about the role and function of the defense in an adversarial legal system, as well as the challenges intrinsic to indigent defense. He also needs to uphold and communicate the vision of OPD within that community. Deputy Michael Bradley needs to be a more visible and complementary partner to the District Defender, assisting the District Defender internally, and strongly asserting OPD's role in the court system as well as with the private bar. Kenny Green, Chief of Trials, plays an important role among the staff. They clearly believe that he "has their backs," and that he is supportive of their zealous advocacy. In many ways, he has become the lightning rod, a position previously occupied by Law Professor Steve Singer when he was Chief of Trials. At present, his major role in the courthouse seems to revolve around protecting the lawyers on his staff from irate judges. This should be converted into a more strategic and focused advocacy for OPD and its mission and values, which will make him less prone to stereotypical complaints from the courthouse and more effective in improving local practice and courtroom culture. Jee Park, Chief of Special Litigation, is a quiet and effective leader. She too needs to strongly assert OPD's mission and value in the courthouse and the broader community, including promptly confronting abusive practices on the part of some judges and litigating systemic violations of the rights of indigent clients. Most of these leaders have gained their leadership positions within the last three years, a time of growth and turmoil. They now need to mature in their leadership roles, and better exercise the wisdom and insight they have gained. Moreover, the Leadership Team needs to move from a siege mentality to a mindset that is more positive, persuasive and assertive about the value of OPD.

There is a definite need for top OPD leadership to be more visible at Tulane and Broad. A constant and almost universal criticism of OPD leadership, specifically directed at Derwyn Bunton and Michael Bradley, is that they are "never present." Judges contrasted this with District Attorney Leon Cannizzaro's almost daily presence in each of the twelve district courtrooms. While "presence" might sometimes seem like window dressing, it is an important issue in the context and environment in which OPD is presently operating. OPD's leaders cannot afford to be viewed as unavailable, disinterested and absent from the courthouse. One or both of them need to commit to being present in every courtroom every week.

The District Defender appears to be exercising good external leadership. We were impressed with how involved the District Defender is in the New Orleans community. In contrast to how he is seen in the courthouse, Derwyn Bunton has substantial support out in the community; he has good contacts and seems to understand the political lay of the land. As an example, in testimony before the City Council Budget Committee, Michael Cowan, Chair of the local Crime Coalition, stated that the "most significant transformation post-Katrina" had occurred at OPD.

It is readily apparent that the Leadership Team needs to function more collaboratively. In the days following Katrina, decision-making appeared to be hasty, often in the middle of a crisis, often with much emotion. OPD is now maturing into a different and more traditional office. It is time for the policy-making-on-the-fly to be replaced by weekly or bi-weekly meetings, all conducted with an organized agenda, and with resulting decisions announced to staff on a regular basis. It is also time for the leaders to work in a less competitive, more collaborative fashion.

**Supervision.** Pre-Katrina there were no supervisors, nor was there a culture of supervision. Rather, lawyers were attached to courtrooms. In a real sense, the judge acted as the supervisor of the part-time public defenders. This has changed dramatically over the last seven years. There is now a formal supervisory structure. More importantly, a culture of supervision exists and has become embedded. Young lawyers routinely provide “prep” to their supervisors, and supervisors routinely work with their young lawyers to improve the final product. There is an expectation and acceptance of supervision. There is also an evaluation process, and an expectation that these evaluations will be used in making promotion decisions. There is also an “LWOP Support Group,” which consists of the upper level attorneys getting together with the Training Director and going into depth on each of the cases carrying a potential life without parole sentence.

For about the last four years, OPD has hired a new “class” of attorneys each year. Those attorneys were trained and mentored by the Training Director. In recent years, they were supervised by attorneys who were located in one of the adult felony clusters. In 2011-12, eight attorneys were part of the new class, supervised by three supervisors. The three supervisors were overseen by the Training Director.

Hiring a new class was appropriate when OPD needed to grow from 6 attorneys in 2006 to more than 40 today, particularly given the high level of turnover. However, today the need for rapid growth is gone. OPD is maturing, and is now in the position of hiring only to fill vacancies. This diminishes the need for the three supervisors overseeing the new class. In addition, it calls for a more permanent placement of attorneys handling Municipal Court cases within the Trial Division, to be overseen by the Chief of Trials.

**Communication.** There is a need for much greater and more effective communication at OPD, both internally and externally. Staff meetings are held on a quarterly basis and these seem to be much anticipated and appreciated. In addition, Derwyn Bunton has instituted an open door policy whereby anyone can come to see him in his office. However, there remains a sense among the staff that they are not informed about the decisions leaders are making and why. There was a universally expressed feeling that staff did not have sufficient notice regarding the layoffs in February. OPD could benefit from a regular e-mail blast from Derwyn Bunton regarding what is happening, what leaders are doing and why. Another alternative would be for OPD to have an internal newsletter, electronic or otherwise, that would regularly update staff on what was occurring in OPD.

There is a need for improvement in communicating externally as well. A universal complaint by judges is that they never see Derwyn Bunton or Michael Bradley. Many judges noted that they see Leon Cannizzaro on an almost daily basis, even though there has been a lot of tension between the D.A. and the Judiciary. They contrasted his presence with that of the OPD leaders, particularly Derwyn Bunton and Michael Bradley. Some of the judges even stated that they did not know Mr. Bunton or Mr. Bradley at all. Judges noted that they saw Kenny Green often, although this usually occurred when there was a perceived problem with one of the felony

attorneys. While communication with the judges has often been strained and the judges have often been hyper-critical, it is absolutely essential that both Mr. Bunton and Mr. Bradley make weekly efforts to see most if not all of the district court judges, if for no more than a 10-minute visit per judge.

Communication also needs to improve with the LPDB. A chronic complaint made about Derwyn Bunton by board members is that he does not communicate well with them, that he regularly fails to document what is going on in Orleans Parish, and doesn't communicate important information to LPDB and staff. This lack of regular communication has been particularly noteworthy during the past year insofar as ongoing budget problems with OPD are concerned. Derwyn Bunton maintains that he believed he had been given a message by LPDB that services were not to be cut during the summer and fall of 2011. However, there is nothing to support that belief in the form of a memo, an e-mail or other written document from LPDB. Communication between Mr. Bunton and LPDB needs to occur regularly and be documented and clear, particularly about budgetary matters.

**Funding of OPD.** The funding situation and resulting crisis in the delivery of services prompted this consultancy. Funding is at the heart of OPD's problems and its instability. Simply put, OPD is not and has never been on a stable revenue footing. Louisiana, unique to all other states, funds its indigent defense system primarily through local traffic tickets and other local fees and costs. This results in some districts having a significant amount of revenue while others do not, often based upon the proximity of an interstate highway. Some districts have a large reserve despite not receiving any state funds. LPDB has no authority to transfer funds from those districts to districts with insufficient local revenues.

This is not a new insight. Each of the assessments by BJA has sharply criticized the manner in which OPD and all other districts in Louisiana are funded. The 2006 BJA Report recommended that the "Louisiana State Legislature and Orleans Parish officials should work together to provide the Orleans Parish defender program with funding in a manner that is adequate, predictable, and data-driven." Thereafter, the State contribution began to increase after Act 307 in 2007 and now constitutes approximately 40% of indigent defense funding. The 2009 BJA Report again called for the development of a "budget based on adequate, relatively stable resources with accurate data and external support...OPD's funding must be stable, dependable, and adequate."

An examination of OPD's FY 12 revenue stream reveals the truth of BJA's assessments. The FY 12 Amended Budget document shows projected revenue from the following multiplicity of sources:

- State--\$4.0 million
- City--\$879,948
- Traffic Court--\$1,300,000
- Traffic Cameras--\$675,000
- Municipal Court--\$125,000

- Juvenile Court--\$1,570
- Criminal District Court--\$80,000
- Condition of Probation--\$20,000
- Bail Bond Revenue--\$200,000
- Criminal Bond Fees--\$17,000
- Application Fees--\$50,000
- Grants/Fellowships--\$350,000
- Total Revenue--\$7,764,490

Not only are the different sources of revenue unstable and unpredictable, but the budget process for OPD is especially difficult and complicated. OPD must work with a State fiscal year that runs from July 1 to June 30 the following year, while at the same time working with a City fiscal year that is based upon a calendar year, from January 1 to December 31. When OPD begins its fiscal year at a particular spending level, they do not know whether the City will provide anticipated funding and meet budget revenue projections. If they spend too much in the first half of the year before knowing what the City will be contributing, the second half of the fiscal year requires significant cuts. In FY 2011, OPD budgeted \$9.5 million, with \$3.5 million expected from the City. This was reduced to \$9.2 million when the City contributed only \$675,000 (with the State having to make up most of the difference with emergency funding). The same sort of over-estimation of revenues and aggressive budgeting occurred in FY12, but this time even more dramatically, leading to the layoffs of 27 employees and preventing timely payments for conflict case representation.

To some extent, OPD has been successful at increasing its funding level. Every year post-Katrina, OPD has been able to increase its revenue to meet the caseload needs. By FY 2011, OPD collected and spent \$9,065,433. The FY 2011 budget was \$9.5 million, amended down to \$9.2 million.

However, FY 2012 was a different story, graphically demonstrating the instability of the revenue stream and the efficacy of the funding scheme. OPD again budgeted \$9.5 million, expecting \$9.3 million in revenue. However, this was amended to \$7.7 million to reflect the fact that the City of New Orleans did not contribute the \$2.6 million expected (instead contributing only \$879,948), traffic court revenue was \$500,000 short of the expected amount, and Municipal Court was \$125,000 less than anticipated. As a result, OPD found itself at the beginning of Calendar Year 2012 in the position of having to cut approximately \$2 million from its spending, resulting in layoffs, salary reductions, increases in employee contribution to health care, and service reductions including the demise of the conflict program. How and why this occurred is addressed below.

Some have alleged that the State is responsible for this situation. We do not agree -- this allegation has no merit. LPDB has not in any way neglected OPD. Indeed, LPDB has worked tirelessly to improve OPD's funding situation. The Board and Staff have worked with OPD to convince judges to assess appropriate fees and to then properly remit them. The Board and

Staff have likewise worked diligently with the City of New Orleans to convince the City to fund OPD similarly to its funding of the D.A. In fact, because of this disparity, it has been necessary for LPDB to fund OPD at a higher level than its population and caseload would warrant (captured in the D.A.F fund). LPDB has been criticized by other jurisdictions for its relatively high level of funding support of OPD.

OPD's operating budget relies heavily on funding from the City of New Orleans. The City is not technically required to contribute to OPD, but it has done so increasingly in recent years due to its recognition of OPD's need and its value to the community and local justice system. However, the City does not contribute an amount equal or even close to the contribution it makes to the D.A.'s Office. While providing a rent-free building to the D.A., they do not provide office space to OPD. An excellent case can be made for funding OPD in parity with the D.A., because OPD plays an essential role in the legal system, it checks the power of the police, seeks alternatives to incarceration, and also contributes in many ways to public safety and a healthier and more just City. Indeed, the policies and practices of Orleans Parish law enforcement and the D.A. determine the caseload of OPD. OPD has no control over its caseload and little control over its revenue. Under these circumstances, it would behoove the City to recognize OPD's role and commit to funding OPD in a manner and amount similar to the D.A.'s Office.

Judges have been remiss in assessing the mandated fees and costs that would have prevented this funding crisis. The most glaring example of judicial neglect in this regard is detailed in the May 2012 report written by LaPorte, CPA's and Business Advisors regarding traffic court. This report is summarized in a May 2012 demand letter written by LPDB Chair Frank Neuner. In his letter, Chairman Neuner summarizes LaPorte's report as establishing that, between 2007 and 2011, Traffic Court failed to pay between \$2.4 and \$6.7 million owed according to statute to OPD. Obviously, had Traffic Court been collecting and remitting the statutorily mandated fees as required, most if not all of OPD's budgetary woes would have been eliminated.

The most recent FY 2013 budget proposed by OPD at this time is for \$7,069,500. It estimates the following sources of revenue for FY 2013:

- \$2.6 million from the State.
- \$1, 057,359 from the City.
- \$2,995,000 from court revenues.
- \$25,000 in application fees.
- \$140,000 in grants.
- Total: \$7, 142,361

This is a realistic budget. It has a small cushion of \$72,861 built in, which is appropriate and responsible. It is not a budget, however, that will provide sufficient resources to fully meet the needs of the Orleans Parish caseload, particularly that which exists in Municipal Court.

**Expenditures.** A review of FY 2011 expenditures reveals, in general, appropriate levels of spending on OPD's part, with some areas of concern. Like most public defender offices, the

great majority of the \$9,210,992 expended in FY 2011 was spent on personnel and benefits such as hospitalization, taxes, workers comp, and malpractice insurance; \$25,845 was spent on the audit and accounting; and \$59,268 was spent on expert witness fees. OPD had an annual audit conducted which noted some material weaknesses, but did not highlight anything of serious concern. Overall, there are no glaring examples of overspending or inappropriate priorities.

One item of concern is the building lease expenditure of \$294,000. The consultants were told that OPD pays over \$18 per square foot for their offices, including over \$30 per square foot for a part of the space. OPD is not getting appropriate value on these expenditures for what is clearly inferior space. The only advantage to their present space is its location. It is ironic that the City provides the D.A. much better space in an even better location at no cost, while OPD pays almost \$300,000 for its inferior space out of a smaller budget. During the site visit, OPD received a proposal for superior space at \$16 per square foot in the CBD (Central Business District). At the same time, staff members voiced serious concerns about and opposition to a potential move due to their desire to be close to the courthouse and jail, notwithstanding the shabby, exorbitantly priced space that OPD currently occupies. Apparently, since the time of the site visits, a more favorable lease has been negotiated that somewhat ameliorates this untenable situation. However, the fact remains that moving to appropriate office space is essential for myriad professional reasons; so is meeting the needs of staff for proximity and convenience. This is a problem that OPD leaders and the City should work together to solve, sooner than later.

OPD also pays a great deal for two areas of representation that have been carved out from OPD's mission of indigent defense representation: capital and juvenile representation. OPD paid \$574,815 in FY 2011 for capital representation and \$450,000 for juvenile representation. Both are critical areas of indigent defense representation. Most urban public defender offices cover both juvenile and capital representation internally. There is an economy of scale that can result in keeping expenditures down while keeping quality high. It is suggested that both areas could be taken back into OPD and money could be saved that could then be used for other needs in the office. Given OPD's budget crisis, it is difficult to justify the high level of expenditures in these two areas.

Another area of concern is the \$941,911 spent on conflicts in FY 12—over 10% of the entire budget. Part of this amount was spent on personnel within OPD, while some was spent on private attorneys. OPD needs to closely examine whether the costs for conflict representation can be lowered while maintaining or improving the quality of representation.

While \$108,529 for training appears to be unusually high, particularly since it does not include the training director's salary, we were informed that most of this amount is funded by grants and is not derived from the operating budget.

**Budget Shortfall attributable to OPD.** The history of the budget shortfall is outlined above and it raises many questions. How did this happen? Was it bad management on OPD's part? And

once the budget shortfall appeared likely, why did OPD bring on a new class of young attorneys, begin to train them and incur the expenses attendant to adding new employees, especially when layoffs were being contemplated? Like many attempts at reconstructing history, who is “to blame” for the \$2 million shortfall depends upon one’s perspective. Suffice it to say that there is plenty of blame to go around. However, more important than assessing blame, it is vital to understand what happened so that it does not happen again.

It is the opinion of the consultants that a number of factors contributed to the dire situation that occurred. It is evident, and OPD Leadership concedes, that OPD engaged in unrealistic optimism about potential funding. One member of the OPD Leadership Team termed it “aggressive budgeting,” while another member characterized it as “wishful thinking.” In the years prior to the FY 2012 cycle, OPD had obtained City funding for the first time. In subsequent years, that funding increased. OPD leadership received what it considered assurances from some people on the City Council that this trend could continue. Whatever level of optimism these so-called assurances generated occurred despite warnings from the OPD Director of Administration in May of 2011 that OPD did not have sufficient revenue for a \$9.5 million budget because LPDB was not going to fund them in 2012 as it had in 2010 or 2011, and the City was not promising that they would make up the shortfall. In fact, e-mail correspondence from the City administration clearly communicated that they were not confident that the City would be able to support significant increases in direct City funding and specifically advised that such increases were unlikely. This communication was received in April 2011, some 12 days before OPD submitted its FY 2012 budget. In addition, before the City Council Budget Committee on June 29, 2011, a councilman explicitly expressed concern that the budget being presented contained a “structural deficit.” The OPD Leadership Team and the District Defender in particular are culpable in moving into FY 2012 with a \$9.5 spending plan without solid assurances from their funders that they would have \$9.5 million in revenue.

Second, the City was convinced to “front” money for FY 12 during the spring of FY 11, with the expectation that OPD would continue to coordinate with the City’s law department to avoid unnecessary disruption of services in municipal and traffic court staffing during the remainder of CY 2011. At the same time the City also explicitly communicated that they were not going to be contributing additional funding to OPD, and that OPD should not rely upon an increase once CY 2012 began. One OPD staff person involved in the budget process said that “It was wishful thinking to believe there were ‘assurances’ from the City – in reality they didn’t exist and weren’t going to come through.” Thus, although the City can be faulted in the sense that its significant contribution to the D.A.’s Office was far in excess of the funding it provided to OPD, it does not share in the “blame” for the budget shortfall that occurred.

Third, OPD continued its customary practice of bringing in a new class of attorneys in the fall. This was part of the culture of OPD by the fall of 2011. OPD developed the concept of bringing in a “class” of new attorneys each fall when they began to rebuild after Katrina. They brought in law students as unpaid interns during the summer before their third year, and afterwards the best and brightest would be offered positions with OPD upon their graduation the following year. This served them well, enabling OPD to obtain services from some of the best new

lawyers in America. It did not serve them so well, however, in the fall of 2012. Offers were made the previous year to 8 new lawyers. When it became apparent in the late summer and early fall of 2012 that the budget was not going to be at the level hoped for, the only reasonable decision to be made at that time was to rescind the offers or condition them on the availability of funds. However, OPD went forward with the new class, and their personnel costs actually increased in October-December. It was during this same period of time that OPD was raising the specter of a budget crisis with a concomitant restriction of services. The irony of that escaped no one—hiring new attorneys while simultaneously preparing to lay off more experienced attorneys then on staff. Bringing the new class onto the staff under the budgetary circumstances extant in the fall of 2011 was imprudent and a poor management decision.

**Systemic causes of the budget shortfall.** OPD is not solely responsible for the shortfall. LPDB and staff bear some responsibility in that they approved OPD's budget request. The process in place, which was utilized in the late spring of 2011, involved submission of budgets by all the defender districts to LPDB for review and approval by LPDB staff. Although LPDB approves budget requests, this "approval" is not what it seems. Everyone involved in the process understood that the budgets submitted by district defenders were based on, at best, a guess as to the anticipated amount of available revenues during the coming year based on revenues received in preceding years. Thus, to a large extent LPDB relied on the figures provided to it by the programs being funded. It was difficult for LPDB to scrutinize and assess how accurate and realistic the revenue projections from a given jurisdiction were because of the unpredictable nature of the revenue sources. Even so, one board member said that while OPD's calculations of revenue were not accurate, "our oversight of their calculations was not adequate. It's a shared responsibility." The budget for FY 12 was similar to FY 11, so there was also a presumption of "regularity" in OPD's budget request. LPDB had made a special appropriation to OPD and to several other districts in FY 11, which it did not have the resources to make in FY 12. In addition, in testimony before the City Council Budget Committee on June 29, 2011, one board member stated that "no retraction of services, uninterrupted service" was expected through the end of the calendar year. To complicate matters further, in the spring of 2011 LPDB had a new and inexperienced budget officer who did not have the ability to make an adequate, proper judgment regarding the soundness of any particular budget request. While certainly not as significant as OPD, LPDB shares some of the "blame" for what occurred.

A major underlying cause of the budget shortfall is that indigent defense at the local level is funded in an unstable manner guaranteeing occasional shortfalls and budget "crises." This is the same conclusion reached in the previous two BJA Reports. It is a systemic issue for the State of Louisiana, not unique to New Orleans. However, it played a significant role in the budget crisis for OPD. There were several local funding sources that simply did not come through as FY 2012 unfolded. The biggest one is the failure of Traffic Court to remit fees that it was collecting, knowingly and illegally diverting that money instead to the operational purposes and coffers of the Court. Auditors with LaPorte, CPAs and Business Advisors, found that the annualized figure was \$2.4 million, more than enough to have prevented the budget crisis in FY 2012. None of the local fines and costs came in at the level anticipated. A successful mandamus action in early 2011 did not result in as much additional revenue from Municipal

Court as predicted. The fault for this lies with the State of Louisiana, which has funded indigent defense in a fragile and unpredictable manner that is completely different than how the prosecution and judicial functions are funded. Equally to blame are those judges who have ignored the requirements of the law and either failed to assess required fees or failed to remit collected fees to OPD.

A recent article in *The Times-Picayune* demonstrates perfectly what happened during the past year. It noted: "New Orleans Traffic Court has been withholding hundreds of thousands of dollars a year designated for public defenders in Orleans Parish, according to a sampling from a newly released forensic audit. According to the audit, the judges also keep hundreds of thousands more for the court by reducing traffic violations to contempt violations or other tickets on which the court collects a fee for itself but isn't required under state law to pass along money to other agencies. The court disputes the exact figures from the audit of more than 14,000 tickets from two months last year. But Robert Jones, the court's chief judge, acknowledged that sometimes the judges keep the money for the court's operational fund. 'To the extent it was done, in rare instances, it was for the sole purpose of keeping the court's operations going,' he said."

Finally, the budget process itself does not lend itself to accurate and conservative budgeting. This is perhaps the biggest "villain" in this scenario. Most governmental budgeting involves a process wherein an agency makes a showing to a budgeting committee with accompanying data that supports the budget request. That committee asks questions, the committee's staff analyzes the underlying data and suggests appropriate action on the request, and the committee then makes a decision. The decision is then recommended to the legislative body, which determines the level at which the governmental entity will be funded. OPD is not a part of such a process. Rather, they are buffeted about, told to ask the State for funding in July, told to ask the City for funding in January, and told to ask judges for funding throughout the year. One board member said that OPD was "caught in a classic political bind." This is a budgeting nightmare, a process rife with pitfalls and uncertainty.

**Restriction of Services.** LPDB has taken the lead among all the states in dealing with the dilemma of excessive caseloads and stagnant or shrinking budgets. LPDB anticipated the shortfall in many of its districts during 2011. Louisiana had previously adopted performance standards mandating that attorneys not accept excessive caseloads. On May 25, 2011, the legislative auditor issued a report entitled "Louisiana District Public Defenders Compliance with Report Requirements" that addressed the fact that 28 of Louisiana's 42 districts had expenditures exceeding their revenues during the previous 18 months. In response, on March 20, 2012, LPDB promulgated a Service Restriction Protocol found in §1701 of Chapter 17 of Title 22 of the Administrative Regulations. The Protocol is noteworthy in its recognition that excessive caseloads threaten compliance with a public defender's ethical responsibilities. The Protocol sets up a process requiring either the LPDB or the district defender to give notice to the other when it is projected that a fiscal crisis or an excessive workload or both will occur during the next 12 months. Detailed responsibilities are set out in the administrative regulation. The essence of the regulation is that excessive workloads cannot be permitted, nor

can expenditures exceed more than a district collects. A more detailed “Guide for Developing a District Service Restriction Plan” has now been developed by LPDB that sets out, step by step, how a district defender is to deal with a restriction of services. The essence of this guide is as follows: “LPDB will support all appropriate Service Restriction Plans that are provided by the districts because LPDB believes that when a public defense service provider breaches the ethical obligations imposed by the Professional Rules of Conduct, the state fails to satisfy its obligation to provide effective assistance of counsel at each critical stage of the proceeding.”

As soon as it became apparent that they would not be receiving \$9.5 million during FY 12, OPD was faced with a major budget crisis that included excessive caseloads. This occurred prior to the finality of the Service Restriction Protocol. The District Defender began to prepare a Restriction of Services plan during the late summer of 2011. This was first revealed in October of 2011. In many ways, it resembled the plan that was ultimately implemented in February of 2012. It proposed implementing the plan as of November 1, 2011. It included instituting a hiring freeze, reducing the salaries of grandfathered lawyers who were holdovers from the previous ODP staff, eliminating expert witness fees, eliminating payment of dues and seminars, eliminating travel and lodging payments, and reducing office supplies, law library expenditures, and other operating expenses. Effective November 15, 2011, it proposed ceasing to provide representation in capital and conflict cases, eliminating the conflict division, eliminating the part-time lawyer positions in Municipal/Traffic Court, canceling the remainder of the Juvenile Regional Services contract, and laying off 12-14 lawyers. It appears that only the hiring freeze was scheduled to be put into effect on November 1, 2011. No documentation was provided to the consultants as to why this plan was not put into effect on that date. It is worth noting that had it been put into effect at that time, the number of layoffs ultimately imposed would not have been as large as they turned out to be. It is also noteworthy that the scheduled implementation of this plan was not to have occurred until after the hiring of 8 new lawyers in the fall class.

Thereafter, at the beginning of 2012, the Restriction of Services Plan was announced at a staff meeting. The plan, including identifying the persons to be laid off, was put together by the Leadership Team with input from the managers. Recommendations for layoffs were based upon performance, seniority, collegiality, cost-efficiency, and commitment to the vision and mission of OPD. The plan included the following provisions:

- Continuing the hiring freeze that began on November 1, 2011.
- Cutting leaders’ salaries by 10% and managers’ salaries by 5%.
- Cutting operating costs.
- Suspending payments to capital and conflict lawyers as of January 16, 2012.
- Eliminating the Conflict Division as of February 15, 2012, which consisted of 7 lawyers and 3 support staff.
- Eliminating the 5 part-time lawyer positions as of February 15, 2012.
- Laying off an additional 13 staff members.
- Requiring employees to contribute 50% of their health insurance premium costs.
- Furloughing all staff for 2 days per month for the remainder of the fiscal year.

- Creating a waiting list for OPD clients as well as conflict clients. Some of these clients would be represented by a *pro bono* panel created by Mark Cunningham of the Jones Walker law firm and overseen by Michael Bradley.
- Moving the training class of new lawyers into Municipal Court effective February 15, 2012.

OPD announced the 27 layoffs to staff members in February of 2012. It further decided not to fill 7 vacant positions. This amounted to an approximate 1/3 (one-third) reduction in staff size. Let there be no mistake, this was a drastic and disruptive action that affected staff, clients and the criminal justice system.

The Restriction of Services plan, while extreme in its effects on the office and others, may have been the only possible choice under the circumstances. The OPD Leadership Team had few good options as of January of 2012. They had to eliminate over \$2 million in spending in just a 6-month period of time. Had they begun their plan earlier in the year and rescinded their offers to their new lawyers, the severity of the plan would have been mitigated. However, as of January 2012, the choices were limited and stark. It was a difficult situation, but the process used in making the decision, and the choice that was ultimately made, reflect a course of action by management that appears reasonably sound given the circumstances.

If implementation of the plan was flawed, it stemmed from the notice given to staff. In our opinion, there was inadequate notice given to the OPD staff. By all accounts, there had been talk of the need for layoffs during the last few weeks of 2011. However, the plan itself was revealed at a staff meeting with only 2 weeks' notice given to staff affected by the layoffs. That is insufficient and is not indicative of good judgment or management practice.

The Restriction of Services is having a serious and unconstitutional impact on indigent clients. There is no other way to say it. As a result of the Restriction of Services Plan, well over a hundred indigent clients, some of them facing serious charges, are without counsel. This is in violation of the Sixth and Fourteenth Amendments to the United States Constitution. In addition, it violates Section 13 of the Louisiana Constitution, which provides in part, "At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. *The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.*" The effect of this on the liberty of individual clients is untold and incalculable.

**Quality of representation and compliance with Performance Guidelines.** The quality of representation is a complex determination, an assessment that is usually made on a case-by-case basis by a court in post-conviction review. Our assessment was more modest, consisting of courtroom observation, reviewing case files from each cluster of felony court, and interviews of staff trial attorneys and supervisors. We also talked with numerous judges, prosecutors, law professors, private attorneys, and outside observers regarding this issue. For the most part, it can be said that the quality of representation now being rendered by OPD lawyers is of

reasonably high quality. The attorneys have received what appears to be solid, ongoing training. They are being supervised both before and after events such as pretrial hearings and jury trials. They are seeing their clients early in the process and documenting those interviews. They are filing for and holding preliminary examinations. Motion practice in each of the cases we reviewed appeared to be thorough, aggressive and well done. The file reviews on those cases that went to trial revealed that the attorneys had prepared extensively prior to trial, with outlines for voir dire, opening statement, cross, direct, and closing contained in the file. Interestingly, with few exceptions, even those judges critical of OPD generally were complimentary about the practice of most OPD lawyers. One judge called OPD lawyers “conscientious, overworked, and underpaid.” The District Attorney also praised the quality of OPD attorneys.

**Caseloads – background, history and current status.** In his recently published book, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* (2011) [hereinafter *Lefstein 2011*], Professor Norman Lefstein discusses the problems in providing defense services pre-Katrina and the unprofessional nature of the organizational culture of the New Orleans defender program at the time (*Lefstein 2011* at 102-105; 163-166). While noting that public defense is much improved in New Orleans today due to statutory reforms and the efforts of LPDB, as well as advances in the structure, operation and culture of OPD, Professor Lefstein is still critical of the caseloads at OPD, and the attitudes and defender office culture that he believes allow them to continue (*Id.* at 105-108).

Caseloads indeed remain a problem, but our evaluation and assessment lead us to believe that the organizational culture has changed, and that it continues to change. Both LPDB and OPD have been instrumental in effecting a still evolving culture change that includes dealing with excessive caseloads, at least in district court with respect to felony representation. They have implemented workload standards (as detailed below), restricted felony caseloads, and reduced services when confronted with budgetary problems. We do not detect the sort of futility and attitude of resignation among current OPD staff that is bemoaned by Professor Lefstein concerning excessive caseloads. On the contrary, there is a fervent commitment to the established workload standards on the part of OPD leaders and a real reluctance to depart from them as a result of the budget crisis. There is more to be done, but significant progress has been made in this regard; and the recognition of the need and the commitment to do more are there.

On the other hand, it remains to be seen what will happen, not only at OPD but throughout Louisiana, when enforcement of caseload standards result in service restrictions and clients are in jail without counsel. Additionally, as set forth *infra*, the caseloads in Municipal Court are a source of serious concern that must be addressed immediately.

**Caseloads – current data and practice.** In 2011, OPD handled 30,103 cases. OPD and LPDB require a case count of those cases opened during a calendar year plus the cases pending at the beginning of the year. The breakdown of this caseload is as follows:

- 8,774 non-LWOP felonies
- 103 LWOP felonies
- 37 capital cases
- 20,105 adult misdemeanor cases
- 7 CINC (child) cases
- 133 CINC (parent) cases
- 2 termination of parental rights cases
- 77 FINS cases
- 477 delinquency/misdemeanor cases (JRS handled these cases, rather than OPD)
- 372 delinquency/felony cases (JRS handled these cases, rather than OPD)
- 6 delinquency/life (JRS handled these cases, rather than OPD)
- 9 revocations
- 1 PCR

OPD attorneys conducted 105 felony jury trials in 2011, resulting in 48 acquittals. There were also 75 bench trials, 31 of which were felonies that resulted in a not guilty verdict. This is a 3.3% trial rate, higher than most other states, which usually feature a 1-2% trial rate. The high trial rate combined with the high acceptance rate of the D.A. must be considered when addressing the caseload issue in OPD.

OPD is the rare office that has attempted to control the felony caseloads of their attorneys in compliance with LPDB guidelines. Following Katrina and the 2006 BJA Report, OPD created practice levels rising from 1 to 5 based upon the complexity of the case. Caseloads are set for each of the practice levels. The caseload limits are based not upon new open cases per year but rather the total open cases at any given time. Supervisors are required to monitor the caseloads of the attorneys under their supervision. When an attorney exceeds the caseload limits, the supervising attorney notifies the Chief of Trials and the attorney is no longer assigned additional cases until her total open caseload goes below the limit. The standards were set out most recently in the OPD May 27, 2011 document entitled "Revised Workload Standards and Relief," which established the following workload levels:

- Level 1: 225 cases
- Level 2: 150 cases
- Level 3: 100 cases
- Level 4: 60 cases
- Level 5: 20 cases

Under the workload policy, overflow cases may be assigned out by the Deputy Public Defender to the OPD Conflict Panel "where existing OPD resources won't allow reallocation among Staff Attorneys."

Supervisors are by definition either Level 4 or Level 5 practitioners. A Level 4 supervisor's caseload is set at 35 cases. A Level 5 supervisor's caseload is set at 12 cases.

Neither the District Defender nor the Deputy carries a caseload. As of May 2012, the Training Director was carrying a caseload of 15 felonies, 2 LWOPs, and 9 misdemeanors. Special Litigation Counsel was carrying a caseload of 9 felonies and 2 misdemeanors, as well as an unknown caseload of systemic cases, contempt citations and writs. The Chief of Trials was carrying a caseload of 26 felonies, 2 LWOPs, and 4 misdemeanors. He also intervenes on an almost daily basis in the cases of the attorneys under his supervision.

By all accounts, OPD has made diligent efforts to adhere to their workload policy and control the felony caseloads of their attorneys by monitoring their open cases at any given time. While the open caseloads per attorney are within limits set by OPD, when the totals are viewed on an annual basis they are excessive. Following the layoffs in February 2012, OPD has 28 staff attorneys representing felonies in district court supervised by 4 attorneys. Given the OPD caseload, each attorney handled 317 felonies during 2011 (adding together the LWOP and non-LWOP cases divided by 28). If supervisors are included, that would amount to 277 felonies per lawyer, assuming a full caseload on the part of the supervisor. Whether you exclude or count the supervisors, this overall caseload far exceeds the National Advisory Commission standards of no more than 150 felonies per lawyer per year. These standards have been consistently reaffirmed, including in the ABA Formal Opinion #06-441, the ABA *Ten Principles* (2002), and the American Council of Chief Defenders *Statement on Caseloads and Workloads* (2006). Caseloads of 317 or 277 felonies would also exceed the LIDAB Standards that were in place prior to Act 307.

The most excessive caseloads in OPD are the caseloads handled by their youngest lawyers. Caseloads of attorneys covering Municipal Court are excessive by any definition. In 2011, there were 20,105 misdemeanors. Most of these were handled by the newest lawyers in OPD, first in Magistrate's Court, and then in Municipal Court. There are 8 lawyers assigned to Municipal Court. Each attorney handled 2,513 misdemeanors during 2011. That is over six times the National Advisory Commission standard of no more than 400 misdemeanors per lawyer per year. That means each attorney had less than 1 hour to spend on each of her clients' cases.

It might be said that misdemeanors do not deserve the same level of scrutiny, the same attention, the same degree of lawyering as a felony case. And certainly the national standards do calibrate the seriousness of the offense by setting no more than 150 felonies compared to no more than 400 misdemeanors in a given year. But that does not mean that we should not care about an excessive misdemeanor caseload and not be concerned about properly defending those cases. In an April 2009 report by the National Association of Criminal Defense Lawyers entitled "Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts," it is noted that "There is a prevailing misconception that misdemeanor convictions do not truly affect a person...But, the consequences of a misdemeanor conviction can be dire. As the Supreme Court noted in deciding *Argersinger*, 'the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or "petty"' matter and may well result in quite serious repercussions affecting his career and his reputation.' Indeed, a wrongful conviction, even in a minor case, is pernicious. If the

constitutionally mandatory processes of our criminal justice system cannot determine accurately a person's guilt or innocence of a minor criminal charge, court outcomes are subject to question in all cases." That same source recommends that "To the extent misdemeanor offenses carry a possibility of incarceration, the legislative body with responsibility for funding the public defender program must appropriate funds that permit defenders to maintain reasonable caseload limits. Funding should be based on estimates of the number and types of cases the program is expected to handle in the upcoming year, with the expectation that each defender will have a caseload appropriate for the jurisdiction while not exceeding national standards. In the event that the caseload increases, the program should be permitted to seek supplemental funds, or be permitted to stop accepting cases in order to maintain appropriate caseloads."

What are the consequences of attorneys handling this many cases, exceeding the national standards by 6 times in Municipal Court, or double the national standards for felonies? In the Preface to his book, Professor Norman Lefstein states that, "[W]hen excessive caseloads are the norm, there are insufficient client interviews, motions are not filed for pretrial release and other purposes, investigation of the client's case is either inadequate or nonexistent, and preparation for hearings, trials, and sentencing, to mention just a few of the defense lawyer's basic tasks, are given short shrift. The result is that the accused is not treated fairly, which is the essence of due process of law, and frequently the justice system incurs both damage to its reputation and unnecessary expense." (*Id.* at 6-7).

**Improvement of Service Delivery.** OPD has made immense progress since Hurricane Katrina. This progress is now threatened by the fiscal crisis, the subsequent layoffs, and by excessive caseloads, particularly in Municipal Court. In this context, OPD needs to ensure that they maintain what they have built. They are recruiting excellent lawyers and they are training them through extensive in-house training, sending them to LPDB's Defender Training Institute, and/or sending them to SPDTC. OPD has created a supervisory structure with an appropriate ratio of supervisors to attorneys. OPD has an adequate number of investigators, as well as a small but well-functioning Defender Services Program. The main threat to their service delivery model is that of insufficient resources and excessive caseloads. The problem is most acute in Municipal Court, where attorneys handle over 2,500 misdemeanors a year. Having said that, it should be noted that OPD has actually improved practice in Municipal Court by laying off the part-time lawyers who practiced without client contact and without files, and instead employing full-time, well-trained lawyers who, although young and relatively inexperienced, are actually committed to representing those clients, filing motions and advocating for their clients.

It should also be noted that OPD is not a complete and full-service public defender office. Several practice areas, specifically the representation of capital, juvenile and appellate cases, have been farmed out to contractors. This limits the growth of OPD lawyers by confining them to misdemeanor and felony practices. It contributes to an expressed feeling among OPD lawyers that after several years with the agency there is no opportunity to advance in the

office, engage in different types of litigation and gain more varied experience. The end result is a feeling of burnout that results in a significant turnover rate.

**Attorney-Client Relations.** OPD properly places a high value on client contact. Policy #9 requires a lead attorney to conduct an initial client interview within 48 hours of appointment “in a private setting.” File reviews confirm that effective client interviews are being conducted in felony cases. One felony attorney noted, however, that due to difficult access issues with the detention center, the 48-hour rule is not always followed. Further, the prohibition against conducting initial client interviews in court is violated routinely in Municipal Court, where attorneys are often seeing their clients for the first time.

**Parity with Prosecution Function.** There is a distinct lack of parity with the prosecution function. In CY 10, the D.A. had \$14,726,514 in total revenues. In FY 11, OPD had \$9,152,433 in revenues. Notably, in FY 12, OPD’s budget was reduced to \$7.2 million, and that is likely to be the budget going forward. The D.A. did not experience a similar reduction in resources. Thus, the Orleans Parish D.A. is funded at double OPD’s funding level, while OPD handles 80-90% of the caseload. Further, all D.A. staff have full retirement benefits, while OPD staff have no retirement benefits at all. OPD salaries are slightly slower than D.A. salaries. Starting salaries at OPD are \$42,000 per year while the D.A.’s starting salaries are \$45,000. OPD salaries go up to \$72,000 while the D.A.’s salary range tops out at \$85,000. Both offices are staffed predominantly with young lawyers. The D.A.’s Office has 81 attorneys and 190 total staff compared to OPD’s 51 lawyers and 83 total staff.

**Salaries and benefits.** The salary structure at OPD is reasonable. At \$42,000 per year, starting salaries are competitive with other defender agencies, and increase each year until year 8, when they top out at \$72,000. “OIDP Elders” earn (or were earning) \$80,000. Supervisors receive a \$5,000 “bump.” As it is, there is no incentive to stay at OPD longer than 8 years. It would make sense for OPD to consider at some point reducing the annual salary increase so that there is incentive to stay at OPD. If this is done, OPD should also raise the upper level cap. OPD pays for health and dental insurance for a single person. The recent decision to require contributions of 50% of the premium should be reversed immediately. In addition, OPD should initiate retirement benefits as soon as that can be accomplished. OPD does not have the resources to provide retirement benefits on its own. Other parts of the criminal justice system, as well as the City and the State, should work together to correct this inequity.

Investigator salaries begin at \$32,000 and move up to \$38,000 by year three. This acts as a disincentive to investigators to remain with the office and continue to gain in experience. Administrative and business office salaries appear reasonable, although the cap on administrative salaries should be removed.

**Culture.** “Culture” is basically defined as “how we do things around here.” Pre-Katrina, the “culture” was not conducive to ensuring compliance with the 6<sup>th</sup> Amendment. It was a court-centered culture, with lawyers assigned to and working for the court, representing clients as they came through the court. The “office” consisted of a small room with cubicles at the

Criminal District Courthouse at Tulane and Broad. Attorneys had no privacy and could not conduct private conversations with clients. When attorneys appeared at arraignments, they were often unprepared. Often clients were in detention for 45-60 days without seeing their lawyer. There were no investigators. There was little motion practice, no training, no supervision, no data collected, and by all accounts no client files. Lawyers did not come to the office, and clients seldom visited the office. While there are stories of good lawyering going on pre-Katrina, the system had little to do with that.

Since Katrina, OPD has built a client-centered culture under extraordinarily adverse conditions. Over a seven-year period of time they have moved into a facility where attorneys and other staff have offices, although some are shared. The offices are cluttered and unprofessional in appearance, but at least OPD now has offices. There is a reception area, although it is not client friendly. It has the appearance of innumerable other government offices that poor people are required to frequent. OPD has created policies and protocols from scratch. It has recruited lawyers from all over the country who have a passion for public defender work. It has created a well-designed training and supervision program. It has limited caseloads for felony attorneys. It has changed some of the more unfriendly aspects of the local court system for its clients, including an allotment system that caused a delay in the appointment of counsel and impeded vertical representation, Commissioners hearing misdemeanor cases, and a system in which preliminary examinations were routinely waived. It has established a writ practice that regularly challenges inappropriate rulings from the bench, including a large number of contempt citations. There continue to be elements of the “us against the world” mentality that existed during the years following the destruction wrought by Hurricane Katrina.

This is not to say that the culture at OPD is all good. There is insufficient communication between leadership and staff, and it is a sore spot with many members of the staff. There is an unhealthy rate of turnover in the attorney staff, and a pervasive sense among attorneys that working at OPD is something one does for the short-term—that for a variety of reasons it is not a place to make a career. There is an undercurrent of claims of favoritism and elitism that has existed and persisted for the last four years. Rumors continue to circulate about unprofessional relationships between some leaders and some staff attorneys. There is resentment over the notice given with the recent layoffs, although by and large there is significant consensus about the lay-off decisions.

**Professionalism.** Issues of professionalism are addressed elsewhere in this Report (e.g., p. 58 *et seq.*). Additional issues in this regard that relate to internal procedures and personnel matters will be addressed directly with LPDB and OPD leadership.

**Policy and Procedure Manual.** The OPD Policy and Procedures Manual has been in effect since January of 2007. It should be noted that this manual was produced early on after the hurricane and destruction of the office, which in itself is an impressive accomplishment. It has excellent client-centered policies in it. A new, more detailed Handbook is now under review to take effect this summer. The latter appears to have most of the normal policies contained in a mature government policy and procedure manual. It has a table of contents and is organized in

a much better manner than the preceding version. In contrast to the policy manual, which is directed toward representing clients, the new handbook concentrates more on human resources issues.

**Physical Plant/Office Facilities.** OPD needs to move out of their present office space. The rent paid by OPD at over \$18 per square foot is exorbitant, particularly given its low quality. Amazingly, some of the space costs OPD over \$30 per square foot. As mentioned above, since the time of the site visits, the lease has been renegotiated with somewhat more favorable terms. Unfortunately, the building and office space remain shabby in appearance and downright dirty. The elevator sometimes does not work. It is laid out in a disorganized, inexplicable maze. The reception area is not welcoming to clients, with no room to sit and no child friendly place for families. It has the appearance of just another government office, and a decidedly inferior one at that. It certainly does not look like a lawyers' office. It contrasts dramatically with the physical plant in which the D.A.'s office is located, less than a ¼ mile away on the other side of the courthouse. The D.A.'s office, flooded and closed by Katrina, has reopened and is airy, open, and highly professional in appearance.

**Conflicts.** Prior to February of 2012, conflict cases were being handled both by a Conflict Division and by private lawyers handling cases on assignment. The private lawyers also acted as overload attorneys, receiving cases from the Deputy Chief to enable felony attorneys to comply with OPD caseload limits. In CY 2011, \$941,911 was spent on conflict cases. As of the spring of 2012, OPD was not handling conflict cases. Instead, the Conflict Division had been laid off and payments to private conflict lawyers suspended. Clients who had been conflicted out were being represented by *pro bono* counsel or placed on a waiting list. Based upon our discussions with OPD leadership, consideration is being given to restoring the Conflict Division in the next fiscal year.

**Training.** OPD has developed a comprehensive training program. A large internship class spends its summer at OPD, and many of them apply to work for OPD after law school graduation. New lawyers are recruited from around the country, and some of the best new lawyers in the nation are attracted to work at OPD. Once at OPD, there is a period of training prior to receiving bar results. The curriculum for new lawyers is comprehensive. New lawyers are trained for approximately one year. Supervision is a part of new attorney training, with "prep" being required of the new lawyers prior to going to court. Supervisors go with the new lawyers and watch them in court and thereafter give them feedback. New lawyers also attend the Defender Training Institute put on by LPDB for a week every fall, usually at the beginning of their training. After a year, the lawyers attend SPDTC in Birmingham. Periodically during the year, often on Wednesdays and sometimes on Saturdays, specific training is offered to all of the lawyers in the office. Oftentimes the LWOP Training Group schedules training sessions on Tuesdays. The training offered is one of OPD's more important accomplishments.

One frequently expressed concern is that the recent move from Magistrate's Court to Municipal Court has resulted in attorneys in the training class handling all of the Municipal Court caseload. Many people interviewed said that Municipal Court is a "terrible training ground." Care needs

to be taken to ensure that attorneys in Municipal Court, particularly new attorneys, do not develop bad habits due to the excessive caseloads and the nature of practice and courtroom culture in Municipal Court. This will require constant reinforcement of core values of client-centered representation and close supervision.

**Investigators.** The office has 8 investigators and 1 investigator supervisor. A 3 to 1 ratio is a good attorney to investigator ratio. While our planned interview of one or more of the investigators did not take place due to a scheduling conflict, the attorneys we interviewed in the office seemed more than satisfied with their work. File review showed a great deal of investigation being conducted in virtually every case.

**Development of Future Leaders.** OPD has developed a good system of supervision. There are 4 cluster supervisors and 3 Municipal Court supervisors. However, there is no strategic, intentional plan in place for the development of future leaders. Although none of the supervisors has been sent to national leadership or management training, OPD's supervisors and leadership attend LPDB's annual Defender Leadership Training. OPD is encouraged to devote time, energy and resources to the implementation of a plan focused on developing their future leaders.

**Recruiting.** OPD's recruiting is a success. We heard competing narratives on recruiting, with the Judiciary asserting that OPD is spending a great deal of money to recruit lawyers from the Northeast, and OPD contending that it recruits for the best lawyers available without an inappropriate expenditure of funds. What we found is that approximately half the attorney staff at OPD attended out-of-state schools, that OPD actively recruits at and is open to hiring from Louisiana law schools, that a great deal of money is not being expended on recruiting, and that obtaining free summer internships is OPD's most effective recruiting tool.

**Quality of Staff.** OPD's recruiting is highly successful and brings in numerous high quality young lawyers from Louisiana and beyond who are smart, committed and willing to work extraordinarily long hours under difficult working conditions. OPD has a good blend of attorneys from in-state and out-of-state, including some from the highly acclaimed Prettyman program at Georgetown Law School. Judges for the most part observe that OPD lawyers are doing a good job, are well prepared, well trained, and committed to high quality representation.

**Staff Attorney Turnover.** Successful recruiting does not necessarily lead to a stable work force. While recruiting and quality of staff are two high points of OPD, turnover continues to be a problem. The 2009 BJA Report noted that high rates of turnover post-Katrina had been reversed somewhat. However, turnover remains high at OPD, and interviews revealed that most attorneys did not foresee making OPD a career. Indeed, it appears that many of OPD attorneys intend to remain there a few years, perhaps 3-4 at most, with plans to leave thereafter.

There are several factors that contribute to this turnover level. First and foremost, the work is hard, and made more difficult by hostile relationships in the courthouse. OPD attorneys are regularly working 60-80 hours per week. Many of the young attorneys feel like they “have no life,” and cannot imagine raising a family in the environment in which they find themselves. The caseloads are high and the work is never-ending. There are no alternative types or areas of practice available within the office, such as appeals, juvenile, or even capital, that an attorney might get involved in to round out her skill set while at the same time obtaining a change of scenery and pace in order to reduce the level of stress that comes from a daily, grinding felony trial practice where clients are being sentenced to long prison sentences, including life without parole. Salaries are comparable to other public defender offices, but they are not in parity with the D.A.’s office. Most importantly, OPD’s benefits package is not competitive. After the layoffs went into effect, all staff members were required to pay for half of their health insurance. Even worse, there are no retirement benefits. The absence of a pension plan in and of itself speaks volumes about whether OPD can ever be considered a serious career option for its attorneys. If OPD wants to become a more stable office over time, they will have to focus on turnover, and devote the same level of attention, energy and resources to retention as it does to recruitment.

**Staff Attorney Burnout.** A problem directly related to turnover is that of staff attorney burnout. There is a real sense among many of the OPD lawyers that they and their colleagues are burning out. A general impression conveyed in interviews is that they will only be there for 2-3 years to work 60-80 hours on serious cases and then leave to pursue other opportunities. At OPD, young attorneys move quickly out of handling misdemeanors, and just as quickly move up from levels 1 and 2 to levels 3-5. Lawyers who are 4 years out of law school are trying cases involving life without parole. A lawyer reaching Level 4 or 5 after 3 or 4 years on the job results in the trial lawyer feeling like he has no place to go in the organization, that it will just continue to be more of the same. As previously mentioned, there currently are no other practice areas or options, such as juvenile, appellate, or capital. It must be remembered that behind each of the serious cases is a story, often a story of a violent crime, a victim, and families that have been torn apart. It would be unusual if secondary trauma is not being experienced by the staff attorneys. Supervisory positions are few, and there is no senior litigator status that carries with it additional remuneration. Also, as previously mentioned, this problem is exacerbated by the fact that there is no pension or retirement benefit. And, of course, constant criticism and intimidation by judges, such as their almost cavalier use of the contempt power, plays into the feeling and incidence of burn out.

**Indigence determinations.** Orleans Parish has a high rate of poverty, over 24%, greater than the state average of 18%. Over 40% of Orleans Parish children are poor. It comes as no surprise that most of the persons charged with a crime are indigent. Traditionally, indigency determinations have been made at the first appearance in Magistrate’s Court, often by a Commissioner who does not have an Affidavit of Indigency from the client. OPD’s Defender Services Program later re-examines the indigency determination. Some of the judges “un-appoint” a client if he or she makes bond.

OPD Policy #4 requires OPD lawyers to “vindicate every indigent accused individual’s right to OPD services...” using the criteria established in La. R.S. 15:147. The same policy notes that “the entitlement to OPD services cannot be rescinded based solely on release on bail or employment.”

There was a controversy this past year when private attorneys accused OPD, without any real justification, of trying to represent everyone charged with a crime. It may have stemmed from and been complicated by the Magistrate’s request of OPD lawyers to speak to persons to inform them of their rights at arraignment prior to appointment. The controversy now seems to have quieted. OPD, with excessive caseloads in felony court and massive caseloads in Municipal Court, has no interest in increasing its caseload. OPD needs to assure all parts of the criminal justice system that it wants to serve only those who cannot afford counsel, that it wants to work with the private bar to make sure that happens, while at the same time ensuring that those who are eligible for a public defender are appointed.

There is a promising development on this issue. The Vera Institute has been working on the pretrial release issue for some time, funded by the City. Over the past several months, Vera staff are now making a recommendation on indigency after reviewing a number of factors, including an assessment of risk. This is not being done in public, but instead it is occurring at an in-chambers meeting with the judge and the prosecutor. Vera ensured that the public defender also was invited to these in-chambers determinations. At present, Vera staff is present at about 75% of the first appearances, and they hope to raise their presence and involvement to every arraignment. If Vera’s involvement continues to be funded, this will be a positive development.

**Community defending.** OPD holds itself out as a community defender office. This is a good approach to defending and a proactive vision for the future, where social workers and lawyers work with clients and their families to address underlying criminogenic issues expanding the scope of representation beyond the crime charged in order to work toward a future of non-criminal behavior. OPD is not there yet. At the present time, OPD has on staff 1 social worker and 1 social worker intern in its Defender Services Program. In addition, staff and volunteers in Defender Services work with clients on bond, substance abuse and addiction issues, mental health, and alternative sentencing plans. The need is overwhelming and the resources are few. One attorney, who had been with a community defense office in New York City, said that OPD was a “long way from community defense because of the lack of resources.” She noted that the office needs an immigration attorney to deal with all of the immigration questions now being raised in the office. Housing needs are not being addressed. The OPD’s offices do not appear to be client-friendly or welcoming to the community. The caseload is too high for there to be much neighborhood community outreach. Long-term, OPD needs to educate the greater community on the desirability of community defending and the role community defending plays in improving public safety and the overall health and welfare of the community.

**Salary reductions.** In February 2012, as part of the Restriction of Services Plan, OPD announced a reduction of salary for leaders and supervisors. While this was viewed positively by the staff,

and it was a good symbolic gesture, in the long run it is counter to good business. Leading and managing and supervising at any level is difficult work and should be rewarded in order to attract and retain good people. In a public defender office, where many eschew the work of management and avoid a leadership role, it is essential to build in and provide for adequate compensation for those who are qualified and willing to assume these important, added responsibilities. OPD is encouraged to restore the salaries of the leaders and supervisors at the earliest opportunity .

**Staff Morale and the Employee survey.** Staff morale is something that changes over time. In the years after Hurricane Katrina, staff morale was poor. Turnover was high. There were allegations of favoritism and elitism. Staff did not understand why some attorneys were promoted and others were not. Some African-Americans and some women believed that promotions were based upon favoritism involving questionable, inappropriate relationships. In 2009, some of the staff even engaged in a “sick-out” that rocked OPD. Some staff aired OPD’s dirty laundry with the Judiciary. This low morale seems to have improved somewhat since Mr. Bunton arrived in 2009. On the other hand, in the days and weeks following the layoffs, morale plummeted.

One way to gauge staff morale is through a snapshot, such as an employee survey. OPD leadership conducted an electronic survey in the fall of 2011. They are to be commended for taking this step, and employees welcomed the opportunity to give feedback to their leaders and supervisors. One attorney stated that he liked the survey, that the results of the survey were communicated to all staff by Mr. Bunton and that he did a good job of doing so.

There are many noteworthy findings in the survey. 77% of respondents supported OPD’s mission. 85% believed that people at OPD care about the vision and mission. 71% of the staff responding to the survey felt good about their work with OPD. 73% felt that they could help OPD succeed. On the other hand, 47% did not agree that OPD was committed to diversity. 46% did not agree that OPD supports its non-attorney staff to the same extent and degree as it does attorney staff. 56% did not believe that OPD leadership kept them informed. 85% believed that OPD leaders gave them sufficient autonomy to solve problems, but only 50% believed that they received necessary training to do their work. And, at best, staff reviews of Mr. Bunton’s leadership were mixed.

Even more valuable are the many comments made in the survey. These should be reviewed by the Leadership Team and LPDB in order to address the concerns expressed. As many of the positive suggestions as possible should be implemented.

**Role of the Judiciary.** The criminal justice system is an organic system. What happens in one part of the system affects other parts. One useful metaphor commonly used around the country is that the criminal justice system operates like a three-legged stool composed of the judge, the prosecutor, and the defender, with the need to have each leg equal to and even with the others in order for the stool to be level and stable. The Judiciary in Orleans Parish would reject that metaphor. The Judiciary seems to respect the office of the District Attorney,

although at present they direct much criticism at the D.A.'s Office because of particular policies it has adopted and certain statements the D.A. made to the press about judges. However, with some few exceptions, the Judges do not respect OPD or the District Defender or his leadership. With some exceptions, they harken back to pre-Katrina days when they had the power to appoint the local indigent defender board, and when they had lawyers assigned to their individual courtrooms. Contrary to virtually every study of the public defender system in Orleans Parish, they contend that "things were better" under the pre-Katrina system. The Judiciary criticizes OPD for practically everything they do, from how they recruit, to who they hire, to how they train, to how case assignments are made, to Mr. Bunton's leadership ability and how he spends his time, to how many cases he has tried, to what OPD does with its budget. Judges, with one or two exceptions, do not support the public defender function; rather, they ridicule the office and minimize the importance of the role it plays in the justice system. They do little to support it publicly. In short, they make the job of public defender all the harder.

One particular common complaint is that OPD "promised" that, if the Judiciary changed the allotment system enabling vertical representation, OPD would place two lawyers in each section of court. A leader in OPD, likely Chris Flood, and one from the D.A.'s office, likely Graymond Martin, first Assistant D.A., together visited each district judge to convince the members of the court to change the allotment system. Each judge has a different memory of the conversation, or the so-called "promise." One judge remembers being promised 4 lawyers would be assigned to each section, while another judge remembers being promised 2 lawyers. A close court observer states this never happened and that such a promise was never made. It is likely that OPD did communicate that OPD would reduce the number of courts in which each lawyer was serving, because the cluster system originally placed 8 lawyers in 3 sections of court, and that could have been interpreted as what was supposedly "promised." It is clear that the judges' complaint about this assignment method can be addressed within the cluster system, meeting the interests of both the judges and OPD alike. One of the recommendations listed below is believed to accommodate those respective interests.

It is worthy of special mention that the Judiciary uses its contempt power liberally and indiscriminately against the young lawyers at OPD. It appears that whenever certain judges are annoyed, they threaten contempt of court against OPD lawyers. Lawyers are routinely held in contempt when they are not in a particular courtroom, even though they are required to be in two places at once, and even if they have notified court personnel of the conflict situation in advance or when they are delayed. One contempt citation was imposed when a lawyer held a deposition in a hospital room in order to perpetuate testimony. Another contempt citation occurred when a lawyer and investigator talked with a child witness; the investigator was later charged with kidnapping. Yet another contempt citation occurred when a lawyer declined to go forward on a motion hearing for a client whom the lawyer had never met. The list goes on. A defender was held in contempt for asking a particular question on cross-examination. Another was jailed for refusing to proceed to trial on a murder charge on a Monday after discovery was provided on the previous Friday. In another case, a lawyer found in contempt was roughed up when he was put into handcuffs and led away. The *en banc* district court filed a disciplinary complaint against the District Defender for publicly commenting on his having filed a judicial

complaint. One defender reported being threatened with contempt for asking what was perceived to be an irrelevant question. A defender was held in contempt after appearing in the courtroom, checking in with the assigned D.A. and, after finding that the judge was not present, leaving to attend to a case in another courtroom with the understanding that the D.A. would text her when the judge arrived and they were ready to proceed. When the D.A. failed to text her that the judge had convened court, both she and the D.A. were summarily held in contempt. The judge had her write "I will no longer be late to court," 50 times as her punishment. In the last four years, Orleans Parish district judges have held OPD lawyers in contempt of court over 30 times. Most of those contempt findings were reversed by the 4<sup>th</sup> Circuit Court of Appeal. Not only does such conduct on the part of a judge raise serious questions about ethics, professionalism and abuse of power, but it has a damaging effect on attorney-client relationships, the dignity and fairness of the adjudicative process, and respect for and confidence in the legal system. Moreover, it can have untold detrimental consequences for the defender involved, ranging from the immediate impact on liberty and property interests, to the damage it causes to professional reputations and future careers. For example, each of the aforementioned contempt citations must be reported to professional liability insurance carriers, as well as listed on applications for admission to the bar of federal courts and other state bars, not to mention employment applications, professional associations and ratings organizations. Furthermore, it is devastating to the morale of the defender staff, and it can have a chilling effect on a lawyer's advocacy in the defense of a client. Rather than endeavoring to create a sense of collegiality and professionalism among the bench and bar, such injudicious behavior makes the practice of law dreadful, and leaves lawyers feeling battered and unwelcome. One young lawyer said that "it's extremely frustrating" to be constantly under the threat of contempt. Another agreed, saying it is "very frustrating. It's absurd they threaten us all the time. It makes you wonder whether you even want to practice law."

**Role of the Prosecutor.** "Leon is the second most powerful person in Orleans Parish." This was an oft-repeated refrain during the consultants' visits to New Orleans. It is clear that Orleans Parish has a strong, professional prosecutor's office. The D.A.'s office is large, well-designed, well-located, well-appointed, well-kept and professional in appearance. It stands in stark contrast to OPD's quarters. The building is owned by the City and provided rent-free to the D.A.'s Office. The City's financial support of the D.A.'s office is considerable, resulting in a budget that is twice that of OPD. Leon Cannizzaro served as a prosecutor, a judge in district court and on the court of appeals, and he is now in his fourth year as District Attorney. He is highly knowledgeable about his office's operation, his staff and their performance. He is a hands-on leader. He is a popular prosecutor who is unafraid to wield his power, including against the Judiciary, many of whom are dissatisfied with him but also fear him. He speaks well of OPD and appears to genuinely respect Mr. Bunton. He was not critical of Mr. Bunton's lack of presence in the courthouse, judging it as "a matter of style." He stated that the Judiciary could "be more flexible by remaining on the bench longer during the day to work with OPD." He supports salary parity between public defenders and attorneys in his office. He expressed that, in his opinion, the OPD attorneys work hard, they know the law, and they're prepared. He stated that OPD lawyers "care...they believe in the cause." He compared OPD lawyers to some

private lawyers who “don’t even know the name of a client at his sentencing.” He does not see the role of OPD as similar to his office in terms of problem-solving in the criminal justice system. He did not agree that the District Defender is a “public figure” similar to the D.A. Mr. Cannizzaro appears in most of the courts on an almost daily basis. He requires all plea bargains to go through him, which disempowers his prosecutors, but also centers the power of the office in him. His acceptance rate is over 90%, and is widely criticized. One effect of this acceptance rate is that it causes excessive caseloads for public defenders, clogged courts, and untold damage to citizens who are caught in the net of the criminal justice system. Another effect is that OPD tries a relatively large number of cases and wins a high percentage of its jury trials.

**Role of the System.** OPD operates within a criminal justice system. Ironically, many parts of that system accuse OPD of being inefficient while at the same time causing much of the inefficiency. Specifically, the D.A. accepts an extraordinarily high rate of cases, causing OPD’s caseloads to increase and become excessive. The D.A. specifically requires all assistant prosecutors to seek his approval for a plea bargain. The D.A. has set a goal of 600 jury trials per year. The Sheriff operates a jail that is exceptionally unfriendly to public defenders who want and need ready access to their clients. This not only wastes a great deal of time, but it also affects the quality of the attorney-client relationship. Finally, the Judiciary criticizes the management of OPD, holds public defenders under a constant threat of contempt of court, while at the same time declining to assess and remit the necessary fees that would add to OPD’s revenues, making it possible for them to more effectively handle their caseloads.

**Compliance with ABA 10 Principles.** One of the most important methods for evaluating a public defender system is the ABA *Ten Principles of a Public Defense Delivery System* (2002). The following observations about OPD are made using these benchmarks as a framework.

- **Principle #1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.** The 2009 BJA Report found “limited adherence” to Principle #1, due primarily to the funding instability. This condition continues today, most dramatically with the \$2 million shortfall during 2012. However, the consultants believe that Principle #1 for the most part is being complied with. Structurally, Act 307 has ensured independence of OPD by removing the local indigent defense board that had been selected and influenced by the local judiciary. The District Defender is chosen by LPDB based upon merit. Recruiting of lawyers involves “special efforts aimed at achieving diversity in attorney staff.” (*Id.*, Commentary to Principle #1). LPDB vigorously protects the independence of OPD, evidenced by their filing suit to protect OPD’s funding stream. However, Principle #1 also speaks in terms of independence from “political influence.” In that sense, OPD continues to suffer from a lack of independence, primarily as a result of interference by the Judiciary. The Judiciary has exhibited its political influence by repeatedly holding OPD lawyers in contempt, with constant threat of further contempt citations and other sanctions held over the heads of the lawyers. Much of the Judiciary also criticizes virtually every decision made by OPD. Many of the judges do not work to improve OPD, nor do they support OPD and the vital function played by OPD in the Orleans Parish criminal justice system.

- **Principle #2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.** The consultants believe that OPD meets Principle #2. OPD now has a functioning full-time system. The 2009 BJA Report faulted OPD for its manner of identifying conflict cases and assigning contract lawyers. Until the Restriction of Services plan went into effect in February of 2012, there was active participation by the private bar through the conflict program. It is hoped and assumed that this program will be restored when the new fiscal year begins. The Deputy monitors the *pro bono* program that is now, in part, covering conflict cases.
- **Principle #3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.** The 2009 BJA Report found that “[a]dherence to this principle has greatly improved.” We would agree. One of the great improvements made by OPD post-Katrina is that clients are seen early in the process, rather than waiting 45-60 days for acceptance by the prosecution. That alone has improved the local system immeasurably. Public defenders are present at arraignment and staff from the Defender Services Program functions to connect the client and the family to an assigned OPD attorney soon thereafter.
- **Principle #4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.** The 2009 BJA Report found “little or no adherence to this principle outside of the OPD office setting.” Some progress has been made toward meeting this principle. Felony attorneys have limited caseloads, although those caseloads remain too high, and thus have more time than others to handle their cases. In contrast, Municipal Court attorneys are in many instances meeting their clients for the first time in court, and conducting an interview at that time, often resolving the case. They handle over 2,500 cases per attorney/per year. This does not comply with Principle #4. Further, by all accounts the situation in the Orleans Parish Detention Center is abysmal. OPD attorneys waste an extraordinary amount of time trying to get into the jail to meet with their clients. Once there, the space is neither comfortable nor private. Litigation has been pursued successfully, but it is too early to determine whether the Sheriff will assist OPD in complying with this principle.
- **Principle #5. Defense counsel's workload is controlled to permit the rendering of quality representation.** The 2009 BJA Report found OPD lacking on Principle #5, and “strongly recommended that Chief Defender Bunton establish a reasonable caseload.” Mr. Bunton complied with this recommendation and established the workload limits for felony attorneys. The *Ten Principles* state that under no circumstances should caseloads exceed national standards. While OPD caseloads exceed national standards, there has been a vast improvement over previous levels. However, no progress has been made limiting the caseloads of public defenders in Municipal Court, where the caseloads are grossly excessive.
- **Principle #6. Defense counsel's ability, training, and experience match the complexity of the case.** The 2009 BJA Report found that this principle was not being followed due to the fact that no process or method for assigning cases was in place, nor was any evaluation of lawyer performance being conducted. This has changed immensely and

for the better. Since that report, OPD has created a system of evaluations involving the placement of attorneys into practice levels. As a result, attorneys are assigned cases consistent with their ability, training and experience, meeting the requirements of Principle #6.

- **Principle #7. The same attorney continuously represents the client until completion of the case.** The 2009 BJA Report found this to be a “major accomplishment of the Office.” This accomplishment has continued, despite the constant criticism of the Judiciary, which wants to return to the pre-Katrina practice when attorneys were assigned to courtrooms and clients bounced from attorney to attorney.
- **Principle #8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** The 2009 BJA Report found that OPD was not in compliance with this principle in that OPD was not “close to parity with regard to salaries and benefits.” The Report also found that OPD “appears to be regarded and included as more of an equal partner than previously.” We find that OPD is not in compliance with this principle. The D.A. has a budget of over \$14 million per year, over double the budget of OPD, despite the fact that OPD handles anywhere between 80 and 90% of the cases handled by the D.A. The D.A.’s office has retirement benefits, as do the judges and the employees of other agencies and components of the criminal justice system. OPD staff stands alone in the system without any retirement benefits. The District Defender is a part of many of the groups that meet to discuss criminal justice issues. However, the District Attorney recognizes and admits that the District Defender is not on a par with him. And the Judiciary for the most part does not treat OPD as an equal partner in the justice system.
- **Principle #9. Defense counsel is provided with and required to attend continuing legal education.** The 2009 BJA Report found that because the Training Director was being diverted to trying cases, BJA was hesitant to find compliance with this principle. This has changed significantly; training is regularly made available in-house, by LPDB Staff, and by SPDTC. In addition, conscientious, active supervision ensures that learning and skills development are ongoing and take place on a continuous, everyday basis in the context of case practice and individual representation. In other words, training and improving skill and competence permeates the office culture, and responsibility for it is not limited to the Training Director. It is spread amongst the Training Director, the Chief of Trials, and the Supervising Attorneys overseeing lawyers in the four clusters in the Adult Trial Division, as well as those assigned to the Municipal/Traffic Division. A policy that requires “prep” review on every felony case set for trial, including completion of a form designed for that purpose, provides “hands-on” assistance and guidance by supervisors that complements more traditional training and instruction in the office. This expands the educational and training function, and allows the Training Director to handle a limited caseload and get into the courtroom, which in turn enables him to better relate to and more effectively teach and develop the trial staff.
- **Principle #10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.** The 2009 BJA Report found that OPD was “not adhering to this principle.” This too has changed since 2009. OPD has 4 attorneys supervising 28 lawyers in their cluster system, and 3

attorneys supervising 8 Municipal Court attorneys. This is not merely *pro forma* supervision either; it is vigorous and continuous. OPD is in full compliance with this principle.

**Compliance with the Eight Guidelines.** The issue of excessive public defender workloads has been gaining in importance. This is highlighted by the ABA's adoption in August 2009 of the *Eight Guidelines of Public Defense Related to Excessive Workloads*. OPD's compliance with these guidelines is addressed below (guidelines are summarized due to the lengthy blackletter statements they contain).

- **Guideline #1. Provider avoids excessive lawyer workloads by assessing whether performance obligations are being met.** OPD appears to be in a minority of public defender organizations that is attuned to the excessive caseload issue. This is likely due to the outstanding leadership of the LPDB. LPDB has adopted performance standards setting out what Louisiana public defenders are expected to do. Included in those standards is the requirement that "When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the district defender for counsel's judicial district and, if applicable, the regional director, the court or courts before whom counsel's cases are pending. If the district defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the district defender shall inform the court or courts before whom cases are pending and the state public defender." [§707(E)]. With one glaring exception, OPD has endeavored to follow LPDB's Standard §707 as well as Guideline #1 of the *Eight Guidelines*. It is in compliance with both in regard to the attorneys that handle felony cases in the four clusters. However, OPD is not in compliance in Municipal Court, where 8 young attorneys are handling grossly excessive caseloads.
- **Guideline #2. Provider has supervisors who monitor workloads.** OPD is in full compliance with this guideline. Their supervision program not only monitors workloads, but also monitors quality of lawyer performance.
- **Guideline #3. Provider trains its lawyers on professional and ethical responsibilities of representing clients.** OPD has a structured training program with a comprehensive syllabus. However, an examination of the syllabus does not reveal specific training on the ethical ramifications of excessive workloads. While they do general training on ethics, it is recommended that they begin to include specific instruction on the ethical components of excessive workloads.
- **Guideline #4. Managers assess whether excessive lawyer workloads are present.** OPD meets this guideline well. Attorneys are routinely taken out of rotation when their caseloads exceed OPD guidelines.
- **Guideline #5. Provider takes prompt action to avoid excessive workloads.** OPD's Service Reduction Plan is an example of action taken to avoid excessive workloads in district court. However, OPD has taken no action to avoid the excessive workloads of its Municipal Court attorneys.

- **Guideline #6. Provider asks court to stop the assignment of new cases and to withdraw from current cases when workloads are excessive.** OPD is in the middle of a service reduction. It has withdrawn from some of its conflict cases and has established a wait list. The situation is in flux and is still developing.
- **Guideline #7. Provider resists judicial directions regarding management of the program that “improperly interfere[s] with their professional and ethical duties in representing clients.”** OPD has been engaged in a struggle for the last 6 years attempting to comply with Guideline #7. OPD has done its part. The Judiciary, however, continues to try to interfere with OPD’s management of its workload situation.
- **Guideline #8. Provider appeals a court’s refusal to stop the assignment of new cases.** OPD has not arrived at this point in the implementation of its service reduction.

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## **Recommendations to OPD, LPDB, and other parts of the Orleans criminal justice community**

### **Structure**

1. **Continue the cluster system.** OPD heard the criticism from the Judiciary regarding OPD lawyers having to travel between and among 12 different courts and responded with a reasonable compromise. The Judiciary, with few exceptions, wants a return to the old system of having 1 or 2 public defenders assigned to each courtroom, apparently for purposes of efficiency and moving dockets more quickly. In response, OPD created four 7-lawyer clusters, with each cluster serving 3 sections of court. This lessened the conflicts resulting from lawyers handling cases in all 12 sections by reducing coverage to only 3 sections by the lawyers in each cluster. Movement from courtroom to courtroom was minimized by this assignment approach, and it actually provides each section with more than 2 lawyers. This cluster system appears designed to work well, and it represents a practical concession by OPD in the assignment of cases and deployment of its lawyers while maintaining vertical representation; however, judges remains adamant that they want to return to 2 lawyers assigned to each of their respective courtrooms.
2. **Issues relating to placement of 2 lawyers in individual sections of district court.** The most problematic aspect of assigning lawyers to a specific courtroom is that judges begin to think of those lawyers as “their public defenders” – that view has been demonstrated in the past and it came through in some of our interviews with judges. Moreover, a “team mentality” in processing cases can easily develop among judges, prosecutors and defenders that undermines the principles of the adversary legal system; and, given OPD’s volume of cases, the appearance if not the reality of assembly line justice is given to clients, and becomes the natural impression of those appearing in court as well as the public. There may be ways to refine and develop

the cluster system, and the Judiciary and OPD are encouraged to work together to find those ways, but it should not be done simply to serve the interests of efficiency at the expense of client-centered representation and the perception of justice.

- 3. Establish as part of each cluster supervisor's responsibilities regular communication with the district judges and the coordination of the schedules of the defenders within the cluster to ensure seamless coverage of court.** Most of the judges did not seem to know the identity of the supervisor assigned to their courtrooms. OPD should make it a part of each supervisor's duties to make weekly contact with each of the three judges to whom they have lawyers assigned. These duties should include introducing new lawyers to the judges, reviewing and coordinating dockets and trial schedules, and trouble-shooting.
- 4. Restore the Conflict Division or consider an alternate defender office.** The Conflict Division was a cost-effective means of providing conflict services. Paying conflict lawyers on an hourly basis is an expense OPD can ill afford. This division, which was eliminated during the layoffs, should be reestablished. Consideration might also be given to establishing an alternate public defender's office, which has the benefit of clearly eliminating conflicts. Such an office could be organized as a neighborhood office and provide OPD with a neighborhood presence. However, this is a costly alternative, and is recommended only if OPD receives considerable additional funding. The subject of these recommendations and these potential changes were discussed during the course of our site visits. It should be noted that Mr. Bunton recently stated in a communication to staff following our last site visit that he is restoring the Conflict Division as soon as practicable in FY 2013, albeit with fewer lawyers.
- 5. Restore the conflict panel for 3rd level conflicts with reasonable contracts to ensure cost stability.** Private lawyers should continue to play a role in providing indigent defense. However, handling conflict cases, including capital case conflicts, has been quite expensive in the past, totaling \$941,911 in 2011 alone. Reserving the conflict panel lawyers for third level conflict cases will reduce the cost considerably. Converting from an hourly rate to a contract will further reduce costs. The contract should not be a low-bid contract. Care will need to be taken to ensure that well-qualified lawyers are chosen for the contract panel, and that oversight by the Deputy Chief Defender is properly established and carried out. Again, this subject was discussed with Mr. Bunton at length during the course of our site visits and it should be noted that, in the same staff communication mentioned above, Mr. Bunton announced that the OPD Conflict Panel will transition to a flat fee contract system with fees tied to salaries paid to OPD attorneys performing equivalent case work.
- 6. Move the oversight of the Chief of Trials to the District Defender; leave the oversight of the Conflict Division with the Deputy District Defender.** As it presently exists, there is an internal conflict between having the Chief of Trials answer to the Deputy, while at the same time the Deputy oversees the conflict division and the *pro bono* panel. Conflicts can be avoided by having the Deputy oversee the Conflict Division, while the District Defender oversees the Trial Division. Given our

recommendation that the Deputy also maintain a caseload, albeit a relatively small one, there are possible scenarios that might develop requiring someone other than the Deputy to be responsible for oversight of a specific conflict arising with one of the Deputy's cases. An appropriate screening system should be put in place (if it does not already exist) to identify and avoid such potential conflicts, similar to that which exists in most law firms and defender programs. Other defender systems regularly monitor their supervisors' caseloads to ensure that, in carrying out their oversight duties, additional conflicts are not being generated.

- 7. Establish a capital division that would handle all capital cases in Orleans Parish as well as LWOP cases. LPDB should consider diverting resources that are now going to non-profits to OPD to fund this coverage.** It made sense in the past to have entities other than OPD provide representation in capital cases. Post-Katrina, new leadership found some of the OIDP lawyers handling 20 open capital cases each. OPD needed to hire a large number of new lawyers and train them in felony practice. Very few of the lawyers (one at the present time) have been certified in representing capital cases. However, as OPD matures, capital representation should be taken back into OPD. Several attorneys should become certified as capital defenders. One problem for attorneys with an exclusive capital practice is that those attorneys do not try cases regularly, since most capital cases plead without a trial. As a result, their trial skills can get rusty and they can become out of touch with day-to-day practice in the courtroom. This can be alleviated by also assigning LWOP cases to the capital division. The non-profits now handling Orleans Parish capital cases can use their considerable skill and experience in those parishes where there are more capital cases being pursued by their respective District Attorneys. The \$574,815 that was spent in 2011 on capital representation can be used not only to establish a capital division but also to fund other parts of OPD in need of additional resources. Once again, as with Recommendations #4 and 5 above, this matter and a potential change in approach to capital case representation were discussed with Mr. Bunton during our site visits. Similarly, Mr. Bunton recently revealed plans to launch a Capital Trial Division sometime during FY 2013.
- 8. Establish a juvenile division in the near future.** While we understand there may be funding and political factors to consider in adopting this recommendation and the two that follow, the fact remains that a mature public defender office contains different practice areas that overlap and allow the office to provide full-service, comprehensive representation to its indigent clients in criminal and related matters. This also allows staff attorneys to find their area of greatest of interest and talent, and become better-rounded, skilled advocates. A public defender also has the opportunity to move from one area to another when he or she becomes burned out in one practice area. OPD should not only have a capital division, it also should have a juvenile and an appellate division to provide diversity of practice areas for its attorneys. It should be noted that the D.A.'s Office has a juvenile and an appellate division and handles capital cases as well. OPD already has attorneys who represent children in transfer cases. Expanding this to handling the full array of juvenile cases will be a cost-effective as well as an efficient, effective, high quality way of providing

representation in these cases. As it is, state money is being used to fund another organization that, among other things, has to fund infrastructure and duplicates other expenditures. Housing a juvenile practice inside OPD will provide an economy of scale and allow for a more cost-effective use of the resources (\$450,000 in 2011) that are currently being spent on juvenile representation.

- 9. Establish an appellate division in the near future and merge it with the Special Litigation Division.** Defender offices around the country have found housing an appellate division inside a predominantly trial office has significant benefits for the clients as well as the attorneys. Appellate attorneys are up-to-date on and expert in the law; they can be consulted by the trial attorneys when potential appellate issues come up pretrial. They can brainstorm with the trial attorney in advance of trial, assist with jury instructions and ensure preservation of error. After the trial ends, they are in a better position to effectively represent the defendant on appeal. As mentioned above, broadening the practice areas also has the benefit of providing OPD attorneys with more professional experience, opportunities, and options that encourage them to remain with OPD.
- 10. Continue the Special Litigation Division while maintaining its reduced size.** The Special Litigation Division appears to be a necessary part of OPD, and it should continue until it is merged with a future appellate division. There are numerous contempt citations and writs that provide a steady stream of systemic litigation issues for this division. While 4 attorneys are listed on the organizational chart, it appears that, in addition to the Special Litigation Counsel, only 2 attorneys work in Special Litigation part-time; the rest of their work is done in one of the clusters.
- 11. Move the responsibility for oversight of the Municipal/Traffic Division to the Chief of Trials. Remove direct supervisory responsibilities from the Training Director.** OPD's training program is considered a strength. There needs to be a shift, however, from the tradition of hiring a new "class" each fall. That was a necessary feature of OPD when it was still developing and rapid growth was needed. OPD now must move to the more fiscally responsible and conservative hiring practice of only hiring when there are vacant positions. This move alleviates the necessity of having the Training Director oversee the Municipal Court attorneys, since those attorneys will not necessarily be "new" attorneys. Further, it makes more sense structurally and functionally for all of the trial attorneys to be under the supervision of the Chief of Trials.
- 12. Move the Director of Media and Communications out of the leadership line of authority.** The Director of Media and Communications certainly needs to be aware of what Leadership decides, what the vision of the agency is, and what needs to be communicated internally and externally. As a result, she will need to be present at Leadership Team meetings, except during discussion of confidential personnel or policy matters. Hers is not a supervisory or policy-making position. She should report directly to the Chief District Defender and his Deputy.
- 13. Reduce CINC to one lawyer.** It is recommended that CINC consist of one lawyer rather than continue with the 1 ½ positions now placed there. As a result, there

would not need to be a supervisor in that position. Both of these moves would result in a savings.

### **Leadership, management, and supervision**

- 14. Leadership must become significantly more visible in the courthouse. Leadership should meet at least on a monthly basis with the Chief District Judge. Leadership should also meet individually with all judges on a routine basis, at a minimum bi-monthly.** A universal complaint from Judges is that they do not know, do not see, and never hear from either the District Defender or the Deputy. While this is not necessarily completely accurate, it does appear that the District Attorney is present at Tulane and Broad a great deal more than are either Derwyn Bunton or Michael Bradley. This issue should be taken away from the Judiciary. While both Messrs. Bunton and Bradley are quiet and introverted, they need to push themselves to perform this significant role and leadership duty by being present in each courtroom on a weekly basis. In addition to his physical presence in the courthouse, the District Defender should seek to re-establish a regular monthly meeting with the Chief District Judge to talk about areas of mutual concern and interest. Both of these changes will pay off considerably in the long run.
- 15. The Leadership Team should meet more regularly with an established agenda on at least a bi-weekly basis.** The Leadership Team does not now have a regularly established meeting schedule. When they meet, there is no agenda. Meetings are held on an as-needed basis, which results in management by crisis. This should change. At least twice a month, and preferably every week, the Leadership Team should meet for at least an hour using an established agenda that is circulated in advance of the meeting.
- 16. All leaders other than the District Defender should carry significant caseloads.** At a time when caseloads are high and service reduction is under consideration, every available attorney should be utilized to meet the caseload. It is recommended that the Deputy, the Chief of Trials, and the Training Director should at least temporarily carry a 50% caseload.
- 17. All supervisors should carry 75% caseloads.** At present, supervisors are carrying a one-half caseload. It is recommended that this be increased to a 75% caseload, at least until such time as improved, additional funding enables them to carry less.
- 18. Communicate the job duties of those in leadership to all staff.** One criticism from staff is that they do not know the duties and job descriptions of leadership. We were provided with those job descriptions; they should be communicated to all staff and included in the office handbook.
- 19. Create a policy that delineates the responsibility for the enforcement of fee assessments by leadership, while at the same time allowing for individual lawyers to advocate for relief for those clients who are without resources and unable to pay. This policy should be communicated to the Judiciary.** The Judiciary is critical of OPD's focus on the revenue aspect of the criminal justice system, while at the same time individual staff attorneys are legitimately advocating for relief for their

indigent clients who lack the resources to pay fees, or are otherwise communicating that they do not wish to pursue the fee collection aspect of these cases. It appears, and is argued, that OPD is speaking out of both sides of its mouth. There is natural confusion over this issue, which is not unique to Orleans Parish. Indeed, this is a common misunderstanding in jurisdictions across the country, and it reflects an ignorance of the difference between the legal and administrative duties of a Chief Defender leading an indigent defense organization and the ethical responsibilities of attorneys representing the best interests of individual indigent clients. Other defender offices have handled this successfully by delineating these separate responsibilities in written policies and procedures, and then educating others in the justice system, as well as the public, about these seemingly competing duties and interests. While leadership should be broadly communicating that fees are an important part of OPD's budget, and that the Judiciary should follow the law, at the same time leadership needs to ensure that it is understood that individual public defenders must be free to argue that a particular fee in a specific case may not be appropriate given the circumstances of the individual client. This policy should be written and communicated to and discussed with the Judiciary, as well as the legislative and executive branches of government.

- 20. There should be only one supervisor in Municipal Court.** At the present time, Municipal Court attorneys answer to 3 supervisors as well as the Training Director. As recommended above, the Municipal Court function should be overseen by the Chief of Trials. There should be only one supervisor, who in turn is supervised by the Chief of Trials.
- 21. Send all members of leadership and all supervisors to leadership and management training.** The District Defender is the only individual in the Leadership Team who has received training in leadership, management, and supervision. One former leader at OPD said that the Leadership Team is not effective at implementing Mr. Bunton's vision or at putting systems into place. Some on the Leadership Team eschew leadership and management. This is natural for a relatively new office and common among public defender offices generally. However, each of the leaders needs to either affirm leadership and management or move back into staff attorney positions. And if they want to remain on the Leadership Team, they should be prepared to study and learn how to become better leaders.
- 22. Leadership must commit to interacting more collaboratively in the criminal justice system. Leadership must commit to achieving a better working relationship with the Judiciary.** OPD has operated since Hurricane Katrina in an embattled state. The Judiciary in particular appears to be in a constant struggle with OPD. This is not healthy for the criminal justice system. OPD cannot control what the Judiciary does; however, without compromising its principles, it can resolve to do everything within its power to alleviate the conflict and to begin to co-manage the criminal justice system in concert with the D.A. and the Judiciary.
- 23. Leadership should consider filing judicial complaints where necessary and appropriate.** While this might perhaps seem contradictory to the previous recommendation, it is not necessarily so. As previously mentioned, OPD should do

everything it can to collaborate and work effectively with the Judiciary. However, when a line is crossed, OPD Leadership should be prepared and willing to file judicial complaints. It is a professional responsibility.

- 24. Leadership must become more active and involved in the local bar.** The local bar has been an ally of OPD. Members of OPD leadership should make it a priority to participate in bar activities and lend their time and talent to help achieve the mission and goals of the bar association. Such involvement is not only salutary on its own merits, but it will forge relationships that might not otherwise exist between OPD and the organized bar, and lead to the improvement of the overall practice of law in Orleans Parish.
- 25. Leadership should establish a strategic planning process involving all staff.** The District Defender has communicated that he wants to begin holding strategic planning meetings on a regular basis. This is a good idea, and it should be done sooner rather than later. It will enhance communication, empower staff, improve morale, and result in better decision-making. Whatever method and means is created to accomplish this objective, care should be taken to involve all of the OPD staff in the planning process.
- 26. Reexamine and reevaluate the allegations of favoritism in the office.** Allegations of favoritism, particularly in who is promoted to supervisory positions and who is elevated to the different levels of practice, have been circulating at OPD for years. While these may have been addressed, the Leadership Team is encouraged to evaluate and determine whether there are appropriate policies and standards in place that objectively inform their decisions and prevent such beliefs and claims in the future.
- 27. Be willing to enforce standards and make values meaningful.** There were troubling reports that OPD purports to be client-centered, but that that is more aspiration than reality. For example, one attorney said that there are no repercussions when people don't show up for court or timely visit their clients in jail prior to court. Systems should be devised and put in place to address these issues and ensure accountability, so that attorneys are where they should be, when they should be, and are in compliance with office policies regarding client interviews and visitation (similar matters will be discussed in the Recommendations dealing with Professionalism and Office Culture below). It was also said that there are attorneys at OPD who do not care for their clients and who are rude and insensitive toward them. Leadership needs to communicate firmly and frequently that OPD is a client-centered organization, and it needs to possess and demonstrate the will to enforce professional, client-centered behavior.

### **Communications**

- 28. Leadership must place a high priority on communication with the Judiciary.** This has been discussed in some detail above. Improving communication with the Judiciary must become a high priority of OPD leadership.

**29. Leadership must also place a high priority on communicating internally.**

Communication between leadership and staff is not nearly what it should be and, in fact, is considered very poor by most of the staff, and even by some members of the leadership team. It is recommended that leadership improve communication through continuing quarterly staff meetings, through the use of blast e-mails on a regular basis, and through the institution of an electronic newsletter under the oversight of the Communications Director. In addition, the District Defender and his Deputy need to be more visible among staff, attending cluster meetings, training sessions, or just dropping in on staff to talk. This may not appear to be significant step to take, but it can make a difference, and improving communication with staff is essential.

**30. The District Defender and his Communications Director need to create a communications plan and then implement it among stakeholders in the system.**

OPD does a good job communicating with some parts of the criminal justice system, and a not-so-good job of communicating with other parts. This could be improved considerably if the District Defender worked with his Communications Director to create an overall communications plan. The purpose of such a plan would be to inform all of the stakeholders in the system of OPD's mission and how its leaders are implementing it. A secondary but important purpose is to communicate the needs of OPD and to build support for meeting those needs.

**31. OPD Leadership must commit to improving communication and relations with the LPDB. Leadership must keep LPDB better apprised of developments within the Orleans criminal justice system and, at the same time, routinely document those developments. OPD and LPDB must work toward a relationship that is similar to that which exists in other district offices. A clear delineation of responsibilities between LPDB and OPD needs to be established.**

A great deal of work needs to be done to improve the relationship between OPD and LPDB. Currently, there is palpable tension between the two, and a less than optimal working relationship. OPD must commit to more promptly and fully responding to LPDB requests for data and information; to better communicating and documenting developments in Orleans Parish so that LPDB is never caught unaware and is in the best possible position to anticipate and advocate for the needs of OPD; and to taking proactive steps to avoid unnecessary friction and misunderstanding. Facts, knowledge and information must be shared by both OPD and LPDB so that each can better perform their necessary roles. The lines between the fiduciary, oversight responsibility and the operational function need to be clearly defined, observed and respected. There are a number of ways to address existing problems and improve relations between OPD and LPDB. They should all be explored, sooner than later. For example, a board/leadership team meeting or retreat could be organized with the assistance of experts in business management and delivery of legal services to identify issues and facilitate discussion and solutions. More than anything, both OPD and LPDB must commit to establishing and maintaining a healthy relationship of communication and collaboration.

**32. Educate and communicate with funders and the public about the appropriate level of funding required to accomplish OPD’s mission and discharge its legal and ethical responsibilities.** Use the communications plan to educate the public and all branches of government on the need for and importance of adequate funding. Establish a goal that is based upon solid data and demonstrable need. A goal of \$10 million appears to be the appropriate level necessary to address the duties and obligations of OPD. Hold that level out as an important milestone for the operation and continuing development of OPD. Bring together City and State officials, as well as other stakeholders in the criminal justice system, to establish this as the goal for a mature and well-funded defender office and to collaborate in making it a reality.

### **Budget and expenditures**

**33. Establish a tight, austere, and conservative budget process based upon available resources and historical trends.** The most fundamental role of leadership is to live within the resources that are available during a particular budget cycle. Over the past 7 years, OPD has engaged in what some leadership team members described as “aggressive budgeting,” and others characterized as “wishful thinking” that was unwise and irresponsible. On the one hand, the aggressive approach of OPD leadership to increasing program funding helped grow the OPD budget to meet its caseload needs. On the other hand, this budgeting approach can be risky and dangerous, as demonstrated in the 2011-12 budget cycle, and it caused significant damage to both OPD and LPDB, which cannot be repeated. It is recommended that OPD adopt and enact a budgeting policy that involves conservative estimates of needs and expenditures, as well as expected revenues. The Business Alliance refers to these budgeting estimates as calculated on the “lower side of predictable averages.” They should be based upon a realistic assessment of various trends, rather than overly optimistic projections. Staff positions should only be filled, and offers should only be made, based upon money in hand, rather than money that is hoped for.

**34. LPDB should establish tighter oversight of the budget request from OPD.** LPDB plays an important role in the budget process. While they provide only 40% of the overall funding for OPD, their “approval” of the budget request in April-June at the end of a given fiscal year should not be *pro forma*, but based upon close scrutiny and insistence on submission of objective data to support the request. One OPD staff person involved in the budget process noted that she expected LPDB to reject the \$9.2 million budget submitted for FY 2012 and send it back to OPD to require further substantiation or at least force a conversation. This kind of superficiality and uncertainty should not be present in the budget process.

**35. Establish a “presumption of continuity” in the OPD budget from year to year.** There is no regularity in the OPD budget process, certainly not in terms of funding and revenue. OPD’s budget in 2011 was over \$9 million, and yet there was no expectation or presumption by anyone that a similar budget would be required in 2012. It is highly unusual for an organization to have a \$9 million budget one year

and a \$7 million budget the following year absent a significant change in operations. And, needless to say, continuing to operate at the same level with that sort of reduction in resources, without a corresponding reduction in expenditures, is impossible. Grave consequences follow, and OPD's experience is a testament to that certainty. It appears that more reliable means and methods for funding indigent defense in Louisiana are unlikely in the foreseeable future. If that is the case, then LPDB, the City, and OPD need to work together to establish a process that will result in a more predictable budget from year to year for OPD.

- 36. Hire only when vacant positions exist and are budgeted, or when funds are provided and available to create new positions.** OPD hired the class of 2011 consisting of 8 new lawyers without knowing whether they had the funding to underwrite the class. No contingency plans or precautions were in place. This is part of the reason why 27 staff lawyers had to be laid off in February of 2012. This practice and management decision cannot be justified, and its consequences cannot be repeated.
- 37. The City of New Orleans should support and fund the OPD in a manner and amount similar and proportionate to the D.A.'s office.** Significant disparity exists between the support and resources provided to the D.A.'s Office and that which is given to OPD. The City is to be commended for funding OPD over the last several budget cycles. However, the City needs to look at these two criminal justice entities in context, recognize the essential roles each play in the justice system, and realize that the system cannot function properly and produce just and reliable results unless there is a level playing field and both offices are adequately funded. The importance of a balanced, well-functioning criminal justice system to the New Orleans community cannot be overstated.
- 38. LPDB is urged to seek a more stable funding mechanism for OPD, preferably securing General Fund dollars for the districts.** In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the U.S. Supreme Court issued a constitutional mandate to the States, to wit: under the Sixth Amendment to the U.S. Constitution, states are required to provide counsel in criminal cases for defendants who are unable to afford their own attorneys. It was a unanimous decision of the Court. Simply put, the court held that the right to the assistance of counsel was a fundamental right, essential for a fair trial. Many states, including Louisiana, reacted by shifting the primary responsibility for funding indigent defense to local government, usually to the counties or parishes. Worse, Louisiana chose to fund indigent defense mainly through an assortment of fines and fees. Not surprisingly, this approach to funding has created anomalies and inconsistencies in different parts of Louisiana. A good argument can be made that this is an unconstitutional system as applied to poorer districts in the state. In any event, it has proven to be an unpredictable, unreliable and inadequate method of funding indigent defense, one that is rife with ethical conflicts and subject to political machinations. A more stable, less erratic funding mechanism must be created and implemented. Certainly, OPD would be in a better fiscal position if it received a higher share of its funding from General Fund dollars, collected and distributed by the state. As noted in a recent article in *The Times-*

*Picayune*, "It's nothing short of shameful the way we fund indigent defense around here. If we really cared about justice -- and not just the illusion of it -- we'd make sure that everybody standing before judge or jury had good legal representation. We'd directly fund the public defenders' office and make sure that one person getting out of a traffic ticket doesn't contribute to another person going to prison." ("Get out of a ticket in New Orleans Traffic Court, bankrupt indigent defense," by Jarvis DeBerry, *The Times-Picayune*, May 15, 2012). LPDB should lead the effort to overcome the obstacles standing in the way of sensible public policy in this regard, specifically the proper funding and sound fiscal management of the indigent defense system by the state. If the *status quo* remains in force and goes unchallenged, Louisiana will continue to have problems in complying with *Gideon's* mandate.

- 39. Grow the organization more organically in the future.** Part of the instability experienced by OPD over the past several years related in part to its rapid rate of growth, combined with a high rate of turnover. Now that OPD has grown and become more stable, it is important for the office to continue its growth in an organic way, rather than in fits and starts.
- 40. Maintain a significant reserve of at least 2%, initially by setting aside additional revenue. Hire additional personnel only when a trend of increased revenues has been established.** Part of conservative budgeting is to hold some revenue in reserve. This is particularly of importance in a system that relies in part on chronically fluctuating traffic and court fines and fees. A 2% reserve, or approximately \$140,000, should suffice to provide a level of stability. It is recommended that this reserve be created as revenue increases.
- 41. Create salary and benefit parity with the District Attorney's Office.** Both prosecution and defense play a vital role in a criminal justice system. Attorneys should seek positions based upon their skills and their natural inclinations rather than based upon who supplies a higher salary or a better benefit package. Persons in authority, including OPD, LPDB, the City, the D.A., as well as the Judiciary, should establish as a priority salary and benefit parity, including a pension plan, within the two offices.
- 42. Fund the Defender Services Division.** The Defender Services Division plays a unique and significant role in OPD. It connects the office and client with the client's family. It works on pretrial release and other pretrial issues. It identifies issues such as mental illness, substance abuse, housing and immigration, which are significant but collateral aspects of the client's representation. The entire system would benefit from having a robust Defender Services Division.
- 43. Create an additional administrative position to assist the Director of Administration.** The current Director of Administration at OPD has been functioning in that capacity by herself with virtually no assistance for some 15 or so years, irrespective of the size of the office at any given time during that period, which covers pre and post-Katrina operations,. She has far too many duties and tasks to perform to be fully effective in discharging the significant administrative and financial oversight responsibilities assigned to her. An additional administrative position should be funded.

## Quality of legal services

- 44. Address the excessive caseloads in Municipal Court.** The *status quo* cannot continue in Municipal Court. Individual attorneys there simply cannot continue to represent 2,000+ cases annually. The system has an obligation to ensure that effective assistance of counsel is provided to persons accused of crime whose liberty is threatened. That cannot be guaranteed at the present time by the 8 lawyers handling the Municipal Court caseload. Worse, an informed observer states that most persons in Municipal Court are not represented at all, in violation of *Alabama v. Shelton*, 535 U.S. 654 (2002). OPD is not in a position to represent those additional defendants who are currently going unrepresented in Municipal Court. However, this is a significant constitutional violation awaiting a solution. One temporary solution might be to identify those cases that typically result in a sentence of imprisonment, and only provide representation to those persons. The Judiciary would then have to find some other way to advise persons whose liberty is not going to be taken away, but who are not represented and cannot afford counsel. As long as OPD has insufficient resources to provide effective counsel to all eligible defendants in Municipal Court, the only realistic and somewhat reasonable, professionally responsible method for addressing the situation may be to provide counsel only to those persons who are incarcerated or are expected to be incarcerated. Obviously, this is not an ideal solution, nor is it suggested as a permanent one. The *status quo* presents a serious systems problem that should be addressed by the entire New Orleans criminal justice system. It is not a problem of OPD's making, and the solution should not be the exclusive responsibility of OPD. Recommendations #52 and #58 further address this issue.
- 45. Improve bail advocacy in Municipal Court.** There are a significant number of persons who are in jail when they appear in Municipal Court. At that time, if they plead guilty, they will usually be released. If they plead not guilty, they will usually sit in jail for 30 days awaiting their next court appearance. One observer called this the "Cry Uncle System of Justice." One of the many problems with this, beyond the coercion of guilty pleas, is that some of the offenses are enhanceable. Thus, OPD lawyers are playing a role in this conveyor belt of injustice by pleading at the first appearance, thereby facilitating the prosecution of any subsequent charge for a sentence that will carry more jail time. One of the Municipal Court attorneys referred to this practice as "simple extortion." Apparently, a Pretrial Working Group, which OPD has not participated in recently because of a lack of resources, is reviewing these problems. It is recommended that OPD work with other parts of the criminal justice system to address and improve this situation, particularly release on reasonable bail so that the accused can assert and exercise their rights, and make knowing, intelligent and voluntary decisions about the disposition of their cases and the consequences attendant thereto.
- 46. Elevate the importance of representing persons charged with misdemeanors and low level felonies.** OPD has created a culture in which the most desirable staff positions are those handling the most serious cases. In the past, some newer

attorneys have felt aggrieved by not moving more quickly into those positions. OPD itself appears to have a culture that minimizes the significance of misdemeanor cases. This contradicts OPD's mission and its desire to be a client-centered office. If one were to look at how most poor people in Orleans Parish are affected by the criminal justice system, it would be in Municipal Court. There are serious collateral consequences to being convicted of a misdemeanor. OPD leadership needs to focus on viewing and treating misdemeanor cases as significant matters in order to better serve its clients and achieve its mission.

- 47. Improve arraignment practice in Magistrate's Court.** The Vera Institute has been building a model of pretrial release over the past several years. In this model, Vera staff utilizes risk assessments and consideration of other factors essential to making evidence-based decisions on pretrial release to assist the judge or commissioner in Magistrate's Court at first appearance. A vigorous public defender presence is vital to the success of this model. The public defender's role is to use the information supplied by Vera to argue for pretrial release, as well as in the client's behalf in the determination of probable cause. OPD has stated that they do not have the resources to perform this essential role, stating that they cannot afford to place more than 1 attorney in Magistrate's Court. According to one observer, "that does not comport with competent representation." It should be noted that as many as 30 individuals are arraigned at any given time, with a typical docket numbering 12-13 defendants. It is in everyone's interest, including the City, to incarcerate only those who are dangerous, while ensuring that others return to court. OPD needs to work with Vera, the Court, and the City to educate them about the critical role of OPD at this stage of the proceedings, and the need to fund additional defenders. An overriding issue here is that there are judges who see no role for the public defender at arraignment in Magistrate's Court. Some have gone so far as to prohibit the participation of a public defender in this process. Until judges change their attitudes and policies in this respect, it will matter little how many public defenders OPD assigns to Magistrate's Court for arraignments.
- 48. Address the excessive caseloads in district court.** OPD and LPDB have done excellent work in ensuring that attorneys in Orleans Parish do not have a caseload higher than LPDB and national standards. However, despite their good work, 28 attorneys in district court are each handling over 300 felonies on an annual basis. This is excessive and must be addressed.
- 49. As long as caseloads are excessive, reduce the practice and number of cases being co-counseled.** Most jury trials are conducted by two OPD lawyers. Given how many young lawyers are on the staff at OPD, this practice is somewhat understandable. However, with caseloads as high as they are, and attorney time and resources at a premium, it is difficult to justify this practice in so many cases, especially in light of the extensive training and supervision that is in place. OPD is encouraged to review this practice and consider adjusting it to apply only to the first jury trial of a new attorney and to higher level felony cases in which a need for co-counsel is demonstrated. This recommendation does not include or refer to the use of 2

attorneys for jury selection, which is considered a good policy that should be continued in all cases.

**50. Prepare for litigation over conflicts and excessive caseloads in Municipal Court.**

While OPD needs to do everything possible to increase its funding level by working with the State, the City, and the Judiciary, OPD cannot continue to accept higher and higher caseloads in Municipal Court. Nor can OPD accept or tolerate the number of clients sitting in jail on serious charges without counsel in conflict situations. Although avenues other than litigation should be explored to address these urgent problems, if relief is not immediately forthcoming, litigation may be the only option. OPD leadership should begin working now with LPDB and non-governmental organizations to prepare for litigation that would alleviate and remedy, once and for all, both the overload situation in Municipal Court and the unavailability of counsel in conflict cases.

### **Service delivery**

**51. OPD must immediately address the situation of unrepresented persons who are incarcerated.**

One of the most egregious effects of the Service Restriction Plan is that it has resulted in persons left in jail on serious charges without counsel. This includes some who are charged with a capital crime, and others with a charge involving a sentence of life without parole. At the time of the site visit, there were over 160 cases in which indigent accused had no lawyer. It is probable that this number is now higher. Whatever happens in the future, it cannot include simply cutting off clients without counsel. This constitutional violation must end.

**52. OPD must address the situation in Municipal Court.** Most of the cases handled by OPD occur in Municipal Court, where over 18,000 state and city misdemeanors are processed through those courts. Each of OPD's attorneys assigned to that court is handling over 2,000 cases per year. Little defense advocacy can occur, or is occurring, under these circumstances. OPD is encouraged to work with all of the stakeholders in the system to either improve the representation in Municipal Court or to litigate what is now a clear violation of the 6<sup>th</sup> Amendment to the U.S. Constitution and Section 13 of the Louisiana Constitution.

**53. Consider providing representation only in misdemeanor cases in which clients are likely to receive jail time if convicted.**

One specific strategy that should be explored and considered involves identification of the types of cases in Municipal Court that routinely result in a sentence of jail time. Once that research is done, and there is confidence that it can be relied upon, OPD should announce that it will no longer supply attorneys in all cases, but rather only those identified as involving "jailable" offenses. Care must be taken to cover cases that are not "identified" as non-jailable cases, but nevertheless turn into one. Obviously, this is not an ideal or permanent solution, but merely a stop-gap measure that amounts to the lesser of two evils. It should be employed on a temporary basis until sufficient resources are obtained to provide counsel for all eligible clients.

- 54. OPD should seriously consider bringing back into the organization the provision of representation in juvenile, capital and appellate matters.** This recommendation has been addressed above.
- 55. Special Litigation should continue to litigate the significant issues now impeding due process and professional practice.** It is unusual to have a dedicated unit in an urban office that is devoted to special litigation. However, there are simply too many significant issues that arise in Orleans Parish that necessitate the existence and operation of this unique division. There are an inordinate number of contempt citations issued by the Judiciary that must be addressed and often litigated. There are numerous systemic issues, such as the use of Commissioners, access to clients at the detention center, etc., that require the attention and assistance of this particular unit. And Louisiana has a provision allowing for writs to be taken by both prosecution and defense to an appellate court prior to the end of a case, again necessitating a unit dedicated for that purpose. If OPD creates an appellate division, Special Litigation could be folded into that unit.
- 56. Continue the pro bono plan.** At present, 17 law firms are handling conflict and waiting list cases. This is no substitute for adequate funding of the conflict division and conflict panel system. However, the creation of the pro bono plan has increased awareness of the problems faced by OPD and generated support for OPD among the private bar, and it demonstrates that OPD is making every effort to provide counsel and cover the caseloads.

### **Caseloads**

- 57. Continue to monitor the caseload caps to ensure that OPD does not regress into excessive and unconstitutional caseloads.** OPD has taken a unique and rather contradictory approach to controlling caseloads: they established and zealously protect caseload caps for felony attorneys, while setting no limits on attorneys handling misdemeanor cases, resulting in enormous caseloads for attorneys assigned to Municipal Court. Some defender offices place the burden of excessive caseloads upon all their attorneys. That could easily happen at OPD. Yet LPDB has promulgated regulations that mandate that defenders not have excessive caseloads; LPDB has also promulgated a service restriction protocol. It is recommended that OPD use these regulations to maintain its caseload cap for felony cases, and that it also utilize the service restriction protocol to bring its misdemeanor caseload under control.
- 58. Examine whether the caseload caps can be adjusted upward under some circumstances.** While affirming the importance of caseload caps, it is also critical to protect the interests of vulnerable clients in a time of layoffs and wait lists. Therefore, it is absolutely essential that each OPD attorney perform at the highest level of efficiency and productivity. It is believed that some attorneys could competently handle somewhat higher caseloads. Although this might appear to contradict our observations above expressing concern that OPD lawyers are carrying 300 felonies per year, it is incumbent on leadership, considering the prevailing

circumstances, to carefully examine the caseloads of all felony attorneys in order to determine whether they can handle an increased number of felony cases while at the same time remaining true to the underlying reasons for the case caps set by LPDB, as well as relevant ethical considerations.

- 59. Either get actively involved in the existing Municipal Court Working Group or assemble a Task Force of all the stakeholders to address problems in Municipal Court, particularly the large numbers of cases being processed by the court and the excessive caseloads carried by public defenders. Caseloads in Municipal Court must be significantly lowered.** It is clear that the Municipal Court attorneys have excessive caseloads and that under the LPDB regulations these caseloads cannot be tolerated. At the same time, the court system has a large volume of cases involving indigent defendants who have a right to counsel. These competing challenges and interests are in significant tension in Orleans Parish. The 18,000+ cases in Municipal Court present one of those “wicked problems” that defy a solution. It is in such situations that a multi-disciplinary task force can be of use. One experienced district judge expressed the opinion that OPD should pull its lawyers out of Municipal Court altogether -- that is an action, or reaction, that should be considered. A task force could generate other ideas. It is recommended that the D.A., the District Defender, the Judiciary, the Sheriff, the Bar Association, and the City take the lead in gathering a broad-based group of stakeholders tasked with the responsibility of addressing this problem. The group should address options for reducing or controlling the number of cases that appear on the docket and require the appointment of counsel. The most obvious options that come to mind are increased use of diversion, alternative sentencing or graduated sanctions that do not involve a loss of liberty, better pretrial release decision-making at arraignment and utilization of more extensive pretrial release options, as well as reclassification of certain non-violent, victimless offenses. Can law enforcement address minor offenses at the outset with citations rather than arrests for those offenses for which jail time is unlikely? Can the D.A.’s Office initiate a program that would impose diversion for individuals without their going to court and taking up judicial, defender, and prosecutorial time? Can the City reduce the number of offenses that carry the potential for jail time, thereby freeing the court system, the D.A.’s and OPD to concentrate on more serious cases? All of these possibilities should be discussed with the objective of forming a consensus to at least explore their use on a pilot project, experimental basis. There is little risk in that, and the potential for great reward; a win-win situation for all concerned.
- 60. OPD Leaders and Supervisors should carry a reasonably significant caseload. Leaders should carry a 50% caseload, while supervisors should carry a 75% caseload.** This has been addressed above.

### **Professionalism and Office Culture**

- 61. Create an atmosphere of stability and a return to normalcy.** OPD grew out of the destruction of a hurricane and its aftermath. OPD quickly hired lawyers, moved into

office space, wrote policies, created curriculum, and established a culture so rapidly that, rather than grow organically, it grew up chaotically. For a time there was a leader from out of state, who was then replaced with two interim leaders, who were then replaced with a district defender hired by LPDB. Two BJA assessments have been conducted resulting in numerous recommendations, many of which have now been implemented. This period of dynamism has been impressive, but it has also been frenetic and disordered, and that is, ultimately, unsustainable. One staffer referred to the culture as “go hard and go fast.” It is time for stability and a sense of calm and constancy to replace the chaos. Leadership should establish stability as an organization, and in its working environment and operations, as one of its main objectives over the next two years.

**62. Move to more professional office space, preferably provided at no cost by the City of New Orleans.** OPD is to be commended for moving out of the courthouse seven years ago. However, it is in an office now that is unprofessional in appearance, expensive, and unfriendly to clients. The amount of rent OPD expends should be used to move into an office that is acceptable to staff, more professional, and friendlier to the client community.

**63. Until OPD can be moved, the reception area should undergo major renovation.** There are a number of OPD staffers who are familiar with community defender offices in other parts of the country. They should be used as models to redesign the OPD reception area so that it is welcoming to visitors, professional in appearance, and clearly establishes that the office is a place that respects its clients regardless of their socio-economic standing.

**64. OPD must become more attuned to some of the unique cultural aspects of providing indigent services in Orleans Parish.** One of the criticisms of OPD is that it hires outsiders who do not understand Orleans Parish and especially do not understand the history or appreciate the culture at Tulane and Broad. There is some truth to the criticism, though the importance of the critics’ point may be debatable. However, OPD has strived to hire the best young lawyers possible, regardless of origin or pedigree, in order to have the best and the brightest representing indigents accused of crime. It is hard to criticize the hiring of the best lawyers available. And a fair number of those lawyers are graduates of Louisiana schools. Nevertheless, Leadership should make a concerted effort to blend these two values together, continuing to hire excellent lawyers, including hiring excellent Louisiana lawyers, while at the same time working to educate those lawyers from out-of-state on the unique culture of Orleans Parish. One judge who grew up in the parish volunteered to teach OPD staff about Orleans culture, and that could be valuable in relating to and representing clients, not to mention interesting in and of itself. That is but one idea that could be used to better engage the community and help OPD be perceived as more a part of it. OPD has a stated goal of being a community defender; it cannot reach that goal if it is not considered part of the community, if it does not truly understand the community, and if it does not participate as an active member of the community.

- 65. A pension plan must be created and provided to all staff, preferably one that is equivalent to that of the District Attorney.** The present system in which all parts of the Orleans Parish criminal justice system participate in a retirement system for the benefit of their employees, except for OPD staff, is unconscionable and indefensible. It cannot be allowed to stand, and whatever it takes to get it done should be undertaken as soon as possible, whether it is the City or the State or a combination of both. OPD will never be able to have a stable office without disruptive staff turnover unless a retirement plan is put in place. Attrition will continue at a high rate so long as attorneys do not believe that they can establish a life and family in Orleans Parish and realistically plan their futures there. The plan should be equal to the benefits provided under the D.A.'s plan.
- 66. Make it possible for public defenders who want to make a career of working with OPD to do so.** A consistent pattern seems to be developing among attorneys who join the OPD staff, about half of whom are from out of state: after being recruited and trained, they begin practicing in Municipal Court under conditions that, suffice to say, are not conducive to good lawyering; they then progress to District Court, where they face a generally hostile judiciary, work 60-80 hours a week, benefit from ongoing training, improve their skill set, and gain valuable trial experience; whereupon, with few avenues open to them to expand their practice, limited opportunities to advance their careers, and no real prospect of a better working environment, improved compensation and a more stable personal and professional life, they move on after 2 to 3 years. During the course of staff interviews, that pattern emerged in nearly every instance. Some were burned out, but most cared about their clients and were passionate about the work. However, virtually none of them had any expectation of making a career out of defender work at OPD, and most had no plans to stay with the office beyond 3 years or so. The situation was not much better with the supervisors we interviewed. Such attitudes and sentiments do not bode well for the future of OPD. The described pattern, and the conditions and circumstances that give rise to it, must be addressed and changed radically. The career path and tenure track of new lawyers and existing members of the staff have to be altered in a way that is meaningful and effective. There will always be some lawyers who will work at the office for a few years and then move elsewhere, but a significant number need to be motivated to plan or at least consider a career at OPD and establish a home in Orleans Parish. A decent salary, a retirement plan, better working conditions, the opportunity to move into other practice areas such as capital, juvenile, and appellate, are all important ways to achieve this goal and, in the process transform the staff into one that consists of a balance of seasoned veterans, rising stars, and new attorneys who are prize recruits.
- 67. Create salary incentives for future top litigators.** One current policy that does not encourage lawyers to view OPD as a career is a compensation schedule in which salaries top out at the eight-year mark. There is a \$5,000 supplement for those attorneys willing and able to supervise others, and this is a good incentive that should be maintained. However, if an attorney does not want to supervise, but prefers to concentrate on becoming the best trial lawyer she can be, this too should

be recognized with salary enhancements that are awarded when her potential is realized and that status is achieved. It is recommended that a “top litigator” status be created that entitles the lawyer who reaches that level to a salary increase similar to that of a supervisor.

- 68. Restore health benefits without requiring any contribution for individual employee coverage.** As part of the February service restrictions, all staff had to begin contributing 50% of the cost of their health insurance benefits. This move was particularly difficult for lower paid staff. One staffer said that this was “just like everybody taking a \$200 cut in their paychecks every month.” This particular component of the restriction plan should be eliminated and the requirement should no longer be in effect. OPD must contribute 100% of an individual employee’s single coverage healthcare insurance.
- 69. End the furloughs.** Just as requiring a 50% contribution for healthcare coverage imposed the equivalent of a salary cut, furloughs have the same effect. Additionally, they have a deleterious impact on productivity and the representation of clients. For these reasons, furloughs should be eliminated.
- 70. Consider funding the restoration of health benefits and the elimination of furloughs by suspending or reducing salary increases for attorneys.** In lieu of additional funding, OPD leaders should consider funding the restoration of healthcare benefits and the elimination of furloughs by suspending or reducing salary increases. The financial consequences of this action ultimately inure to the benefit of employees.
- 71. Create rotations within the office that will allow attorneys to reduce stress by periodically changing the area of practice they engage in.** There is considerable burnout among OPD staff lawyers. Once they are trained and move into the felony courts, there is a sense that there is no place else to go. The workload is crushing with long hours, in many cases 60-80 hours per week. That is unsustainable. It is recommended that Leadership strive over the long-term to create rotations that will alleviate some of the burnout, and also enhance the experience and legal abilities of staff.
- 72. Provide routine janitorial service for the office.** OPD must stop requiring office staff to clean up the offices and the bathrooms. A routine janitorial service must be made a part of the budget or incorporated into the lease.
- 73. Require all attorneys to sign an agreement committing to stay with the office for a minimum three-year period of time, and agreeing to pay back a *pro rata* share of training costs if the attorney leaves the office earlier than 3 years.** OPD invests a great deal of time, effort and money in training its lawyers. In all likelihood, the figure is well over \$10,000-\$20,000 per attorney. Some of those lawyers leave within a short period of time after receiving the benefit of their training. They then are able to use that training to enhance their resumes in seeking other employment, as well as utilize the skill set they developed at the expense of OPD in the next phase of their careers. Many public defender offices have implemented a commitment policy whereby attorneys sign an agreement to stay for a specific, minimum period

of time, promising to reimburse the organization for training received if they breach the agreement and leave early.

- 74. Diversity.** Orleans Parish has a highly diverse population. OPD Leadership should welcome diversity in its organization and set a goal of reflecting that value in their staffing and practice. In addition, Leadership should conduct diversity training on a regular basis to ensure that the values of diversity are recognized, understood and implemented.
- 75. Office environment and atmosphere.** Additional professionalism issues relating to internal procedures and personnel matters will be addressed directly with LPDB and OPD leadership.

### **Perception of public defender's office**

- 76. OPD must commit to being a model public defender's office that is respected by all parts of the local criminal justice system and the client community for the quality of its representation and its professionalism.** Given the defense role and function, respect cannot and should not be confused with popularity. It would be nice to have both, but respect is the goal and clear priority, a professional respect of OPD for the proper discharge of its constitutionally based duties and ethical responsibilities. This is further addressed above.
- 77. Develop a communications plan that drives the goal of improving the perception of the office.** This is addressed above.

### **The Judiciary**

- 78. OPD must commit to improving communications and relations with the judiciary.** This is addressed above.
- 79. The Judiciary must respect the role of the OPD as an equal partner in the criminal justice system.** It is clear that the public defense function is not respected by many of the judges. This comes through loud and clear in their criticisms of OPD, in their demeanor, in their liberal use of their contempt power, in their insistence on having their own lawyers in their courtrooms, in expecting OPD lawyers to be in two places at once, and in minimizing the role of the public defender. Judges have an obligation to treat all lawyers who come before them with respect. It was reported by more than one judge that when the District Defender recently appeared before all of the judges at a meeting of the full court, several of the judges "screamed" at him. Judges also have an obligation to improve the system of justice, particularly for those who are indigent. The Orleans Judiciary is encouraged to commit to having better relations with OPD lawyers and OPD leadership. One judge stated that OPD wanted to impose "civil law firm standards" on Tulane and Broad, saying OPD was unwilling to move cases quickly, they were filing too many motions, and they were not adapting to the "ER/triage nature of Tulane and Broad." Change is usually a two-way street. OPD is trying to be more professional, and this affects how the Judiciary wants to run its court. The Judiciary is urged to give some leeway to OPD

as it endeavors to provide more professional representation to its poor and needy clients. Moving from a pre-Katrina model to a “civil law firm model” is not necessarily a bad thing.

- 80. The Judiciary must recognize the independence of OPD.** Principle #1 of the ABA *Ten Principles* states that the indigent defense function must be independent of the judiciary. Historically this principle has been violated in Orleans Parish, particularly prior to Act 307. However, the indiscriminate use of contempt citations, as well as other actions that deride and demean public defenders has the effect of intimidating public defenders to the point where their independence is compromised and their ability to work for and with clients is diminished. The Orleans Judiciary is encouraged to commit to respecting OPD’s independence.
- 81. As long as OPD is funded through fees, fines, and costs, the Judiciary must do everything it can do to assess reasonably and efficiently use accountability measures.** Louisiana has an unstable and unsustainable method of funding its indigent defense system. Orleans Parish is no exception. 60% of OPD’s budget comes from local sources. And yet, these funding sources have proven to be unpredictable and unreliable. OPD is dependent upon revenue that it has no power to generate and no ability to control those who can produce that revenue. After Hurricane Katrina, few traffic tickets were being written, and as a result OPD had fewer funds available at a time when their need was the greatest. Law enforcement can look the other way when traffic violations occur and it affects OPD’s budget. Judges can decline to assess fines and fees when they have some disagreement OPD or with funding indigent defense in a particular way. Judges can decide that funding of their own court needs take precedence over the needs of the public defender’s office, as has been recently done in Orleans Traffic Court. One judge has said that while he will assess the \$35 fee, but he will not collect it. Judges can require that public defender’s fees be collected and paid last in the order of priority. Judges can dismiss traffic offenses and replace them with a contempt of court fine, as is being done in Municipal and Traffic Court, thereby diverting money from OPD to the judiciary fund. These are all derogations of their duty to follow the law, including the assessment, collection and remission of appropriate fees and fines that contribute to the funding of OPD.
- 82. The Judiciary needs to follow the statute regarding indigency rather than “un-appointing” OPD simply because someone posts bond for a public defender client.** OPD has no interest in representing clients who are not indigent and are therefore ineligible for defender services. However, we heard repeated reports and saw examples of judges who “un-appoint” OPD once someone posts bond for an indigent client represented by a public defender. Posting bond might indicate that a client is not indigent, but it also might mean that someone other than the client has posted bond and it has nothing to do with the client’s own resources and his ability to hire a lawyer. While posting bond should be a factor to consider, it should not be the sole factor, nor should it be an automatic disqualifier without further inquiry.

- 83. The Judiciary must cease the liberal use of its contempt power, reserving this extraordinary power for the truly offensive and unprofessional behavior of lawyers.** The use of the contempt power by Orleans judges is unique and oppressive. This practice has few benefits and no real purpose other than to express anger. On the other hand, it has a chilling effect on zealous defense advocacy and ultimately it demeans the system of justice. The Supreme Court of Louisiana and the Louisiana Judiciary Commission are encouraged to address this issue with the Municipal and District Court Judiciary.
- 84. The Judiciary is encouraged to work for the improvement of the public defender system. When the District Defender takes the initiative to become more available and accessible in the courthouse, judges are encouraged to work with him to solve problems.** This report has described the breakdown in the relationship between the Judiciary and OPD. Both parties carry their share of the blame for this situation. Throughout this report, measures that OPD can undertake to improve this vital relationship are suggested. The Judiciary can also take steps to improve the relationship, starting with a willingness and commitment to do so.

#### **The Prosecution**

- 85. The District Attorney is encouraged to support a well-funded and well-managed public defender system; the District Attorneys' Association's recent opposition to legislation providing additional funding for public defenders is shameful, particularly given the funding levels of D.A.'s offices.** The D.A. is a powerful figure in Orleans Parish. He is encouraged to use this power to help ensure that OPD is reasonably funded so that it can play its important and necessary role in the local justice system. To his credit, Mr. Cannizzaro has expressed strong support for a well-funded public defender's office. At the state level, recently the District Attorneys' Association opposed a modest increase in the \$35 fee funding indigent defense. The prosecution function is funded at approximately double that of indigent defense in Louisiana. At the same time, public defense represents anywhere from 70-90% of persons coming before the courts. It is unconscionable for the District Attorneys' Association to use their considerable power to maintain a systemic advantage. Instead, they are encouraged to help build an improved system of justice that is cost-effective, maintains public safety and does justice at the same time.
- 86. The local District Attorney is encouraged to utilize his considerable ability and power to treat the District Defender as a significant partner in managing the criminal justice system.** The D.A. expressed the opinion that he did not view the District Defender as his equal in terms of his position as a public official. That is of course how the power relationships have been viewed historically in Orleans Parish. There are many examples across the country of district attorneys and public defenders being considered equals and viewed as such by the courts and the public, working together to solve problems. A model of equality would work much better than the model of disparity now in effect.

- 87. The District Attorney's Office should examine its high acceptance rates and consider restoring the previous practice of using the acceptance process to screen and cull out less serious cases.** The Judiciary and OPD are critical of the D.A.'s Office for its high acceptance rate, which is described as being above 90%. One judge compared this acceptance rate negatively to a prior D.A.'s rate of 50%. The current acceptance rate has the effect of cluttering the court system with cases of questionable merit and unnecessarily overburdening OPD. The D.A. is encouraged to examine his office's evaluation of cases and to compare it to how D.A.'s offices in other parts of Louisiana make acceptance decisions that effectively protect the public while efficiently using the considerable power of their offices to prosecute those who deserve to be prosecuted and also exercising their discretion to dismiss those cases that do not merit prosecution.
- 88. The District Attorney is encouraged to allow his trial attorneys to negotiate with individual public defenders in order to make the courts function more efficiently.** One reason the system is moving more slowly can be attributed to the D.A.'s policy requirement that all plea bargains must have his approval. Well-qualified, experienced line prosecutors are competent and able to evaluate their cases and decide on an appropriate plea offer in particular cases. In a professional prosecutor's office that is properly run, as Mr. Cannizzaro's appears to be, there should be no reason for this added level of review and approval. It serves only to slow down the proceedings and needlessly consume the precious time and resources of other stakeholders in the system.
- 89. Discovery needs to be processed more efficiently.** One district judge said that the system was not operating efficiently because discovery was not being provided early enough to the defense. While this is often the fault of the police officer, the D.A.'s Office is in the best position to ensure that the police report is completed in a timely manner and provided promptly to the defense.
- 90. The District Attorney is encouraged to work with the District Defender to establish alternatives to incarceration, diversion programs for persons with mental illness and substance abuse, and to reduce the numbers of cases resulting in disproportionately long sentences of imprisonment.** The recent 8-part series in *The Times-Picayune* on incarceration statistics and sentencing practices in Louisiana pointed to the extraordinary number of persons serving long prison sentences. It revealed that Louisiana has an incarceration rate that is double that of the United States at large. One place to begin to change this disturbing trend and explore more effective means of dealing with crime is in Orleans Parish. And two leaders who can help make that happen are the D.A. and the District Defender.

### **The Sheriff**

- 91. The Sheriff is encouraged to work with OPD to improve and increase access to inmates at the various detention centers.** It is imperative that OPD lawyers be able to visit their incarcerated clients in a timely and efficient manner. At the present time, there is an immense and unnecessary waste of time in visiting clients. OPD

lawyers complain that it sometimes takes hours to have a client brought to a place where an interview can occur; one staff attorney stated that it takes 4-5 hours to get in and out of the House of Detention to see one client. It is difficult to see clients at nights and on weekends. This not only wastes taxpayer money but likely violates the Sixth Amendment to the US Constitution and Section 13 of the Louisiana Constitution.

**92. The Sheriff is encouraged to work with OPD to improve the conditions under which interviews are taking place.** Lawyers often have to talk to clients using video equipment at a temporary facility. Contact visits can occur only if the defender calls four hours in advance. In one of the detention centers, lawyers are separated from their clients by plexiglass with holes drilled in it through which they must attempt to communicate. In some areas, the plexiglass is so dirty the defender cannot see the client's face. There is no privacy, and everyone can hear the client speaking to his attorney, a clear violation of attorney-client confidentiality and a potential waiver of the privilege. This is completely unacceptable and, again, a likely constitutional violation.

## Appendix

### Documents Reviewed

The following documents were reviewed as part of this assignment:

- April 10, 2006 report entitled *An Assessment of the Immediate and Longer-Term Needs of the New Orleans Public Defender System*, written by Nicholas L. Chiarkis, D. Alan Henry, and Randolph N. Stone, produced by BJA National Training and Technical Assistance Initiative Project at American University
- January 2010 report entitled *Recommendations to Strengthen the Management and Organizational Structure of the New Orleans Public Defender Office*, written by Bennett Brummer, Edwin Burnette, Nicholas Chiarkas, and Gail Zancha,” produced by BJA National Training and Technical Assistance Initiative Project at American University
- *A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana’s Criminal Courts* (2006)
- *Access Denied: Pre-Katrina Practices in Post-Katrina Magistrate and Municipal Courts* (April 2006)
- 15 case files, including cases from each cluster in the Adult Trial Division of OPD, were reviewed for content, motion practice, and quality of investigation, research and preparation for trial or other disposition.
- 2007 Policy and Procedure Manual
- New Policy and Procedure Manual now under review
- Job Descriptions for the Deputy Public Defender, Director of Programs and Administration, Director of Training and Development, and Special Litigation Counsel
- An Excel document detailing CY 2012 caseloads at OPD
- Blueprint of Orleans Parish Criminal District Court
- Waiver of Rights Form in New Orleans Municipal Court
- “Orleans Public Defender’s Office, Review & Consultation with Ernie Lewis and Dan Goyette Narrative Requests March 21, 2012,” a 7-page memo by Derwyn Bunton
- Louisiana Public Defender Board Trial Court Performance Standards
- Louisiana Public Defender Performance Standards for Attorneys Representing Parents in Child in Need of Care and Termination of Parental Rights Cases
- Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings
- E-mails regarding Facebook Page: Hostility to OPD
- Nola.com article entitled “Judge taps New Orleans noteworthies to handle criminal cases”
- Nola.com article entitled “Poor defendants in Orleans Parish get some well-heeled help”
- OPD Brochure
- *The Times-Picayune* 8-part series entitled “Louisiana Incarcerated: How We Built the World’s Prison Capital”
- OPD Organizational Chart

- 41<sup>st</sup> Judicial District page from the LPDB 2012 Annual Report
- *The Case for Community Defense in New Orleans*, written by Christopher Muller, Brennan Center for Justice at NYU School of Law (2006)
- *Treated like Trash: Juvenile Detention in New Orleans Before, During and after Hurricane Katrina*, Juvenile Justice Project of Louisiana
- *The Children Left Behind: A Review of the Status of Defense for Louisiana's Children and Youth in Delinquency Proceedings*, ABA Juvenile Justice Center (2002)
- *Conference Report: Public Defender in Louisiana*, Yale Law School (2006)
- Document prepared for the 2007 Kentucky Bar Association devoted to review of the New Orleans Public Defender system (2007)
- Untitled report reviewing the Louisiana Public Defender system
- LPDB Timeline (2007-2011)
- *An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years after Gideon*, NLADA (March 2004)
- Public Defender Salary Scale
- Service Restriction Plan Executive Summary consisting of 10 pages
- Substantive Post-ROS Provision Protocols consisting of 3 pages
- Letter dated January 25, 2012 from Frank Neuner to Derwyn Bunton
- Untitled document detailing deadlines for the service restriction plan
- Administrative regulation entitled "Service Restriction Protocol"
- "Orleans Public Defenders Office Restriction of Services: Review of Operating Environment"
- Restriction of Services Plan for FY 2012 dated October 20, 2011
- District 41 Caseload Report 2011
- E-mail from David Newhouse detailing Orleans Parish jury trials
- Orleans Public Defenders "Revised Workload Standards and Relief"
- May 2, 2012 letter from Misty Hizer, Comptroller, and Heather Gillespie, Clerk, Division "B" to Judge Robert E. Jones, Orleans Traffic Court
- "District Attorney Offices—Audit Report Summaries for all LA Judicial Districts—CY10"
- "District Public Defender Offices—Audit Report Summaries for all LA Judicial Districts—FY11"
- D.A. document entitled "Talking Points HB 325"
- Numerous e-mails entitled "Criminal Justice Audit in NOLA"
- Orleans Public Defenders Expenditures January through December 2011
- OPD FY 2011 Original Budget and Budget Amendment
- E-mail string entitled "OPD Budget"
- OPD Proposed FY 2013 Budget--\$7.2 million
- OPD FY 2012 Budget
- OPD FY 2012 Revenue and Expenditures
- OPD CY 2011 Revenue and Expenditures
- OPD FY 2011 Revenue and Expenditures

- Document entitled “Annual Budgets of Louisiana Indigent Defense Assistance Board and its Predecessor Board, Louisiana Indigent Defender Board”
- Payroll Document
- FY 2013 OPD Payroll
- Projected Payroll as of Feb. 1, 2012
- Orleans Public Defenders Financial and Compliance Audit Together with Independent Auditors’ Report for the Year ended June 30, 2011
- FY 11 Income Statement
- CY 11 Income Statement
- FY 12 Income Statement
- 204 e-mails setting up the site visits, clarifying information, attaching documents
- Article in *The Times-Picayune* entitled “Poor defendants in Orleans Parish get some well-heeled help”
- Article in the *The Times-Picayune* entitled “Indigent defense cases accepted by New Orleans politicians, media figures”
- ORLEANS PUBLIC DEFENDERS OFFICE RESTRICTION OF SERVICES: Budget Reductions
- OPD Leadership/Culture Evaluation Survey, short and long reports
- A February 9, 2012 engagement letter between OPD and LaPorte
- Derwyn Bunton’s notes from a May 2011 meeting regarding Municipal and Traffic Court Reorganization
- Copy of the 4<sup>th</sup> Circuit case of *State v. Walker*
- Staff Performance Evaluation Form
- Orleans D.A. Leg. Audit Report 2009 and 2010
- August 17, 2009 BJA Report on caseload management
- Various exhibits and charts in support of LaPorte audit
- D.A. Projected Budget 2012
- June 2011 letter to City Council from D.A.
- *The Times-Picayune* article entitled “Public defenders' operations shortchanged by New Orleans Traffic Court, audit shows”
- ACLU Report entitled *In For a Penny: The Rise of America's New Debtors' Prisons*
- Three power point presentations made by OPD to City Council in November 2010, June 2011, and November 2011
- OPD Training Agenda
- OPD Training Plan
- OPD CY2012 Cases by Attorney and Case Type
- LPDB *Guide for Developing a District Service Restriction Plan (2012)*
- *The Times-Picayune* article entitled “Orleans Parish DA Leon Cannizzaro expresses annoyance with Criminal District Court Judge Benedict Willard,” February 14, 2011
- *The Times-Picayune* article entitled “Public defender mistreated in Criminal District Court, agency chief says,” December 9, 2009

## Persons Interviewed

The following persons were interviewed during the consultants' on-site visits as well as on the phone:

- Derwyn Bunton, District Defender
- Michael Bradley, OPD Deputy
- Kendall Green, OPD Chief of Trials
- Jee Park, OPD Special Litigation Counsel
- William Boggs, OPD Training Director
- Dannielle Berger, OPD Director of Administration
- Carrie Ellis, OPD Supervisor
- Megan Garvey, OPD Supervisor
- Danny Engelberg, OPD Supervisor
- Nzinga Hill, OPD CINC Supervisor
- Jason Ullman, OPD Felony Attorney
- Scott Sherman, OPD Felony Attorney
- Amelia Beskind, OPD Felony Attorney
- Collen Reingold, OPD Felony Attorney
- Aaron Clark-Rizzio, OPD Felony Attorney
- Ashley Georgia, OPD Municipal Court Attorney
- David Ramsey, OPD Pretrial Coordinator in Municipal Court
- Lindsey Hortenstine, OPD Director of Media and Communications
- Frank Neuner, LPDB Chair
- Luceia LeDoux, LPDB Board Member and Vice President of Baptist Community Ministries
- Pam Metzger, LPDB Board Member, Tulane Law Professor
- Julie Kilborn, Deputy Public Defender, LPDB
- John DiGiulio, Trial Compliance Officer, LPDB
- Irene Jo, Assistant Training Director, LPDB
- Dr. Erik Stilling, LPDB
- Chief Judge Camille Buras, Orleans Parish Criminal District Court
- Judge Laurie White
- Judge Franz Zibilich
- Judge Lynda Van Davis
- Judge Keva Landrum-Johnson
- Judge Arthur Hunter
- Judge Frank Marullo
- Judge Karen Herman
- Chief Judge Desiree Charbonnet, New Orleans Municipal Court
- Leon A. Cannizzaro, Jr., Orleans Parish District Attorney
- Robert Kazik, Judicial Administrator of Orleans District Court
- Josh Perry, Director of Juvenile Regional Services
- Joy Dennis, Orleans Parish Municipal Court Minute Clerk

- David Eichenthal—Consultant with The PFM Group
- Blair Gearhart—Director of The PFM Group
- Hardy Fowler, Business Alliance
- John Hope, Business Alliance
- Jay LaPeyre, Business Alliance and Urban League
- Mike Cowan, Chair of the New Orleans Crime Commission
- Mark Cunningham, Private Attorney and Coordinator of Pro Bono Consortium
- Jon Wool, Director, Vera Institute of Justice, New Orleans Office
- Bennett Brummer, Former Miami-Dade County Chief Public Defender
- Steve Singer, Former OPD Attorney, Loyola University Law Professor

**Other**

- Observed proceedings in Municipal Court, Section A, Judge Paul Sens
- Observed proceedings in Municipal Court, Section B, Judge Sean Early
- Observed proceedings in Criminal District Court, Section C, Judge Benedict Willard

OVERSIGHT OF CAPITAL DEFENSE SERVICES  
LOUISIANA PUBLIC DEFENDER BOARD



PERFORMANCE AUDIT  
ISSUED FEBRUARY 12, 2014

**LOUISIANA LEGISLATIVE AUDITOR  
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NICOLE B. EDMONSON, CIA, CGAP, MPA

**FOR QUESTIONS RELATED TO THIS PERFORMANCE AUDIT, CONTACT  
EMILY WILSON, PERFORMANCE AUDIT MANAGER,  
AT 225-339-3800.**

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report is available for public inspection at the Baton Rouge office of the Louisiana Legislative Auditor.

This document is produced by the Louisiana Legislative Auditor, State of Louisiana, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397 in accordance with Louisiana Revised Statute 24:513. Six copies of this public document were produced at an approximate cost of \$32.64. This material was produced in accordance with the standards for state agencies established pursuant to R.S. 43:31. This report is available on the Legislative Auditor's website at [www.la.gov](http://www.la.gov). When contacting the office, you may refer to Agency ID No. 9726 or Report ID No. 40130003 for additional information.

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

February 12, 2014

The Honorable John A. Alario, Jr.,  
President of the Senate  
The Honorable Charles E. "Chuck" Kleckley,  
Speaker of the House of Representatives

Dear Senator Alario and Representative Kleckley:

This report provides the results of our performance audit on the Louisiana Public Defender Board (LPDB). The purpose of this audit was to determine whether LPDB provides oversight of capital defense services delivered by judicial district offices and nonprofit organizations in accordance with state law.

The report contains our findings, conclusions, and recommendations. Appendix A contains LPDB's response to this report. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the Board members, management, and staff of LPDB for their assistance during this audit.

Sincerely,

A handwritten signature in blue ink that reads "Daryl G. Purpera". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/ch

LPDB 2014

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# Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



## Oversight of Capital Defense Services Louisiana Public Defender Board

February 2014

Audit Control # 40130003

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## Introduction

Article I, Section 13 of the Louisiana Constitution requires the legislature to provide for a uniform system for securing and compensating qualified counsel for indigent defenders. To fulfill this requirement, the Louisiana Public Defender Act<sup>1</sup> created the Louisiana Public Defender Board (LPDB) in August 2007. According to this Act, LPDB is responsible for the supervision, administration, and delivery of a statewide public defender system, which includes both capital and non-capital defense representation. The purpose of this audit was to evaluate LPDB's oversight of capital defense services.

LPDB oversees 42 judicial district offices (district offices) that represent capital defendants who are unable to afford an attorney. LPDB also contracts with six<sup>2</sup> nonprofit organizations (contract programs) to represent capital defendants during appeals or when a district office is unable to represent a capital defendant at trial due to a conflict of interest, lack of capitolly certified attorneys, unavailability of funds, or excessive workload. In fiscal year 2013, LPDB had 16 full-time authorized positions and received approximately \$33.1 million in state funding. Of this amount, LPDB paid \$17.5 million (52.7%) to the district offices for both capital and non-capital representation<sup>3</sup> and paid \$9.7 million (29.2%) to the six contract programs that handle capital cases. The remaining \$5.9 million (18.1%) went to salaries, training, professional services, expert witness services, capital outlay, non-capital contract programs, and other operating services. As of June 30, 2013, district offices and contract programs were handling 228 capital cases in Louisiana. Our audit objective was as follows:

### **Does LPDB provide oversight of capital defense services delivered by judicial district offices and nonprofit organizations in accordance with state law?**

Overall, we found that LPDB does not provide adequate oversight of capital defense services in accordance with all statutory requirements. In addition, we identified challenges that LPDB faces in administering both capital and non-capital public defense services. Appendix A contains LPDB's response to this report, Appendix B details our scope and methodology, and Appendix C summarizes relevant background information.

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<sup>1</sup> Act 307 of the 2007 Regular Session created LPDB to replace the Louisiana Indigent Defense Assistance Board.

<sup>2</sup> LPDB contracts with a total of nine contract programs; however, only six of them provide capital representation services. See Appendices D and E for a listing of the six capital contract programs.

<sup>3</sup> District offices do not differentiate expenditures for non-capital versus capital representation. See page 5 for more information.

## Does LPDB provide oversight of capital defense services delivered by judicial district offices and nonprofit organizations in accordance with state law?

Overall, LPDB does not provide adequate oversight of capital defense services in accordance with all statutory requirements. We found that:

- LPDB does not adequately monitor the performance of all capital defense attorneys to ensure they are providing high quality legal representation as required by state law. In addition, LPDB has not created mandatory statewide performance standards for these attorneys as required by state law.
- LPDB does not adequately track the cost of capital defense services to ensure these services are provided in a cost-effective and fiscally responsible manner as required by state law.
- LPDB does not comprehensively monitor whether each district office complies with Capital Defense Guidelines as required by state law. These guidelines outline the structure of capital defense services in Louisiana, including the assignment and qualifications of the defense teams and attorney workloads.

In addition, we identified challenges that LPDB faces in administering both capital and non-capital public defense services. Specifically, we found that LPDB experienced turnover rates of 26.7% and 42.9% during fiscal years 2012 and 2013, respectively. In addition, during fiscal year 2012, 29 (69%) of the 42 district offices operated at a deficit and had to use their fund balances to cover expenses.<sup>4</sup> Because state law requires LPDB to provide adequate funding for public defense services, LPDB will need to financially assist district offices that deplete their fund balances. This will place an increasing financial burden on LPDB in the future. These findings are discussed in more detail below.

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### **LPDB does not adequately monitor the performance of all capital defense attorneys to ensure they are providing high quality legal representation as required by state law. In addition, LPDB has not created mandatory statewide performance standards for attorneys as required by state law.**

State law requires LPDB staff to monitor the performance of all capital defense attorneys to ensure that each defendant is receiving high quality legal representation.<sup>5</sup> However, LPDB does not adequately monitor the ongoing performance of attorneys representing capital cases in

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<sup>4</sup> Fiscal year 2013 audited financial information was not available during the timeframe of this audit.

<sup>5</sup> Louisiana Administrative Code (LAC) 22:XV.921(A)(1)

district offices and contract programs. In addition, LPDB has not created mandatory statewide performance standards for public defenders as required by state law.

**District Offices.** According to LPDB, it reviews the performance of attorneys *before* they defend capital cases through the capital certification process and monitors the performance of these attorneys *after* cases conclude by reviewing the Capital Case Trial Review Forms<sup>6</sup> submitted by the district offices. However, LPDB does not monitor the ongoing performance of attorneys representing capital cases in district offices. As a result, LPDB cannot ensure that the attorneys are providing high quality legal representation *during* capital case trials, which can last as long as two to four years in Louisiana according to LPDB.<sup>7</sup> LPDB stated it does not have the staff or the time to monitor the performance of all capital defense attorneys. In addition, according to the Capital Defense Guidelines, a case supervisor at each district office is also required to monitor the capital defense attorneys in each capital case and report noncompliance to LPDB staff. However, according to LPDB staff, none of the 42 district offices have a case supervisor because of insufficient funding at the district level.

**Contract Programs.** To monitor the performance of capital defense attorneys working for the six capital contract programs, LPDB included a monitoring provision in the contracts stating that it will conduct periodic samplings of the work products (e.g., pleadings, briefs, motions) filed by capital defense attorneys on behalf of defendants. According to the contracts, LPDB is to review the work products for form, procedural correctness, legal analysis, and substance. However, according to LPDB management, they have not reviewed any work products because LPDB does not have sufficient staff to fulfill this requirement. As a result, LPDB cannot ensure that contract programs are filing work products in a timely manner and providing high quality legal representation.

**Statewide Performance Standards.** State law mandates that LPDB create mandatory statewide performance standards for attorneys in capital cases. These standards require public defense services to be provided in a manner that is uniformly fair and consistent throughout the state.<sup>8</sup> As of January 2014, the Board had not yet established performance standards for capital cases because its Capital Working Group has not yet recommended standards to the full Board for approval. According to LPDB, it is currently using interim performance standards based on best practices established by the American Bar Association. However, these interim standards are not specific to Louisiana and the delivery of capital defense services by the individual district offices. According to LPDB's Capital Strategic Plan, LPDB will promulgate performance standards by January 1, 2015. Once LPDB establishes these standards, it should monitor to ensure that attorneys employed by district offices and contract programs are meeting the standards.

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<sup>6</sup> The Capital Case Trial Review Form shows the background of the case, the progression of the case, and the outcome of the case.

<sup>7</sup> This timeframe is based on the definition of a case in Louisiana Revised Statute (R.S.) 15:174(C) and does not include appeals.

<sup>8</sup> R.S. 15:148(B)(1) and (10)

**Recommendation 1:** The Board should monitor the performance of capital defense attorneys in district offices during the cases to ensure high quality representation is being provided.

**Summary of Management's Response:** LPDB agrees with this recommendation. LPDB states it does monitor all or virtually all of the capital cases in the State and defines monitoring as tracking a case and following it within the courts. LPDB has instituted a number of important structural changes that permit it to monitor. In addition, other important methods of monitoring capital cases are nearly completed. However, despite these significant changes and protocols, LPDB does agree that additional steps need to be taken to address some of the concerns identified in the audit. LPDB believes that the changes and protocols now in place will permit it to proceed to focus its attention in the near future on these additional steps. See Appendix A for LPDB's full response.

**LLA Additional Comments:** State law requires LPDB staff to monitor the performance of all capital defense attorneys and take necessary action to protect the interests of the attorney's current and potential clients where there is evidence that an attorney is not providing high quality legal representation [LAC 22:XV.921(A)(1) and LAC 22:XV.921(A)(3)]. Our recommendation is directed toward LPDB monitoring the performance of attorneys rather than tracking the capital cases.

**Recommendation 2:** The Board should review work products filed by contract programs as stipulated in the contract monitoring plan to ensure that capital defense attorneys are providing high quality representation.

**Summary of Management's Response:** LPDB agrees with this recommendation. LPDB states it does review the work products of contract program attorneys as each attorney seeking capital certification is required to submit two writing samples with his or her application. The application for annual recertification also requires the submission of one writing sample. However, LPDB agrees that there should be a more formal, regularly scheduled review of written documents from the programs with objective criteria used to judge their quality. See Appendix A for LPDB's full response.

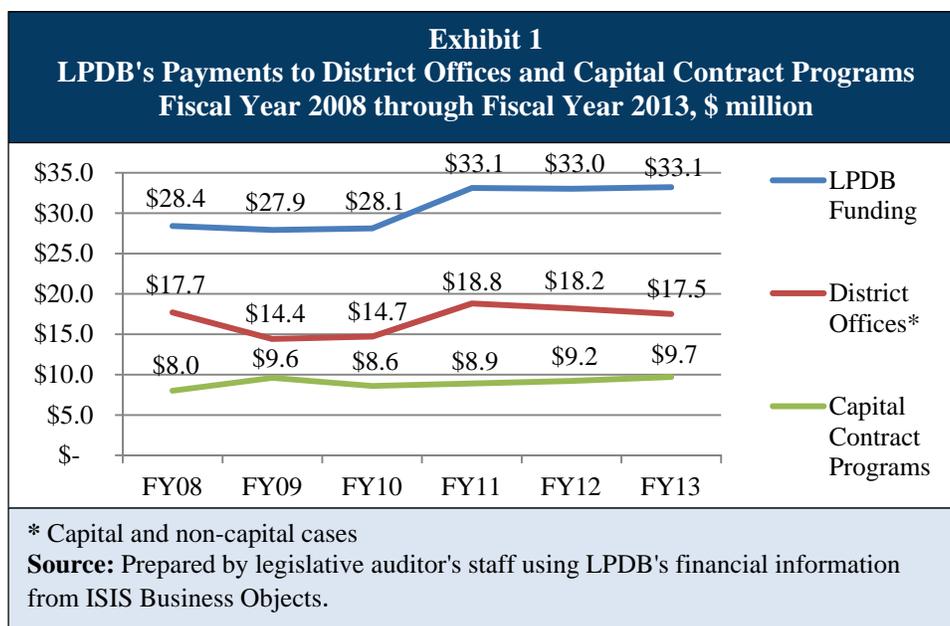
**LLA Additional Comments:** LPDB's response addresses the review LPDB staff conducts during the capital certification process. It does not fulfill LPDB's responsibility to periodically sample the work products filed by contract programs on behalf of the indigent clients and to review them for form, procedural correctness, legal analysis, and substance.

**Recommendation 3:** The Board should establish statewide performance standards for attorneys in capital cases. Once established, LPDB should incorporate them into its monitoring process to ensure that public defense services are being provided in a manner that is fair and consistent throughout the state.

**Summary of Management’s Response:** LPDB agrees with this recommendation. See Appendix A for LPDB’s full response.

**LPDB does not adequately track the cost of capital defense services to ensure these services are provided in a cost-effective and fiscally responsible manner as required by state law.**

State law requires LPDB to ensure that adequate funding of public defense services is provided and managed in a cost-effective and fiscally responsible manner.<sup>9</sup> According to LPDB, while the Board requested \$40 million in state funds in fiscal years 2011 and 2012, it received \$33.1 million and \$33 million, respectively. In fiscal year 2013, the Board requested \$42 million in state funds but received \$33.1 million. LPDB paid \$9.7 million (29.2%) of its \$33.1 million budget to the six contract programs that handle capital cases and \$17.5 million (52.7%) of its budget to the district offices for both capital and non-capital representation in fiscal year 2013, as shown in Exhibit 1. See Appendix D for a breakdown of LPDB’s payments to contract programs and district offices from fiscal years 2011 through 2013.



Because LPDB does not track the cost of capital cases separately from non-capital cases in the district offices, it does not have the information needed to determine the cost of capital defense services. Without knowing the cost, LPDB cannot ensure that these services are adequately funded, as required by state law, and that they are being provided in a cost-effective and fiscally responsible manner. According to a report issued by the Subcommittee on Federal Death Penalty Cases,<sup>10</sup> the cost of capital representation in each case depends upon the number

<sup>9</sup> R.S. 15:142(B)(1)

<sup>10</sup> The Judicial Conference of the United States, Committee on Defender Services, Subcommittee on Federal Death Penalty Cases issued the report “Federal Penalty Cases: Recommendations Concerning the Cost and Quality of

of hours each attorney must work, the salary ranges at which attorneys are compensated, and the cost of any expert witnesses. While LPDB tracks the costs of expert witnesses, it does not track the time attorneys spend on capital cases and has not established salary ranges for all capital defense attorneys as required by state law.

**LPDB does not require district offices to track time of attorneys in capital cases.**

LPDB currently does not require district offices to report the time attorneys and support staff spend on capital cases because it has not yet established standardized time categories for them to use. According to LPDB, requiring attorneys to track their time would enable the Board to determine how much time attorneys spend on each of the key tasks involved in defending a capital case. LPDB could then use the results to determine reasonable workloads and pay ranges for attorneys and to evaluate their performance. LPDB states that it is currently establishing standardized time categories for capital cases so that attorneys are able to track their time. See Appendix E for capital caseloads for district offices for fiscal years 2011 through 2013.

**LPDB has not established salary ranges for attorneys in capital cases.** State law requires LPDB to establish salary and compensation ranges for attorneys and all other staff necessary for adequate public defense.<sup>11</sup> These salaries are to be comparable to other positions that are similar throughout the state and be based on years of service, nature of the work (i.e., capital or non-capital case), workload, and district variances in practices in rural, urban, and suburban districts. In addition, according to the American Bar Association, the salaries of public defense attorneys should be commensurate with the salaries of the prosecuting attorneys within the same jurisdiction.

While LPDB has established salary ranges for each District Defender, it has not established salary ranges for attorneys or staff providing public defense services for district offices or contract programs.<sup>12</sup> According to LPDB's Capital Strategic Plan, it anticipates setting these salary ranges by June 30, 2014. Currently, the district offices and contract programs determine the salaries of their own attorneys and support staff. Without set salary ranges, the Board cannot ensure that attorneys providing capital and non-capital public defense services are compensated in a fair, consistent, and fiscally responsible manner throughout the state. In addition, LPDB cannot be sure that district offices and contract programs are paying attorneys appropriately to provide these services.

**Salaries of District Defenders  
By District Population**

< 50,000	\$28,603 - \$102,691
50,000 - 99,999	\$53,508 - \$107,504
100,000 - 249,999	\$68,366 - \$119,286
>250,000	\$83,686 - \$147,374

**Source:** Prepared by legislative auditor's staff using information provided by LPDB.

**Recommendation 4:** The Board should establish standardized time categories. Then, the Board should require district offices to track the time attorneys and support staff spend on capital cases.

Defense Representation" in 1998, which can be found at

<http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/Publications/RecommendationsCostQuality.aspx>

<sup>11</sup> R.S. 15:148(B)(12) and R.S. 15:148(B)(15)

<sup>12</sup> Each district office is overseen by a District Defender who is responsible for managing and supervising public defense services within that district.

**Summary of Management's Response:** LPDB agrees with this recommendation. See Appendix A for LPDB's full response.

**Recommendation 5:** The Board should establish salary ranges for attorneys and support staff providing public defense services as required by state law.

**Summary of Management's Response:** LPDB agrees with this recommendation. LPDB states it has established salary ranges for attorneys providing capital defense services, but believes these salary ranges are out-of-date and need to be updated. Salaries for support staff providing public defense services have yet to be established. See Appendix A for LPDB's full response.

**LLA Additional Comments:** During the Board meeting on April 2, 2013, LPDB General Counsel advised the Board members that LPDB was not in compliance with the state law requiring LPDB to establish salary and compensation ranges for attorneys and all other staff necessary for adequate public defense [R.S. 15:148(B)(12) and 15:148(B)(15)]. In addition, LPDB did not provide us with the Board approved salary ranges for attorneys, which we requested during the audit.

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**LPDB does not comprehensively monitor whether each district office complies with Capital Defense Guidelines as required by state law.**

State law requires LPDB to ensure district offices comply with Capital Defense Guidelines.<sup>13</sup> These guidelines outline the structure of capital defense services in Louisiana, including assignment and qualifications of the defense teams and attorney workloads. To monitor the district offices' compliance with Capital Defense Guidelines, LPDB developed monthly Capital Trial Reports for district offices to complete for every capital case. These monthly reports include the open date, phase (pre-indictment or indictment), disposition (plea or trial), status (pretrial, trial, or post trial), assigned defense team, and the date of any upcoming hearings for each capital case. However, these reports do not address all provisions of the Capital Defense Guidelines such as identifying, monitoring, and resolving conflicts of interest in capital cases or resolving defendants' complaints. In addition, while district offices are required to submit these reports, LPDB does not ensure that it receives them for every capital case handled by each district office. According to LPDB staff, it does not have sufficient staff or resources to comprehensively monitor the district offices' compliance with Capital Defense Guidelines as state law requires.

In addition, the Capital Defense Guidelines require that each district office adopt and implement a District Capital Representation Plan that outlines, in part, how it will comply with Capital Defense Guidelines, including those provisions not addressed by the Capital Trial Reports. However, as of November 2013, LPDB had not finalized any of the 42 District Capital

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<sup>13</sup> R.S. 15:148(B)(3)

Representation Plans. According to LPDB management, this is because all of the district offices submitted incomplete plans to LPDB, and LPDB only has one full-time employee available to work on finalizing these plans. Once LPDB finalizes these plans, it should incorporate this information into its monitoring process to evaluate the district offices' compliance with the Capital Defense Guidelines.

**Recommendation 6:** The Board should ensure that it receives monthly Capital Trial Reports for every capital case handled by each district office.

**Recommendation 7:** The Board should ensure that it finalizes all 42 District Capital Representation Plans and ensure these plans outline how each district will comply with the Capital Defense Guidelines.

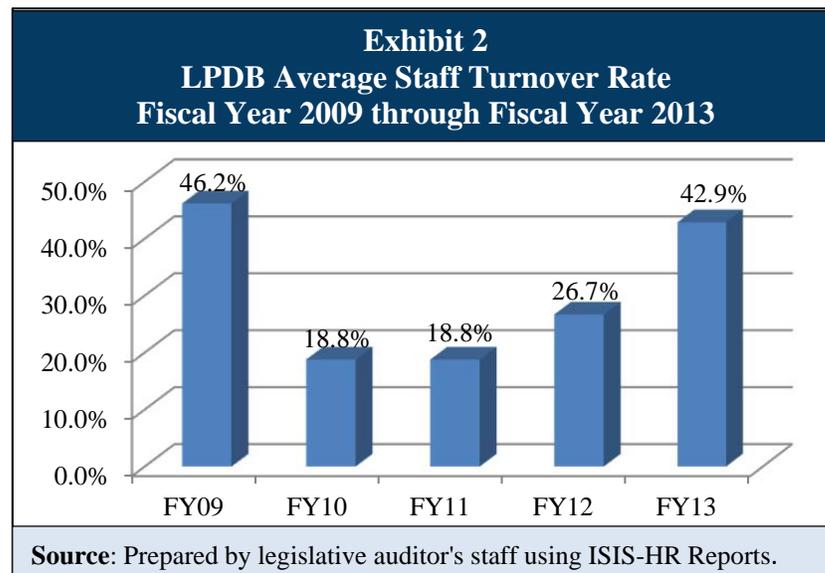
**Recommendation 8:** Once the Board finalizes all 42 District Representation Plans, the Board should incorporate this information into a comprehensive monitoring process to ensure all district offices comply with Capital Defense Guidelines.

**Summary of Management's Response:** LPDB agrees with these recommendations. See Appendix A for LPDB's full response.

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**LPDB experienced turnover rates of 26.7% and 42.9% during fiscal years 2012 and 2013, respectively.**

While LPDB was fully staffed in fiscal years 2010 and 2011, LPDB experienced a staff turnover rate of 26.7% (losing four of 15 employees) in fiscal year 2012 and 42.9% (losing six of 14 employees) in fiscal year 2013. As mentioned throughout the report, LPDB stated that a lack of sufficient resources has hindered its ability to fulfill oversight obligations such as finalizing District Representation Plans, monitoring the performance of capital case attorneys, establishing statewide performance standards, and reviewing work products filed by contract programs. Exhibit 2 shows LPDB's average staff turnover rate for fiscal years 2009 through 2013.



One position affected by staff turnover is the Capital Case Coordinator. The Capital Case Coordinator position is responsible for monitoring all capital cases and enforcing compliance with LPDB's Capital Defense Guidelines. LPDB established this position in 2009 and hired the first coordinator in September 2010. From fiscal years 2011 to 2013, the position was filled by three staff and one contract employee. During fiscal year 2013, the coordinator was responsible for monitoring 228 capital cases, reviewing 173 expert witness service requests, reviewing 42 District Capital Representation Plans, coordinating the capital certification for 12 attorneys, as well as other duties. The amount of responsibility placed on this position coupled with high turnover over the past three fiscal years may have contributed to weaknesses we have identified in LPDB's oversight of capital defense services.

**Recommendation 9:** The Board should determine and address the potential causes for staff turnover and vacancies to help ensure it has adequate and competent staff to consistently carry out its statutory responsibilities.

**Recommendation 10:** The Board should evaluate the distribution of responsibilities amongst LPDB staff to ensure it is able to effectively oversee capital defense services in Louisiana.

**Summary of Management's Response:** LPDB agrees with these recommendations. See Appendix A for LPDB's full response.

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**During fiscal year 2012, 29 (69%) of the 42 district offices operated at a deficit and had to use their fund balances to cover expenses. This will place an increasing financial burden on LPDB in the future as state law requires LPDB to provide adequate funding for public defense services.**

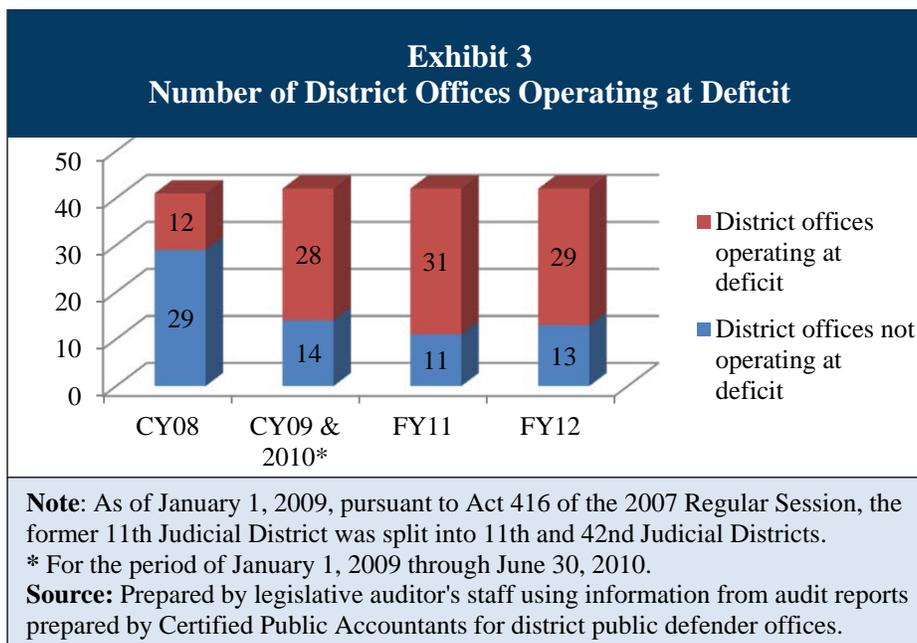
As stated earlier in the report, during fiscal year 2013, LPDB distributed a total of \$17.5 million of its budget to the 42 district offices. LPDB distributes these funds every year based on each district office's caseload, number of employed attorneys, and annual expenditures, revenues, and fund balance. According to LPDB, however, the single largest local revenue source for district offices comes from court fees assessed on all traffic tickets and criminal convictions. In fiscal year 2012, approximately \$30.1 million (61%) of district revenues were generated by local funding.

When district offices need additional funds to provide public defense representation (e.g., because of reduced local funding, additional and/or more complex cases, necessary equipment upgrades, increasing rent), state law authorizes them to use their fund balances.<sup>14</sup> However,

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<sup>14</sup> According to R.S. 15:168(E), a district office's fund balance consists of any money left at the end of the year and must be used to deliver public defense services in that district.

LPDB must provide additional financial assistance to district offices that run out of money during the fiscal year because state law requires it to provide adequate funding for public defense services.<sup>15</sup> From January 1, 2008, through June 30, 2012, the combined fund balances of the 42 district offices decreased by 51% from \$21.7 million to \$10.6 million. During fiscal year 2012, 29 (69%) of the 42 district offices operated at a deficit and had to use some of their fund balances to cover their expenses for providing public defense services.<sup>16</sup> Exhibit 3 shows the number of district offices operating at a deficit from January 1, 2008, through June 30, 2012.



One reason district offices are operating at a deficit, according to LPDB, is that they may not be receiving all the local funding that is owed to them. In addition, the local funding they do receive is dependent on law enforcement writing traffic tickets and arresting defendants; judges imposing court fees on traffic tickets and criminal convictions; and on remitting agencies (e.g., clerk, sheriff) collecting and disbursing these fees to the district offices. According to LPDB, Louisiana is the only state that funds a large percentage of its public defense costs through court fees assessed on traffic tickets. In addition, for every capital case, the Louisiana Supreme Court requires the appointment of at least two capitally certified attorneys and state law<sup>17</sup> requires that the defense team include two capitally certified attorneys, an investigator, and a mitigation specialist.<sup>18</sup> This means that when an indigent defendant is arrested and charged with 1st degree murder, the district office is required to assemble a defense team of at least four individuals, regardless of its budget at that time.

<sup>15</sup> R.S. 15:142(B)(1)

<sup>16</sup> Fiscal year 2013 audited financial information was not available during the timeframe of this audit.

<sup>17</sup> LAC 22:XV.913(A)(1)(a)

<sup>18</sup> A mitigation specialist provides defense attorneys with a comprehensive psycho-social history of the defendant based on an exhaustive investigation, finds mitigating themes in the defendant's life history, identifies the need for expert assistance, etc.

As multiple district offices continue to operate at a deficit, there is a risk they will deplete their fund balances. This will place a financial burden on LPDB, which must provide additional funding to the district offices so they can continue to operate. According to LPDB, however, it does not have the funds to increase financial assistance to the district offices, as its own funding levels have not increased since fiscal year 2011.<sup>19</sup> If LPDB cannot increase its financial assistance to district offices in financial need, district offices will have to go into service restriction, which may include not accepting new cases, delaying or halting current cases, reducing attorney salaries, or laying off attorneys.

**Recommendation 11:** The Board should work with the district offices to determine the reasons why an increasing number of districts are operating at a deficit. Once the causes are identified, the Board should work with the districts to develop possible solutions.

**Summary of Management's Response:** LPDB agrees with this recommendation. See Appendix A for LPDB's full response.

**Matter for Legislative Consideration:** The legislature may wish to commission a study to determine if current funding mechanisms and levels enable the state to provide a uniform system of securing and compensating qualified counsel for indigent defenders, as required by the Louisiana Constitution.

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<sup>19</sup> See Appendix C for an exhibit showing LPDB's funding for fiscal years 2008 through 2013 and Appendix D for a summary of LPDB's funding to the district offices for fiscal years 2011 through 2013.

## **APPENDIX A: MANAGEMENT'S RESPONSE**

# LOUISIANA PUBLIC DEFENDER BOARD



Bobby Jindal  
Governor

James T. Dixon, Jr.  
State Public Defender

EQUAL JUSTICE FOR ALL

January 23, 2014

Via Email and U. S. Mail  
dpurpera@lla.state.la.us

Mr. Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
1600 North Third Street  
P. O. Box 94397  
Baton Rouge, Louisiana 70804-9397

Re: Capital Defense Services  
Louisiana Public Defender Board  
Audit Control #40130003

Dear Mr. Purpera:

Having completed the legislative audit process, we would like to take this opportunity to thank your office and your personnel for their professionalism, courtesy, honesty, and dedication, throughout. As you can imagine, the auditing process can be extremely intimidating. Your office was very clear in their purpose and worked with us to finalize a report that we find even-handed and fair. While we might disagree with certain aspects of the report, on the whole it provides our office with guidance and the opportunity for improvement. More particularly, it provides us with a tool to improve our office and the services we provide. We shall endeavor to implement all of the recommendations made in this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mr. Burns", is written over the typed name.

Judge Robert J. Burns (retired)  
Vice-Chairman

RJB/JDT/ag

Attachment

# LOUISIANA PUBLIC DEFENDER BOARD



Bobby Jindal  
Governor

James T. Dixon, Jr.  
State Public Defender

EQUAL JUSTICE FOR ALL

January 23, 2014

Via Email and U. S. Mail  
dpurpera@lla.state.la.us

Mr. Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
1600 North Third Street  
P. O. Box 94397  
Baton Rouge, Louisiana 70804-9397

Re: Capital Defense Services  
Louisiana Public Defender Board  
Audit Control #40130003

Dear Mr. Purpera:

Thank you for the opportunity to respond to the Capital Defense Services Audit prepared by your office dated February 2014. This letter serves as the Louisiana Public Defender Board's (LPDB's) response to the Capital Defense Services Audit Report. As stated so succinctly on page seven of your Audit Report: "As mentioned throughout the report, LPDB stated that a lack of sufficient resources has hindered its ability to fulfill oversight obligations such as finalizing District Representation Plans, monitoring the performance of capital case attorneys, establishing statewide performance standards, and reviewing work products filed by contract programs." After several preliminary remarks, I will address each of the Recommendations contained in the Report.

I must emphasize that while capital defense work is very important it represents only a small portion of the total amount of work accomplished by LPDB and its staff. This Performance Audit focused on only one small, albeit important, substantive area of many for which the Board is responsible.

Although LPDB was created by Act 307 of 2007, the first state public defender was not hired until June of 2008 and the office was not fully staffed until 2010. Since June of 2008 LPDB has implemented Trial Court Performance Standards, Trial Court Performance Standards for CINC Representation; Trial Court Performance Standards for Delinquency Representation and Capital Defense Guidelines. Detailed contracts for the non-profit corporations handling appellate, juvenile and capital cases were written, as well as contracts for all of the district defenders, clarifying their roles in light of the new statutory structure. A complaint policy which extends to capital cases in both the district and contract offices was implemented in 2009.

Recommendation 1: The Board should monitor the performance of capital defense attorneys in district offices during the cases to ensure high quality representation is being provided.

While we agree with many of the observations made in the Audit, we believe that the Audit does not sufficiently recognize much of the Board's important work in the capital arena. At the outset it is important to define the terms "monitor," "supervision" and "oversight" which are not synonymous under Louisiana statutory law. Monitor means to track a case and follow it within the courts; supervision is direction and guidance given to employees by a supervisor in the contract program or district office; *see, e.g.*, La. R.S. 15:161(E) (1), (6), and (13); oversight is the general administration and superintendence of the indigent defense system.

While LPDB appreciates the detailed explanations of the challenges it has faced and continues to face which are stated after your findings, the headings and findings themselves do not reflect the interplay of the responsibilities of the Capital Case Coordinator and other members of the defense community. The Trial-Level Compliance Officer and the District Public Defenders each have specific roles in this process. The former plays a role in assessment while the latter maintains the role of supervisor. La. R.S. 15:157B, D.

LPDB does in fact monitor all or virtually all of the capital cases in the State and has instituted a number of important structural changes that permit it to do so, including:

- The capital certification process
  - Development of a detailed application and rigorous evaluation process leading to the certification of over 130 attorneys
- The Capital Defense Guidelines
- The monthly capital trial reports
  - Monitoring case loads and whether cases are Guidelines compliant as to staffing and conflicts
- The capital trial review reports
- The capital direct appeal review form
- The Expert Witness Fund Application (which has been substantially improved) and the funding process, protocols, rules and data collection
- Review of the District Capital Representation Plans
- The detailed contracts for each of the capital programs
- The capital program assessment instrument

In addition, other important methods of monitoring capital cases are nearly completed such as:

- The capital "wing" of the database
- The Capital Performance Standards (two versions are currently being reviewed by members of the Capital Case Working Group with extensive capital experience)

- The State Capital Representation Plan<sup>1</sup>
- The District Capital Time Sheet

However, despite these significant changes and protocols, LPDB does agree that additional steps need to be taken to address some of the concerns identified in the Audit. LPDB believes that the changes and protocols now in place will permit it to proceed to focus its attention in the near future on these additional steps.

LPDB is a regulatory agency with oversight responsibilities, not day-to-day case management responsibilities. LPDB does not have the staff, funding or statutory responsibility for direct supervision of cases.<sup>2</sup> The contract program executive directors and the district defenders are responsible for supervising the capital cases in their respective offices. LPDB has insufficient staff to observe the performance of all capital defense attorneys in the district and program offices on a regular basis and looks to the district defenders and program directors to supervise

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<sup>1</sup> As part of the State Capital Plan, salaries for capital attorneys are to be listed. It is important to note that in 2007, the Louisiana Public Defender Board's predecessor, the Louisiana Indigent Defense Assistance Board, agreed to the following wage schedule for full-time capital attorneys:

Senior Attorney (First Chair): \$75,000-\$90,000  
Associate Attorney (Second Chair): \$55,000-\$65,000  
Junior Attorney: \$38,000-\$45,000.

These salary ranges were calculated by reference to the salary ranges of ADAs and DAs prosecuting capital cases but, significantly, did not take into account the very generous ADA retirement benefits. *Cf. Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, The Constitution Project, Report of the National Right to Counsel Committee, p. 12 (2009) ("Recommendation 7—Fair compensation should be provided, as well as reasonable fees and overhead expenses, to all publicly funded defenders and for attorneys who provide representation pursuant to contracts and on a case-by-case basis. Public defenders should be employed full time whenever practicable and salary parity should be provided for defenders with equivalent prosecution attorneys when prosecutors are fairly compensated."); Guidelines 9.1(B) (2) of the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases ("Attorneys employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction."); Ten Principles of a Public Defense Delivery System, American Bar Association, Principle 8, Commentary ("There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense."); *Improving Criminal Justice Systems Through Expanded Strategies And Innovative Collaborations* (DOJ, 2000), p.14. ("Salary parity between prosecutors and defenders at all experience levels is an important means of reducing staff turnover and avoiding related recruitment/training costs and disruptions to the office and case processing.").

These amounts should be adjusted as follows to account for inflation:

Lead Attorney (First Chair): \$84,306.00-\$101,167.20  
Associate Attorney (Second Chair): \$61,824.40-\$73,065.20  
Junior Attorney: \$42,715.04-\$50,583.60

This compensation schedule assumes a significant employer contribution to health, dental and disability insurance.

<sup>2</sup> With the exception of the Expert Witness Fund, LPDB staff is outside of the attorney-client privilege and cannot be involved in supervising cases.

Mr. Daryl G. Purpera  
January 23, 2014  
Page 4

their staff. Furthermore, it is important to note that since June of 2013, the LPDB has been without a Trial Level Compliance Officer. Mr. John Di Giulio, who held the position for five years, is a Harvard Law School Graduate with over 34 years of criminal trial experience including numerous state and federal capital cases. Mr. Di Giulio observed and monitored capital trials throughout the state when employed by LPDB. He did not, nor should he have, supervised capital cases.

Recommendation 2: The Board should review work product filed by contract programs as stipulated in the contract monitoring plan to ensure that capital defense attorneys are providing high quality representation.

The Capital Certification Advisory Panel, which assists in the capital certification process and is supported by staff, does review work product of contract program attorneys, as each attorney seeking capital certification is required to submit two writing samples with his or her application. Frequently, the submitted documents are motions, writs, petitions or briefs filed in the applicant's cases. The application for recertification (submitted on an annual basis) also requires submission of one writing sample. All lawyers in all programs are certified and have and continue to submit written work products. LPDB agrees that there should be a more formal, regularly scheduled review of written documents from the programs with objective criteria used to judge their quality.

Recommendation 3: The Board should establish statewide performance standards for attorneys in capital cases. Once established, LPDB should incorporate them into its monitoring process to ensure the public defense services are being provided in a manner that is fair and consistent throughout the state.

Two versions of the Capital Performance Standards have been drafted: One in 2012 and the other in 2013. Copies of each are attached to this response. As indicated earlier, these two versions have been distributed to the Capital Case Working Group members with extensive capital defense experience. A teleconference to begin vetting the Performance Standards has been scheduled for February 3, 2014. Once finalized and accepted by the Board they will need to be promulgated. The Capital Performance Standards will provide staff with specific criteria from which to make a uniform performance assessment tool for district defenders and contract program executive directors to apply to their capital defenders. It is staff's plan to create a check list similar to the federal capital checklist to monitor the performance of state capital defenders.

Recommendation 4: The Board should establish standardized time categories. Then, the Board should require district offices to track the time attorneys and support staff spends on capital cases.

Time keeping in the district offices is done in gross amounts of number of hours worked per day. While we agree that caseloads are very high in the district offices, we do not believe that it would be too burdensome for capital lawyers and support staff in the district offices to track their time. As referenced above, capital time sheets with standardized time categories are nearing completion and will be available before the end of January 2014.

Recommendation 5: The Board should establish salary ranges for attorneys and support staff providing public defense services as provided by law.

The Board has established salary ranges for attorneys providing capital defense services as indicated in note 1 above. We believe that these salary ranges are out-of-date and need to be updated. Salaries for support staff providing public defense services have yet to be established.

Recommendation 6: The Board should ensure that it receives monthly Capital Trial Reports for every capital case handled by each district office.

LPDB requires every district and capital program to complete monthly Capital Trial Reports. The reports are due by the fifth of each month. All programs and most offices timely supply the forms. If a district office does not comply, LPDB follows up by contacting the office until the forms are provided. The Capital Trial Report form is not intended to address every issue in a capital case. It is unlikely that any form LPDB produces will cover all provisions of the Capital Defense Guidelines. The Capital Trial Reports do cover conflicts as the names of all co-defendants are required to be listed. Further, each office is supposed to have a mechanism for conflicts checks as required by LPDB. The Capital Trial Reports also indicate whether a capital case is properly staffed under the Capital Defense Guidelines as the form requires that a listing of personnel staffing the case be provided: Specifically, the form requires that the Lead Attorney, Associate Attorney, Fact Investigator and Penalty Phase Investigator be listed. Recommendation 6 is already in place.

Recommendation 7: The Board should ensure that it finalizes all 42 District Capital Representation Plans to ensure these plans outline how each district will comply with the Capital Defense Guidelines.

The Board has received 42 District Capital Representation plans. While the form provided by LPDB to the districts was carefully drafted to assure uniformity for the purpose of comparison, many of the district defenders either did not use or follow the form. Staff has finalized the District Capital Representation Plans in terms of making them uniform and is now in the process of updating the information from calendar year 2011 when the plans were first submitted, and following up with each district defender on unanswered questions. Once completed and updated, this needed information will be incorporated into the State Capital Representation plan explicitly laying out the duties of each district defender and the state public defender for the purpose of monitoring the actions of each.

Recommendation 8: Once the Board finalizes all 42 District Representation Plans, the Board should incorporate this information into a comprehensive monitoring process to ensure all districts comply with Capital Defense Guidelines.

LPDB has a draft State Representation Plan which cannot be completed until all 42 District Representation Plans are updated and verified. Part of the purpose of the State Representation Plan is to create the comprehensive monitoring process to ensure all districts comply with the Capital Defense Guidelines, as stated in the recommendation.

Recommendation 9: The Board should determine and address the potential causes for staff turnover and vacancies to help ensure it has adequate and competent staff to consistently carry out its statutory responsibilities.

As the Audit states, staff turnover has affected the continuity of work in the capital division. From fiscal years 2011 to 2013, at different times, the position was filled by three staff and one *part-time* contract employee. In fiscal year 2012, the part-time contract employee was responsible for coordinating the application process with over 130 applicants seeking Capital Certification in various roles, 125 of whom were certified. LPDB agrees that staff turnover and vacancies have affected the capital division's ability to consistently carry out its statutory responsibilities and the distribution of responsibilities among LPDB staff. As of December 1, 2013, the staff has new leadership, in Mr. James T. Dixon, Jr. LPDB will investigate the cause of staff turnover but believes that Mr. Dixon's selection as the state public defender will reduce staff turnover to normal rates for any state agency.

Recommendation 10: The Board should evaluate the distribution of responsibilities amongst LPDB staff to ensure it is able to effectively oversee capital defense services in Louisiana.

Should the hiring freeze affect the vacancy of the Trial Level Compliance Officer, the needed distribution of responsibilities amongst LPDB staff will go unmet. Among the position's statutory duties, the Trial Level Compliance Office shall:

B.

1. Develop evaluation protocols to assess trial-level compliance with board-adopt Standards and guidelines.
2. Develop an effective evaluation implementation plan that allows for regular assessments and ongoing monitoring of each district public defender system's compliance of board-adopted standards and guidelines.
3. Provide direct oversight of necessary staff to conduct regular assessments and ongoing monitoring.
4. Make regular reports to the board on variances to board standards and guidelines with respect to each district. . . .

. . . .

D.

*Nothing in this Section shall superseded a district public defender's responsibility to supervise individual attorneys and staff in performance on specific cases, . . . . La. R.S. 15:157B, D.*

It is clear from the statute that the monitoring of compliance with board-adopted standards and guidelines and oversight of necessary staff to conduct regular assessments and ongoing monitoring lies with Trial Level Compliance Officer. It is also abundantly clear that the Trial Level Compliance Officer's duties shall not supersede a district public defender's responsibility to supervise individual attorneys and staff in performance on specific cases, which includes capital trial level cases.

Recommendation 11: The Board should work with the district offices to determine the reasons why an increasing number of districts are operating at a deficit. Once the causes are identified, the Board should work with the districts to develop possible solutions.

As noted in the Audit, district offices' fund balances are being depleted at an alarming rate. Offices receive traffic ticket revenue, which they do not control. The Audit correctly identifies Louisiana as the only state in the country which funds its indigent defense system largely on traffic ticket revenue generated within each judicial district. If a judicial district has major highways and interstates, it is apt to have considerably more income than a judicial district which does not. Statewide, at least 60% of the districts' income is traffic ticket revenue over which the district defenders have absolutely no control. Police write the tickets, judges impose (or should) the statutory court cost, Clerks of Courts or Sheriffs' Offices or Judicial Administrators collect the funds. The entity in a given parish or judicial district is then required to deliver this revenue to the district defender with an accounting by the 10<sup>th</sup> of each month with detailed information about the source of the funds. La. R.S. 15:168(B)(1) & (2).

From the very start, district defenders have to estimate what they "believe" they will receive in any given year. If a jurisdiction forgets to have traffic ticket forms printed, or the "blue flu" hits a police or sheriff's department, or the price of gas goes so high that traffic patrols are reduced, the district defenders office is seriously adversely impacted. If a judge refuses to impose the cost, then the district defender has to spend time litigating the court's decision. If the agency collecting the special cost does not properly document the flow of the costs from the court to the district defender, there is no method for the district defender to determine what monies come from which cases and defendants. None of these events is within the control of any district defender. Finally, not all courts are required to impose the special cost. Mayors' Courts are growing in number and are exempt from remitting the special cost to the district defender if the population of the jurisdiction is less than 5,000.

Mr. Daryl G. Purpera  
January 23, 2014  
Page 8

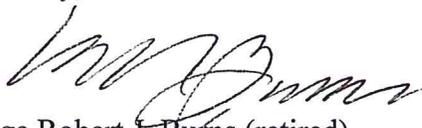
Through the use of the District Assistance Formula and the Adjustment Formula, those district offices with fund balances were required to expend them so that other districts may receive more state funding under the formula. Over time, this requirement has caused a steady increase in the number of districts depleting their fund balances. This was a choice made early on to forego providing state funds to those districts which continue to accrue fund balances, and to require districts with sizeable fund balances to deplete their funding so that other offices could survive.

Had the Board not made that decision, many offices would have had to restrict their services much earlier. As a result of the Board's decision, only two districts have gone into full service restriction.

Each office has different reasons for the reduction of local revenues and LPDB agrees that it needs to identify the root causes for the reductions and to work with each district on possible solutions.

I am enclosing the Recommendation Check List. I do not feel that an exit interview is necessary as our staff has recently met with your staff.

Sincerely,



Judge Robert J. Burns (retired)  
Vice Chairman

RJB/JTD/JMF/JH/ag



Louisiana Legislative Auditor  
Performance Audit Services

Checklist for Audit Recommendations

**Instructions to Audited Agency:** Please check the appropriate box below for each recommendation. A summary of your response for each recommendation will be included in the body of the report. The entire text of your response will be included as an appendix to the audit report.

RECOMMENDATIONS	AGREE	DISAGREE
<p><b>Recommendation 1:</b> The Board should monitor the performance of capital defense attorneys in district offices during the cases to ensure high quality representation is being provided.</p>	X	
<p><b>Recommendation 2:</b> The Board should review work products filed by contract programs as stipulated in the contract monitoring plan to ensure that capital defense attorneys are providing high quality representation.</p>	X	
<p><b>Recommendation 3:</b> The Board should establish statewide performance standards for attorneys in capital cases. Once established, LPDB should incorporate them into its monitoring process to ensure that public defense services are being provided in a manner that is fair and consistent throughout the state.</p>	X	
<p><b>Recommendation 4:</b> The Board should establish standardized time categories. Then, the Board should require district offices to track the time attorneys and support staff spends on capital cases.</p>	X	
<p><b>Recommendation 5:</b> The Board should establish salary ranges for attorneys and support staff providing public defense services as required by state law.</p>	X	
<p><b>Recommendation 6:</b> The Board should ensure that it receives monthly Capital Trial Reports for every capital case handled by each district office.</p>	X	

<p><b>Recommendation 7:</b> The Board should ensure that it finalizes all 42 District Capital Representation Plans and ensure these plans outline how each district will comply with the Capital Defense Guidelines.</p>	<p>X</p>	
<p><b>Recommendation 8:</b> Once the Board finalizes all 42 District Representation Plans, the Board should incorporate this information into a comprehensive monitoring process to ensure all district offices comply with Capital Defense Guidelines.</p>	<p>X</p>	
<p><b>Recommendation 9:</b> The Board should determine and address the potential causes for staff turnover and vacancies to help ensure it has adequate and competent staff to consistently carry out its statutory responsibilities.</p>	<p>X</p>	
<p><b>Recommendation 10:</b> The Board should evaluate the distribution of responsibilities amongst LPDB staff to ensure it is able to effectively oversee capital defense services in Louisiana.</p>	<p>X</p>	
<p><b>Recommendation 11:</b> The Board should work with the district offices to determine the reasons why an increasing number of districts are operating at a deficit. Once the causes are identified, the Board should work with the districts to develop possible solutions.</p>	<p>X</p>	

## APPENDIX B: SCOPE AND METHODOLOGY

We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. The purpose of this audit was to evaluate LPDB's oversight of capital defense services. The scope of our audit was from August 2007 when the LPDB was established through the end of fiscal year 2013. The audit objective was as follows:

### **Does LPDB provide oversight of capital defense services delivered by judicial district offices and nonprofit organizations in accordance with state law?**

We conducted this performance audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. To answer our objectives, we reviewed internal controls relevant to the audit objectives and performed the following audit steps:

- Researched Louisiana Revised Statutes, Administrative Code, and Executive Budget Supporting Documents to understand LPDB's legal authority, responsibilities, mission, and goals.
- Interviewed LPDB personnel, selected district attorneys, a judge, selected district public defenders, and selected executive directors of contract programs to obtain an understanding of LPDB's oversight role over capital defense services in Louisiana and potential challenges affecting this role.
- Interviewed LPDB staff and obtained necessary information and documentation related to the oversight of capital defense services provided by attorneys.
- Conducted research on best practices for the delivery of public defense services.
- Reviewed contracts between LPDB and contract programs to understand the requirements for contract programs.
- Identified areas where LPDB did not meet the legal requirements established in Louisiana Revised Statutes and Louisiana Administrative Code.
- Conducted research to provide background information on public defense services in Louisiana.
- Analyzed Executive Budgets to determine LPDB's funding from August 15, 2007 through June 30, 2013.

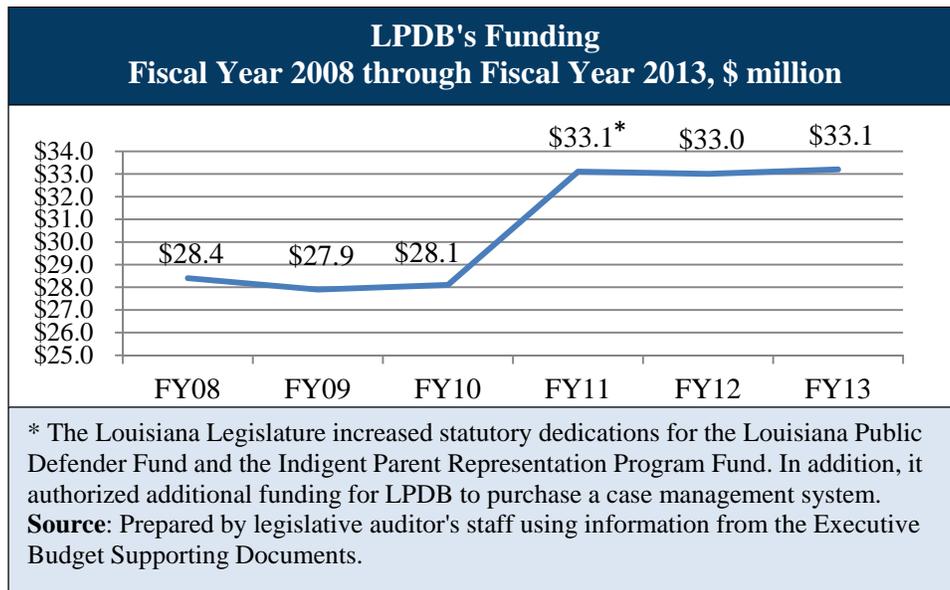
- Analyzed financial data from Business Objects for LPDB to determine LPDB's expenditures allocated to each district office and contract program from August 15, 2007 through June 30, 2013.
- Analyzed turnover data from ISIS-HR Business Objects to determine LPDB's staff turnover rate from August 2007 through June 30, 2013.
- Attended LPDB board and committee meetings.
- Summarized funding and expenditure trends for district offices from January 1, 2008, through June 30, 2012.

## APPENDIX C: BACKGROUND

**Authority.** In August 2007, LPDB was created by the Louisiana Public Defender Act (Act 307 of the 2007 Regular Session) to replace the Louisiana Indigent Defense Assistance Board (LIDAB). Louisiana Revised Statute 15:147(A), within the Public Defender Act, gives LPDB the regulatory authority to enforce and audit all aspects of the delivery of public defender services throughout the courts of the state of Louisiana.

**Organization.** LPDB is established as a state agency within the Executive Department of the Office of the Governor and consists of 15 board members serving staggered four-year terms. Louisiana is one of 20 states that established an independent public defense commission as recommended by best practices.

**Funding.** LPDB is funded by state general funds, statutory dedications, and federal funds. During fiscal years 2008 through 2013, LPDB’s annual funding increased from \$28.4 million to \$33.1 million, as shown below.



**Goals.** According to the Louisiana Public Defender Act, LPDB has the following goals:

1. Ensuring that adequate public funding of the right to counsel is provided and managed in a cost-effective and fiscally responsible manner.
2. Ensuring that the public defender system is free from undue political and judicial interference and free of conflicts of interests.

3. Establishing a flexible delivery system that is responsive to and respectful of jurisdictional variances and local community needs and interests.
4. Providing that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.
5. Providing for statewide oversight with the objective that all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding.
6. Providing for the ability to collect and verify objective statistical data on public defense workload and other critical data needed to assist state policymakers in making informed decisions on the appropriate funding levels to ensure an adequate service delivery system.
7. Providing for the development of uniform binding standards and guidelines for the delivery of public defender services and for an effective management system to monitor and enforce compliance with such standards and guidelines.

**APPENDIX D: LPDB PAYMENTS TO THE 42 DISTRICT PUBLIC DEFENDER OFFICES AND SIX CAPITAL CONTRACT PROGRAMS  
FISCAL YEAR 2011 THROUGH FISCAL YEAR 2013 (\$)**

Judicial District	Parish(es)	FY11	FY12	FY13	Total
1st	Caddo	\$1,426,677	\$750,253	\$1,355,695	\$3,532,625
2nd	Bienville, Claiborne, Jackson	-	257,576	100,880	358,456
3rd	Lincoln, Union	135,397	244,230	226,666	606,293
4th	Morehouse, Ouachita	1,271,365	539,678	804,610	2,615,653
5th	Franklin, Richland, West Carroll	211,132	420,232	175,208	806,572
6th	East Carroll, Madison, Tensas	124,386	134,944	44,514	303,844
7th	Catahoula, Concordia	332,254	191,388	163,452	687,094
8th	Winn	174,885	175,070	179,418	529,373
9th	Rapides	304,327	367,016	394,016	1,065,359
10th	Natchitoches	193,745	309,863	263,386	766,994
11th	Sabine	234,621	217,465	161,678	613,764
12th	Avoyelles	116,730	219,499	220,224	556,453
13th	Evangeline	159,031	212,442	212,588	584,061
14th	Calcasieu	1,492,615	550,969	768,748	2,812,332
15th	Acadia, Lafayette, Vermilion	537,446	1,211,080	1,481,975	3,230,501
16th	Iberia, St. Martin, St. Mary	330,647	426,947	373,138	1,130,732
17th	Lafourche	-	216,969	307,614	524,583
18th	Iberville, Pointe Coupee, West Baton Rouge	8,004	-	-	8,004
19th	East Baton Rouge	1,024,743	1,283,309	1,334,260	3,642,312
20th	East/ West Feliciana	-	-	-	-
21st	Tangipahoa	1,411,750	1,071,403	1,302,626	3,785,779
22nd	St. Tammany, Washington	1,368,117	1,278,301	1,021,912	3,668,330
23rd	Ascension, Assumption, St. James	300,005	292,741	340,784	933,530
24th	Jefferson	637,138	623,857	607,662	1,868,657
25th	Plaquemines	213,141	128,300	64,618	406,059
26th	Bossier, Webster	453,615	832,779	969,546	2,255,940
27th	St. Landry	-	497,348	472,570	969,918
28th	LaSalle	125,033	241,870	179,174	546,077
29th	St. Charles	-	-	-	-
30th	Vernon	62,263	78,807	144,658	285,728
31st	Jefferson Davis	8,004	107,526	-	115,530
32nd	Terrebonne	183,515	616,807	367,862	1,168,184
33rd	Allen	30,041	-	121,516	151,557
34th	St. Bernard	191,574	126,743	227,376	545,693

Judicial District	Parish(es)	FY11	FY12	FY13	Total
35th	Grant	\$59,978	\$89,096	\$103,296	\$252,370
36th	Beauregard	59,050	31,283	101,474	191,807
37th	Caldwell	94,857	172,307	132,308	399,472
38th	Cameron	-	21,269	10,650	31,919
39th	Red River	30,959	104,142	53,273	188,374
40th	St. John the Baptist	72,138	10,639	30,420	113,197
41st	Orleans*	5,304,155	4,117,998	2,656,490	12,078,643
42nd	DeSoto	80,679	41,944	-	122,623
<b>Subtotal for District Offices</b>		<b>18,764,017</b>	<b>18,214,090</b>	<b>17,476,285</b>	<b>54,454,392</b>
1	Baton Rouge Capital Conflict Office (BRCCO)	\$935,000	\$935,000	\$935,000	\$2,805,000
2	Capital Assistance Project of Louisiana (CAPOLA)	1,399,787	1,228,750	1,399,787	4,028,324
3	Capital Defense Project of Southeast Louisiana (CDPSL)	1,168,268	1,491,458	1,663,370	4,323,096
4	Louisiana Crisis Assistance Center d/b/a Louisiana Capital Assistance Center (LCAC)	1,184,292	1,184,292	1,198,306	3,566,890
5	Capital Post-Conviction Project in Louisiana	3,118,600	3,159,333	3,319,270	9,597,203
6	Capital Appeals Project (CAP)	1,096,515	1,220,364	1,186,255	3,503,134
<b>Subtotal for Capital Contract Programs</b>		<b>8,902,462</b>	<b>9,219,197</b>	<b>9,701,988</b>	<b>27,823,647</b>
<b>Total</b>		<b>\$27,666,479</b>	<b>\$27,433,287</b>	<b>\$27,178,273</b>	<b>\$82,278,039</b>
<p>*LPDB did not begin directly contracting with Juvenile Regional Services (JRS) until FY13. Prior to July 2013, the funding for JRS was provided by LPDB through Orleans Public Defender's Office.</p> <p><b>Note:</b> To assist district public defender offices with the greatest financial need, the Board reduced, and in some cases, eliminated district assistance funding to those district public defender offices that had a positive fund balances.</p> <p><b>Source:</b> Prepared by legislative auditor's staff using LPDB's financial information from ISIS Business Objects Reports.</p>					

## APPENDIX E: CAPITAL CASELOAD BY DISTRICT OFFICE AND CONTRACT PROGRAM FISCAL YEAR 2011 THROUGH FISCAL YEAR 2013

Judicial District	Parish(es)	FY11	FY12	FY13	Total
1st	Caddo	9	3	1	13
2nd	Bienville, Claiborne, Jackson	1	-	1	2
4th	Morehouse, Ouachita	-	2	-	2
5th	Franklin, Richland, West Carroll	1	1	2	4
9th	Rapides	3	2	7	12
11th	Sabine*	-	1	-	1
12th	Avoyelles	1	1	-	2
15th	Acadia, Lafayette, Vermilion	7	10	10	27
16th	Iberia, St. Martin, St. Mary	6	8	9	23
17th	Lafourche	1	3	1	5
19th	East Baton Rouge	8	10	8	26
21st	Tangipahoa	4	6	7	17
22nd	St. Tammany, Washington	8	9	7	24
23rd	Ascension, Assumption, St. James	7	10	4	21
24th	Jefferson	4	-	-	4
25th	Plaquemines	3	-	-	3
26th	Bossier, Webster	5	1	1	7
27th	St. Landry	2	5	7	14
29th	St. Charles	-	-	1	1
32nd	Terrebonne	1	1	3	5
40th	St. John the Baptist	-	-	1	1
41st	Orleans	10	11	5	26
<b>Subtotal for District Offices</b>		<b>81</b>	<b>84</b>	<b>75</b>	<b>240</b>
1	Baton Rouge Capital Conflict Office (BRCCO)	9	14	16	39
2	Capital Assistance Project of Louisiana (CAPOLA)	16	16	13	45
3	Capital Defense Project of Southeast Louisiana (CDPSL)	41	20	20	81
4	Louisiana Crisis Assistance Center d/b/a Louisiana Capital Assistance Center (LCAC)	14	6	7	27
5	Capital Post-Conviction Project in Louisiana (CPCPL)	63	64	65	192
6	Capital Appeals Project (CAP)	32	37	32	101
<b>Subtotal for Capital Contract Programs</b>		<b>175</b>	<b>157</b>	<b>153</b>	<b>485</b>
<b>Total</b>		<b>256</b>	<b>241</b>	<b>228</b>	<b>725</b>

\*Pursuant to Act 416 of the 2007 Regular Session of the Louisiana Legislature, the former 11th Judicial District, which was comprised of Sabine and DeSoto parishes, was split along parish boundaries as of January 1, 2009. Sabine Parish became a "new" 11th Judicial District, and DeSoto Parish became the newly created 42nd Judicial District.

**Source:** Prepared by legislative auditor's staff using information provided by LPDB.

# THE PUBLIC DEFENDER SERVICE

*for the District of Columbia*



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CHAMPIONS OF LIBERTY

Fiscal Year 2015

Congressional Budget Justification

Avis E. Buchanan, Director

March 10, 2014

**PUBLIC DEFENDER SERVICE  
Fiscal Year 2015 Budget Justification**

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## LEGAL AUTHORITY AND MISSION

The Public Defender Service for the District of Columbia (PDS) is a federally funded, independent organization governed by an eleven-member Board of Trustees. Originally operating as the Legal Aid Agency from 1960 to 1970, PDS was created in 1970 by a federal statute<sup>1</sup> enacted to comply with a constitutional mandate to provide defense counsel to people who cannot afford an attorney.<sup>2</sup> The mission of PDS is to provide and promote quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia justice system and thereby protect society's interest in the fair administration of justice.

A major portion of the work of the organization consists of representing individuals in the District of Columbia's local criminal justice system who are charged with committing serious criminal acts and who are eligible for court-appointed counsel. In the District of Columbia, public defense services are primarily provided by PDS, the "institutional defender," and a panel of private attorneys, known as Criminal Justice Act (CJA) attorneys, who are screened for membership on the panel and paid on a case-by-case basis by the District of Columbia courts.<sup>3</sup> Because of its better resources, well-regarded training program, and overall higher skill level, PDS generally handles the more serious criminal cases, and the CJA attorneys generally handle the less serious criminal cases. The federal public defender system is modeled in most respects on this structure.

PDS also provides legal representation to people facing involuntary civil commitment in the mental health system, as well as to many of the indigent children in the most serious delinquency cases, including those who have special education needs due to learning disabilities. PDS attorneys represent indigent clients in the majority of the most serious adult felony cases filed in the District of Columbia Superior Court every year, clients pursuing or defending against criminal appeals, nearly all individuals facing parole revocation under the District of Columbia Code, and all defendants in the District of Columbia Superior Court requiring representation at Drug Court sanctions hearings. In addition, PDS provides technical assistance to the local criminal justice system, training for CJA and pro bono attorneys, and additional legal services to indigent clients in accordance with PDS's enabling statute.

In 1997, the Congress enacted the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act),<sup>4</sup> which relieved the District of Columbia of certain "state-level" financial responsibilities and restructured a number of criminal justice functions, including representation for indigent individuals. The Revitalization Act instituted a process by which PDS submitted its budget to the Congress and received its appropriation as an administrative transfer of federal funds through the Court Services and Offender Supervision Agency appropriation. With the enactment of the Fiscal Year 2007 Appropriation Act, PDS now receives a direct appropriation from the Congress. In accordance with its enabling statute and the constitutional mandate it serves, PDS remains a fully independent organization and does not

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<sup>1</sup> Pub. L. No. 91-358, Title III, § 301 (1970); *see also* D.C. Code §§ 2-1601 – 1608 (2001).

<sup>2</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>3</sup> Plan for Furnishing Representation to Indigents under the District of Columbia Criminal Justice Act. D.C. Code §§ 11-2601 – 2608 (2001).

<sup>4</sup> Pub. L. No. 105-33, Title X (1997).

fall under the administrative, program, or budget authority of any federal or local executive branch agency.

Since its creation, PDS has maintained a reputation nationally and in the District of Columbia criminal justice system for exceptional advocacy. The strength of PDS has always been the quality of the legal services that the organization delivers. Judges and prosecutors alike acknowledge and respect the excellent advocacy of PDS's attorneys, as do public defender agencies and criminal justice bars across the nation.

**PUBLIC DEFENDER SERVICE  
BUDGET JUSTIFICATION SUMMARY**

**FY 2015 Summary of Changes**

	<b>FTE</b>	<b>2015 PDS Need</b>
<b>FY 2014 Enacted Budget</b>	<b>218</b>	<b>40,607</b>
<b>Adjustments to Base:</b>		
Less Non-Recurring Expense		
Moving Expenses	-	(1,150)
Add		
New positions	6	554
Pay Raises	-	221
General Pricing Level	-	104
Efficiency Savings	-	(255)
<b>Total, Adjustments</b>	<b>6</b>	<b>(526)</b>
<b>FY 2015 Base</b>	<b>224</b>	<b>40,081</b>
Non-Recurring Expense -		
Moving Expenses	-	1,150
<b>FY 2015 Request</b>	<b>224</b>	<b>41,231</b>

**FISCAL YEAR 2015 REQUIREMENTS**

The Public Defender Service for the District of Columbia requests an operating budget of \$40,081,000 for Fiscal Year 2015. This would allow PDS to fill six positions that are needed to adequately staff PDS’s Trial Division and to provide representation to unrepresented adults seeking release on parole for District of Columbia sentences. PDS’s operating budget request represents an increase of only 1.6 percent or \$624,000, from the FY 2014 operating budget appropriation of \$39,457,000. PDS also requests one-time funding of \$1,150,000 for moving four program and administrative divisions from two satellite offices due to the expiration of the leases for these two locations.<sup>5</sup>

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<sup>5</sup> PDS requested and received \$1,150,000 for these moving expenses in FY 2014. PDS continues to work with the General Services Administration to negotiate leases for these satellite offices. Because the lease negotiation process is complicated and time-consuming (e.g., PDS waited several weeks for a required flood plain analysis to be conducted for PDS’s Pennsylvania Avenue, N.W. site), it is extremely doubtful that any of the relocations will take place in FY 2014.

For FY 2014, PDS received funding for five attorney positions<sup>6</sup> to fill vacancies caused by operating pursuant to flat or reduced budgets for four years.<sup>7</sup> For FY 2015, PDS requests six attorney positions. Five of these six positions would permit PDS's Trial Division to further recoup the decline in staffing that has occurred as a result of PDS's operating pursuant to flat or reduced budgets. The sixth attorney position would allow PDS's Institutional Services Program to represent adults seeking parole from Federal Bureau of Prisons facilities.

This request is consistent with PDS's policy and funding priorities – providing representation to individuals facing serious charges who cannot afford to hire an attorney – and directly supports the Congress's overarching goal of supporting high performing programs.

## **POLICY AND FUNDING PRIORITIES**

PDS is a small, single program; the only local institutional public defender in the District of Columbia; and the only local institutional public defender funded by the Congress. PDS's priority is ensuring that all persons in the District of Columbia receive due process when threatened with a loss of liberty. All PDS divisions and employees either support or provide representation in furtherance of this mission. The available evidence demonstrates that PDS effectively carries out its mission and saves taxpayer funds.

### **PDS's Effectiveness**

Despite not having a research division and despite being denied access to certain electronic criminal justice system data controlled by District of Columbia law enforcement agencies and courts, PDS continues to make strides toward more effectively incorporating evidence and evaluation in managing the organization and maintaining its reputation for high quality performance. PDS has evaluated its performance through its growing capacity to generate outcome data and through surveys of stakeholders.<sup>8</sup> The results demonstrate that PDS is a high performing program. PDS continues to receive scores of over 90 percent from judges and CJA attorneys assessing the quality of the representation provided by PDS lawyers and the quality of the training provided to the CJA lawyers. The results of PDS's most recent survey of judges confirm their high opinion of PDS's performance with scores of 100 percent in all but a single category. More specific to case outcomes:

- PDS's Parole Division data shows that the division wins 35 percent of its contested hearings and mitigates the sentences in another 27 percent.
- PDS's Mental Health Division wins 35 percent of the contested probable cause hearings and wins 50 percent of the contested commission hearings.

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<sup>6</sup> Three positions were for the Trial Division, and two were for the Juvenile Services Program in the Community Defender Division.

<sup>7</sup> PDS's FY 2010 enacted budget was \$37,316,000; PDS's enacted budget for FY 2011 was \$37,241,000; it was the same for FY 2012. Because of the budget reduction triggered by sequestration, PDS's FY 2013 budget was \$35,293,000.

<sup>8</sup> Detailed results are presented at pp. 21, 24.

- PDS’s Appellate Division, from 2005 through 2013, secured reversals in 33 percent of its appellate cases as compared to a four percent reversal rate for the rest of the defense bar – a PDS success rate eight times higher than that of the rest of the appellate defense bar.<sup>9</sup>

By increasing the staffing level of the Appellate Division, PDS has maintained the above appellate reversal performance while also reducing the appellate backlog by 67 percent over the past three years. As explained below,<sup>10</sup> however, this effort has come at a cost to the staffing of the Trial Division. Because the Trial Division is a critical part of the Appellate Division’s success (by making the required arguments in the trial court to preserve issues for consideration on appeal) and a critical part of a high performing public defense system, PDS is seeking funding to more fully staff the Trial Division.

### **Reduction in Taxpayer Costs**

A study of 83 wrongful convictions uncovered in Illinois determined that the cost to taxpayers was \$214 million or \$2.5 million per wrongful conviction.<sup>11</sup> A study of criminal defense systems similar to the District of Columbia’s criminal defense system (a combination of an institutional defender and a panel system) demonstrates that institutional defender representation is more cost-effective, saving taxpayers on average 25 percent per case in adult criminal representation.<sup>12</sup> As detailed in PDS’s FY 2013 Budget Justification, PDS’s Trial Division saves taxpayer funds by preventing wrongful convictions.<sup>13</sup> Every year, PDS’s Trial Division

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<sup>9</sup> Performance data for PDS’s Appellate Division is easily captured because outcomes appear in electronically available published appellate decisions, and, starting in 2005, Memorandum Opinions and Judgments (or unpublished decisions) also became available electronically. For PDS’s matters in the Superior Court of the District of Columbia, PDS has not been able to secure electronic access to case outcomes from the Court other than in PDS’s own cases. And PDS has been able to generate electronically case outcome data only for the past one to two fiscal years, depending on the legal division. With the upgraded Atticus system, PDS will increase its ability to provide outcome data and will continue to try to secure the requisite electronic data from the Superior Court to compare PDS’s performance against that of other legal services providers.

<sup>10</sup> See below at pp. 7-11.

<sup>11</sup> See <http://www.forbes.com/sites/erikkain/2011/06/29/the-high-cost-of-wrongful-convictions/>, June 29, 2011 (detailing a study by the Better Government Association and the Center on Wrongful Convictions).

<sup>12</sup> See Statement of Michael S. Nachmanoff, Federal Public Defender for the Eastern District of Virginia on Behalf of the Federal Public Defender and Community Defenders Before the Judiciary Committee Subcommittee on Bankruptcy and the Courts; Sequestering Justice: How the Budget Crisis is Undermining Our Courts; July 23, 2013, (Attachments One and Two); <http://www.judiciary.senate.gov/pdf/7-23-13NachmanoffTestimony.pdf>.

<sup>13</sup> “Two FY 2011 PDS cases illustrate this point. PDS was appointed to two separate homicide cases. In each case, the government sought and secured an indictment for first degree murder and related charges. But for the work of PDS, both of these cases would have proceeded to trial with a high probability of conviction. Instead, after hundreds of hours of investigation, more than 100 hours of attorney time on pretrial litigation and hours of expert services poring over cell tower records and fingerprint evidence, PDS presented the evidence its lawyers, experts, and

convinces the government to dismiss cases after an arrest and even after the government has indicted the case. PDS accomplishes this through thorough investigation, expert assessments, and litigation demonstrating that the wrong person was charged. This work is accomplished at a fraction of the cost of a wrongful conviction.<sup>14</sup> However, because PDS has had to leave an increasing number of Trial Division positions unfilled, PDS has had to reduce the number of cases it can accept.

Every division at PDS plays a part in improving the effectiveness of the criminal justice system, case by case. But PDS goes even further. Using the information PDS learns at the trial level in case after case, PDS collaborates with others in the criminal justice system to develop and support evidenced-based programs that, cost effectively, improve the criminal justice system and reduce recidivism. Three such programs are two U.S. Parole Commission programs, the Short-term Interventions for Success program and the Mental Health Sanctions Docket, and the District of Columbia Superior Court's revised Drug Court program discussed in the Accomplishments section below.<sup>15</sup>

With an increase in funding to cover inflationary costs and allow PDS to more fully staff its Trial Division and to represent those who may otherwise forfeit their liberty, the Congress can promote high performing programs that save taxpayers money, reduce the burdens of debilitating over-incarceration, and support justice in the District of Columbia.

## **Resource Request**

To recoup personnel losses due to a succession of flat budgets and sequestration, PDS requests funding for six positions for FY 2015: five positions would assist PDS in regaining capacity in the Trial Division, and one would allow PDS to represent adults serving District of Columbia sentences who are seeking parole from Federal Bureau of Prisons facilities. PDS's requests are limited to mission-critical needs.

### **Trial Division – Five new positions – \$462,000**

**PDS needs five trial attorney positions. Failure to fund these positions will shift costs to the federally funded Superior Court CJA program and jeopardize the quality of representation being provided in the most serious cases.**

In FY 2014, PDS sought and received funding for three Trial Division positions. For FY 2015, PDS requests funding for five additional positions. Returning the Trial Division to its former staffing complement remains a priority for PDS. PDS has operated for three years with flat

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investigators had uncovered to the prosecution. In each case, PDS convinced the prosecution that it had charged and indicted the wrong person. Each case was dismissed within only weeks before the trial was scheduled to start. The cost of avoiding these two wrongful convictions was less than \$50,000. The costs involved in two trials – two wrongful convictions with lengthy sentences, appeals, other post-conviction proceedings and retrials – are unquantifiable.” PDS FY 2013 Budget Justification at 5. Many other dismissals are obtained for even less.

<sup>14</sup> *Id.*

<sup>15</sup> *See* pp. 18-19.

budgets and one year with a reduced budget imposed by sequestration. This has forced PDS to leave positions unfilled in the Trial Division in order to meet other critical client and administrative needs<sup>16</sup> and stay within funding limits.

One of these other critical needs is assisting the District of Columbia Court of Appeals in its continuing efforts to reduce the backlog of appeals, which also allows PDS to reduce the amount of time clients wait to have their appeals resolved. PDS is meeting this need with an increase in the Appellate Division staff. Given the performance of this division, PDS has no plan to reduce its size. PDS secures reversals at the appellate level at a rate eight times higher than that of the rest of the defense bar (33 percent versus four percent). Between FY 2010 and FY 2012, PDS reduced the amount of time between the court's issuance of the notice to file and the filing of a brief by 17 percent and has reduced the case backlog by 67 percent. Maintaining the Appellate Division's current size continues to bring down the backlog of appeals and the time to resolution without compromising quality – quality that is essential to protecting against inequities in the criminal justice system.<sup>17</sup>

Because the Trial Division is the largest division at PDS and has the highest turnover rate of the PDS legal divisions, it is the division that most easily allows PDS to absorb the financial impact of diminishing resources. At the same time, it requires the most complicated efforts to staff and train. To produce high quality trial representation requires training and intense supervision before a lawyer is able to competently handle complex criminal cases. To secure the best applicants, PDS must schedule its hiring process to coincide with the hiring by the private sector, the judiciary, and other high performing public defender offices. For PDS to be efficient, a class of new lawyers must be brought on at the same time to train together. The most cost-effective training requires that PDS train six or more lawyers at one time. To produce the high quality trial lawyers that are the foundation of PDS's reputation as the best public defender office in the country, (as Attorney General Holder has described PDS<sup>18</sup>), PDS produces a model initial training program<sup>19</sup> and then continues with staged training for the next four years of a lawyer's development. This necessitates hiring at a single point in time and in sufficient numbers to

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<sup>16</sup> PDS filled administrative vacancies created by the departure of the Human Resources Director, the Chief Information Officer, the Chief Financial Officer, and the only accountant on staff. Leaving any of these positions vacant puts PDS at risk.

<sup>17</sup> PDS's five-year target is to reduce the appellate backlog to zero and the time between notice of the brief of filing date and the filing of the brief by more than half to 40 days. The result will be a more efficient appellate court and timely resolution of matters that cause indigent clients to linger in prison.

<sup>18</sup> Harvard School of Public Health conference, "Defending Childhood and Youth," <http://theforum.sph.harvard.edu/events/u-s-attorney-general-eric-holder-defending-childhood-and-youth/>, (May 2011).

<sup>19</sup> PDS's training program has been held in high regard for decades. In the mid-1970s, the U.S. Department of Justice Law Enforcement Assistance Administration designated PDS as an "exemplary program" in part because of the high quality of PDS's training program. In a 2008 report of its assessment of PDS's overall program, the National Legal Aid and Defender Association commended PDS's training program. The NLADA concluded that PDS exceeded the American Bar Association's national standards for training public defender attorneys.

justify the time required of senior lawyers and judges to produce the initial and the staged trainings.

To address budget realities now and in the near future, PDS has creatively managed its hiring. It has hired experienced lawyers into those legal divisions suited for such hiring when vacancies occur. Some candidates have come from outside of PDS, and some have come from the ranks of the Trial Division seeking to use their considerable skills in the Appellate Division, the Mental Health Division, the Parole Division, or the Community Defender Division. These lawyers – both seasoned PDS trial lawyers and attorneys hired from law firms and clerkships – can be brought on board in these legal divisions with relatively little additional training other than direct supervision. After several years of having no more than six new attorneys hired for the Trial Division, PDS recently hired a relatively large Trial Division class so that PDS can train efficiently and effectively while making plans to delay further hiring until its budget permits. PDS will divide this group of nine new lawyers into two over the course of two years to handle cases in the courts traditionally covered by PDS, effectively creating a class of five and four without compromising training or applicant quality. But even with this influx, the Trial Division will be eight lawyers short of its 2009 staffing level of 60 lawyers. Several years of hiring only six new Trial Division lawyers and now most recently effectively hiring a class of five and four, while fiscally prudent, has not kept up with attrition. Without additional funding, PDS’s Trial Division will remain understaffed.<sup>20</sup>

The direct impact of understaffing the Trial Division has been a 50 percent reduction in the number of general felony cases handled by PDS. Presently there are 250 Criminal Justice Act (CJA) attorneys available through a panel system to handle these cases but at a cost to the District of Columbia Superior Court’s CJA budget.<sup>21</sup> More importantly, the indirect effect of limited hiring is a reduction in the cadre of lawyers at PDS who are being prepared to handle the most serious cases for which there is a dearth of qualified and adequately resourced lawyers outside of PDS. PDS’s Trial Division has maintained its ability to handle every homicide case it is permitted to under the ethical rules,<sup>22</sup> but it has lost some of its capacity to handle the majority of the other charges for which life in prison is the maximum sentence. PDS should be handling close to 70 percent of those offenses just as it has historically handled 70 percent of the homicide cases. Instead, PDS representation of individuals charged with “life offenses” has declined in recent years from 62 percent in FY 2006 to just 39 percent for FY 2013.

This decline in the number of attorneys trained to handle complex cases and in the number of cases PDS handles at the trial level comes at a significant cost to the criminal justice system in

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<sup>20</sup> With the recent enactment of PDS’s FY 2014 budget, PDS has initiated the hiring process for new Trial Division attorneys. PDS’s ability to hire to fulfill its needs depends on the quality of the applicant pool, so PDS may not be able to reach its target level of hiring until FY 2015.

<sup>21</sup> CJA lawyers are compensated at \$90 per hour. PDS Trial Division lawyers’ average salary with benefits is approximately \$50 per hour.

<sup>22</sup> PDS cannot provide representation in 100 percent of the homicide cases, as many involve multiple co-defendants, and the conflict-of-interest rules prohibit joint representation of co-defendants; some cases involve government witnesses who are current PDS clients in other criminal matters, and the same rules prohibit simultaneous representation of individuals with adverse interests. See D.C. Rule of Professional Conduct 1.7.

the District of Columbia. PDS secured acquittals in more than 50 percent of the cases it took to trial in FY 2012 and FY 2013.<sup>23</sup> But more than just creating good outcomes for clients, the quality of representation PDS provides at the trial level is the foundation from which almost all of PDS's accomplishments stem, irrespective of the type of case. PDS's Appellate Division's reversal rate of 33 percent compared with the rest of the defense bar's reversal rate of four percent starts with the quality of the lawyering at the trial level. The three wrongful convictions brought to light by PDS's Special Litigation Division during the last four years were grounded in the knowledge base within PDS's Trial Division about faulty forensic science and about new methods to test the reliability and accuracy of dated forensic methods. PDS is currently challenging two more wrongful convictions, and once again, the work in those cases is based on investigative efforts and legal skills that take years to develop and the capacity to draw upon multiple areas of expertise within PDS. PDS cases that have been dismissed by the government after an arrest and indictment but short of trial have often been dismissed because of the investigation and litigation done by the Trial Division lawyers and their investigators.<sup>24</sup>

PDS has detailed examples of case dismissals in past budget submissions. One example from this fiscal year involved a client who is a permanent resident seeking citizenship. She is also a small business person with a beauty shop in the District of Columbia. This client was charged with assault. This charge could have precluded her from gaining citizenship, impacted her ability to secure the licenses necessary to grow her business, and put her at risk for deportation. After a thorough investigation, PDS's trial lawyer presented the results of the investigation to the prosecutor assigned to the case. After reviewing PDS's investigation, the government agreed not only to dismiss the criminal case but not to oppose a motion to seal the client's arrest record based on her actual innocence. The court subsequently granted the motion. While the charge in this case was not nearly as serious as those in other case dismissals PDS has previously reported on, the case was one that would have been life-altering for this client, her family, their small business, and their community. In this example, as it is in so many cases, PDS was critical to preventing an injustice of the very sort that those working in the criminal justice system are

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<sup>23</sup> This is based on data from FY 2012 and FY 2013. PDS has only recently been able to efficiently collect this performance data and is using a longer period than the current fiscal year to present its performance figures to more accurately report its performance. Because the number of trials conducted is not that large, small changes in outcomes could affect the percentages in a manner that may not fairly reflect performance. As PDS collects more data, it will be able to better assess current and historical performance. While PDS cannot compare its trial performance with that of the CJA attorneys because PDS lacks access to the necessary data, studies of similar defender institutions have shown that the outcomes are substantially better in serious cases when the institutional defender provides representation, and that the institutional defender is more cost efficient. *See* Measuring the Effect of Defense Counsel on Homicide Case Outcomes, Award number 2009-IJ-CX-0013, Anderson & Heaton, December 2012; <https://www.ncjrs.gov/pdffiles1/nij/grants/241159.pdf>; and *see* Statement of Michael S. Nachmanoff, Federal Public Defender for the Eastern District of Virginia on Behalf of the Federal Public and Community Defenders Before the Judiciary Committee Subcommittee on Bankruptcy and the Courts; Sequestering Justice: How the Budget Crisis is Undermining Our Courts; July 23, 2013; (Attachments One and Two); <http://www.judiciary.senate.gov/pdf/7-23-13NachmanoffTestimony.pdf>.

<sup>24</sup> In FY 2013, PDS secured pretrial dismissals in 46 cases.

challenged to prevent. Though this was a minor charge that most under-funded public defense systems would have failed to investigate and where in most jurisdictions a plea would have been encouraged, PDS spent a combined 20 hours of lawyer and investigator time ferreting out the truth – the client was innocent.<sup>25</sup>

In its everyday work, the Trial Division is the front-line protection against unequal justice and wrongful convictions that cost the government millions of dollars, cause irreparable harm to clients, and undermine the public's confidence in the criminal justice system. PDS's request of \$462,000 will bring the Trial Division back to full strength, ensuring PDS's ability to continue its vital role in the criminal justice system.

### **Community Defender Division**

#### **Institutional Services Program – One new position – \$92,000**

**PDS requests funds for one Institutional Services Program attorney position to represent individuals serving District of Columbia Code-based sentences in Federal Bureau of Prisons (BOP) facilities at parole release hearings. Because the vast majority of these individuals do not currently have representation, this position will provide a service in high demand and help reduce over-incarceration in the BOP.**

PDS requests funds for one position to provide representation to individuals serving sentences imposed pursuant to the District of Columbia Code in Federal Bureau of Prisons (BOP) institutions. These inmates, who have been placed in various facilities throughout the country, often far from the District, receive little to no legal representation for hearings before the U.S. Parole Commission (USPC) that could result in their release from prison.<sup>26</sup> PDS would use the funding to increase the number of Institutional Services Program (ISP) attorneys from two to three in order to increase the number of BOP inmates serving District of Columbia Code parole-based sentences whom PDS can assist.

In FY 2012, the USPC held 255 parole release hearings<sup>27</sup> for BOP inmates who were sentenced in the District of Columbia Superior Court. Depending upon the availability of staff resources,

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<sup>25</sup> Notably, PDS did not need to pay for outside translator services for this case because it has hired a significant number of bilingual employees and has nine languages represented on staff with many staff who are bilingual in English and Spanish.

<sup>26</sup> One District of Columbia non-profit civil legal services group, the Prisoners' Rights Project of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, has trained a small number of pro bono lawyers from local law firms to represent individuals at parole release hearings. For the first eight months of 2013, the Committee, which does not itself provide this representation, received 42 requests for assistance and found attorneys to fulfill 17.

<sup>27</sup> The District of Columbia changed its sentencing structure in 2000. Individuals convicted of offenses committed before then still receive sentences that make them eligible for release on parole. Individuals convicted of offenses committed after 2000 receive a determinate prison sentence followed by a term of supervised release. The reported number of hearings includes subsequent hearings for those whose initial efforts to obtain release on parole may have been unsuccessful. In addition, inmates who are incarcerated with indeterminate sentences under the

the ISP attorneys in PDS's Community Defender Division have represented as few as one and as many as ten residents in parole release hearings in any given year over the past five years. PDS provided representation in only one parole release hearing during FY 2013 because the two ISP attorneys' regular workload left little time for this time-consuming representation, which usually involves out-of-town travel. Nevertheless, the demand for legal representation in parole release hearings is great.

When PDS began providing this representation on a limited basis and the inmates became aware of this service, the number of requests began to grow and continued growing. PDS could not – and cannot – accommodate all the requests because of staffing and geographical limitations. Of the nearly 8,000 individuals serving District of Columbia Code sentences in BOP institutions across the country,<sup>28</sup> hundreds of them could benefit from PDS's assistance. Currently, because ISP has only two attorneys, both of whom provide other core legal services to the District of Columbia population in the BOP (for example, consultation on sentence computation issues, representation at disciplinary hearings, advice on access to services, counsel on pre-release preparation, and other issues related to the conditions of their confinement), PDS geographically limits the parole release representation it provides to those who are housed in ten of the 34 states in which those serving District sentences are located. Most of these facilities are within a 500-mile radius of the city.

For individuals serving District of Columbia Code parole-based sentences and housed in BOP facilities all across the nation, the first step in the release process involves a parole determination hearing. These hearings provide the individual with the opportunity to persuade a USPC hearing examiner to make a recommendation of release to community supervision. Having the assistance of an attorney will allow the inmates to make the most persuasive case and increase the chances of obtaining a favorable recommendation. Where PDS has provided representation, the hearing examiner has recommended release in approximately 80 percent of cases, and more often than not, the USPC has followed the hearing examiner's recommendation. In other cases, the hearing examiner has recommended an advance or reduction of the time before the individual's next parole eligibility date – another advantageous outcome. Many of the people PDS represented had been before a hearing examiner multiple times without success; PDS's involvement, however, changed the result.

These inmates need more access to representation, and PDS is the optimal organization to provide it. Funding for one additional attorney position would not only enhance PDS's ability to achieve the goal of improving access to legal services for these individuals whose liberty is at stake and who cannot afford an attorney; significantly, it would also reduce unproductive and unnecessary incarceration while maintaining public safety.

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former sentencing structure can file motions for a “reduction in minimum sentence”; these pleadings can also result in hearings before the Commission.

<sup>28</sup> This number reflects the population in FY 2012. See *Evaluation of the Short-Term Intervention for Success (SIS) Policy for Technical Violators*, U.S. Parole Commission, Austin & Johnson, May 2013.

## **Relocations of Two Satellite Offices with Expiring Leases (\$1,150,000)**

**PDS's FY 2014 appropriation included \$1,150,000 in relocation expenses for two satellite offices. PDS is still engaged in long-standing negotiations for leases for these offices. The likelihood of successfully concluding the negotiations in time to use the funds for either relocation in FY 2014 is very low. PDS has therefore included the \$1,150,000 in the FY 2015 Budget Justification.**

PDS houses three divisions in one satellite office for which the lease expired at the end of September 2013. PDS's Office of Rehabilitation and Development, Civil Legal Services Division, Information Technology Division, and Moot Courtroom/training facility are located in this satellite office. PDS regularly uses the training facility for meetings, for staff training, and for training programs offered to the CJA attorneys, who have continuing legal education requirements. Working with GSA, PDS is negotiating with the current leaseholder (the successful bidder), to negotiate terms for a new lease.

PDS's Mental Health Division began occupying 600 E Street, N.W., in October 2012, in a building under a federal lease. PDS is currently negotiating renewal of this lease, as the space provides MHD attorneys ready access to the Mental Health and Habilitation Branch of the District of Columbia Superior Court, where they represent clients, and it provides easier overall access to clients placed at the various mental health care facilities located throughout the city.

In preparing for these relocations, PDS is not seeking to increase the amount of space used by the organization as a whole.

## **PROGRAM DESCRIPTION**

### **Legal Services**

PDS and private attorneys, both appointed by the District of Columbia courts pursuant to the Plan for Furnishing Representation to Indigents under the District of Columbia Criminal Justice Act (CJA),<sup>29</sup> provide constitutionally mandated legal representation to indigent people facing a loss of liberty in the District of Columbia. PDS handles a majority of the most difficult, complex, time-consuming, and resource-intensive criminal cases, while private attorneys (CJA lawyers) handle the majority of the less serious felony, misdemeanor, and regulatory offenses. PDS is a model program applying a holistic approach to representation. PDS uses both general litigation skills and specialty practices to provide complete, quality representation in complex cases. While PDS is a single program, PDS divides its attorneys and professionals into specific functions to promote overall representation in individual cases. PDS staff attorneys are divided into seven practice groups: the Trial Division, the Appellate Division, the Mental Health Division, the Special Litigation Division, the Parole Division, the Civil Legal Services Division, and the Community Defender Division. On a day-to-day basis, the attorneys in the various divisions provide advice and training to each other, and they often form small teams to handle particularly complex cases.

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<sup>29</sup> D.C. Code §§ 11-2601 – 2608 (2001). D.C. Code § 11-2601 mandates the creation of a plan to furnish representation to indigent defendants that includes provisions for private attorneys, attorneys furnished by PDS, and qualified students participating in clinical programs.

Using this team approach, PDS undertook 13,500 legal matters in FY 2013. As described below, these matters encompassed a wide range of legal representation, including in homicide trials, special education proceedings, parole revocation hearings, disciplinary hearings for detained children and adults, a class action suit on behalf of children in the custody of the District of Columbia, involuntary civil commitment proceedings, and groundbreaking appellate representation.

### **Trial Division**

Staff attorneys in the Trial Division zealously represent adults in criminal proceedings in the District of Columbia Superior Court or provide zealous legal representation to children in delinquency matters. Attorneys are assigned to specific levels of cases based on experience and performance. As a result of intensive supervision and ongoing training, attorneys generally transition over the course of several years from litigating juvenile delinquency matters to litigating the most serious adult offenses. The most seasoned attorneys in the Trial Division handle the most complex and resource-intensive adult cases. For example, senior PDS attorneys routinely handle cases involving DNA evidence, expert testimony, multiple-count indictments, and novel or complex legal matters. This group of highly trained litigators provides representation in the majority of the most serious adult felony cases filed in the District of Columbia Superior Court each year.<sup>30</sup>

Less senior Trial Division staff attorneys handle the most difficult or resource-intensive delinquency cases (cases involving children with serious mental illnesses or learning disabilities or children facing serious charges) and handle some general felony cases and a limited number of misdemeanor cases.<sup>31</sup> Trial Division staff attorneys also provide representation in a variety of other legal matters through PDS's Duty Day program and the District of Columbia Superior Court's Drug Court program.

### **Appellate Division**

The attorneys in the Appellate Division are primarily responsible for handling the appellate litigation generated in PDS cases, providing legal advice to CJA attorneys in appellate matters, and responding to requests from the District of Columbia Court of Appeals for briefs in non-PDS cases involving novel or complex legal issues. Another important function of the Appellate Division is to provide a wide range of technical assistance and training to other PDS divisions. The Appellate Division attorneys' knowledge and experience allow them to assist in complex cases without having to perform long hours of original research each time difficult legal issues arise. The reliance on this division by the District of Columbia Court of Appeals is demonstrated

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<sup>30</sup> PDS was assigned to 68 percent of the Felony One cases and to 39 percent of the Accelerated Felony Trial cases in FY 2013. Felony One cases include all homicides, and Accelerated Felony Trial cases include all "while armed" offenses that carry potential life sentences and are to be tried within 100 days after the initial court appearance.

<sup>31</sup> PDS provides representation in misdemeanor cases on a limited basis. PDS's authorizing statute permits PDS to represent "[p]ersons charged with an offense punishable by imprisonment for a term of 6 months, or more." D.C. Code § 2-1602(a)(1)(A) (1981). Sentences for most misdemeanors in the District of Columbia are for lesser terms.

by the Court's emphatic and repeated requests that PDS expand its staff of appellate specialists to assist the Court in reducing its backlog without compromising on quality.

### **Mental Health Division**

Attorneys in the Mental Health Division (MHD), which was previously located on the grounds of St. Elizabeths Hospital in the District of Columbia, handle, on average, half of the involuntary civil commitment cases that arise in the District of Columbia Superior Court.<sup>32</sup> PDS is initially appointed when a person is detained in a mental hospital upon allegations that the person is a danger to himself or others as a result of mental illness. MHD lawyers also represent persons in post-commitment proceedings, including commitment reviews and outpatient revocation hearings; in involuntary commitment proceedings of persons found incompetent to stand trial because of mental illness or mental retardation; and in matters relating to persons found not guilty by reason of insanity in District of Columbia Superior Court or in United States District Court cases. The lawyers in this division also provide information to the District of Columbia Council on proposed mental health and mental retardation legislation, conduct training sessions on the rights of persons with mental illness involved in civil commitment actions, and provide legal assistance to CJA lawyers appointed by the court to handle involuntary civil commitment cases.

### **Special Litigation Division**

The Special Litigation Division (SLD) handles a wide variety of litigation that seeks to vindicate the constitutional rights of PDS clients, to ensure equal justice to all in the District of Columbia courts, and to change unfair systemic criminal justice practices. Examples of such litigation are the *Jerry M.* lawsuit brought on behalf of the children committed to the care of the District of Columbia following delinquency proceedings and the *Brown v. District of Columbia, et al.* lawsuit filed in FY 2013 on behalf of all those who have had cars seized by the police without being provided due process. SLD attorneys also support PDS trial lawyers in the litigation of systemic criminal justice issues, including eyewitness identification issues, forensic science issues, and issues pertaining to the suppression of exculpatory information by the government, as well as handle post-conviction innocence cases. SLD attorneys have appeared before all the major courts in the District of Columbia – the Superior Court and the Court of Appeals in the local system, and the District Court for the District of Columbia, the Court of Appeals for the District of Columbia Circuit, and the Supreme Court in the federal system.

### **Parole Division**

The Parole Division provides legal representation to individuals who are facing the revocation of their parole or supervised release. PDS represents more than 95 percent of the individuals facing revocation proceedings. The attorneys represent clients at revocation hearings before the U.S. Parole Commission pursuant to local and federal laws. The majority of the revocation hearings are held at local detention facilities; however, through the development of diversion programs, some of the hearings take place at locations in the community. Parole Division attorneys are

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<sup>32</sup> In FY 2013, PDS was appointed to 42 percent of the involuntary commitment cases filed in the District of Columbia.

available daily for in-person, telephone, or written inquiries, offering assistance and referrals when appropriate.

In addition, the division provides training to members of the District of Columbia Bar, members of the Federal Bar, and law students from throughout the United States on parole and supervised release matters. The division also works in collaboration with community organizations; local, state, and federal paroling authorities; and experts who serve as advocates for incentive-based sanctions that are fair and designed to yield successful outcomes for individuals on parole and supervised release.

### **Civil Legal Services Division**

The Civil Legal Services Division (CLS) provides services to address issues facing children in the delinquency system that often hinder their successful reintegration into the community. CLS has a team of special education attorneys expert in advocacy under the federal Individuals with Disabilities Education Improvement Act (IDEIA), which mandates special accommodations in public schools for children who cannot be adequately educated in a traditional classroom setting due to learning disabilities or other physical or intellectual challenges. In addition, CLS includes attorneys who address other rehabilitative needs of these children and the needs of adult clients by providing representation in civil matters arising out of their criminal charges – civil matters such as those related to housing, child support, and other family court matters. CLS also provides expert consultation for attorneys with clients in the criminal justice system who face immigration consequences as a result of their contact with the criminal justice system.<sup>33</sup>

### **Community Defender Division**

The Community Defender Division provides services through three programs: 1) the Juvenile Services Program represents children at institutional disciplinary hearings at the District's youth detention centers and works with community organizations to develop reentry programs that address the special needs of children; 2) the Institutional Services Program serves as the PDS liaison to individuals convicted of District of Columbia Code offenses and serving sentences in Federal Bureau of Prisons facilities, to provide information to assist these individuals, monitor their conditions of incarceration, and assist them on parole and other release-related matters; and 3) the Community Reentry Program responds to the legal and social services needs of newly released individuals, assisting them in making a successful transition back into the community; the program gives special consideration to returning individuals who are not served by the Court Services and Offender Supervision Agency.

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<sup>33</sup> Locally in the District of Columbia, defense attorneys have long had an obligation to advise their clients of the possible immigration consequences of their decisions concerning plea offers. See *Goodall v. United States*, 759 A.2d 1077, 1083 (D.C. 2000). In FY 2010, the U.S. Supreme Court in *Padilla v. Kentucky*, 559 U.S. 356 (2010), applied for the first time the ineffective assistance of counsel standard in *Strickland v. Washington*, 466 U.S. 668 (1984), to a lawyer's failure to advise a client about a consequence of a conviction where the consequence is not part of the sentence imposed by the court. PDS's model approach to criminal defense and its previously developed expertise in collateral consequences of criminal convictions have made PDS staff much sought-after speakers, and PDS materials on this subject have been widely distributed.

## Legal Support Services

Legal Support Services is composed of various professionals within PDS who work closely with attorneys on individual cases: the Investigations Division, the Office of Rehabilitation and Development (ORD), and the Defender Services Office (DSO). Investigators ensure that each case is carefully investigated prior to a client's decision to accept a plea offer or proceed to trial.<sup>34</sup> ORD's forensic social workers provide presentencing assistance to address mitigation issues and to provide program alternatives for appropriate clients.<sup>35</sup> Other legal support services include a multi-lingual language specialist to facilitate communication with non-English speaking clients without the need to hire outside translators, a librarian to manage PDS's specialized collection and electronic access to research, a forensic scientist whose work and expertise often allow PDS to avoid hiring expensive outside experts or reduce their cost by narrowing the scope of their work, and two paralegals who work on cases and projects.<sup>36</sup>

### Investigations Division

The Investigations Division supports all the legal divisions of PDS, in particular the Trial Division, by providing thorough and professional investigative work, which includes locating witnesses, conducting field interviews, taking written statements, collecting and assessing digital evidence (e.g., security camera footage, cellphone records, Global Positioning System records, "Shot Spotter" (gunshots) technology), serving subpoenas, collecting police reports, copying court and administrative files, and preparing exhibits for trials and other hearings. In addition to producing exceptional investigation in PDS cases, the staff conducts initial and ongoing training to court-certified CJA investigators who provide investigation services to the CJA attorneys.

### Office of Rehabilitation and Development

The Office of Rehabilitation and Development (ORD) is composed of experienced licensed forensic social workers and professional counselors who assist in recommending appropriate sentences to the District of Columbia Superior Court. The ORD staff are skilled "mitigation specialists" who often directly address the court at sentencing to provide the court with information about viable alternatives to incarceration such as community-based, rehabilitative treatment. Because the ORD staff are well-versed in all of the District of Columbia area rehabilitative programs (e.g., drug treatment, job training, education programs, and parenting classes), the forensic social workers are frequently asked to provide consultation for judges, CJA lawyers, and others in the criminal justice system. In addition to their invaluable advocacy work,

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<sup>34</sup> See e.g., *Kimmelman v. Morrison*, 477 U.S. 365 (1986) (failure to investigate and present Fourth Amendment claim was constitutionally ineffective assistance of counsel).

<sup>35</sup> See *Wiggins v. Smith*, 539 U.S. 510 (2003) (decision of counsel not to expand their investigation of petitioner's life history for mitigating evidence beyond presentence investigation report and department of social services records fell short of prevailing professional standards).

<sup>36</sup> As stated above, PDS operates as a single program, allowing it to shift resources between specialties as needed. In addition to the five legal support staff noted, PDS has 11 forensic social workers and 32 investigators supporting the lawyers in their casework and 15 administrative assistants supporting the 157 lawyers and professional staff who provide direct client services.

the staff of ORD prepare a comprehensive annual *Directory of Adult Services: Community and Confinement Access Guide* and a biennial *Directory of Youth & Families Resource Guide: Community and Confinement Access Guide* that list a wide range of services available to adults and children in the criminal justice system. These directories, available on the PDS website,<sup>37</sup> are used by the Court Services and Offender Supervision Agency, the Federal Bureau of Prisons and its contract prisons, the District of Columbia Superior Court, and many other agencies and organizations working with clients in the criminal justice system. The District's Criminal Justice Coordinating Council (CJCC) has used the adult manual to create and post on the CJCC's website an interactive, electronic map with a "pop-up" feature that allows website visitors to see the location of all the services described in the manual.<sup>38</sup>

### **Defender Services Office**

The Defender Services Office (DSO) supports the court appointment of counsel system by determining the eligibility for court-appointed counsel of virtually every child and adult arrested in the District of Columbia and coordinating the availability of CJA attorneys, law school clinic students, pro bono attorneys, and PDS attorneys for appointment to new cases on a daily basis.<sup>39</sup> The DSO operates six days a week, including holidays. PDS attorneys work a similar schedule to be available for client representation and other needs of the court system.

### **Administrative Support**

PDS has a number of divisions that provide technical assistance to PDS staff. Though small, these divisions support the overall effective functioning of PDS using both internal expertise and outside contracts for short-term selective expertise. These divisions include Budget and Finance, Human Resources, Information Technology, and Administrative Services.<sup>40</sup> In concert with individual attorneys and the PDS executive staff, these divisions provide such services as: procurement of expert services for individual cases, financial accountability,<sup>41</sup> strategies for developing PDS's human capital and wellness, recruitment, development of an electronic case management system, maintenance of PDS's IT infrastructure, and copying and supply services.

Though PDS is made up of a number of divisions and legal practice groups, each group and each employee's work are valued for the manner in which they enhance direct client representation. PDS's single program approach allows PDS to manage and adjust its staffing to bring the ideal mix of general skills and specialized expertise to each case according to the client's needs.

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<sup>37</sup> <http://www.pdsdc.org/Publications/Publications.aspx>. PDS's website can be found at [www.pdsdc.org](http://www.pdsdc.org).

<sup>38</sup> <http://www.cjccresourcelocator.net/ResourceLocator/ResourceLocatorHome.aspx>.

<sup>39</sup> This office is currently staffed with 12 professionals who in FY 2013, conducted eligibility interviews and assisted in the appointment process for nearly 28,000 cases.

<sup>40</sup> These four divisions are currently staffed with 27 professionals.

<sup>41</sup> While a clean audit is an expectation and not an accomplishment for PDS's Budget and Finance Division, it is worthy of note that PDS continues to receive clean financial audits.

## PDS ACCOMPLISHMENTS

PDS continues to maintain its longstanding tradition of providing exceptional representation to clients and helping to ensure that case outcomes are not driven by an individual's ability to pay for an attorney. Most recently, the exceptional quality of the advocacy of PDS's staff was recognized in several instances:

- by the National Legal Aid and Defender Association's selection of PDS's Special Litigation Chief as one of the two 2013 recipients of the Kutak-Dodds Prize. This prestigious national award is made annually to honor the accomplishments of public defenders, civil legal aid attorneys, assigned counsel, or public interest lawyers who, through the practice of law have contributed in a significant way to the enhancement of human dignity and the quality of life of those persons who are unable to afford legal representation;
- by the appointment of a former PDS attorney and then-judge on the U.S. District Court for the District of Columbia for elevation to the U.S. District Court of Appeals for the District of Columbia Circuit, widely regarded as the second most powerful court in the United States. This marks the first time a former PDS attorney has ever served on a federal court of appeals; and
- by an unprecedented 13 former PDS attorneys who were appointed as judicial officers during FY 2011 and FY 2012.

PDS's skills have also been recognized over time

- by requests from the public defender organizations in California, Kentucky, Mississippi, Missouri, Virginia, and New York for PDS attorneys to present training involving forensic science;
- by reliance of every court in the District of Columbia, including the U.S. Supreme Court, on PDS *amicus* filings;
- by a request from the U.S. Supreme Court for a PDS attorney to brief and argue one of its matters;
- by requests from defender offices around the country for assistance and for pleadings, training guides, and other materials developed by PDS's specialty practice groups;
- by the hundreds of applications PDS receives each year from talented individuals seeking to become PDS staff attorneys, law clerks, and interns;
- by awards received by both PDS and its staff from various bar and defense organizations; and
- by the consistently high ratings District of Columbia trial and appellate judges gave PDS when surveyed about the quality of legal representation PDS provides.

### Performance

PDS has steadily improved its capacity to collect, analyze, and report performance data over the years. PDS expects to have even more capacity for these tasks now that its upgraded case management system, "Atticus," has "gone live." With supportive funding, PDS has invested

significant staff and financial resources into re-constructing Atticus, which now also functions as a data warehouse.<sup>42</sup>

PDS believes it is also important to obtain performance data beyond what the upgraded Atticus system will provide. Such data offers PDS information not otherwise obtainable that will help PDS identify more targeted areas for improved performance. PDS has therefore taken surveys of District of Columbia Court of Appeals and Superior Court judges, of CJA attorneys, of PDS staff, and of PDS clients. PDS has also pressed the District of Columbia Superior Court to provide electronic access to its case data for two purposes: so that PDS can make use of PDS case data for PDS's upgraded case management system does not maintain and so that PDS can make comparisons of its performance with that of the CJA Bar. While the Court has permitted limited access for PDS's own cases, the Court has to date resisted making public, non-PDS case data available.

Because of the former Atticus's limitations, PDS has previously reported or tracked only certain measures of the performance of its Trial, Appellate, Parole, and Mental Health Divisions, choosing specific measures that inform PDS about key aspects of the divisions' performance. Now that the upgraded version of Atticus is available, PDS will be able to expand the number and type of these measures for which data will be collected and provided in future budget submissions. For now, PDS reports the following outcomes and performance data.

### **Trial Division**

In FY 2013, PDS conducted its third survey of the District of Columbia Superior Court judges who had criminal or juvenile delinquency assignments during the preceding year. The new survey results are consistent with – and even slightly better overall – than those of the first and second surveys, which were conducted in FY 2004 and FY 2008 and which showed that the judges find the Trial Division to be engaging in exceptional advocacy.<sup>43</sup> In the FY 2013 survey, 100 percent of those responding agreed that PDS staff “are well prepared to defend their clients.” One hundred percent also agreed that PDS staff “are skillful in oral and written advocacy,” an improvement over the 97.7 percent recorded in FY 2004. Comments from responding judges include, “I have a very high regard for PDS and its lawyers,” “overall, the quality is extremely high,” “they provide high-quality legal presentation,” and “many of your attorneys are exceptional.”

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<sup>42</sup> See Leveraging Technology below at 27.

<sup>43</sup> The results reflect primarily, but not only, the performance of the Trial Division, since the survey asks for the judges' views on PDS staff, not just on PDS attorneys. The judges can observe the performance of PDS investigators and social workers, who occasionally appear in court and whose written materials the judges sometimes review.

**PDS FY 2008 and FY 2013 Judicial Surveys – Superior Court for the District of Columbia**

Statement	Percentage of Responding Superior Court Judges Who Agree With Statement	
	FY 2008	FY 2013
PDS staff provide and promote quality legal representation to indigent adults and children facing a loss of liberty.	100%	100%
PDS staff are zealous advocates for their clients.	100%	100%
PDS staff are well prepared to defend their clients.	100%	100%
PDS staff adhere to ethical standards when representing their clients.	89.3%	100%
PDS staff are timely in following court/administrative procedures.	93.1%	100%
PDS staff are current with the latest legal principles.	100%	100%
PDS staff are skillful in dealing with witnesses.	100%	94.1%
PDS staff are skillful in oral advocacy.	100%	100%
PDS staff are skillful in their written advocacy.	100%	100%
PDS’s working relationship with us is professional and respectful.	89.7%	100%

More specific to case outcomes, PDS won acquittals on all charges in 51 percent of the cases that have proceeded to trial in FY 2012 and FY 2013, and defeated the most serious charges in another four percent.<sup>44</sup> PDS has not been given access to the Court’s data that would allow PDS to compare its performance against that of the rest of the defense bar. However, a recent study of a similarly situated defender office revealed that “[c]ompared to private appointed counsel, public defenders reduce the murder conviction rate by 19%.<sup>45</sup> Of equal significance, the study revealed that the institutional defender “reduced overall expected time served in prison by 24%.<sup>46</sup> PDS was the first institutional defender organization in the United States to employ full-time mitigation specialists. If and when it can secure access to the required data, PDS is confident it can demonstrate that the work of the Trial Division combined with the expertise of

<sup>44</sup> The recently upgraded Atticus case management system enables PDS to collect more data about case outcomes more accurately and more efficiently. As the case data set grows, PDS will be able to identify and describe significant trends rather than report outcome measures that may vary greatly from year to year because of the small annual number of events analyzed.

<sup>45</sup> See Measuring the Effect of Defense Counsel on Homicide Case Outcomes, Award number 2009-IJ-CX-0013, Anderson & Heaton, December 2012; <https://www.ncjrs.gov/pdffiles1/nij/grants/241159.pdf>.

<sup>46</sup> *Id.*

the forensic social workers in PDS’s Office of Rehabilitation and Development substantially reduces the expected time served in prison by District of Columbia defendants, saving considerable taxpayer resources and easing overcrowding in the prisons.

In addition to surveys and case outcome data, PDS has tracked an annual measure of the percentage of clients visited within 48 hours of appointment. While PDS’s performance has declined slightly during the last two fiscal years, PDS still strives to meet the goal of 100 percent. PDS’s actual performance and fiscal year targets are as follows:

**Percentage of Cases in Which Attorney Consulted with Client within 48 Hours**

	<b>Target</b>	<b>Actual</b>
FY 2010	93%	92%
FY 2011	100%	95.5%
FY 2012	100%	94.34%
FY 2013	100%	93.90%
FY 2014	100%	N/A

After FY 2004, when PDS established a baseline for the pretrial restraint measure reflected in the chart below, the numbers of individuals represented by PDS who are charged with detainable offenses increased due to a change in the law;<sup>47</sup> many of those individuals are typically held in detention pending trial due to the seriousness of the charged offense. Notwithstanding that increase, PDS achieved a reduction in some form of pretrial restraint in 48 percent of its cases. Although PDS consistently misses its 99 percent target, with FY 2013 being no exception, the goal nonetheless remains seeking release for any client who wants it. PDS’s actual performance and fiscal year targets are as follows:

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<sup>47</sup> The District of Columbia Council lowered the standard the government must meet to justify pretrial detention without bond of those charged with certain offenses (lowering it from substantial probability to probable cause – i.e., more likely than not – that the person has committed the charged offense), making it easier for prosecutors to persuade the court to order such detention.

## Percentage of Cases in Which Reduction in Pretrial Restraint Was Obtained

	Target <sup>48</sup>	Actual
FY 2010	67%	59% 66.5% within first 21 days after initial hearing
FY 2011	99%	53.2% 60% within first 21 days after initial hearing
FY 2012	99%	53% 60% within first 21 days after initial hearing
FY2013	99%	48% 59.1% within first 21 days after initial hearing
FY2014	99%	N/A

While PDS is pleased to provide the above data to demonstrate the performance of the Trial Division, so many aspects of this division’s work cannot be fully captured by performance data alone. PDS has provided many examples over the years where the work of the Trial Division has led to systemic reform, exonerations, and legislative reform. An example from FY 2013 is a homicide case in which an eighteen-year-old PDS client was charged with second degree murder. If not for PDS, the case would have proceeded to trial with a high probability of conviction because the government had multiple witnesses who identified PDS’s client as the perpetrator of the offense. Instead, after hours of investigation located critical videotapes, additional witnesses, and telling phone and Instagram records, and after careful consultations with outside experts, PDS presented all the evidence its lawyers, experts, and investigators had uncovered to the government. Although PDS and the United States Attorney’s Office for the District of Columbia (USAO) are usually vigorous opponents in the adversary system, in this instance the parties met and shared information, and PDS ultimately convinced the USAO to dismiss the case, setting free an innocent man and saving taxpayers the cost of a lengthy trial. In FY 2013, PDS had an additional 45 cases dismissed.

### **Appellate Division**

PDS’s third judicial survey also sought the views of the District of Columbia Court of Appeals judges. The survey results for the Appellate Division attorneys mirror those for the Trial

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<sup>48</sup> Starting in FY 2011, PDS revised its performance targets for both measures to reflect that PDS’s goal is to visit all clients within 48 hours of appointment and that virtually all clients desire to be released. Achieving the first target is less subject to third-party influence, but the combination of prosecutorial charging decisions and release arguments, detention laws, and the disproportionate number of serious cases PDS handles makes the second target essentially unattainable. PDS’s ultimate goal for the second target, reduction in pretrial restraint, is to seek its clients’ objectives (usually pretrial release), even when the likelihood of achieving them is small.

Division: the appellate judges find the Appellate Division to be a high performing group. As one judge commented, “the general quality of the PDS attorneys appearing before the Court of Appeals is very high indeed.”

**PDS FY 2008 and FY 2013 Judicial Surveys – District of Columbia Court of Appeals**

Statement	Percentage of Responding Court of Appeals Judges Who Agree With Statement	
	FY 2008	FY 2013
PDS staff provide and promote quality legal representation to indigent adults and children facing a loss of liberty.	100%	100%
PDS staff are zealous advocates for their clients.	100%	100%
PDS staff are well prepared to defend their clients.	100%	100%
PDS staff adhere to ethical standards when representing their clients.	100%	100%
PDS staff are timely in following court/administrative procedures.	100%	85.7%
PDS staff are current with the latest legal principles.	69.2%	100%
PDS staff are skillful in dealing with witnesses.	100%	100%
PDS staff are skillful in oral advocacy.	100%	100%
PDS staff are skillful in their written advocacy.	100%	100%
PDS’s working relationship with us is professional and respectful.	100%	100%

PDS secures reversals at the appellate level at a rate eight times higher than that of the rest of the defense bar (33 percent versus four percent).<sup>49</sup> Between FY 2010 and FY 2012, PDS reduced the amount of time between the Court’s issuance of the notice to file and the filing of a brief by 17 percent and has reduced the case backlog by 67 percent. PDS’s goal is to eliminate the backlog and reduce the time between the Court’s issuance of the notice to file and the filing of a brief by more than half to just 40 days over the next five years without adversely impacting quality.

A sample of PDS victories underlying the data in FY 2013 demonstrate how PDS’s Appellate Division is essential to the goals of ensuring fair trials and equal justice, and avoiding wrongful convictions and over-incarceration.

In *Kittle v. United States*,<sup>50</sup> the Court reversed the client’s conviction because, notwithstanding the common-law rule that jurors may not impeach their verdicts, the fundamental importance of the right to an impartial jury requires that judges have discretion to inquire into a juror’s post-

<sup>49</sup> These figures reflect results in published opinions from calendar years 2005 through 2013.

<sup>50</sup> [www.dccourts.gov/internet/documents/09-CF-1586.pdf](http://www.dccourts.gov/internet/documents/09-CF-1586.pdf).

verdict allegation of racial or ethnic bias expressed during deliberations. In *Fortune v. United States*,<sup>51</sup> the Court reversed a client's conviction because the trial court improperly coerced a verdict by telling the jurors they would be deliberating indefinitely in response to their note saying they could not reach a unanimous verdict. In *Dorsey v. United States*,<sup>52</sup> the Court reversed the client's conviction because the trial court erroneously admitted a statement from the client after he had been badgered repeatedly by District of Columbia police detectives despite invoking his right to remain silent until he had consulted with counsel in violation of *Edwards v. Arizona*.<sup>53</sup> And in *Young v. United States*,<sup>54</sup> the Court reversed the client's conviction leading to a 27-year sentence for drug distribution on the grounds that the non-PDS trial attorney provided ineffective assistance of counsel in failing to consult with a narcotics expert before trial and present expert testimony at trial that would have discredited the government's key witness.

The Appellate Division continues at the vanguard of criminal justice in the District of Columbia by providing exemplary representation of individual clients, advancing the development of the law, and training the bench and bar.

### **Parole Division**

The Parole Division consistently obtains parole revocation sanctions for clients that are below the U.S. Parole Commission (USPC) guidelines. The Parole Division is the sole source of representation for more than 95 percent of parolees and supervised releasees facing revocation proceedings. The division's lawyers practice before the USPC, which continues to use guidelines to determine the period of incarceration in the event of a revocation – guidelines that its own experts have identified as outdated and likely to result in over-incarceration. As the Short-term Intervention for Success (SIS) pilot program described below has demonstrated, far shorter sentences can be employed in the face of violations without impacting public safety and at considerable cost savings. PDS represents approximately 1,500 clients annually who are facing revocation. Of those clients, approximately 30 percent proceed to a final revocation hearing. The other 70 percent accept either expedited plea offers or incarceration combined with drug treatment, are selected to participate in the SIS program, or are convicted of a new offense and therefore have their cases handled in another jurisdiction, according to USPC rules. Revocation hearings are conducted before hearing examiners employed by the USPC, and their decisions are reviewed by U.S. Parole Commissioners. In FY 2013, PDS won reinstatement and release in 35 percent of these contested hearings and secured reduced sentences (sentences below the guidelines) in another 29 percent of these cases. Thus, PDS advocacy reduced the over-incarceration of its clients in 64 percent of the contested hearings.

One of the Parole Division's FY 2013 cases illustrates how effective representation produces just results for clients and cost-saving outcomes by reducing over-incarceration and promoting reentry. Mr. F. is a client with a hearing impairment whose Court Services and Offender Supervision Agency (CSOSA) court supervision officer (CSO) requested a warrant for his arrest less than a month after he was placed on supervised release. The CSO requested the warrant

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<sup>51</sup> [www.dccourts.gov/internet/documents/09-CF-780.pdf](http://www.dccourts.gov/internet/documents/09-CF-780.pdf).

<sup>52</sup> [www.dccourts.gov/internet/documents/06-CF-1099\\_mtd.pdf](http://www.dccourts.gov/internet/documents/06-CF-1099_mtd.pdf).

<sup>53</sup> 451 U.S. 477 (1981).

<sup>54</sup> [www.dccourts.gov/internet/documents/10-CF-1001.pdf](http://www.dccourts.gov/internet/documents/10-CF-1001.pdf).

based on the sole allegation that Mr. F. failed to report for supervision because she could not find him at the shelter where he was supposed to be staying. At the time she requested the warrant, the CSO knew that Mr. F. was hearing impaired and had no family in the area. Mr. F. was arrested several months after the warrant was issued, and PDS entered its appearance on his behalf and obtained an interpreter for him. Although the USPC found after a hearing that Mr. F. had violated his release conditions, PDS successfully argued that CSOSA had failed to make the appropriate accommodations for him, and the USPC decided not to revoke his supervised release status. Upon Mr. F.'s release, PDS's Office of Rehabilitation and Development staff, with the help of PDS interns who also have hearing impairments, accompanied Mr. F. to meet his new CSO, gave the CSO notice of Mr. F.'s need for a certified interpreter for his scheduled office visits and for any communication about the conditions and terms of his supervision, escorted Mr. F. to a new shelter and informed the counselors there of Mr. F.'s hearing impairment, and introduced him to service providers in his community who support people with hearing impairments.

### **Mental Health Division**

PDS's Mental Health Division wins 39 percent of the contested probable cause hearings, or the first hearing in a proceeding to involuntarily commit a person to the District's psychiatric hospital.<sup>55</sup> These hearings are presided over by an associate judge of the District of Columbia Superior Court. These initial hearings simply determine whether the government meets the low standard of probable cause before it can proceed to the next stage of the civil commitment process. When PDS prevails at these hearings, clients who would otherwise be tying up hospital resources are released, saving taxpayer funds and making the hospital resources available to those most in need. For cases that proceed past the probable cause hearing, the proceeding to determine whether a client is to be involuntarily committed is a commission hearing. These hearings are presided over by a magistrate judge of the District of Columbia Superior Court and two doctors employed by the Court. PDS wins 50 percent of the contested commission hearings. For those clients who are civilly committed, the presumptive release date is one year from the initial commitment. If the District of Columbia Department of Mental Health wants to continue the commitment for an additional year, it must prevail at a recommitment hearing. Like the commission hearings, this hearing is presided over by a magistrate judge of the District of Columbia Superior Court and two doctors employed by the Court. PDS wins 20 percent of the recommitment hearings and mitigates the outcome in 33 percent of these cases by securing outpatient status where the government is seeking inpatient status. The cost of treatment in the community is considerably less expensive than inpatient treatment.

Just as performance data cannot tell the entire story for the Trial Division, it also cannot do so for the Mental Health Division. An example of a cost-saving result short of a contested hearing is Mr. L.'s case. Mr. L.'s mother is a recovering drug addict. Mr. L. had been placed in foster care

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<sup>55</sup> These results are based on data collected from FY 2013. In FY 2012, PDS changed its practice with respect to these initial hearings. This change has led to both a higher percentage of successful outcomes and a higher percentage of cases in which the government discharges the client prior to the hearing. While PDS must now take a slightly smaller case load to accommodate the new practice, the outcomes are much better for clients and provide a cost savings to the system. PDS will be working with the CJA attorneys to promote this change in practice across all cases.

when his mother was unable to care for him. But eventually, Mr. L. went to live with his mother and grandmother. While Mr. L. was living with them, his mother filed a petition for civil commitment against him. The case was headed for a very unpleasant and costly trial. Instead of proceeding to trial, PDS was able to convince the court that this case should be resolved through mediation. Mediation, while commonplace in most civil arenas, was unprecedented in mental health matters in the District. But PDS, consulting with all the parties, persuaded the judge to meet with all the parties to work through a fair settlement. As a result, the case was dismissed short of a lengthy and costly trial, with the family reunited and receiving services in the community identified by the MHD lawyer.

All of the above-described results demonstrate that PDS adds value where it provides representation to clients and illustrate why PDS's performance is respected throughout the District of Columbia justice system.

## **Leveraging Technology**

### **PDS's Case Management System**

Beginning in FY 2009, PDS embarked on a multi-year project to update its case management system, Atticus, to provide greater utility to users, managers, and the executive staff. An internal project management team and an experienced outside consultant engaged by PDS generated the data set of requirements and the recommendation of an updated operating platform; they were reviewed and approved by senior management and used for the contract award process in FY 2010. During FY 2011, PDS completed the design phase of the project on schedule and converted the software platform the system operates on from a no-longer-supported software product to the more current .Net platform. In FY 2012, PDS substantially completed construction of the front-end software system; in FY 2013, PDS completed the balance of construction and conducted system testing; and in January 2014, Atticus became fully and successfully operational. When PDS embarked on Atticus's creation thirteen years ago, PDS did not have the resources to design Atticus to serve as a data warehouse. The upgrade will allow PDS to track, analyze, and evaluate division-specific information and use that information to identify the most effective practices and train and assign staff accordingly. PDS also will use aggregate outcome data from each of its practice areas to more accurately track performance and to compare PDS's performance over time with that of other defender institutions and other defender systems to identify best practices.<sup>56</sup>

## **System Reform**

Although widely known for zealously participating in the adversarial process of the criminal justice system, PDS also works closely with criminal justice agencies and the courts to make the

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<sup>56</sup> PDS cannot yet compare outcomes in its cases to those of the CJA attorneys in the District of Columbia Superior Court because the Court will not provide electronic access to its case processing data. PDS was able to compare outcomes in appellate cases (and did so manually) because the cases are fewer in number, and all the District of Columbia Court of Appeals published and unpublished decisions have been made available through the Court's website since 2005.

justice system function more efficiently and fairly using its experience in individual cases and evidence based approaches.

### **Short-term Intervention for Success (SIS)**

In January 2012, the U.S. Parole Commission (USPC) began a pilot project implementing the cost-effective approach to public safety identified in a 2007 report commissioned by the District's Criminal Justice Coordinating Council. A JFA Institute study assessed the current guidelines structure used by the USPC when determining the period of incarceration a person on parole or supervised release should receive if the person was determined to have violated the conditions of release. The study concluded that the guidelines being used by the USPC had not been validated for the target population and resulted in over-incarceration. The study also concluded that the USPC could use a three-month or shorter period of incarceration and achieve the same public safety benefits as a twelve-month period of incarceration. PDS's Parole Division has been at the forefront advocating that the USPC reform its guidelines consistent with the available research. The USPC instituted the Short-term Intervention for Success (SIS) project, with PDS's Parole Division providing the sole source of representation at these proceedings. As PDS predicted, a study of the pilot program revealed no increase in the number of technical violations by those in the SIS program as compared with a control group, and showed a reduction in the rate of recidivism – 38 percent for the control group and only 27 percent for those participating in SIS.<sup>57</sup> Fully implemented, it is estimated that this program could save taxpayers more than \$7.5 million.<sup>58</sup> Simply put, shorter periods of incarceration can be used without increasing the risk to the public and at considerable savings.

### **Mental Health Sanctions Docket**

In FY 2013, the U.S. Parole Commission (USPC) expanded the Mental Health Sanctions Hearing Docket (Mental Health Docket) that began as a pilot project in March 2012. Based on PDS's experience with the District of Columbia Superior Court's Mental Health Court, PDS advocated for a new approach by the USPC, arguing that failing to attend all of the required meetings, mental health treatment, and drug treatment is not indicative of a public safety threat but instead is caused by difficulties faced by people with mental illness in making and remembering appointments. In response, the USPC created the Mental Health Docket. The goal of the Mental Health Docket is to target a specific population whose non-compliant conduct is likely caused by a mental illness. Rather than issue an arrest warrant for a supervisee, the USPC summons the supervisee to a Mental Health Sanction Hearing in the community. At the hearings, an individualized supervision plan is created with the input of the Court Services and Offender Supervision Agency, the District of Columbia Department of Mental Health, and the PDS advocate and approved by the USPC. Results have shown that with this kind of collaborative approach and commitment to helping people who suffer from mental illness comply with supervision, they can be successful in the community. The project has now moved beyond the pilot stage, and the USPC has expanded the hearing calendars to bring in more cases

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<sup>57</sup> See *Evaluation of the Short-Term Intervention for Success (SIS) Policy for Technical Violators*, U.S. Parole Commission, Austin & Johnson, May 2013.

<sup>58</sup> *Id.*

on each docket. PDS continues to be the sole provider of all the legal representation required to support the Mental Health Docket.

### **Drug Court Improvements**

In FY 2012, PDS, the District of Columbia Pretrial Services Agency, the District of Columbia Superior Court, the United States Attorney's Office for the District of Columbia, and attorneys from the Criminal Justice Act panel worked together to identify and implement changes based on research to improve the District of Columbia Superior Court Drug Intervention Program (SCDIP). Research has demonstrated that Drug Court programs can be effective in reducing criminal recidivism, improving the psycho-social functioning of offenders, and reducing taxpayer costs if the courts employ specific programs targeted to specific populations.

An assessment of SCDIP was completed to determine whether or not the program was employing evidence-based practices. During the fall of 2011, representatives from all of the agencies attended a week of training assessing the current state of the research on Drug Courts. As a result, many changes to the District's program were approved.

A subcommittee that included PDS was formed to implement these changes. These changes are designed to target populations most likely to re-offend without intervention and implement a combination of treatment and sanctions that research has shown produces positive outcomes for this population. As a result, a smaller but more targeted group is now the focus of Drug Court and is a population in which all of the participating agencies will invest more time and resources. PDS continues to aid in the implementation of changes to the program that will increase the likelihood of success for participants and ensure that their due process rights are being upheld. The changes have reduced the number of cases PDS handles in Drug Court but have increased the workload of each case. To manage these workload changes and be more efficient, PDS switched from rotating attorneys to Drug Court and assigned Drug Court duties to a single PDS attorney who handles all Drug Court representation.

The full complement of changed sanctions and incentives is scheduled to be in place in late 2014. The Drug Court program has been collecting data for future research to determine the cost-effectiveness of the program as implemented in the District in the long- and short-term, but the available research suggests this targeted investment will produce both savings and improved results.

### **Criminal Record Sealing**

In response to a request by the District of Columbia Council, PDS worked with the U.S. Attorney's Office for the District of Columbia (USAO) and the District of Columbia Office of the Attorney General (OAG) to draft legislation to expand the District's criminal records sealing law. The first comprehensive record sealing statutory scheme, passed in 2006, contained a number of procedural hurdles and substantive bars to getting before a judge to request discretionary records sealing. PDS worked with the USAO and the OAG to lower the procedural hurdles and eliminate the absolute bars to judicial consideration. Now, more people will be able to request that the court seal records of their arrests that did not result in convictions. After the compromise bill passed the Council unanimously, PDS drafted proposed orders for use by the

judges and trained staff at the USAO and at the District of Columbia Metropolitan Police Department on the changes in the law.

### **Compassionate Release**

PDS assists inmates who are terminally ill but unable to apply to the court for compassionate release. Most terminally ill individuals serving District of Columbia Code-based prison sentences can seek compassionate release from either the District of Columbia Superior Court or the Federal Bureau of Prisons. No statute, however, allowed a terminally ill person serving a determinate misdemeanor sentence to apply for a reduction in sentence. PDS drafted language to close this gap in the law. PDS worked with the USAO and the District of Columbia Department of Corrections to refine the language of the bill to ensure that the interests of clients were protected as the needs of all affected agencies were addressed. The resulting bill was unanimously approved by the District of Columbia Council and signed by the Mayor, and the Act became law in June 2013. The law will not only allow sentenced individuals to die with dignity and in the company of their families but will save taxpayers the unnecessary costs associated with guarding incapacitated inmates in hospital settings.

### **Systemic Litigation**

As a comparatively small institutional defender, PDS has traditionally handled those cases in which it can have the most impact. Historically, that has included the most serious and costly criminal and delinquency cases. But PDS also used those cases to help it identify litigation that can have a larger impact beyond cases handled by individual PDS lawyers. This year, PDS used highly skilled lawyers to target cases involving constitutional violations that affect large numbers of persons and cause both unfairness and inefficiencies in the criminal justice system.

### **Civil Forfeiture**

In FY 2012, PDS's Special Litigation Division (SLD) successfully challenged the constitutionality of the District of Columbia's civil forfeiture scheme in the U.S. District Court for the District of Columbia. PDS won a preliminary injunction declaring aspects of the District's civil forfeiture scheme as likely unconstitutional because the city was seizing and retaining individuals' cars indefinitely without ever providing them a prompt post-seizure hearing at which the person could contest the validity of the seizure and the validity of the continued police retention of the vehicle. The case resulted in the return of the client's car.

In early FY 2013, through informal negotiations with the Office of the Attorney General (OAG), PDS secured the release of approximately fifty vehicles, often to people who needed their cars to get to and from work, school, and medical appointments, and to take care of urgent tasks. However, the practice of civil forfeiture did not change, and the city continued to seize cars in violation of the principles set forth in the U.S. District Court's FY 2012 ruling. As a result, PDS filed a class action lawsuit in May 2013, on behalf of all owners whose vehicles are being unconstitutionally held by the District. At the same time, PDS consulted on legislative efforts to reform the civil forfeiture statute, working with a District of Columbia Councilmember's office on her bill to eliminate the unconstitutional aspects of the District's forfeiture practices.

In the wake of both the class action lawsuit and the proposed legislation, the District of Columbia Council asked PDS to chair a working group to draft consensus comprehensive reform legislation, and the District agreed to work with PDS and other stakeholders to draft legislation that overhauls the civil forfeiture scheme for all types of seized property, including cars, money, and homes. As a result of this process and agreements made in litigating the class action lawsuit, PDS helped to immediately mitigate some of the worst hardships experienced by indigent people whose property was seized, and the city has agreed to return more than 200 cars to their owners. The District has also agreed to a wide variety of temporary reforms that dramatically reduce the number of forfeitures and that make the process fairer; it is likely that new legislation will make permanent a number of reforms that will help thousands of people each year.

## **Training**

In FY 2013, PDS continued its commitment to advancing high quality defense for those who cannot afford to hire their own attorneys. As it has in the past, PDS produced a “Summer Series” on specialty topics over the course of two months for local attorneys;<sup>59</sup> produced local training for certified CJA investigators; and produced the 49<sup>th</sup> Annual Deborah T. Creek Criminal Practice Institute Conference.<sup>60</sup> Annually, PDS lawyers from each of its legal divisions provide more than fifty hours of training for hundreds of non-PDS attorneys representing indigent clients in the District of Columbia.<sup>61</sup>

## **CONCLUSION**

The core work of PDS is the representation of individual clients facing a loss of liberty. The examples above all flow from the work done every day by PDS lawyers, investigators, and social workers, and other staff in thousands of matters. The systems for involuntary commitments, parole revocation proceedings, and criminal and juvenile delinquency proceedings are adversarial in nature, and PDS has able adversaries in the District’s Attorney General’s Office and the United States Attorney’s Office for the District of Columbia. A fair justice system depends on having all components (judges, prosecution, and defense) fulfill their respective roles. PDS plays a pivotal part in ensuring that all cases, whether they result in plea agreements or trials, involve comprehensive investigation and thorough consultation with the client. For those matters that proceed to trial or to an administrative hearing, PDS litigates each matter to the fullest, ensuring that the proceeding constitutes a full and fair airing of reliable evidence. As it has every year since its inception, in FY 2013, PDS won many trials, fought a forceful fight in others, and found resolution prior to trial for many clients. Whatever the outcome or type of case, PDS’s goal for each client was competent, quality representation. Adequate financial

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<sup>59</sup> In FY 2013, the Summer Series received an average rating of 4.6 on a five-point scale. The lowest rating for a single session was 4.4, and the highest was 5.

<sup>60</sup> Due to budget constraints PDS did not present its annual forensic science conference and instead covered the critical topics in this arena at this year’s Deborah T. Creek Criminal Practice Institute Conference.

<sup>61</sup> In addition, PDS staff attorneys, forensic social workers, and investigators are routinely asked to be presenters at training sponsored by the District of Columbia courts, the District of Columbia Bar, and various defender organizations locally and nationally. Through these programs, PDS provides assistance to local counsel and to defender offices around the country, most recently in Mississippi, Missouri, Virginia, New York, and Florida.

support for PDS's services is essential to assist the District in meeting its constitutional obligation to provide criminal defense representation in the District's courts, to ensure the reliability of the results, and to avoid costly wrongful convictions.

**BUDGET DISPLAYS**

**PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA**

**FY 2015 Summary of Changes**

	<b>FTE</b>	<b>Amount (\$ in 000s)</b>
<b>FY 2014 Enacted .....</b>	<b>218</b>	<b>40,607</b>
<b>Adjustments to Base:</b>		
Less Non-Recurring Expense.....	-	
Moving Expenses.....	-	(1,150)
Add - New Positions	6	554
Pay Raises	-	221
General Pricing Level Adjustments.....	-	104
Efficiency Savings.....	-	(255)
<b>Total, Adjustments.....</b>		<b>(526)</b>
<b>FY 2015 BASE.....</b>	<b>224</b>	<b>40,081</b>
<b>PROGRAM CHANGES:</b>		
Non-Recurring Expenses		
Moving Expenses	-	1,150
<b>TOTAL, Program Changes</b>	<b>-</b>	<b>1,150</b>
<b>FY 2015 REQUEST.....</b>	<b>224</b>	<b>41,231</b>

**FY 2015 Salaries and Expenses**  
**Summary of Requirements by Grade and Object Class**  
**(\$ in 000s)**

<b>Grades:</b>	2013 Sequestration level		2014 Enacted		FY 2015 Budget Request	
	FTE	Amount	FTE	Amount	FTE	Amount
ES	3	466	3	473	3	473
AD-15	16	2,317	16	2,310	16	2,369
AD-14	67	8,258	75	9,291	67	8,342
AD-13	31	3,128	36	4,152	32	3,530
AD-12	27	2,177	27	2,198	27	2,504
AD-11	20	1,342	19	1,506	35	2,505
AD-10	1	57	2	120	1	59
AD-09	14	812	16	978	14	833
AD-08	4	189	4	211	4	194
AD-07	20	907	16	728	19	931
AD-06	3	129	2	91	3	131
AD-05	3	118	2	78	3	121
AD-04	-	-	-	-	-	-
Total Appropriated Positions	209	19,900	218	22,136	224	21,992
EX/ES FTE		3		3		3
GS FTE		206		215		221
Average EX/ES Salary		155		158		158
Average AD Salary		94		100		97
Average AD Grade		13		13		13
<b>Object Class</b>						
11.1 Full Time Permanent	209	19,900	218	22,136	224	21,992
11.5 Other Pers.Comp.		270		270		280
11.8 Special Pers. Services		460		900		900
12.0 Benefits		5,833		6,339		6,993
13.0 Unemployment Comp.		100		100		100
<b>Personnel Costs</b>	209	26,563	218	29,745	224	30,265
21.0 Travel & Training		247		368		297
22.0 Transportation of Things		8		10		10
23.1 Rental Payments to GSA		2,652		2,773		2,837
23.2 Rental Pmts.to Others, & Misc.		970		917		969
23.3 Comm., Utilities & Misc.		405		468		480
24.0 Printing and Reproduction		51		102		98
25.1 Consulting Services		791		953		980
25.2 Other Services		1,675		1,476		1,528
25.3 Purch.from Gov't Accts.		982		1,075		1,099
25.4 Maintenance of Facilities		50		124		115
25.7 Maint. of Equipment		275		325		323
26.0 Supplies and Materials		444		533		548
31.0 Furniture and Equipment		180		588		532
32.0 Buildout		-		-		-
<b>Non-Personnel Costs</b>		8,730		9,712		9,816
<b>TOTAL</b>						
<b>31.0 Non recurring Expense - Moving Expenses</b>	209	35,293	218	39,457	224	40,081
		-		1,150		1,150
<b>Grand Total</b>		35,293		40,607		41,231
<b>OUTLAYS</b>		31,764		36,546		37,108

## APPROPRIATION LANGUAGE

### Public Defender Service for the District of Columbia

#### Appropriation Language Fiscal Year 2015

For salaries and expenses, including the transfer and hire of motor vehicles, of the District of Columbia Public Defender Service, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, [\$40,607,000] **\$41,231,000: Provided**, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of Federal agencies.

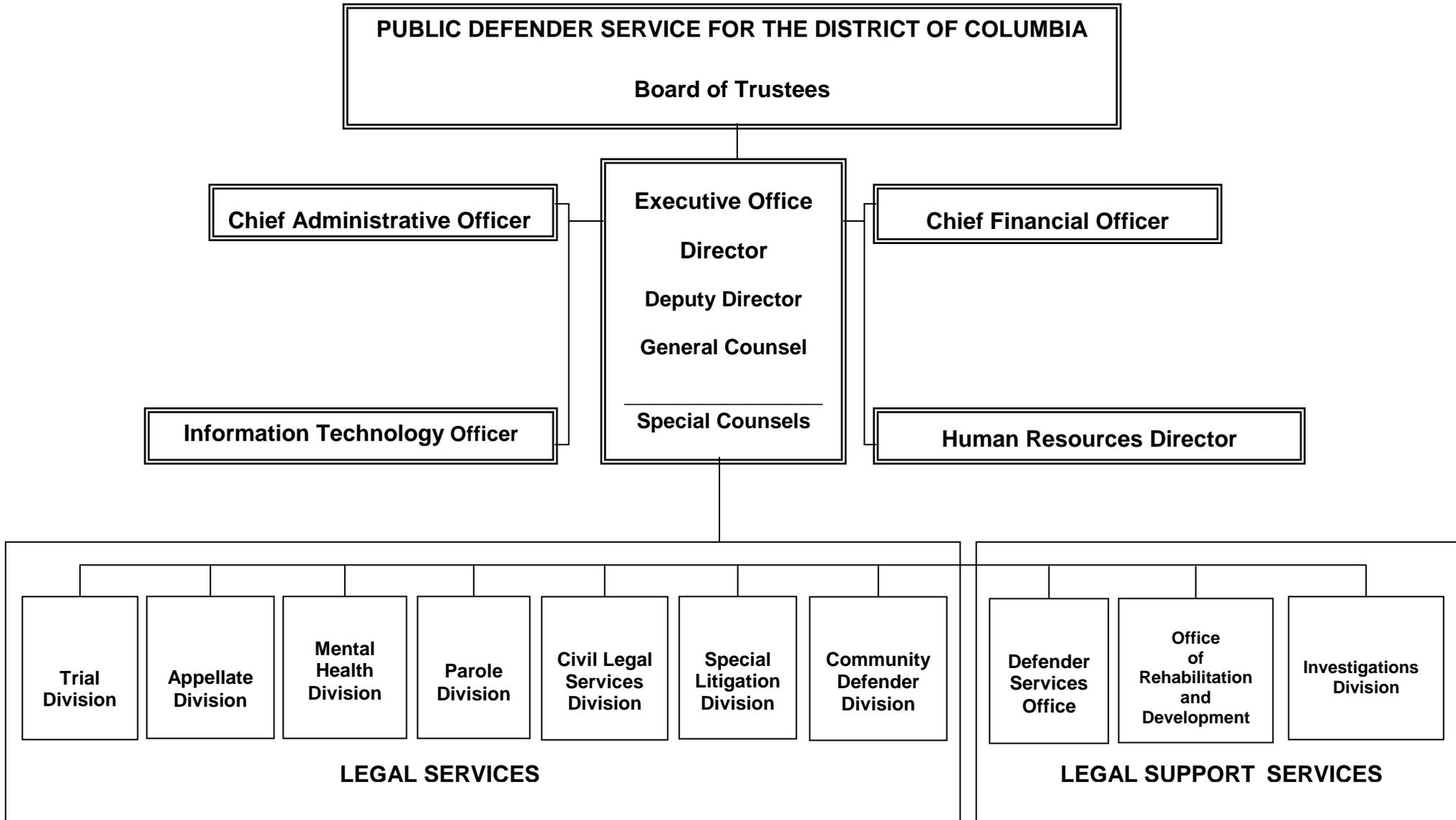
[Authority to Accept Voluntary and Uncompensated Services]

**Provided further**, That notwithstanding section 1342 of title 31, United States Code, for this and successive years, and in addition to the authority provided by District of Columbia Code Section 2-1607(b) upon approval of the Board of Trustees, the District of Columbia Public Defender Service may accept and use voluntary and uncompensated (gratuitous) services for the purpose of aiding or facilitating the work of the District of Columbia Public Defender Service.

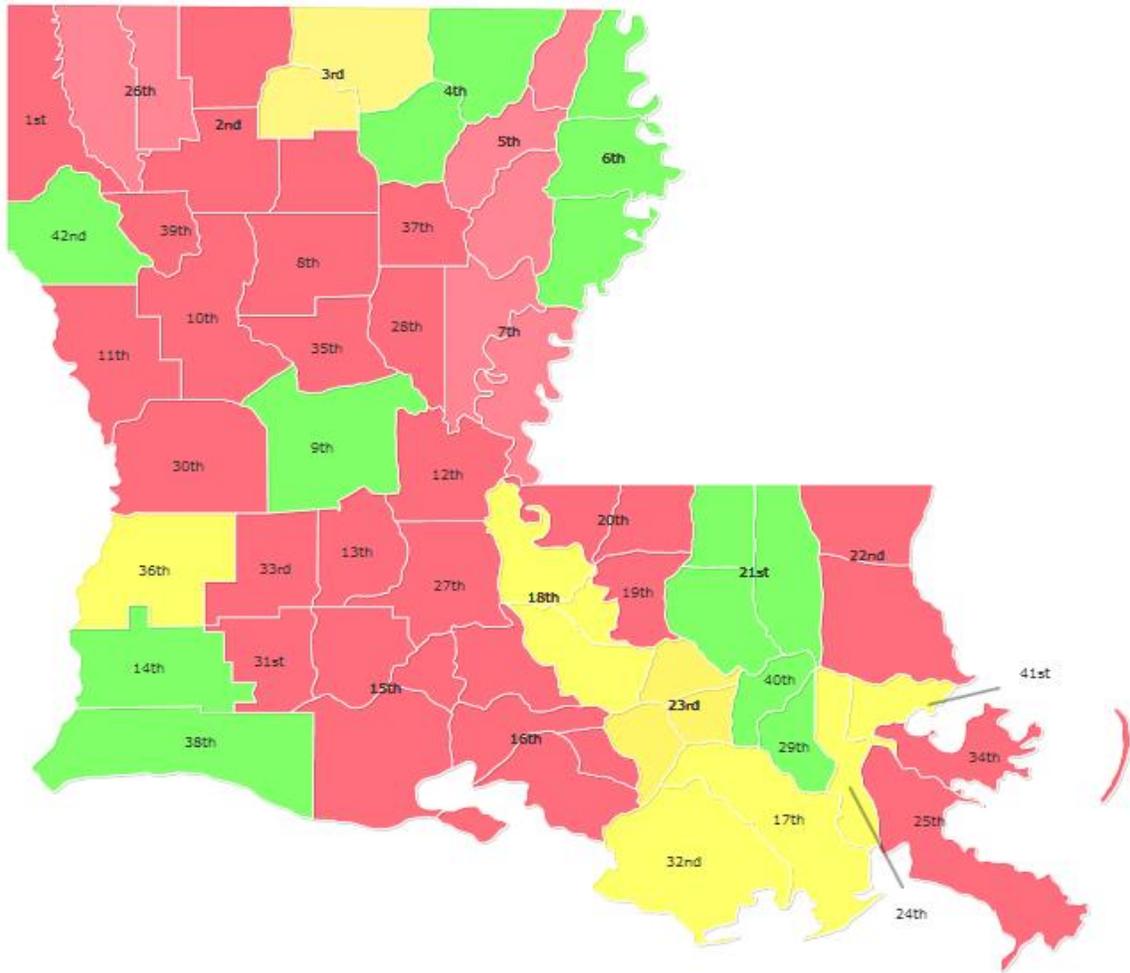
[Change Board of Trustees Members' Status to Employees]

**Provided further**, That notwithstanding District of Columbia Code Section 2-1603(d), for this and successive years, for the purposes of any action brought against the Board of Trustees of the District of Columbia Public Defender Service, the trustees shall be deemed to be employees of the District of Columbia Public Defender Service.

# ORGANIZATION CHART



# CRIMINAL JUSTICE SYSTEM AT A CROSSROADS



**James T. Dixon, Jr.**  
State Public Defender  
500 Laurel Street, Suite 300  
Baton Rouge, LA 70801  
(225) 219-9305





## MESSAGE FROM THE STATE PUBLIC DEFENDER –

**JAMES T. DIXON, JR.**

---

Since the formation of the Louisiana Public Defender Board (LPDB), great strides have been made in public defense. Caseloads have been reduced, standards have been promulgated, and the quality of representation has improved throughout the state. The fiscal crisis which will occur within the next two years threatens public safety as well as the advances that have been made in public defense.

When LPDB was formed, there were a number of districts which held fund balances. Due to inadequate funding and reliance on an unstable local funding stream, heavily dependent on special court costs, districts have relied on these fund balances to keep the system afloat. Many of these funds have been depleted and most of those that still remain are rapidly being depleted. By the end of July 2016, LPDB expects that no less than 24 of the state's 42 judicial districts will become insolvent and enter restriction of services. These districts include rural districts as well as major population centers such as Bossier Parish, East Baton Rouge Parish, Jefferson Parish, Lafayette Parish, Orleans Parish, and St. Tammany Parish.

Failure of the public defense system will come with severe societal and financial costs that will be felt by the entire state. Service restriction will slow down the judicial system as district offices in insolvent districts will be forced to lay off attorneys leaving the remaining attorneys to assume their caseloads. Rising caseloads will require district offices to conform to Louisiana and United States Constitutional requirements for the effective assistance of counsel, by refusing new cases as the remaining attorneys absorb their colleagues' caseloads thereby precipitously raising caseloads to unmanageable levels. As districts enter restriction of services court dockets will slow down as private attorneys, many of whom will have had little or no experience and inadequate training in criminal defense law, must be appointed to cases on a pro-bono basis. Reliance on overworked and under-trained counsel will likely lead to an increase in the incarceration rate, adding to the financial strain placed on Louisiana's prison system which already boasts the highest incarceration rate in the World.

Further, we can expect litigation throughout the state in the form of ineffective assistance of counsel claims, suits from private counsel seeking relief from appointments in criminal cases without pay, and federal claims arising from the collapse of constitutionally mandated representation of the indigent in criminal matters.

Working with all Louisiana stakeholders, we can and must find a solution to this crisis.

Sincerely,

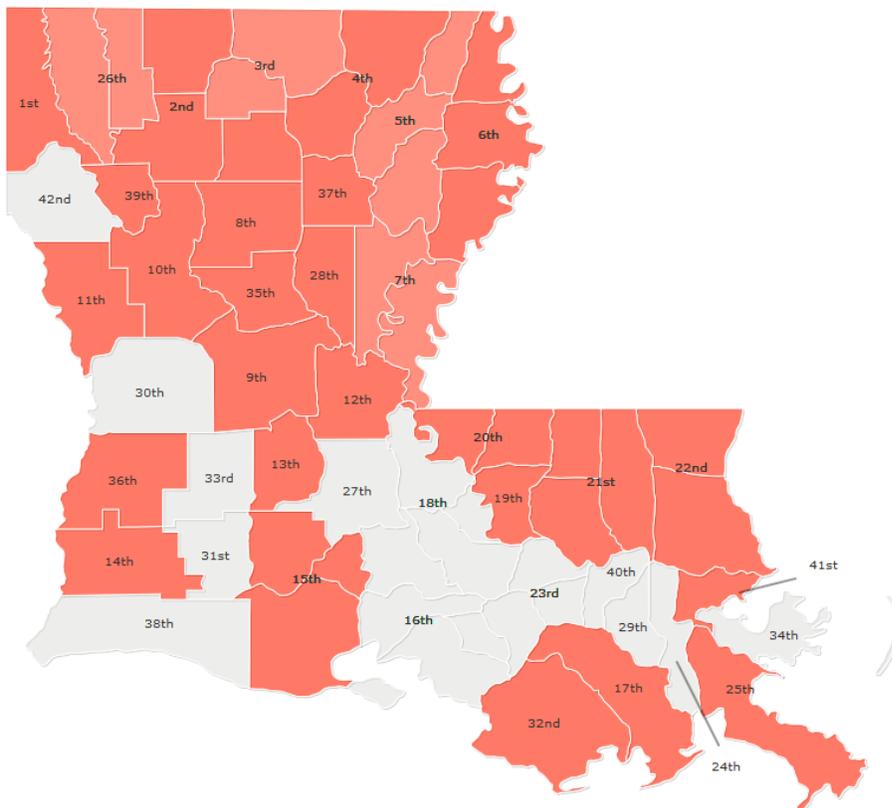
James T. Dixon, Jr.  
State Public Defender

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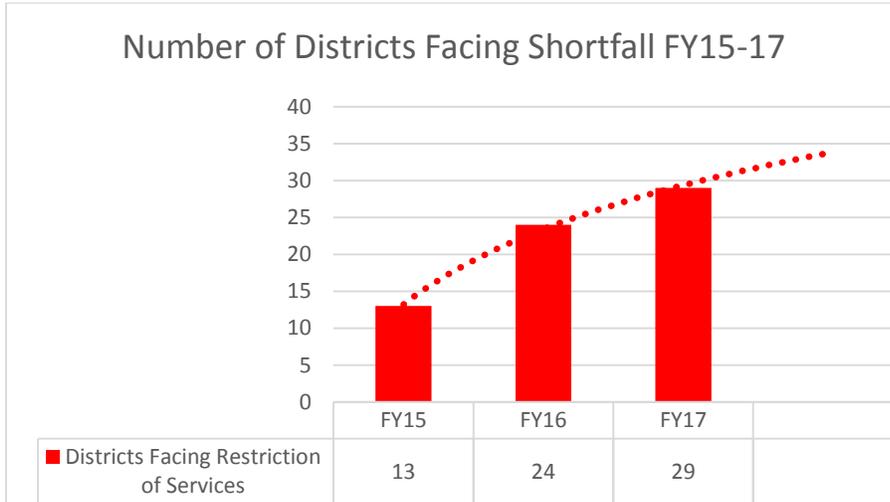
# CRIMINAL JUSTICE SYSTEM IN CRISIS

Louisiana's public defense system is a critical component of the criminal justice system, protecting public safety by preventing wrongful convictions and protecting due process and constitutional rights. The Louisiana Public Defender Board (LPDB) was created by the Legislature in 2007 as a representation of the State's commitment to the pursuit of equal justice for all of Louisiana's citizens regardless of income. Policies and procedures implemented by LPDB have resulted in increased supervision and training, standards and guidelines, as well as improved client representation and outcomes. The public defense system has been persistently underfunded since its inception, due to reliance on unstable revenues requiring the assessment, collection, and dispersal of fines associated with traffic tickets and court costs for survival. As shown in the map below, as of August 2014, policies and procedures implemented by LPDB designed to increase efficiency, increase revenues, and decrease expenditures have prevented financial disaster in 29 of the state's 42 Public Defender Offices (districts in red) at least once between 2010 and 2014. Public Defender Offices have no control over these revenue streams, their collection, or disbursement. Thus, continued instability of revenues places the entire system at risk, jeopardizing public safety. Without sufficient resources necessary to provide the constitutionally guaranteed right to counsel for the more than 240,000 cases represented by public defenders each year, many districts will be required to begin restriction of services and potentially grinding the entire criminal justice system to a halt.



Source: LPDB Database, September 2014

# RESTRICTION OF SERVICES



Source: LPDB Database, September 2014

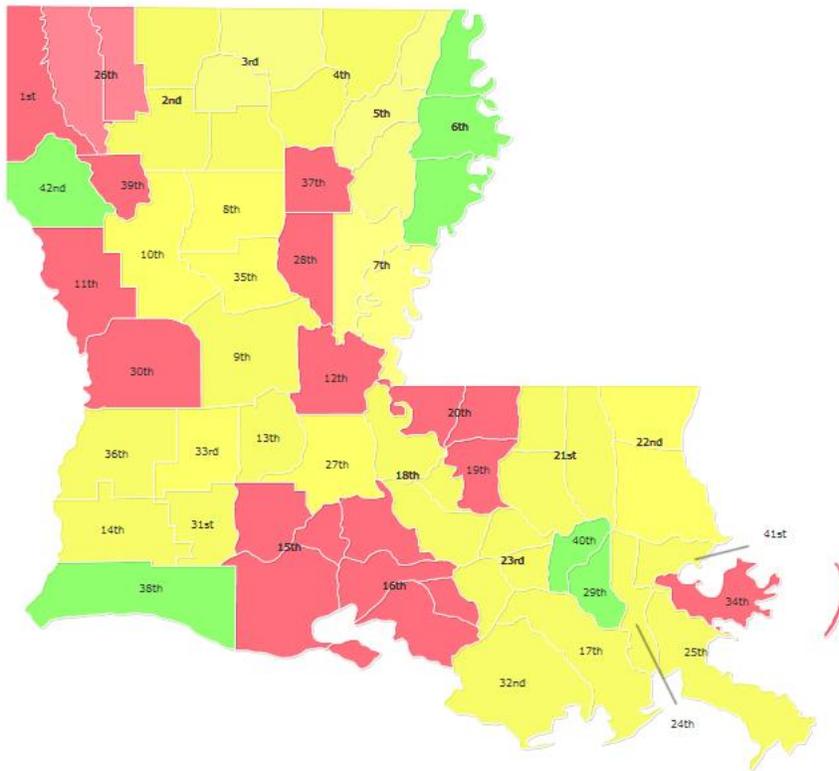
As expenditures exceed revenues, district public defense offices will be required to lay off attorneys, causing caseloads to rise. To conform to the Louisiana Rules of Professional Conduct and adhere to Louisiana and United States Constitutional requirements for the effective assistance of counsel, district offices will be required to refuse new cases as the remaining lawyers absorb their colleagues' caseloads thereby precipitously raising caseloads to unmanageable levels. Once attorneys are no longer able to accept new cases the districts must begin restricting services.

## DURING SERVICE RESTRICTION

- District offices **MUST** stop accepting new cases to prevent attorney caseloads from rising so far that attorneys are no longer able to meet Louisiana and United States requirements for the effective assistance of counsel.
- New cases will be assigned to the private bar or be placed on waitlists.
- The use of waitlists or assignments to the private bar will slow down court dockets in many areas, threatening public safety and jeopardizing justice for crime victims and their families.
- Clients will, in many cases, be represented by attorneys who do not specialize in criminal defense, potentially increasing the rates of ineffective assistance of counsel claims as well as increasing the risk of wrongful convictions which threaten public safety.
- Litigation will arise from private attorneys contesting their appointment to criminal cases without pay, as an unconstitutional taking.
- Increased risk for federal interference and litigation.

# FY15 OUTLOOK

Since the inception of LPDB, on a statewide level, sufficient revenues to meet the expenditures necessary for the compliant representation of eligible clients have never materialized. In the past, a greater number of districts accrued fund balances and had the ability to bail out the shortfall districts which only required a small amount of additional revenue to remain solvent. However during FY15, the remaining accruing (green) districts do not receive sufficient state funding to bail out the shortfall (red) districts who have exhausted their fund balances. This rapid insolvency among smaller districts as well as larger districts including, the 1<sup>st</sup> (Caddo Parish), 15<sup>th</sup> (Acadia, Lafayette, and Vermillion Parishes), 16<sup>th</sup> (Iberia, St. Martin, and St. Mary Parishes), 19<sup>th</sup> (East Baton Rouge Parish), and the 26<sup>th</sup> (Bossier and Webster Parishes) may cause restriction of services in several parts of the state. These estimates are based on LPDB’s projection that the 1<sup>st</sup> Judicial District’s Public Defenders Office will face a significant deficit and become insolvent in May 2015. If the 1<sup>st</sup> Judicial District Office is able to remain solvent, LPDB may be able to take additional measures to prevent insolvency in the remaining shortfall districts. However, this is merely a short term solution as without increased revenues, restriction of services is inevitable. As shown in the map below, without aggressive intervention the red districts are facing a shortfall and insolvency within fiscal year 15. Yellow districts are depleting their fund balances and many will become insolvent in the next fiscal year, while green districts are accruing revenues.



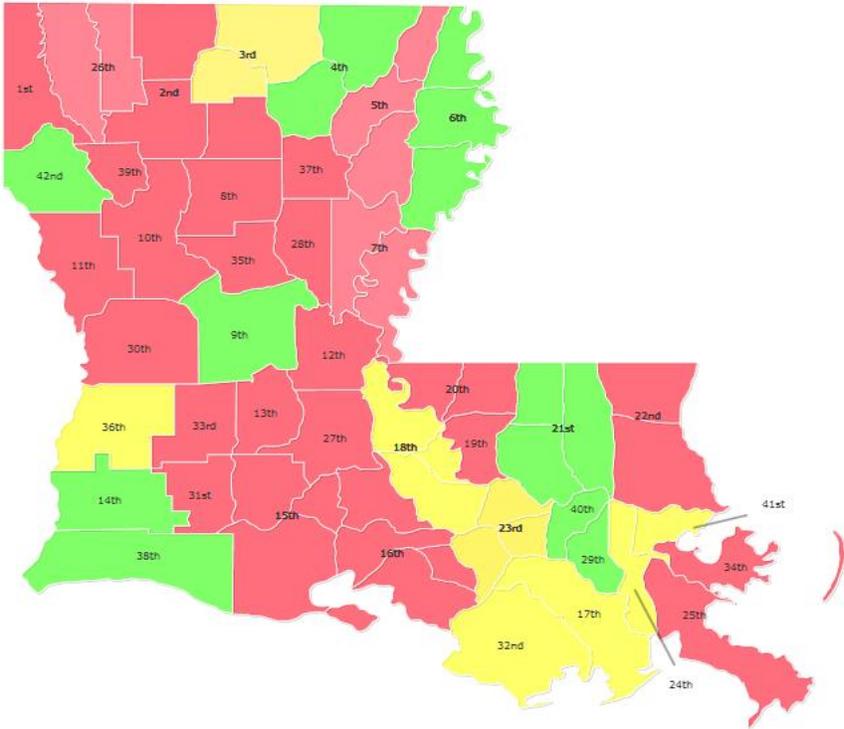
<u>District</u>	<u>Insolvency Date</u>
<b>1</b>	<b>May 2015</b>
<b>26</b>	<b>May 2015</b>
34	May 2015
12	June 2015
<b>15</b>	<b>June 2015</b>
<b>16</b>	<b>June 2015</b>
<b>19</b>	<b>June 2015</b>
20	June 2015
28	June 2015
30	June 2015
37	June 2015
39	June 2015

Source: LPDB Database, September 2014

Notes: (1) The 11<sup>th</sup> PDO has entered into a cooperative endeavor agreement with the 42<sup>nd</sup> PDO, whereby the 42<sup>nd</sup> PDO covers the gap between the 11<sup>th</sup> district’s expenditures and revenues. (2) The 7<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 22<sup>nd</sup>, 27<sup>th</sup>, 33<sup>rd</sup>, and 35<sup>th</sup> districts are expected to become insolvent very early in FY16, prior to distribution of the FY16 appropriations.

# FY16 OUTLOOK

After FY15, LPDB will be forced to abandon the DAF adjustment formula as districts continue to exhaust their fund balances becoming insolvent. Meanwhile, revenue accruals available for adjustment drastically decline and are insufficient to meet the needs of the shortfall districts. Elimination of the adjustment formula will be necessary in FY16 to protect the long-term viability of the remaining accruing (green) districts. The map below of FY16 represents a best case scenario wherein a minimum of twenty-five (25) public defender district offices across the state, including the 22<sup>nd</sup> district (St. Tammany and Washington Parishes) are expected to become insolvent and forced to call upon the private bar during service restriction. The FY15 and FY16 projections demonstrate the instability of the public defense system; as districts become insolvent, in particular the larger districts, the pace with which districts become insolvent begins to quicken.

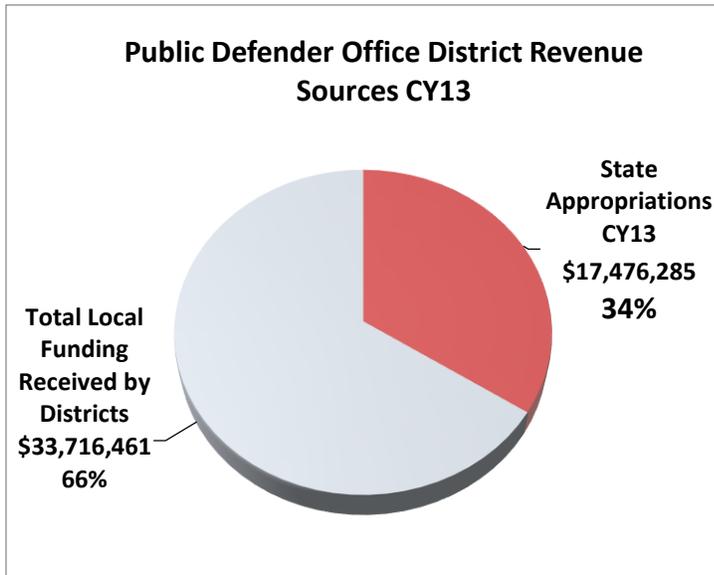


<u>District</u>	<u>Insolvency Date</u>
<b>1</b>	<b>FY15</b>
<b>15</b>	<b>FY15</b>
<b>16</b>	<b>FY15</b>
<b>19</b>	<b>FY15</b>
<b>20</b>	<b>FY15</b>
<b>26</b>	<b>FY15</b>
<b>28</b>	<b>FY15</b>
<b>34</b>	<b>FY15</b>
<b>37</b>	<b>FY15</b>
<b>39</b>	<b>FY15</b>
<b>12</b>	<b>FY15</b>
<b>30</b>	<b>FY15</b>
<b>8</b>	<b>December 2015</b>
<b>33</b>	<b>December 2015</b>
<b>7</b>	<b>January 2016</b>
<b>35</b>	<b>January 2016</b>
<b>10</b>	<b>February 2016</b>
<b>13</b>	<b>February 2016</b>
<b>25</b>	<b>February 2016</b>
<b>27</b>	<b>February 2016</b>
<b>2</b>	<b>March 2016</b>
<b>31</b>	<b>April 2016</b>
<b>5</b>	<b>May 2016</b>
<b>22</b>	<b>May 2016</b>

Source: LPDB Database, September 2014

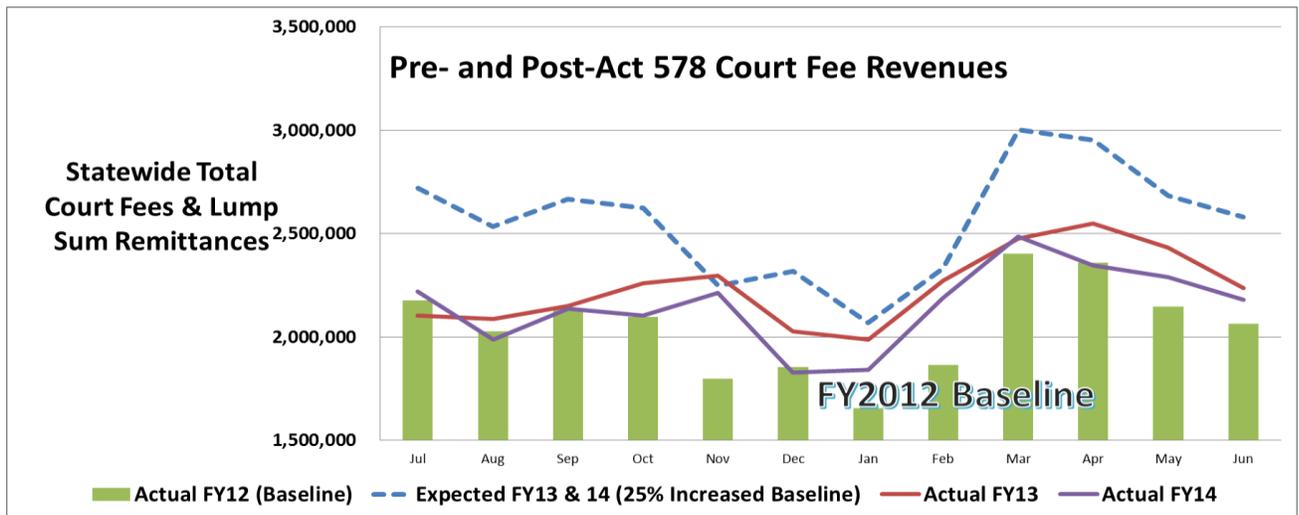
Notes: (1) The 11<sup>th</sup> PDO has entered into a cooperative endeavor agreement with the 42<sup>nd</sup> PDO, whereby the 42<sup>nd</sup> PDO covers the gap between the 11<sup>th</sup> district’s expenditures and revenues. (2) The 3<sup>rd</sup> and 23<sup>rd</sup> districts are expected to become insolvent very early in FY17, prior to distribution of the FY17 appropriations.

# REVENUES



Unlike most state agencies, LPDB has not experienced any cuts to its budget. However, despite stable state appropriations, public defenders are still overwhelmingly dependent on local funding streams. Reliance on local funding is a dangerous and untenable practice as local funds are unstable because they are primarily derived from fines associated with traffic violations and convictions. Many districts lack adequate funding due to a decrease in traffic tickets being written, the clients' inability to pay court costs and application fees, an increase in the use of diversion programs, or a combination thereof.

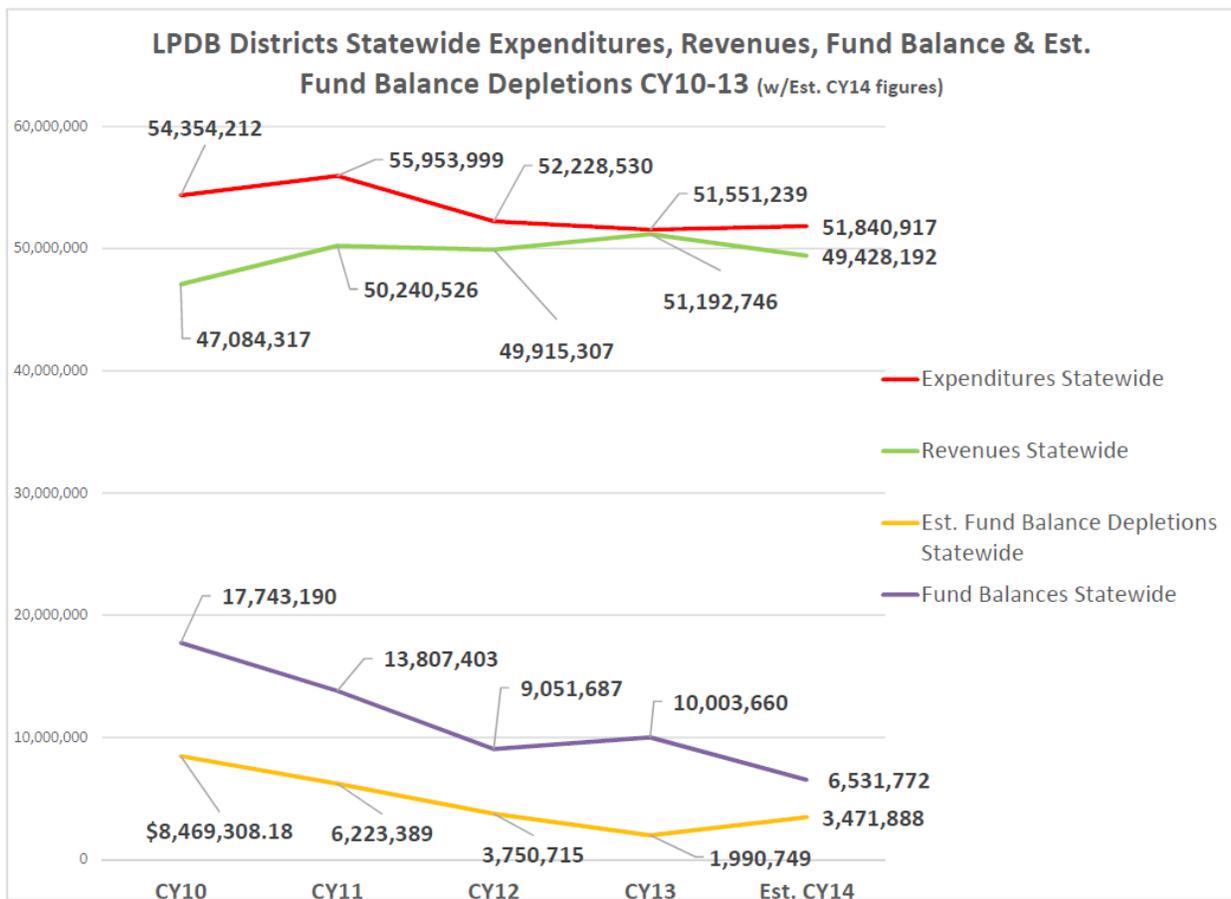
Source: LPDB Database, September 2014



Additionally, revenues that were expected to be generated by Act 578 of the 2012 Regular Legislative Session, which increased court costs from \$35 to \$45 for four years (increase will sunset August 1, 2016), have not materialized in many districts. As shown above during the two fiscal years since Act 578 was enacted, districts have generally struggled to maintain FY12 baseline revenues and have certainly fallen short of the 25% increase in revenue that Act 578 was projected to achieve. Based on FY12 baseline revenues of \$24.5 million, after the \$10 increase, districts were expected to receive approximately \$30,700,000 statewide in FY13. However districts only received \$26.8 million, \$3.9 million less than was projected. In FY14, districts only received \$25.8 million, a mere 5% increase in funding and \$4.9 million less than what was projected to materialize through Act 578.

# EXPENDITURES

Public Defender Offices have answered the call to reduce expenditures, however reliance on an unstable funding stream based primarily on traffic tickets and court fees from convictions has caused many districts to deplete their fund balances to avoid restriction of services. Statewide, districts expended roughly \$11,000,000 of their fund balances between CY10 and CY13. Districts are expected to spend an additional \$3,000,000 of their existing fund balances during CY14. This practice is not sustainable as within approximately two years the vast majority of districts will have no fund balance upon which to rely.



Source: LPDB Database, September 2014

2013 CASELOAD SNAPSHOT

**247,828** TOTAL CASES

ADULT FELONY

**93,384**

CHILD IN NEED OF CARE

**8,246**

ADULT MISDEMEANOR\*

**109,175**

JUVENILE

**20,423**

REVOICATIONS

**11,020**

CAPITAL

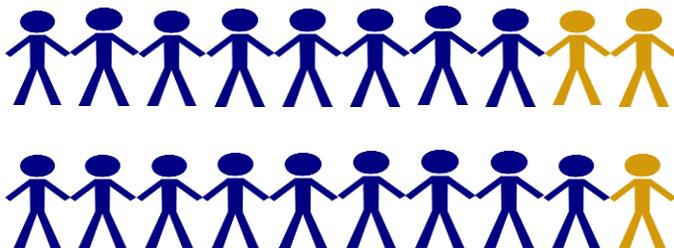
**99**

LIFE WITHOUT PAROLE

**1,465**

OTHER LEGAL SERVICES\*\*

**4,016**



LPDB represents more than 85% of defendants charged with a criminal offense in Louisiana

Source: LPDB Database, September 2014.

\* Adult misdemeanor includes traffic, parish/municipal ordinances, extraditions, & unclassified.

\*\* Other legal services include post-conviction relief, Sex Offender Assessment Panels, & child support.

# EXONERATIONS



In 1986, Anthony Johnson was convicted of the 1984 stabbing death of his girlfriend. His conviction came as a result of police withholding key information, now-discredited forensic testimony, an alleged statement by Mr. Johnson, and an ineffective lawyer. Through the work of Innocence Project New Orleans, a not-for-profit program funded in part by LPDB, DNA testing was conducted excluding Mr. Johnson as the perpetrator. This information was consistent with additional evidence implicating a serial killer, who was known to the police at the time of Mr. Johnson’s trial. The serial killer went on to kill two others and later bragged about committing the murder for which Mr. Johnson spent more than two decades in prison.

Source: Innocence Project New Orleans

Mr. Johnson was officially exonerated on September 15, 2010, 26 years after his arrest.

Since 1991, there have been 52 exonerations in Louisiana. Not only does Louisiana have the highest incarceration rate in the World, Louisiana also has the distinction of having the highest exoneration rate in the United States (Source: Prison Policy Initiative). LPDB did not exist at the time of Anthony Johnson’s wrongful conviction; however, this case is a perfect testament as to why LPDB exists today. Wrongful convictions are not merely a tragic injustice to the accused; but an injustice to the victim, the victim’s family, and a community that is left vulnerable to further violence while the real perpetrator remains at large.

## CAPITAL – DEATH ROW

<u>EXONERATIONS</u>
<b>10</b>
<u>TOTAL YEARS TRUE PERPETRATOR PLACED PUBLIC AT RISK</u>
<b>125</b>
<u>INCARCERATION COSTS</u>
<b>\$55.68/day* for 125 years = \$2,540,400</b>

## NON-CAPITAL

<u>EXONERATIONS</u>
<b>42</b>
<u>TOTAL YEARS TRUE PERPETRATOR PLACED PUBLIC AT RISK</u>
<b>705</b>
<u>INCARCERATION COSTS</u>
<b>\$36.59/day** for 705 years = \$9,415,521.75</b>

## FINANCIAL REMUNERATION

<u>SIGNED JUDGMENTS</u>
<b>\$7,040,477</b> (only 25 exonerees awarded thus far)

\* Source: DPS&C self-reported FY13 daily average

\*\* Source: DPS&C self-reported FY13 Louisiana State Penitentiary (Angola) daily average

# ACT 307

Act 307 of the 2007 Regular Legislative Session dissolved all local district public defender boards and transferred supervision and oversight of the local offices to the newly created Louisiana Public Defender Board (LPDB). The primary difference between the provision of representation for eligible clients before and after Act 307 is LPDB's creation of uniform performance standards and guidelines for representation of indigents and involvement in the oversight and supervision of the local offices and 501(c)3 not-for-profit corporations.

## Indigent Representation

District Defender Appointment

District Assistance Fund (DAF)

Database

Standards for Client Representation

Training

Client Complaint Policy

Site Visits

## Pre Act 307

Appointment practices varied from district to district.

Funding formula was based on inaccurate data, it failed to adequately reflect district needs allowing districts to utilize state funds while accruing local funds.

Poor data entry compliance with limited reporting.

Developed but not promulgated or implemented.

No formal training provided to public defenders.

No client complaint policy for public defender clients.

No systematic plan for supervision of the districts.

## **Post Act 307**

District Defenders are appointed using a best practice model with local stakeholder input.

Development of an improved, more accurate formula that projects each district's expenditures based on the preceding year's financial data; locally generated revenues are then deducted from projected expenditures to determine the amount of state funds that are needed by a district to cover expenditures based on the district's caseload.

Creation of a new Case Management System which has improved data entry compliance and more accurate caseload, workload, and outcome data.

Trial Court Performance Standards promulgated for representation of adult clients, parents in Child in Need of Care cases, and children in Delinquency cases; Capital Defense Guidelines, promulgated; Capital Performance Standards, drafted awaiting promulgation.

LPDB has developed and offers no less than six annual trainings, including training for investigators, juvenile defenders, capital defenders, leadership training, training for new defenders, and legislative updates.

Formal client complaint policy developed and implemented in all district and program offices.

Formal site visit protocol created and implemented statewide to provide systemic supervision of the districts.

# LPDB IMPROVING QUALITY

Since its inception in 2007, LPDB has continually strived to improve the quality of representation provided in the more than 247,000 cases that are represented by public defenders each year. Supervision, adherence to standards of representation, and training are the cornerstones which lead to improved outcomes for clients.

## SUPERVISION

- Statewide database is the most expansive, real-time criminal justice data reporting tool available in the state capturing case data from arrest through disposition.
- Required annual reporting by all districts.
- Implementation of site visit protocol ensuring adherence to standards.
- Implementation of Community Oriented Defense model which incorporates resources and tools to create engagement between the community and defenders.

## ADHERENCE TO STANDARDS

- Trial Court Performance Standards for Representation of Adult Clients, promulgated.
- Trial Court Performance Standards for Parents in Child in Need of Care Cases, promulgated.
- Trial Court Performance Standards for Children in Delinquency Cases Detention through Adjudication, promulgated.
- Trial Court Performance Standards for Children in Delinquency Cases Post-Adjudication, promulgated.
- Capital Defense Guidelines, promulgated.
- Capital Performance Standards, awaiting promulgation.

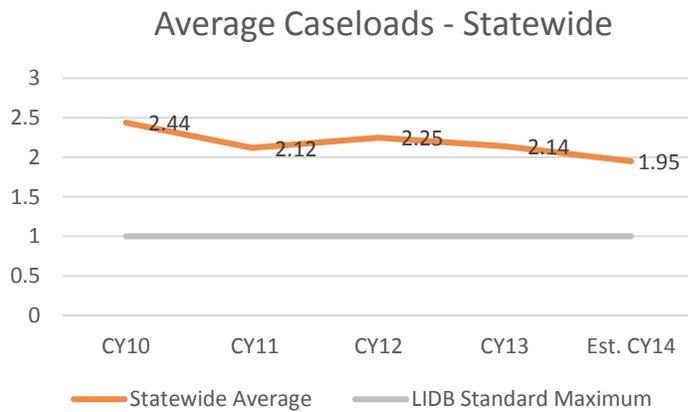
## TRAINING - LPDB offers, for free to attorneys representing indigent clients, the most comprehensive and accessible defense attorney training program in the state

- Defender Leadership Training
- Defender Training Institute
- Capital Defender Training
- Juvenile Defender Training
- Investigator Workshop
- Legislative Update
- Regional Trainings

## OUTCOMES

- Decrease in attorney caseloads.
- Improved representation in post conviction, juvenile, Child in Need of Care (CINC), and adult criminal court representation and advocacy.
- Improved outcomes in adult criminal prosecutions.
- Improved outcomes in CINC proceedings.
- Provide capital representation in a fiscally responsible manner through regional program offices.
- Regional approach to capital representation relieves district offices of the workload and financial burdens associated with capital cases, allowing local resources to be utilized locally for other case types.

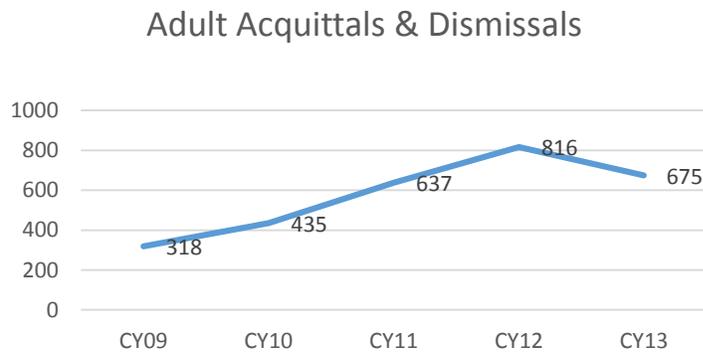
# IMPROVING REPRESENTATION



Public defenders have traditionally maintained excessive caseloads. However, over the previous five years, public defender caseloads have been reduced by 20%. This reduction in cases can be attributed to increased training and oversight.

Source: LPDB Database, September 2014

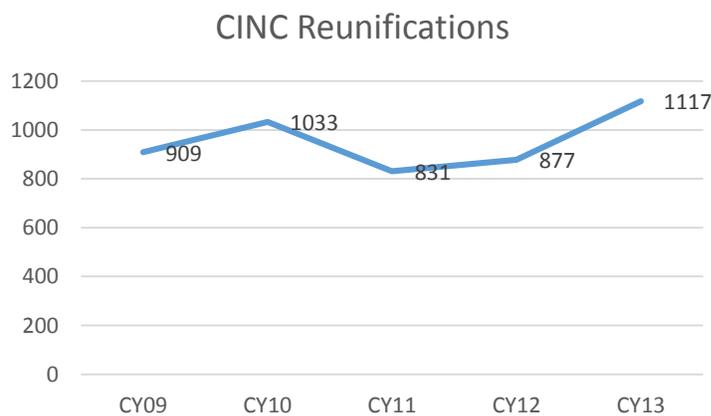
Note: CY14 estimates based on January – July 2014 data; LIDB compliant caseload = 1.0



Since 2009, as the standards of representation have been implemented and the defender training curriculum has been created, criminal acquittals and dismissals have significantly increased.

Source: LPDB Database, September 2014

Note: Includes Judge and jury acquittals as well as Judge dismissals.



Public defense attorneys began representing parents in CINC cases in 2010. Since that time, through training and promulgation of standards for representation, public defense attorneys have significantly improved representation of parents involved in the child welfare system.

Source: LPDB Database, September 2014

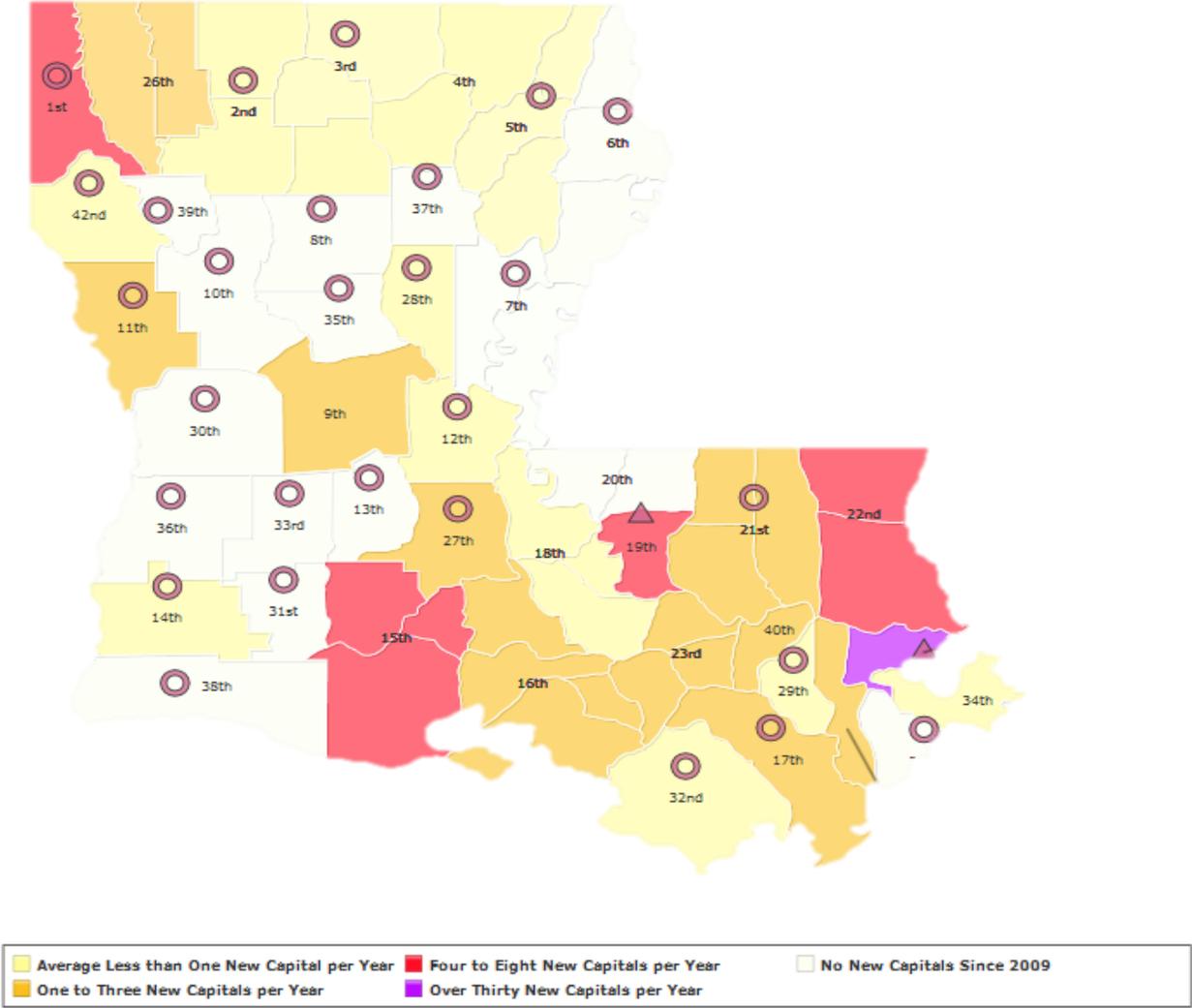
# CAPITAL DEFENSE REPRESENTATION

LPDB contracts with not-for-profit law offices to provide qualified, competent capital counsel across the state to indigent clients in a fair and cost-effective fashion.

## **Importance of Contract Programs**

- The vast majority of capital prosecutions occur in a small number of districts.
- It is not economically feasible for the majority of the state's 42 judicial districts to maintain the staffing capacity necessary for capital cases.
- Even in the larger districts, the economic pressure of cases involving conflicts of interest creates a need for an alternative source of capital counsel.
- Contract programs provide LPDB with flexibility to place qualified capital counsel in cases across the state as needed by offering a regionalized approach to capital defense in areas of the state where capital cases are infrequent or where conflicts of interest are common.
- Contract programs relieve district offices of the workload intensity and economic burden associated with a capital case by handling those cases on behalf of the district.
- As shown on the opposite page, without contract programs, capital cases cannot be tried in 28 of the state's 42 judicial districts due to a lack of capitally certified attorneys or funding to support capital services.
- Even in districts reporting the ability to try capital cases, one high-profile crime having multiple defendants can completely deplete the district's resources.

# CRIMINAL JUSTICE SYSTEM’S RELIANCE ON PROGRAM OFFICES FOR CAPITAL PROSECUTION



Source: LPDB Database, September 2014

Note: ○ District reliant on program offices to proceed with defense of capital cases

▲ District partially reliant on program offices to proceed with defense of capital cases

# CAPITAL EXPENDITURES & OUTCOMES

## Costs associated with capital representation

- LPDB spends approximately \$10 million on capital case funding:
  - Trial level capital representation through contracts to the program offices
  - Expert Witness Funds
  - Capital appellate representation
  - Post-conviction representation through contracts
- Suggestions that the program offices are too expensive are belied by:
  - Low hourly rates for the services provided through the program offices
  - Where these offices invest more staff resources in a particular case they receive no additional funding and nevertheless maintain caseloads at or above LPDB standards
- By contracting with these programs for capital representation services, LPDB saves between \$692,719 and \$3,189,349 per year

## Compensation Comparison (Average Hourly Rates as of July 2014)

	Contract Offices	LPDB Approved Rate	Federal CJA	AG
Lead Counsel	\$85	\$85-110	\$180	\$175
Associate Counsel	\$61	\$75-85	\$180	\$150
Mitigation Specialist	\$49	\$35-100	\$85	N/A
Investigator	\$42	\$35-75	\$50-75	N/A

## Outcomes

- Death penalty cases typically take several years to reach completion, however as shown in the table below recent data shows better outcomes among the program offices
- Among cases eligible for the death penalty, 87.5% of clients defended by district offices were either found or pled guilty to 1<sup>st</sup> degree murder, compared to 60% in program offices
- Among the total number of cases eligible for the death penalty, 60% of clients defended by district offices were sentenced to death, compared to 26.67% in program offices

## Outcomes Comparison among Death Penalty Eligible Cases

	1 <sup>st</sup> Degree/Death	1 <sup>st</sup> Degree/Life	Pled to Lesser	NG/NGRI/Hung	Total
District Offices	19	9	2	2	32
Program Offices	8	10	9	3	30

Note: "NG" means Not Guilty; "NGRI" means Not Guilty by Reason of Insanity"; "Hung" means that the jury was unable to agree on a verdict.

Verdict Date Timeframe - 2003 to June 2014

# AVOIDING SYSTEM CRISIS

The impending financial crisis that Louisiana's public defense system is currently facing was first predicted in 2009. Since that time LPDB has taken several steps attempting to prevent or postpone this crisis.

## CHANGES TO DISTRICT ASSISTANCE FORMULA

- Adopted policies requiring districts to spend down reserve balances to a percentage of annual expenditures.
- Developed District Assistance Fund Adjustment Formula which withheld a portion of state funds from accruing districts, re-allocating those funds to districts facing a shortfall.

## LEGISLATION

- Obtained Legislature approval to increase special court costs from \$35 to \$45, which was expected to increase local revenues (to date, expected revenues have not materialized).

## STRATEGIC MEETINGS TO EDUCATE STAKEHOLDERS AND DISCUSS SOLUTIONS

- Governor's Office, Executive Counsels and Policy Advisors
- Louisiana Supreme Court
- State Senators and Representatives
- Louisiana District Judges Association
- Louisiana District Attorneys Association and Individual District Attorneys
- Louisiana State Bar Association
- New Orleans City Council and Office of the Inspector General

## LITIGATION

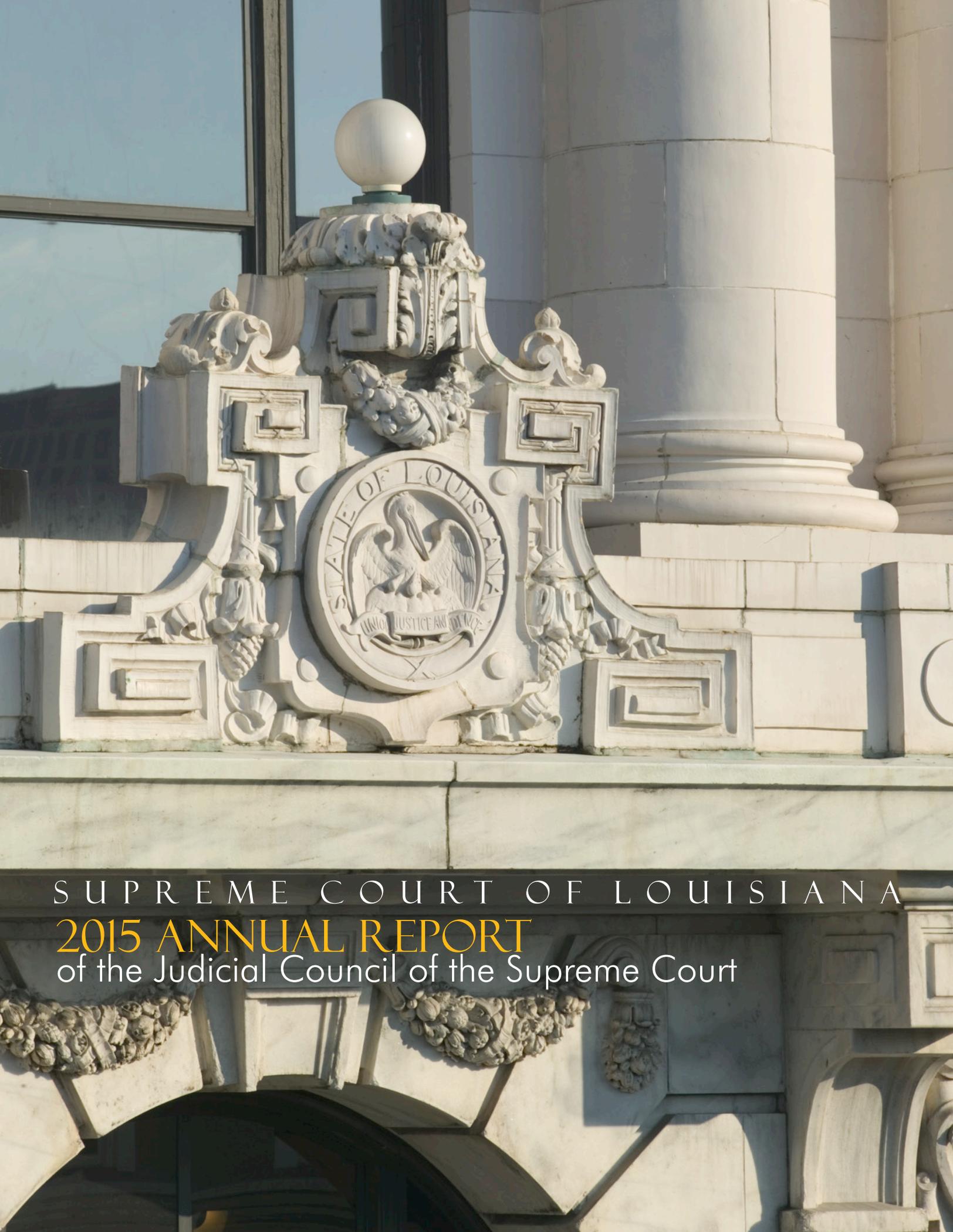
- Used testimony during litigation to educate courts and prosecutors

The Louisiana Public Defender Board, its district defenders, and contract programs have been good stewards of public dollars – implementing policies and procedures which have improved supervision, training, standards and guidelines, and client outcomes while aiming to increase revenues and decrease expenditures. LPDB will continue to develop and implement policy initiatives designed to improve the long-term viability of the state's public defense system, including:

- Elimination of the DAF Adjustment Formula to preserve the long-term viability of accruing districts
- Ensuring that local infrastructure support will not be used to supplant state obligations
- Promulgation of Capital Trial Performance Standards
- Working with stakeholders to determine better, more efficient mechanisms for the provision of client representation services

Louisiana's public defense system is at a crossroads, LPDB welcomes feedback and support from its criminal justice, governmental, and legislative partners as well as from community stakeholders. However, going back to the "meet, greet, and plea" systems which has resulted in Louisiana having the distinction as the Prison Capital of the World and also the highest exoneration rate per capita in the United States, is not an option. In order to continue meeting the state's constitutional obligations while providing effective assistance of counsel, LPDB is left with two options:

- Increase revenues to meet caseload demands
- Reduce the number of services provided by public defenders to eliminate deficit spending



S U P R E M E C O U R T O F L O U I S I A N A

**2015 ANNUAL REPORT**

of the Judicial Council of the Supreme Court



## THE SUPREME COURT OF LOUISIANA

*From left: Justice Jefferson D. Hughes, III, Justice Greg G. Guidry, Justice Jeannette Theriot Knoll, Chief Justice Bernette Joshua Johnson, Justice John L. Weimer, Justice Marcus R. Clark, Justice Scott J. Crichton.*

### **CHIEF JUSTICE BERNETTE JOSHUA JOHNSON**

Seventh Supreme Court District  
Jefferson and Orleans Parishes.\*

### **JUSTICE GREG G. GUIDRY**

First Supreme Court District  
Jefferson, Orleans, St. Helena, St. Tammany, Tangipahoa, and Washington Parishes.\*

### **JUSTICE SCOTT J. CRICHTON**

Second Supreme Court District  
Allen, Beauregard, Bossier, Caddo, DeSoto, Evangeline, Natchitoches, Red River, Sabine, Vernon, and Webster Parishes.\* Took office January 1, 2015

### **JUSTICE JEANNETTE THERIOT KNOLL**

Third Supreme Court District  
Acadia, Avoyelles, Calcasieu, Cameron, Jefferson Davis, Lafayette, St. Landry, and Vermilion.\*

### **JUSTICE MARCUS R. CLARK**

Fourth Supreme Court District  
Bienville, Caldwell, Catahoula, Claiborne, Concordia, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Ouachita, Rapides, Richland, Tensas, Union, West Carroll, and Winn Parishes.\*

### **JUSTICE JEFFERSON D. HUGHES, III**

Fifth Supreme Court District  
Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, West Baton Rouge, and West Feliciana Parishes.\*

### **JUSTICE JOHN L. WEIMER**

Sixth Supreme Court District  
Assumption, Iberia, Jefferson, Lafourche, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, and Terrebonne Parishes.\*

\* See Court District Maps on pages 12-13.

## **ABOUT THIS REPORT**

The Supreme Court Annual Report is a useful guide to judicial personnel and contacts throughout the state, as well as an overview of the Court's progress in 2015, and includes maps of electoral districts for the Supreme Court, the Courts of Appeal, and District Courts.

## **RESOURCES ON THE WEB AT WWW.LASC.ORG**

The **STATISTICAL DATA** section summarizes two-year activity trends in juvenile, civil, criminal and traffic categories for courts at all levels in the state.

The **2015 LOUISIANA SUPREME COURT ANNUAL REPORT** and the **GUIDE TO LOUISIANA COURTS** featuring a list of judges, clerks and administrators (complete with contact phone numbers) for the Courts of Appeal, District Courts, and City and Parish Courts statewide are now available on the Louisiana Supreme Court web site at [www.lasc.org/press\\_room/publications.asp](http://www.lasc.org/press_room/publications.asp).

## FINDING COMPREHENSIVE SOLUTIONS TO SYSTEM WIDE PROBLEMS

I am pleased to present to you the 2015 Annual Report of the Judicial Council of the Supreme Court of Louisiana. This report demonstrates the hard work and dedication of the Louisiana state judiciary including: judges, clerks of court, court administrators, department managers, and court staff.

2015 marked a year of focus on evidenced-based criminal justice reform measures to develop a comprehensive set of solutions to address over-incarceration. To that end, in May the Supreme Court convened a meeting of over 50 criminal justice stakeholders to discuss evidenced-based solutions to over-incarceration. Led by Bill Hubbard, American Bar Association Immediate Past-President, the meeting addressed the importance of developing legislation and policy aimed at implementing alternatives to incarceration for low-level offenders, reducing the length of sentences, and providing meaningful pathways back to work and society for returning citizens. Such legislative reforms have proven to reduce prison populations, save state dollars and influence reduction in violent crimes.

Further, research indicates that public safety is actually undermined when space and funds are unnecessarily allocated for imprisoning low-level offenders. Therefore, the Supreme Court focused attention on improving pretrial criminal justice services; specifically, a model which would provide judges with objective, data-driven assessments of a defendant's risk level and the most effective approach to public safety in each case. In November, a team from the Court traveled to Kentucky to gain first-hand knowledge of how the Kentucky Supreme Court runs its highly successful statewide pretrial services program.

In 2015, state of the art technology, aiSmartBench, was a solution implemented by several district judges to ensure well supported decision-making. aiSmartBench is a highly responsive, interactive system designed to retrieve, compile, and present critical information from a combination of case data, documents and related knowledge sources to help judges confidently make the best informed decisions in the shortest amount of time.

Additionally, we considered the problem that people without means to pay criminal fines and fees face disproportionate rates of incarceration. To address this concern, the Supreme Court was awarded a grant from the State Justice Institute to study the problem and provide solutions. This grant will assist us with a comprehensive statewide study of court fees and costs, which will be a starting point for making the system more fair and just for all citizens.

Finally, the Supreme Court made a concerted effort to review our various specialty courts which include: drug courts,



mental health courts, re-entry courts and veteran's courts. We continued to study national best practices of the specialty courts with an eye toward further improving upon their proven success and reduced rates of recidivism.

In 2015 we welcomed Justice Scott J. Crichton to the Supreme Court bench. Elected from the Second Supreme Court District he, along with Justice John Weimer, serves as a co-chair of the Louisiana Judicial College. The year however was not without its losses, with the untimely passing of two longtime members of the Supreme Court family – Louisiana State University Law Professor Cheney C.

Joseph, Jr. and Louisiana Supreme Court Budget Director Randy Certoma. Professor

Joseph served as the Executive Director of the Louisiana Judicial College for 14 years while Randy served the Court for 20 years. Both gentlemen are dearly missed. We also said goodbye to Louisiana Law Library Director Georgia Chadwick and Supreme Court Central Staff Director Gregory Pechukas, both of whom retired in 2015.

I have the distinct pleasure of submitting to the Supreme Court of Louisiana, to the Board of Governors of the Louisiana State Bar Association, to the citizens of Louisiana, and to other interested parties the Annual Report of the Supreme Court for 2015 including reports of the Judicial Council, the Judicial Administrator's Office, the Clerk of Court, the Law Library of Louisiana, the Louisiana Judicial College, and the Judiciary Commission of Louisiana, as well as statistical information of the state judiciary reflecting the work of the past year. The report also includes information from the Committee on Bar Admissions and the Louisiana Attorney Disciplinary Board, entities that operate under the auspices of the Supreme Court.

All who were involved in our continuing efforts throughout 2015 to improve judicial administration are to be congratulated and thanked.

A handwritten signature in black ink that reads "Bernette J. Johnson".

Bernette Joshua Johnson  
Chief Justice  
Louisiana Supreme Court



## THE JUDICIAL COUNCIL OF THE SUPREME COURT OF LOUISIANA

The *Judicial Council of the Supreme Court of Louisiana* was established in 1950 and serves as the research arm for the Supreme Court. It often acts as a resource center where ideas for simplifying and expediting judicial procedures and/or correcting shortcomings in the systems are studied. Most of this work done is through its various standing committees and the creation of ad hoc committees.

There are two standing committees to evaluate the need for new judgeships—the Appellate Judgeship Committee and the Trial Court Committee to Evaluate New Judgeships. A request for a new judgeship must be received by the Judicial Administrator’s Office by October 1st of each year. There were no new judgeships in 2015.

In 2003, a Court Cost/Fee Committee was created to guide the Judicial Council’s process of reviewing and evaluating requests for new court costs, fees, and increases in existing court costs and fees. These requests must be received by the Judicial Administrator’s Office by January 15th of each year.

After several years of work, the Family Court Rules Committee of the Judicial Council—with the assistance from the Supreme Court’s District Court Rules Committee—created uniform rules for family law proceedings that took effect July 1, 2015. These new rules with their accompanying appendices are available on the Supreme Court website at [www.lasc.org](http://www.lasc.org).

In 2015, the Judicial Council welcomed two new members: Judge John J. Molaison, Jr., representing the Louisiana District Judges Association and Judge Roy Cascio, representing the Louisiana City Judges Association.

Also, in 2015 the State Justice Institute awarded a \$50,000 grant to the Supreme Court in order to secure the services of the National Center for State Courts to assist in implementing the recommendations of the Judicial Council’s standing committee to evaluate requests of court costs and fees. The initial recommendations include establishing an effective system for tracking assessed and collected fines and costs, the development of Louisiana-specific best practices, and supporting courts as they implement those best practices.

### MEMBERSHIP OF THE JUDICIAL COUNCIL

Honorable Bernette J. Johnson, Chair  
*Chief Justice, Supreme Court of Louisiana*  
 Honorable Greg Gerard Guidry  
*Justice, Supreme Court of Louisiana*  
 Honorable John Michael Guidry  
*representing Conference of Court of Appeal Judges*  
 Honorable Terri Love  
*representing Conference of Court of Appeal Judges*  
 Honorable Tiffany Chase  
*representing Louisiana District Judges Association*  
 Honorable John J. Molaison, Jr.  
*representing Louisiana District Judges Association*  
 Honorable Roy Cascio  
*representing Louisiana City Judges Association*  
 Honorable Grace Gasaway  
*representing Louisiana Council of Juvenile and Family Court Judges*  
 Honorable Paul Young (Non-voting)  
*representing Louisiana Council of Juvenile and Family Court Judges*

Richard K. Leefe  
*representing Louisiana State Bar Association*  
 Claude “T-Claude” Devall  
*representing Young Lawyers Section of the LSBA*  
 Monica T. Surprenant  
*representing Louisiana State Law Institute*  
 Honorable Dan Claitor  
*State Senator*  
 Honorable Franklin Foil  
*State Representative*  
 Honorable Paul D. Connick, Jr.  
*representing Louisiana District Attorneys Assn.*  
 William F. Dodd  
*representing the Louisiana State Bar Association appointed by the Louisiana Supreme Court*  
 Honorable H. Lynn Jones, II  
*representing Louisiana Clerks of Court Assn.*  
 Mr. Charles C. Beard, Jr.  
*Citizen Representative*

### EX-OFFICIO MEMBERS OF JUDICIAL COUNCIL

Justice Jeannette Theriot Knoll  
 Justice John L. Weimer  
 Justice Marcus R. Clark  
 Justice Jefferson D. Hughes  
 Justice Scott J. Crichton

### STAFF OF JUDICIAL COUNCIL

Sandra A. Vujnovich, JD  
*Judicial Administrator*  
 Supreme Court of Louisiana  
 Royce Duplessis, JD  
*Special Counsel, Research & Development*  
 Supreme Court of Louisiana

## 2015: A YEAR IN REVIEW

This section highlights the initiatives of the Judicial Administrator's Office, the managerial arm of the Louisiana Supreme Court which serves as the staffing and fiscal agent for the Judicial Council and court-appointed task forces and committees. Program departments of the Judicial Administrator's Office include: Children & Families, Drug Courts, Louisiana Protective Order Registry, and Community Relations.

This section also features an update of the work of the Law Library, the Judicial College, Committee on Bar Admissions, Clerk of Court's Office, Court Management Information Systems, Attorney Disciplinary Board, and the Judiciary Commission.

## OFFICE OF THE JUDICIAL ADMINISTRATOR



**Sandra A. Vujnovich, JD**  
*Judicial Administrator*



**Veronica Cheneau, PHR, CHRE**  
*Human Resources*



**Lauren McHugh Rocha, JD**  
*General Counsel*



**Rose Marie DiVincenti, CCR, RPR**  
*Court Reporter/Trial Reports*



**Darryl M. Schultz**  
*Legislative Liaison*



**Royce Duplessis, JD**  
*Research & Development*



**Terence Sims, CPA, CFE**  
*Chief Financial Officer/Accounting Services*



**Clare Fiasconaro, JD**  
*Judiciary Commission*



**Mary Whitney, JD**  
*Office of Special Counsel*



**Kären Hallstrom, JD, MSW**  
*Children & Families*



**Valerie Willard, JD**  
*Community Relations*



**Ramona Harris**  
*Louisiana Protective Order Registry (LPOR)*



**Richard Williams, JD**  
*Trial Court Services/Court Interpreters*



**Kerry Lentini, JD**  
*Supreme Court Drug Court Office*



**Bryan Wolff, CPA**  
*Budget*

## IN MEMORIAM



**Randy Certoma**  
*Louisiana  
Supreme Court  
Budget Director*



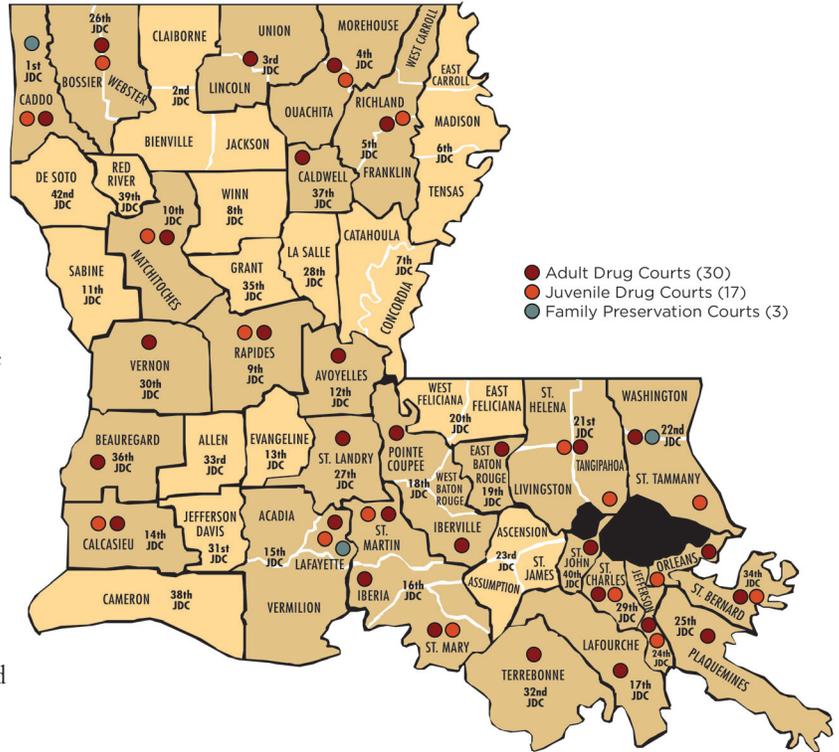
**Prof. Cheney Joseph**  
*Executive Director,  
Louisiana  
Judicial College*

# DRUG COURTS

## LOUISIANA SUPREME COURT DRUG COURT PROGRAM

There were 50 operational drug court programs in Louisiana in 2015. Of the 50 programs, there were 30 adult drug courts, 17 juvenile drug courts, and 3 family preservation courts. Each program is comprised of a drug court team which is led by a drug court judge and includes a drug court coordinator, treatment staff, a prosecutor, a public defender, law enforcement representatives, a case manager, and other stakeholders. Drug court teams use a non-adversarial approach to ensure that participants receive the highest level of care possible. Teams also work together to ensure program operations adhere to all applicable standards and policies.

As an alternative to incarceration, Louisiana drug courts are demanding programs that require frequent and random drug testing, intensive treatment, judicial oversight, and community supervision and support to assure the best possible outcomes for offenders with substance abuse problems. Funds for Louisiana’s drug courts are appropriated by the Louisiana legislature and administered by the *Supreme Court Drug Court Office* (SCDCO). The SCDCO awards funds annually to programs statewide. Additionally, the SCDCO closely monitors each program throughout the year.



### 2015 DRUG COURT PARTICIPANTS

	Adult	Juvenile	Family Preservation
Individual Participants Served	4,110	571	218
Individuals Screened	1,936	484	380
New Participants Admitted	1,378	272	133
Treatment Hours Administered	306,551	15,152	9,109
Drug Tests Administered	180,394	13,043	4,380
Community Service Hours	23,158	1,357	325

### 2015 DRUG COURT GRADUATE SUCCESSES

	Adult	Juvenile	Family Preservation
Graduates/Satisfied Court Order	734	160	35
Average Months in Program	24	11	8

### PROGRAM SUCCESSES

49	Drug Free Babies in 2015	In 2015, 49 drug-free babies were born to drug court clients for an estimated cost savings of \$12,250,000 to the State of Louisiana which is based on estimated medical and related expenses of \$250,000 per baby in the first year of life.*
593	Total Drug Free Babies Born	Since the inception of drug courts in Louisiana, 593 drug-free babies have been born to drug court clients, for an estimated total cost savings of \$148,250,000.*
10.20%	Drug Court Recidivism Rate	89.8% of the 2012 Drug Court graduates remained free of additional convictions 3 years after graduation.
707	GED/Full Time Employment	The number of clients who graduated in 2015, who earned their GED or are now employed full time after being unemployed or without a GED at the time of program admission.

\*The cost of care and treatment for each child born addicted to drugs is estimated to be approximately \$250,000 for the first year of life, Office of Justice Programs, 1997.

# LPOR

## LOUISIANA PROTECTIVE ORDER REGISTRY

The Louisiana Protective Order Registry (LPOR), which was established in 1997, is a statewide repository for court orders issued for the purpose of preventing harassing, threatening, or violent acts against a spouse, intimate co-habitant, dating partner, family, or household member. In addition to developing and maintaining the LPOR database, LPOR is also responsible for creating and disseminating standardized order forms that all courts are mandated to use.

In 2015 the registry facilitated eight multi-disciplinary legal seminars throughout the state. The training program is approved for 4.25 continuing legal education credits and a total of 345 stakeholders attended the trainings. Additionally, LPOR has developed an electronic component to the 12.5 hour training curriculum for the state judiciary on the topic of domestic abuse and dating violence. The curriculum was presented to 71 judges at the 2015 Louisiana State Bar Association/Judges Summer School.

LPOR also provided four presentations and workshops at the request of other agencies and organizations in 2015, with a total of 239 people in attendance.

At year's end, the registry received and entered 26,050 orders from courts across the state. Of these, 16,836 (65%) were civil orders and 9,214 (35%) were criminal orders. From the pilot phase of the project through the close of 2015, the registry received and entered 345,126 orders. Of these, 255,558 (74%) were civil and 89,568 (26%) were criminal orders.

Certain qualifying records from the registry are transmitted to the FBI's National Crime Information Center (NCIC) and the National Instant Background Check System (NICS). In 2015, 22,047 qualifying orders were transmitted to NCIC and the registry's on-call staff responded to 249 requests for order verification submitted by the NICS examiners. In addition, the registry staff responded to 1,360 calls from local, state, other state, and federal law enforcement calls with requests for order verification.

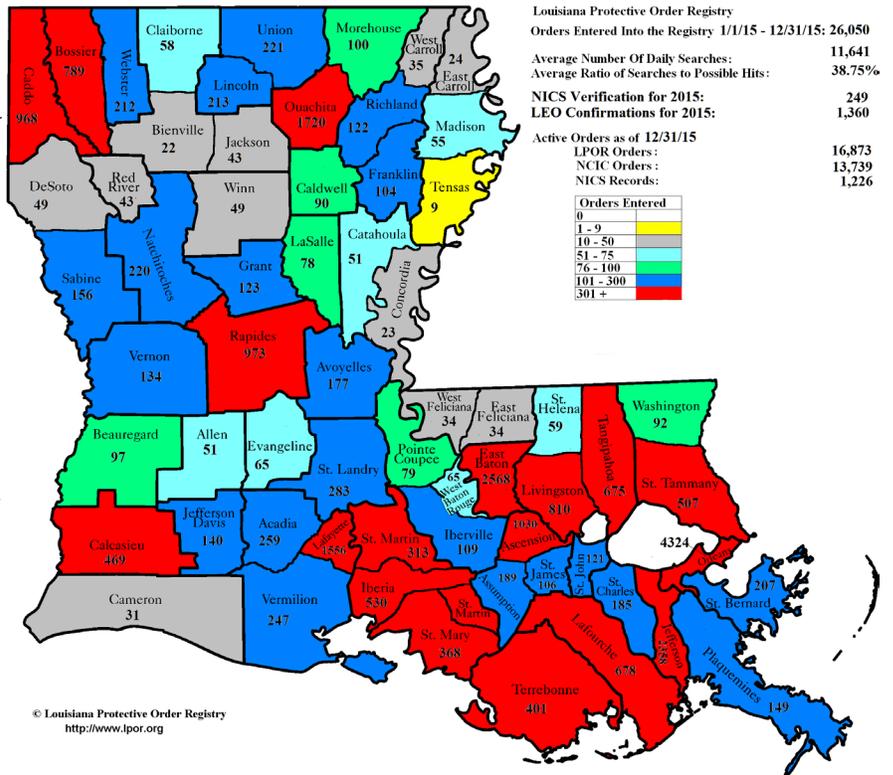


Table One: Civil Orders	2011	2012	2013	2014	2015	Total (1997-2015)
Temporary Restraining Order	12,496	12,053	12,122	12,000	12,971	191,671
Protective Order	3,344	3,177	3,324	3,340	3,754	61,134
Preliminary Injunction	22	23	31	53	62	1,118
Permanent Injunction	42	48	39	33	49	1,635
<b>Total Civil Orders</b>	<b>15,904</b>	<b>15,301</b>	<b>15,516</b>	<b>15,426</b>	<b>16,836</b>	<b>255,558</b>

Table Two: Criminal Orders	2011	2012	2013	2014	2015	Total (1997-2015)
Bail Restriction	4,795	3,721	3,704	4,912	6,583	54,295
Peace Bond	120	199	270	274	346	18,776
Combined Bail/Peace Bond	238	643	669	706	1,098	8,412
Sentencing Order	0	0	0	0	0	0
Probation Conditions	0	0	0	0	0	0
Combined Sentencing/Probation	514	1,181	1,178	1,136	1,187	8,085
<b>Total Criminal Orders</b>	<b>5,667</b>	<b>5,744</b>	<b>5,821</b>	<b>7,028</b>	<b>9,214</b>	<b>89,568</b>

Table Three: Totals by Year	2011	2012	2013	2014	2015	Total (1997-2015)
<b>Total Civil and Criminal Orders</b>	<b>21,571</b>	<b>21,045</b>	<b>21,337</b>	<b>2,454</b>	<b>26,050</b>	<b>345,126</b>

# HUMAN TRAFFICKING

## HUMAN TRAFFICKING

The Chief Justice initiated a **Human Trafficking Committee** to focus on the problem of trafficking of juveniles, particularly in the New Orleans area. The Committee has reviewed best practice materials; researched the need for and availability of services; brought together state, regional, and local trafficking experts to facilitate integrated work; and participated in the National Summit on Human Trafficking and the State Courts. The Supreme Court's Human Trafficking initiative is coordinated by Angela White-Bazile, Executive Counsel to the Chief Justice.



Angela White-Bazile  
*Executive Counsel to the Chief Justice*

## CHILDREN & FAMILIES

### CHILDREN & FAMILIES

In 2015, the Court expanded its scope of work to further improve the administration of juvenile justice. In addition to the established FINS Assistance Program, the CASA Assistance Program, the Court Improvement Program, and JDAI partnership, the Court began implementation of a Child Representation System Oversight program, a juvenile data grant, and a child trafficking initiative.



The FINS Assistance Program provided funding for informal FINS offices in 41 judicial districts. Highlights this year included coordinating an annual retreat that allowed FINS programs to share best practices and improve program quality assurance and fidelity, implementation of a standard statewide juvenile screening instrument, improved data analysis and reporting which facilitated completion of an annual performance indicator report by parish and judicial district, and performance-based funding allocations.

The CASA Assistance Program administered funding for CASA programs in 57 parishes and facilitated the development of a program-to-program support and technical assistance network allowing CASA programs to share best practices with fellow programs. The expanded use of the new state-wide case management system continues to enhance uniformity of data collection and reporting.



Key Court Improvement Program initiatives, now managed by the Pelican Center for Children & Families, included recommendations for oversight of children's representation by the Court, promulgation of *Indicators of Quality Representation* in child protection cases, and the development of a comprehensive, interdisciplinary curriculum and materials on Safety Decision-making for judges, attorneys, and collateral stakeholders.

 Court participation in the State JDAI (Juvenile Detention Alternatives Initiative) Scale Collaborative provides judicial input into planning for a research-based process of statewide juvenile detention reform in Louisiana.

 Formal Child Representation System oversight of the programs representing over 5,500 children in child protection cases was initiated. The Mental Health Advocacy Service Child Advocacy Program and the Louisiana Services Corporations (administered by the Louisiana Bar Foundation) were approved for continuation of legal services to children in their respective jurisdictions. In addition, the first meeting of the state Child Protection Representation Commission was organized and hosted by the Court.

 Work began toward development of a standardized statewide juvenile data reporting system pursuant to a grant from the Louisiana Commission on Law Enforcement. The project is designed to collect uniform delinquency data from local courts' existing case management systems and will be piloted in select courts in early 2016.

## COURT INTERPRETER TRAINING PROGRAM

### COURT INTERPRETER TRAINING PROGRAM

In 2013, the Supreme Court established the *Louisiana Court Interpreter Training Program*. It was developed to serve litigants of limited English proficiency in the Louisiana court system by enhancing access to justice through quality interpreting services. The Supreme Court adopted the *Code of Professional Responsibility for Language Interpreters* and adopted policies that established a two-tier interpreter qualification and testing program consisting of "Registered" and "Certified" court interpreters. The program was initially funded in part by a grant from the State Justice Institute (SJI).

In 2015, the program was expanded to include advanced skills classes and the first administration of the court interpreter oral certification examination. Louisiana's first certified court interpreters were sworn in, and the number of certified and/or registered court interpreters increased to 103 in the languages of Arabic, French, Italian, Laotian, Mandarin, Polish, Portuguese, Spanish, Thai, Vietnamese, and American Sign.

In addition to orientation, testing, and skills classes around the state, Louisiana co-hosted an advanced court interpreting regional seminar with the Supreme Courts of Arkansas, Tennessee, and Mississippi. Louisiana also participated in a grant from SJI to specifically focus on the uses and implementation of video remote interpreting in the courts.

A current list of registered and certified court interpreters, upcoming training opportunities, and the application for court interpreter reciprocity is available on the Supreme Court website at [www.lasc.org](http://www.lasc.org).

## COMMUNITY RELATIONS

### COMMUNITY RELATIONS DEPARTMENT

The *Community Relations Department* (CRD) is the outreach division of the Supreme Court that oversees public communications, meetings and events, courthouse tours, and other public involvement including: managing the court website information and design ([www.lasc.org](http://www.lasc.org)), handling media relations, providing photographic and videographic support, and producing court publications such as the *Annual Report of the Judicial Council of the Louisiana Supreme Court*. In all of these endeavors, the CRD aims to inform, educate, and further public understanding of and trust and confidence in the Louisiana judiciary.

In 2015, the CRD assisted in planning and coordinating a working retreat for the Supreme Court justices. The four-day retreat took place in central Louisiana and provided a fresh environment for the justices to review cases, discuss administrative issues and, with the help of a facilitator, participate in team-building exercises to promote collegiality.

Law Day always presents an opportunity for courts to reach out to the public. 2015 was no exception as the Supreme Court hosted nearly 300 students for court tours and mock trials during the week of May 1st. The CRD kicked-off a new Supreme Court outreach tradition in recognition of Constitution Day, September 17th, by inviting citizens to tour the courthouse Law Museum and Law Library and receive a free pocket edition of the U.S. Constitution. Over 250 U.S. Constitutions were given away to visitors on Constitution Day and the event was featured in the metro New Orleans television news.



## LAW LIBRARY

### LAW LIBRARY OF LOUISIANA

Located in the Supreme Court building in New Orleans, the *Law Library of Louisiana* provides valuable services and resources for the judiciary, the bar, and the public throughout the state and beyond. The Law Library, which was founded in 1838, now contains nearly 150,000 volumes in print, microform, and online.

In 2015 the Law Library sponsored six continuing legal education programs that were free and open to the public on a variety of topics of law. Exhibits were prepared for both the Law Library and the Louisiana Supreme Court Museum which included: one on Justice Jeannette T. Knoll; Early Louisiana Codes; the Italian Code Civil; and one on the 2015 Law Day Theme of the Magna Carta. Additionally, the Law Library hosted the “*Freedom Riders*” exhibit, which was on loan from the Gilder Lehrman Institute of American History.

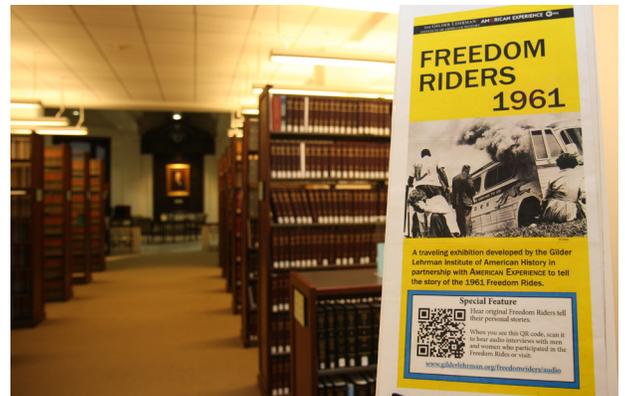
Also notable in 2015, Director Georgia Chadwick received the Bethany J. Ochal Award for Distinguished Service given by the State, Court, and County Special Interest Section of the American Association of Law Libraries.

The Law Library’s collection of books and other materials is continually updated. In 2015 the Library added 461 new titles, 1,831 new volumes, and 731 pieces of microfiche. The staff of the Library continued to publish its newsletter *De Novo* to reach out to library users and provide them with useful information on legal topics and library resources.

#### THE LAW LIBRARY OF LOUISIANA STAFF

Georgia Chadwick, MLIS  
*Director, Law Library of Louisiana*  
 Miriam Childs, MLIS  
*Associate Director*  
 Francis Norton, JD, MLIS  
*Research Lawyer/Librarian and Government Documents Librarian*  
 Sara Pic, JD, MLIS  
*Assistant Librarian*

Jennifer Creevy, MLIS  
*Assistant Librarian*  
 Catherine Lemann, JD, MLIS  
*Research Librarian*  
 Ruth Mahoney  
*Library Associate*  
 Daphne Tassin  
*Library Associate*  
 Gail Bragg  
*Administrative Assistant*



# JUDICIAL COLLEGE

## LOUISIANA JUDICIAL COLLEGE

The *Louisiana Judicial College* provides legal education for Louisiana’s judges, and in 2015 it offered ten seminars for the judiciary and justice partners. In addition to its usual Summer School, Fall Conference, and Spring Conference, the College sponsored regional and thematic learning events. Seminars including Evidence and Procedure, Torts, Rural Courts, Family Law, North Louisiana, City and Juvenile Judges, and Criminal Court provided numerous educational opportunities.

In 2015 the College began the process of strategic planning in order to improve the quality of its programming for the purpose of providing justice for the citizens of Louisiana. A new program attorney and judicial education coordinator were hired to support the College’s mission.

As the Judicial College begins implementation of the strategic plan in 2016, it looks forward to providing excellent educational opportunities through both in-person seminars as well as other best practices to meet the needs of Louisiana’s judiciary.

# BAR ADMISSIONS

## COMMITTEE ON BAR ADMISSIONS

The *Committee on Bar Admissions* is comprised of 19 active members of the Louisiana State Bar Association appointed by the Louisiana Supreme Court to administer the bar admissions system. It is the duty of the Committee to recommend for admission only those applicants who meet the eligibility requirements set forth in La. Sup. Ct. Rule XVII.

The Committee received and processed 1,122 bar examination applications, 336 law student registration forms, 35 A.D.A. requests, eight equivalency applications, and 16 in-house counsel applications. Two written examinations were administered. Examiners developed examination questions, and with the assistance of more than 300 volunteer graders, scored test papers for 302 applicants who sat for the February examination as well as 698 applicants who sat for the July examination. The pass rate was 65.56% in February and 62.03% in July.

In order to assure that each applicant recommended for admission possessed the requisite character and fitness, the Committee’s Character and Fitness Department investigated and considered the backgrounds of all applicants. As part of the character and fitness screening process, eight Commissioner hearings were held and two matters were argued before the Supreme Court. The Committee’s Character and Fitness Panel recommended 11 applicants be conditionally admitted and 20 applicants be denied admission.

### COMMITTEE ON BAR ADMISSIONS

Lawrence J. Centola, Jr.  
Chairman  
Larry Feldman, Jr.  
Director of Character & Fitness  
Hon. S. Maurice Hicks, Jr.  
Testing Accommodations &  
Immediate Past Chair  
J. Patrick Beauchamp  
Director of Testing  
Dow M. Edwards  
Character and Fitness Panel Member  
Celeste R. Coco-Ewing  
Character and Fitness Panel Member  
Richard A. Goins  
Testing Committee Member  
Hon. Piper D. Griffin  
Testing Committee Member

L. David Cromwell  
Testing Committee Member  
C. Peck Hayne  
Examiner—Civil Code I  
William C. Kalmbach, III  
Examiner—Civil Code II  
Robert P. Thibeaux  
Examiner—Civil Code III  
David R. Frohn  
Examiner—Louisiana Code of Civil Procedure  
Jennifer W. Hilburn  
Examiner—Torts  
Ronald J. White  
Examiner—Business Entities &  
Negotiable Instruments  
DeWayne L. Williams  
Examiner—Constitutional Law

Todd S. Clemons  
Examiner—Criminal Law, Procedure &  
Evidence  
Glenn L. Langley  
Examiner—Federal Jurisdiction &  
Procedure

## LOUISIANA JUDICIAL COLLEGE BOARD OF GOVERNORS

### CHAIRS

Justice John L. Weimer  
*Supreme Court of Louisiana*  
Justice Scott J. Crichton  
*Supreme Court of Louisiana*

### MEMBERS

Judge Roland Belsome  
*Court of Appeal, 4th Circuit*  
Judge Fredericka Wicker  
*Court of Appeal, 5th Circuit*  
Judge Lori A. Landry  
*16th Judicial District Court*  
Judge John Michael Guidry  
*Court of Appeal, 1st Circuit*  
Judge William J. Crain  
*22nd Judicial District Court*  
Judge Robin D. Pittman  
*Orleans Criminal District Court*  
Judge Michael Pitman  
*1st Judicial District Court*  
Judge Sharon Ingram Marchman  
*4th Judicial District Court*  
Judge M’elise Trahan  
*Crowley City Court*  
Judge D. Milton Moore  
*Conference of Court of Appeal Judges*  
Judge Madeleine Landrieu  
*Conference of Court of Appeal Judges*  
Judge Guy Holdridge  
*Louisiana District Judges Association*  
Judge Allison Penzato  
*Louisiana District Judges Association*  
Judge John B. Slattery  
*Louisiana City Judges Association*  
Judge Douglas J. Saloom  
*Louisiana City Judges Association*  
Judge Patricia Koch  
*Louisiana Juvenile Judges Association*  
Judge Shonda Stone  
*Louisiana Juvenile Judges Association*

### EX-OFFICIO

Vacant  
*Executive Counsel to the Governor*  
Mark Cunningham  
*President, Louisiana State Bar Association*  
Walter Leger, III  
*House Representative*  
Dan Claitor  
*Senate Representative*  
Judge James McKay  
*Conference of Court of Appeal Judges*  
Judge Jules Edwards  
*Louisiana District Judges Association*  
Judge Kirk Williams  
*Louisiana City Judges Association*  
Judge Guy Bradberry  
*Louisiana Council of Juvenile and Family Court Judges*

### EXECUTIVE DIRECTOR

Cheney C. Joseph, Jr.  
Baton Rouge  
Phone (225) 578-8825  
Fax (225) 578-8762

## JUDICIARY COMMISSION

### JUDICIARY COMMISSION

The *Judiciary Commission of Louisiana* received and docketed 529 complaints against judges and justices of the peace in 2015. There were 289 complaints pending from previous years as of January 1, 2015. The Commission's Office of Special Counsel also received and responded to 291 requests for complaint forms.

Complaints are received from litigants, non-litigant citizens, attorneys, judges, non-judicial public officials, and anonymous sources. Some complaints are referred to the Commission by the Attorney Disciplinary Board, and the Commission is authorized to review matters on its own motion, which may come from media reports of alleged judicial misconduct.

Of the 529 complaints filed in 2015, 369 were screened out as not within the jurisdiction of the Commission or failing to allege facts implicating a possible violation of the Code of Judicial Conduct. The remaining 160 cases were reviewed to consider the need for investigation. The Commission authorized in-depth investigation in 47 cases, some as to complaints filed before January 1, 2015.

In 2015, the Commission filed formal charges against six judges and no justices of the peace. Two judges and one justice of the peace resigned or retired after formal charges that had been filed in previous years; one judge retired after formal charges were filed in 2015 and a hearing was held. Hearings before a randomly appointed hearing officer were scheduled in 11 cases and conducted in nine. A motion to dispense with a hearing officer was granted in two cases in which stipulations were reached. A Deferred Recommendation of Discipline Agreement was signed in two cases before a hearing was held. Some of this activity occurred in connection with formal charges filed before January 1, 2015.

Also during 2015, six judges and two justices of the peace personally appeared before the Commission for questioning after a hearing before a hearing officer or after entering into stipulations in lieu of a hearing.

In 2015, the Judiciary Commission filed with the Supreme Court two recommendations for judicial discipline and no recommendation for the imposition of penalties in financial disclosure cases arising under Supreme Court Rule 39. As of December 31, 2015, there were two Judiciary Commission cases pending before the Supreme Court.

In 2015, the Judiciary Commission filed with the Supreme Court one recommendation for the interim disqualification of a judge pending further proceedings. That judge was disqualified from exercising any judicial function pending further proceedings.

As of December 31, 2015, the Commission had 215 files pending, having disposed of 601 files in 2015.

**THE JUDICIARY COMMISSION OF LOUISIANA, CREATED IN 1968 BY AN AMENDMENT TO ARTICLE IX, CONSTITUTION OF 1921, IS CONTINUED IN EXISTENCE BY ARTICLE V, SECTION 25, CONSTITUTION OF 1974.**

### 2015 JUDICIARY COMMISSION

Judge Jules D. Edwards, III, *Chair*  
Mrs. Carol LeBlanc, *Vice Chair*  
Jerry Edwards  
Harold M. Block  
John T.M. Baldwin  
Kenneth Michael Wright  
Dr. Michael S. Blue  
Judge Timothy E. Kelley  
Judge Felicia Toney Williams

### STAFF OF THE JUDICIARY COMMISSION

Sandra A. Vujnovich, JD  
*Chief Executive Officer*  
Clare Fiasconaro, JD  
*Commission Legal Counsel*

### STAFF OF THE OFFICE OF SPECIAL COUNSEL

Mary Whitney, JD, *Special Counsel*

## ATTORNEY DISCIPLINARY BOARD

### ATTORNEY DISCIPLINARY BOARD

April 1, 2015, marked the 25th year anniversary of the *Louisiana Attorney Disciplinary Board's* creation by the Louisiana Supreme Court. Over that span the Court has appointed 81 lawyers and non-lawyers to serve as Disciplinary Board members, all of whom served as volunteers without compensation, to uphold the high standards of Louisiana's legal profession. Hundreds of other lawyers have served as hearing committee members and probation monitors to support a lawyer regulation system that is patterned after the ABA Model Rules for Lawyer Disciplinary Enforcement and is considered one of the premier disciplinary agencies in the country.

In 2015, at the request of the Chief Disciplinary Counsel, the justices of the Supreme Court invited a consultation team of the ABA's Center for Professional Responsibility to conduct a comprehensive review of the entire Louisiana disciplinary system with a view toward recommending any changes that would result in an improved lawyer regulatory agency. The Supreme Court anticipates receipt of the product of that review in the spring of 2016.

While the lawyer population in Louisiana has grown to nearly 22,000 attorneys, the Office of Disciplinary Counsel (ODC) reports that the number of written complaints alleging misconduct is down at 2,955. Less than half, or 1,410 complaints, were opened for formal disciplinary investigation. The remaining complaints were resolved informally by ODC, referred to the Louisiana State Bar Association's alternatives to discipline, or dismissed for lack of jurisdiction.

Effective April, 2015, the Supreme Court amended the Rules of Professional Conduct to formally mandate that attorneys subject their client trust accounts to a reconciliation process on a not less than quarterly basis. As a result of that rule change, the ODC witnessed a dramatic reduction in the number of overdraft notifications on trust accounts resulting in the need for fewer disciplinary audits and corrective action while ensuring that client and third party funds were best protected.

### LOUISIANA ATTORNEY DISCIPLINARY BOARD

R. Steven Tew, *Chair*  
Carl A. Butler, *Vice-Chair*  
Stephen F. Chiccarelli  
George L. Crain  
Anderson O. Dotson, III  
Carrie LeBlanc Jones  
Kim Leija  
Jeffrey L. Little (LSBA Member)  
Pamela W. Carter  
Edwin G. Preis, Jr.  
Dominick Scandurro, Jr.  
R. Lewis Smith, Jr.  
Evans C. Spiceland  
Walter D. White

## CLERK OF COURT

### CLERK OF COURT

Filings continued to drop in 2015 hitting 2,365—an all-time low for the past 30 years. In addition to processing all incoming filings, court actions and opinions, other key responsibilities fulfilled by the *Supreme Court Clerk of Court Office* in 2015 included:

- Admitting 636 new attorneys to the practice of law, a decrease of 10% from 709 in 2014 but still more than the 542 admitted in 2013;
- Issuing Certificates of Good Standing. The demand for issuance of Certificates of Good Standing continued to fall. Following the 2013 implementation of a charge of \$20.00 the requests for Certificates have continued to drop and in 2015 only 1,988 Certificates were issued;
- Awarding a contract for C-Track, a new case management system which, besides replacing the case management and e-filing systems, integrates with the justices' and staff attorneys' offices;
- Managing logistics for 266 events hosted by the Court. These events included Court conferences, oral argument days, Judiciary Commission hearings, and other meetings;
- Overseeing courthouse general maintenance and improvements involving roof repairs, basement waterproofing, and the refurbishing of the chillers. The State entered into a contract to repair damage resulting from Hurricane Isaac. The exterior waterproofing and the interior repairs should be completed by 2016; and,
- Continued to participate in the Enterprise Resource Planning (ERP) implementation of an integrated, computer-based system designed to manage financial resources, materials, and human resources.

### OFFICE OF THE CLERK

John Tarlton Olivier, JD  
*Clerk of Court*  
 Okyeame Haley, JD, LLM  
*Chief Deputy Clerk of Court*  
 Katie Marjanovic, JD  
*2nd Deputy Clerk of Court*  
 Robin Burras  
*Deputy Clerk—Front Office*  
 Carmen B. Young  
*Deputy Clerk—Opinions & Filings*  
 Eddie Gonzales  
*Deputy Clerk—Records Manager & Property Manager*

## CMIS

### COURT MANAGEMENT INFORMATION SYSTEMS

The *Court Case Management Information Systems (CMIS)* Division collects, analyzes and disseminates information to external agencies regarding case filings, dispositions and sentencing information from Louisiana's district courts, city courts, and some mayor's courts. CMIS worked with courts and associated agencies throughout the state to provide training assistance, on-site visits, and grant opportunities to enhance the completeness, accuracy, and timeliness of data collected for criminal and traffic dispositions.

#### Criminal Records

The *Criminal Records Project* received 350,767 criminal records containing filing, disposition, and sentencing information in 2015. Of those records, 64,601 contained information that was shared with the Louisiana Department of Public Safety for inclusion in a computerized history database that is accessible to law enforcement and the courts to help enhance public safety.

Additionally, 36,043 disposition records were posted to the FBI National Instant Check System (NICS) database. NICS is a national system that checks available records on persons who may be disqualified from receiving firearms. Of these records, 28,848 were felony convictions, 3,989 were misdemeanor crimes of domestic violence, 80 were not guilty by reason of insanity, 519 were incompetent to stand trial, 1,680 were probation restrictions, and 927 were court-ordered firearm prohibitions.

In 2015, five criminal commitment orders, 1,074 civil commitment orders, and 25 criminal orders under La.R.S.13:753(A) were posted to the NICS database. Also posted were 22,047 criminal and civil protection orders from the Louisiana Protective Order Registry.

#### Traffic Records

The *Traffic Records Project* sends final disposition information on traffic cases to Louisiana Office of Motor Vehicles (OMV) for inclusion in the state driver history database. In 2015, 851,283 traffic records containing filing, disposition and sentencing information were received. Of those records 255,876 were posted to the OMV database by the end of the year. CMIS receives traffic data from 61 parishes, 16 city courts, and 11 mayor courts.

#### CMIS Outreach

In 2015, CMIS disbursed \$1,224,025 in federal and CMIS grants to 18 district, city, and parish courts to enhance security, disposition reporting, and data quality. Funds were provided to 1st and 2nd Parish Courts in Jefferson Parish for enhanced electronic reporting of criminal dispositions for posting to the Louisiana Criminal History database and NICS.

Federal Motor Carrier funding was provided to six city courts for replacement or enhancement of case management systems to improve the completeness, accuracy, and timeliness of reporting traffic and DWI dispositions to CMIS for posting to the OMV driver history database and the National Commercial Driver's License Information System.

Grant money was also used to provide tools for judges. An "electronic bench" system built on aiSmartBench was funded for implementation in Orleans Parish Municipal Court and in Calcasieu Parish. The system is an electronic dashboard that integrates information from a case management system and other sources to improve the information available to judges on the bench.

# JUDICIAL BUDGET

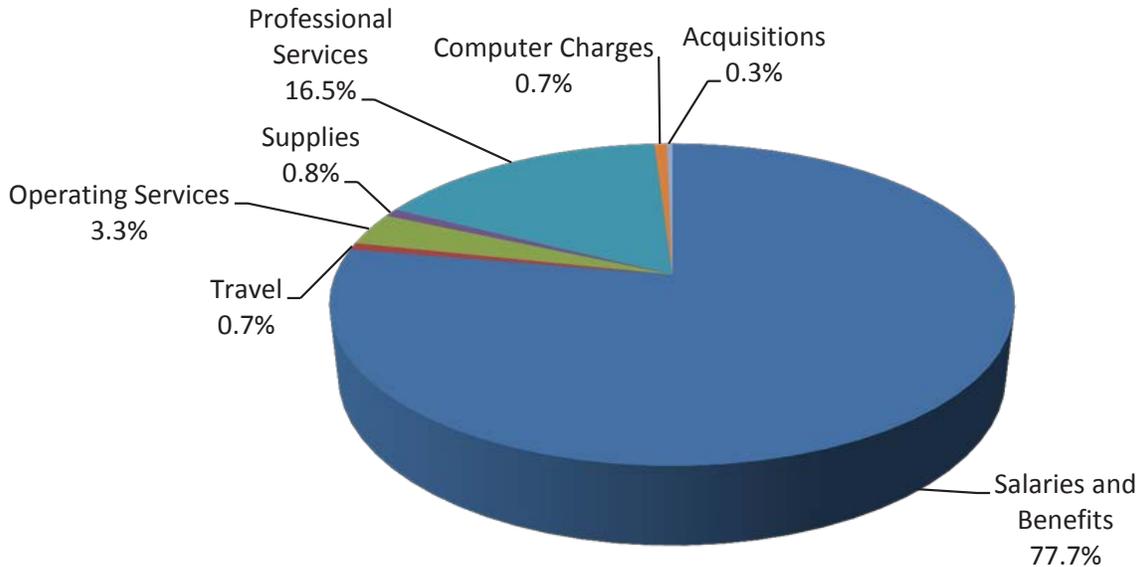
## JUDICIAL BUDGET

Louisiana does not have a unified state court funding system. Operations of district, parish and city courts are primarily funded by local governments. An annual state legislative appropriation funds the operations of the Louisiana Supreme Court and the five courts of appeal, as well as the salaries of all state court judges. The state also funds a portion of the salaries of parish and city court judges, and the compensation of retired and *ad hoc* judges.

### FY 2015-2016 Approved Judicial Appropriation - \$179,603,192

In FY 2015-2016, state appropriated funds totaled \$179,603,192<sup>1</sup>:

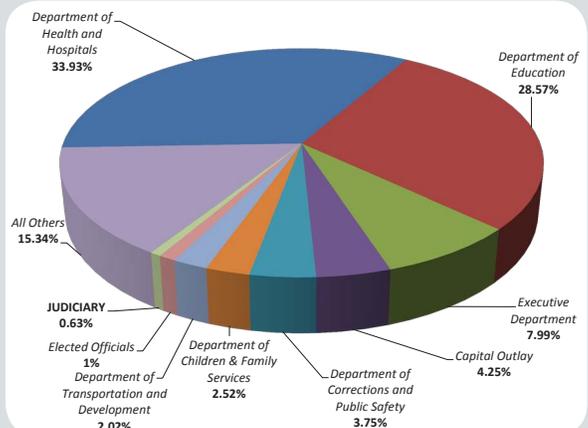
Salaries and Benefits <sup>2</sup>	139,531,183	77.7% of total budget
Professional Services	29,567,049	16.5% of total budget
Operating Services	5,853,605	3.3% of total budget
Supplies	1,500,563	.8% of total budget
Travel	1,317,454	.7% of total budget
Computer charges	1,235,728	.7% of total budget
Acquisitions	597,610	.3% of total budget



<sup>1</sup>The Louisiana Supreme Court's expenditures are audited by the Louisiana Legislative Auditor every two years, and the audit report is available on the Legislative Auditor's website at [www.la.state.la.us](http://www.la.state.la.us). These reports contain comparisons of budget to actual revenues and expenditures, as well as a summary of revenues and expenditures by categories, and the Court's financial data.

<sup>2</sup>Includes Salaries and/or Benefits for 365 state Judges, 7 Commissioners, 228 Supreme Court employees, 369 Courts of Appeal employees, 118 designated lower court employees, and 39 retired judges or widows in Unfunded Pension system.

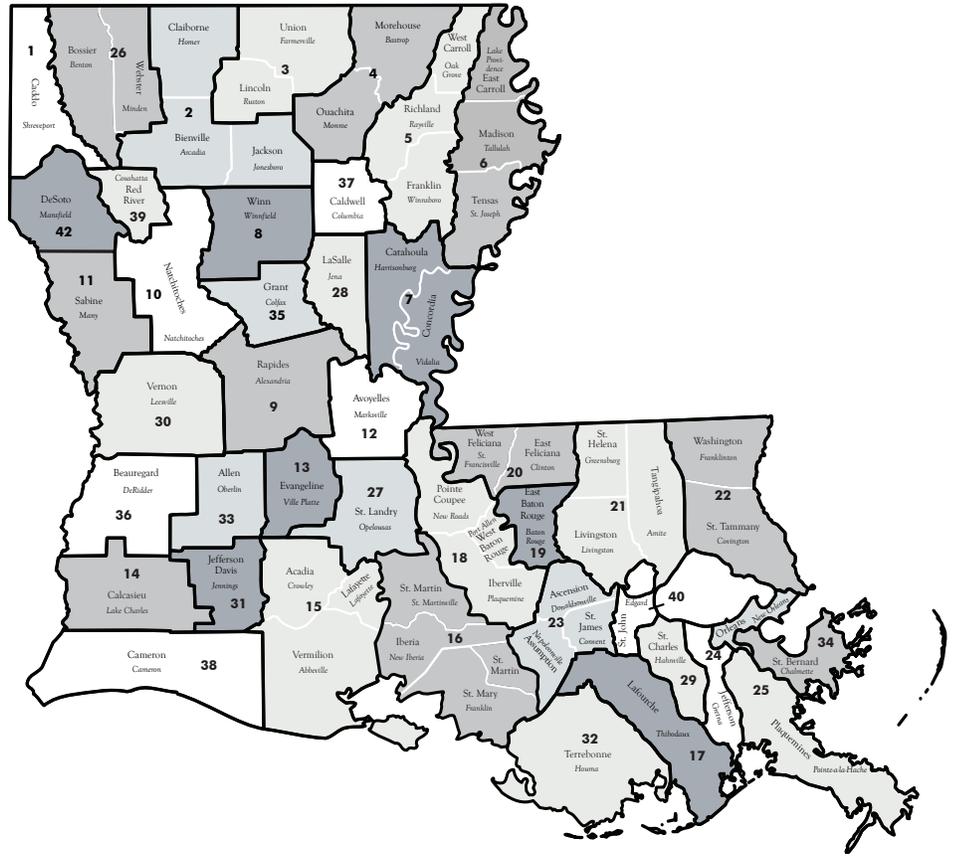
### LOUISIANA STATE BUDGET 2015-2016



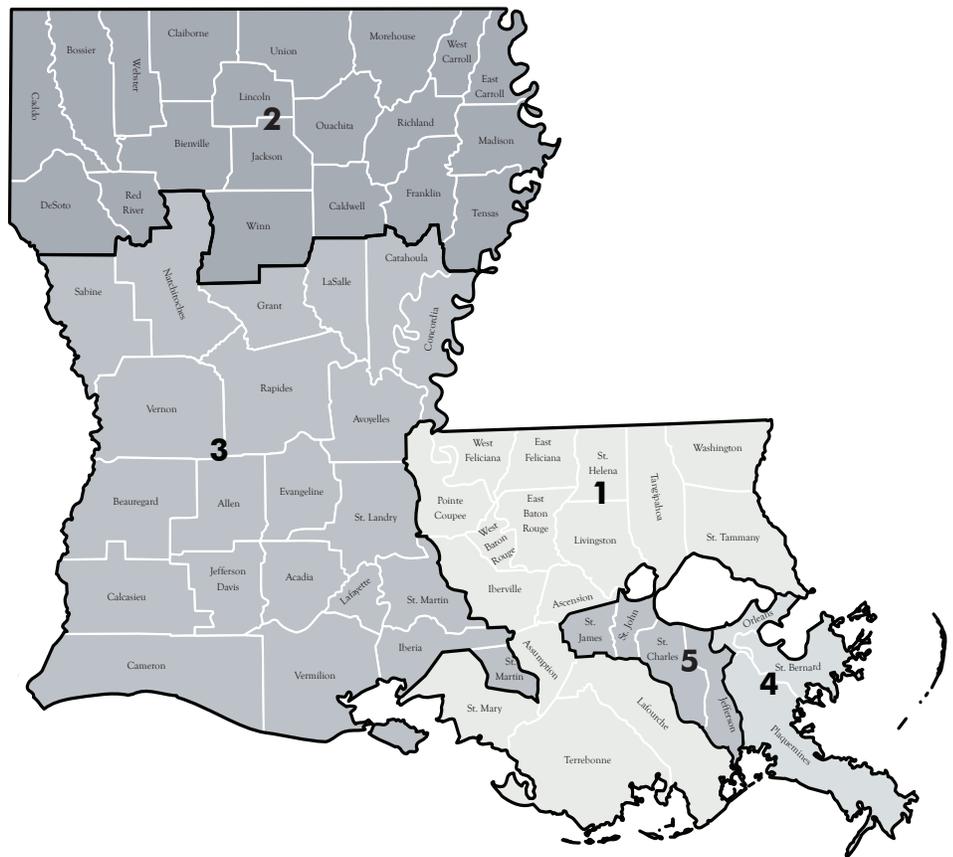
Total State Budget:  
**\$28,494,976,959**  
Judiciary Budget:  
**\$179,603,192**

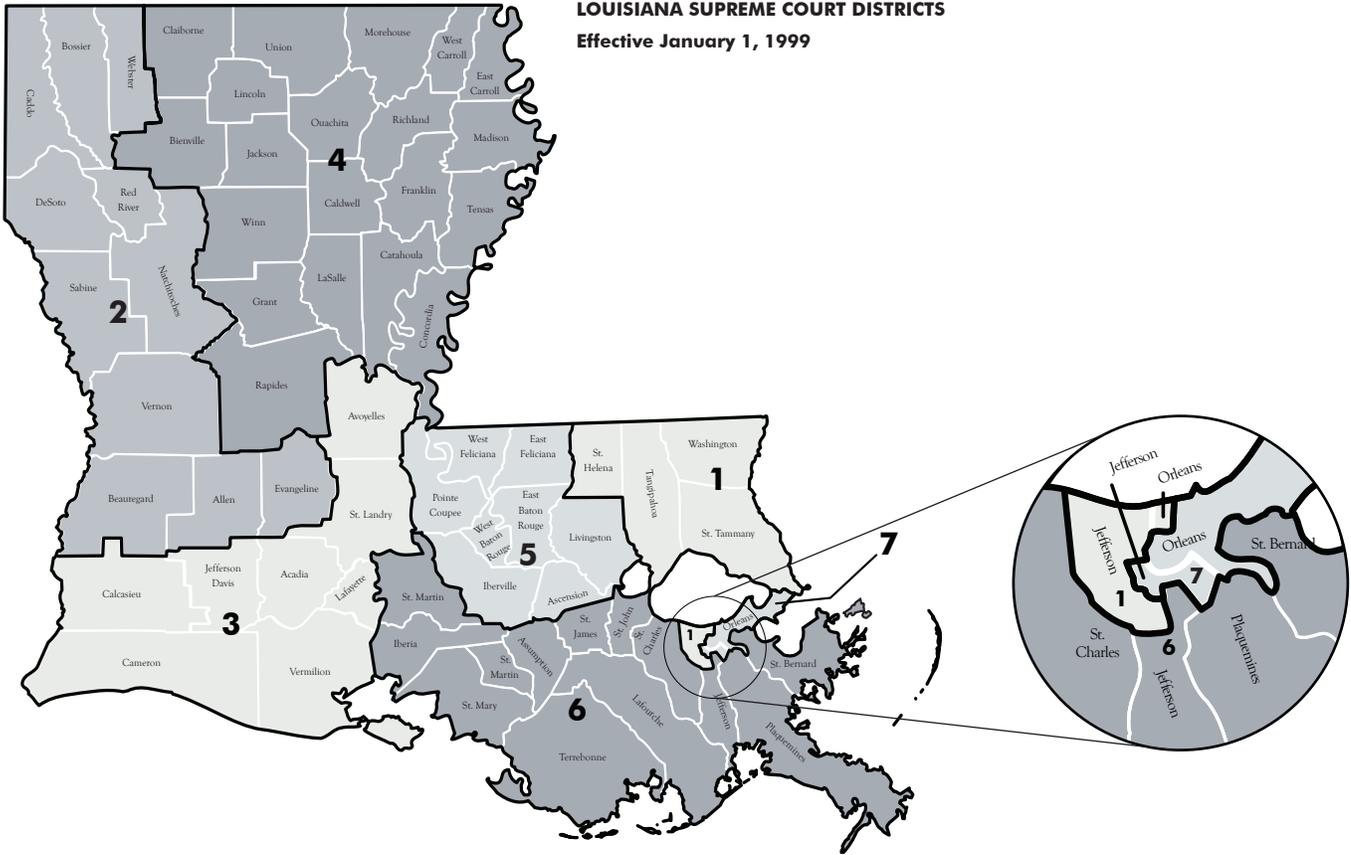
In FY 2015-2016, .63% of the state's general fund was appropriated to the state judiciary.

**LOUISIANA DISTRICT COURTS  
JUDICIAL DISTRICTS**



**LOUISIANA COURTS  
OF APPEAL CIRCUITS**





**LOUISIANA SUPREME COURT DISTRICTS**  
Effective January 1, 1999

**\*Districts 1, 6 & 7 Detail:**

Jefferson Parish Precincts in the First Louisiana Supreme Court District are 1-H through 9-H; 1-K through 35-K; 1 through 46; 51 through 108; 115 through 138; 150 through 155; 157A; 157B; 158; 170; 186; 198 and 199.

Jefferson Parish Precincts in the Sixth Louisiana Supreme Court District are 1-G1; 1-LA, 1-LB; 2-L; 182 through 185; 189 through 197; and 246A through 250.

Jefferson Parish Precincts in the Seventh Louisiana Supreme Court District are 1-G; 2-G through 11-G; 1-W through 9-W; 156; 171 through 181; 187; 188; 210 through 217; and 225 through 238.

Orleans Parish Precincts in the First Louisiana Supreme Court District are 3-20; 4-8 through 4-11; 4-14 through 4-23; 5-13 through 5-18; and 17-17 through 17-21.

The remainder of Orleans Parish Precincts are in the Seventh Louisiana Supreme Court District.

# 10 ways Justice works for you



## 1. Access to Justice

An Access to Justice Commission has been established in collaboration with the Louisiana State Bar Association and the civil justice community with the goal to ensure that all Louisiana citizens have access to equal justice under the law.



## 2. State of the Art Web Site

The Louisiana Supreme Court web site includes a language translation tool which translates 31 languages, a news release alert service, and live online tech support. Additionally, Louisiana Supreme Court oral arguments are streamed live on the court web site for anyone, anywhere to see.



## 3. Outreach to Schools

Using the *Judges in the Classroom* handbook developed by the Louisiana District Court Judges Association, judges across the state reach out to schools by participating in civics classes and by encouraging students to become future lawyers, probation officers, or judges rather than defendants.



## 4. Ride-Alongs

Through the Supreme Court Ride-Along Program, state judges host legislators for a “day on the bench” allowing legislators to experience firsthand the complexity and volume of cases handled day-to-day by a judge. Drug Court Ride-Alongs have been a particularly successful outreach effort.



## 5. Law Museum

The Louisiana Supreme Court building houses a free and open to the public Law Museum which features, among other things, the Louisiana Supreme Court documents from the historically significant *Plessy v. Ferguson* case.



## 6. Women in Law

In recognition of March being designated National Women’s History Month, the Louisiana Law Museum features an exhibit honoring the women judges of Louisiana and a historical time line exhibit of women in the law.



## 7. Campaign Oversight

During the qualifying period for state court elections, the Louisiana Judicial Campaign Oversight Committee conducts free, educational seminars throughout the state focusing on Canon 7 of the Code of Judicial Conduct and the Louisiana Campaign Finance Disclosure Act.



## 8. Law Day

In recognition of Law Day, May 1st, the Louisiana Supreme Court issues a resolution urging all Louisiana state court judges to dedicate the month of May to reaching out to schools to provide students with an opportunity to learn about the law, the role of judges, and the court system from members of the judiciary.



## 9. U.S. State Department Partnership

The U.S. Department of State launched its first state-level partnership by partnering with the Louisiana Supreme Court. The agreement paves the way for the State Department to leverage the expertise of the nation’s only state court system that relies on civil law to adjudicate non-criminal disputes.



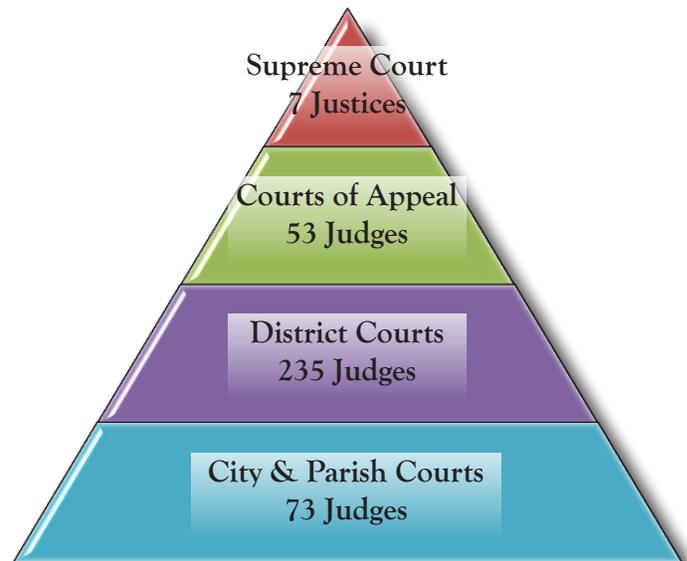
## 10. Leadership

Several judges and court administrators serve in leadership positions on national organizations including: the American Judges Association; the American Bar Association; the National Conference of Court of Appeal Judges; the National Association for Court Management; the Conference of State Court Administrators; the National Conference of Appellate Court Clerks; and the National Court Appointed Special Advocates Association.



# LOUISIANA'S JUDICIAL BRANCH OF GOVERNMENT

The judicial power of Louisiana, which is the power to interpret the Constitution and the laws of the state, is vested in the Judicial Branch of Government, made up of a supreme court, courts of appeal, district courts, city courts, and other courts authorized by the Constitution. In Louisiana judges are elected. The court structure consists of: 1 supreme court, 5 courts of appeal, 43 district courts, 5 juvenile or family courts, 49 city courts, and 3 parish courts. A total of 368 judges preside over the Louisiana state courts.



## Appellate Courts

### Supreme Court

- Seven justices, 10 year terms
- Sits in New Orleans
- Chief Justice is the most tenured in office
- Justices preside *en banc* (full court)

### Circuit Courts of Appeal

- 53 judges, 10 year terms
- Five circuits:
  - 1st Circuit: Baton Rouge, 12 judges
  - 2nd Circuit: Shreveport, 9 judges
  - 3rd Circuit: Lake Charles, 12 judges
  - 4th Circuit: New Orleans, 12 judges
  - 5th Circuit: Gretna, 8 judges
- Cases generally reviewed by three-judge panels

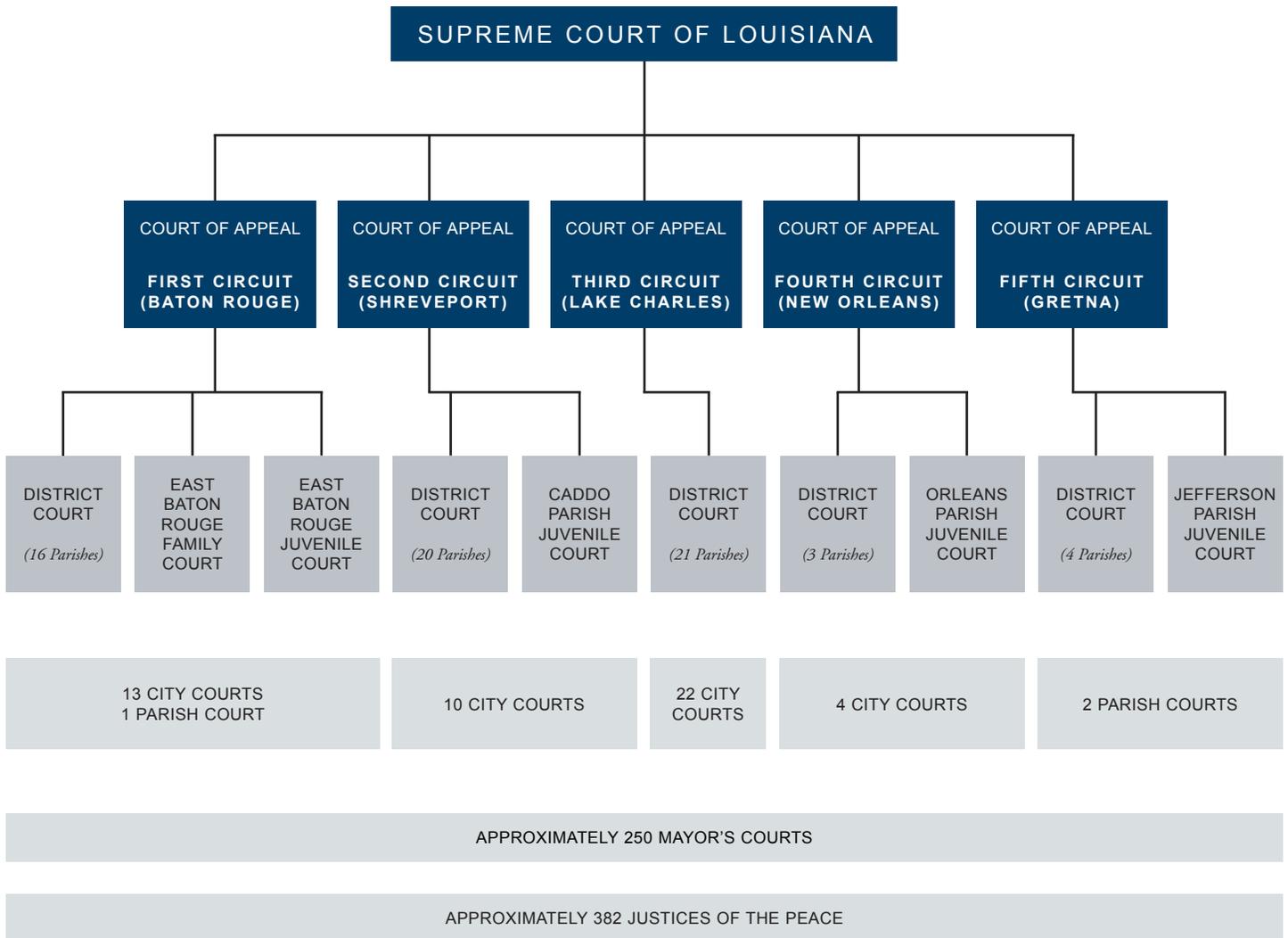
## Trial Courts

### District, Juvenile and Family

- 235 judges, six or eight year terms
- 43 judicial districts
- 4 juvenile courts
- 1 family court
- Number of judges in each court based on caseload and other factors
- Judges preside individually, not in panels

### City and Parish Courts

- 68 city court judges, six year terms
- 5 parish court judges, six year terms
- 49 city courts
- 3 parish courts
- Judges preside individually, not in panels



Number of Justices and Judges:	<b>7</b>	Supreme Court
	<b>53</b>	Courts of Appeal
	<b>235</b>	District, Family and Juvenile
	<b>73</b>	City and Parish Courts
	<b>368</b>	Total



# LOUISIANA SUPREME COURT

The Supreme Court is Louisiana's highest court and is domiciled in the City of New Orleans.

Under the Constitution of 1974, the Louisiana Supreme Court is composed of 7 justices elected from districts throughout Louisiana. The justices of the Louisiana Supreme Court serve 10 year terms of office. The senior justice in point of service is the Chief Justice, who is the chief administrative officer of the judicial system.

The Supreme Court has *exclusive jurisdiction* in cases involving disciplinary action against lawyers and judges. These cases cannot be heard by any other state court – only the Supreme Court.

The Supreme Court has *appellate jurisdiction* in cases in which a law or ordinance has been declared unconstitutional and in capital cases where the death penalty has been imposed. These cases originate in the trial court, but bypass review by the intermediate courts of appeal in order to be heard directly by the Supreme Court.

The Supreme Court has *supervisory jurisdiction* over all state courts. Cases from courts reach the Supreme Court after they have been heard by a lower court; however, the Supreme Court does not automatically hear these cases. A party must first convince the Court in a special application that its case merits high court review because an error occurred in the opinion, judgment, or ruling of the lower court. This procedure is known as *applying for writs*.

## 2015 Supreme Court Stats

In 2013, 3,017 cases were filed with the Clerk of Court, an increase of nine percent from the 2,769 cases filed in 2012. There was a major drop in filings between 2013 and 2014. Filings dropped 10% to 2716. Filings continued to drop in 2015 (2,365) hitting an all-time low for the last 30 years; 1984 = 2,214; and 1985 = 2,416. The all-time high occurred in 1999 when there were 3,652 filings.



# Louisiana Supreme Court

## CASE FILING BY TYPE

SUPREME COURT OF LOUISIANA *Two Year Trend in Activity*

	2014 Total	2015 Total	2015 Civil	2015 Criminal
<b>APPEALS</b>				
Filed	12	6	4	2
Dismissed	3	0	0	0
Opinions Rendered				
With written opinions	8	3	2	1
Per curiams	2	2	2	0
<b>WRITS</b>				
Applications Filed (Except Prisoner Pro Se)	1,383	1,277	841	436
Prisoner Pro Se Writs	1,113	895	15	880
Granted	204	201	111	90
To be argued	56	56	38	18
With orders & transferred	148	145	73	72
Dismissed	0	0	0	0
Not Considered	41	114	31	83
Denied	2,139	2,002	818	1,184
Opinions Rendered	48	31	24	7
<b>REHEARINGS</b>				
Applied for	48	40	24	16
Granted	3	1	0	1
Denied/Dismissed	53	48	28	20
Opinions Rendered	0	0	0	0
<b>ORIGINAL JURISDICTION</b>				
Petitions Filed	206	185	185	0
Opinions Rendered	3	3	3	0
Other Actions	172	182	182	0
<b>OTHER MATTERS</b>				
Filed	2	2	2	0
Opinions Rendered	0	3	3	0
Other Actions	6	4	2	2
<b>OTHER PER CURIAM OPINIONS RENDERED</b>	<b>211</b>	<b>365</b>	<b>167</b>	<b>198</b>
<b>TOTAL FILINGS</b>	<b>2,716</b>	<b>2,365</b>	<b>1,047</b>	<b>1,318</b>
Per Justice	388	338	150	188
<b>TOTAL OPINIONS RENDERED</b>	<b>59</b>	<b>40</b>	<b>32</b>	<b>8</b>

The Supreme Court has exclusive original jurisdiction in cases involving disciplinary actions against lawyers and judges, appellate jurisdiction in capital cases where the death penalty has been imposed and in cases in which a law or ordinance has been declared unconstitutional, as well as supervisory jurisdiction over all courts.



# COURTS OF APPEAL

Louisiana has established the intermediate courts of appeal between the district court and the supreme court. These courts guarantee the right to have almost any trial court decision reviewed by a higher court. Their appellate jurisdiction extends to virtually all civil and criminal cases triable by a jury, except for those few which are directly appealable to the Supreme Court.

Filings of writs and appeals dropped 4.3% from 6,375 in 2014 to 6,101 in 2015. In total the number of opinions rendered dropped 19.1% from 2,109 opinions in 2014 to 1,705 during 2015.

The Courts of Appeal use a variety of technology to assist them in their work. Funding for technology projects and maintenance is typically built into each circuit's annual budget request.

E-filing is being planned in several circuits. E-notification, a system provided for in law which allows attorneys to receive communications from the clerk of court by e-mail, is in use in three circuits. Video conferencing is also used in several circuits, and remote access is provided in most of the circuits to allow judges and staff working in satellite offices to access the court servers and networks.

All of the circuits use an electronic case management system to monitor case activity from intake/docketing through disposition. All circuits also report to the Supreme Court annually, using uniform reporting criteria and categories, on filings, opinions rendered, appeals pending, and other actions. Other uses of technology in the circuits included the ability for attorneys to pay fees and/or costs online and by credit card; the streaming of court hearings over the Internet; and electronic document management capabilities involving the scanning and storage of case documents, exhibits, and other case-related items.

## 2015 Courts of Appeal Stats

The number of opinions rendered per judge totaled 44 in First Circuit Court of Appeal, 30 in the Second Circuit Court of Appeal, 33 in the Third Circuit Court of Appeal, 22 in the Fourth Circuit Court of Appeal, and 31 in the Fifth Circuit Court of Appeal.

## STATISTICAL DATA

LOUISIANA COURTS OF APPEAL *Two Year Trend in Activity*

	2014 Total	2015 Total	2015 Civil	2015 Criminal
<b>FIRST CIRCUIT</b>				
Appeals Filed	605	698	547	151
Motions Filed	28	35	30	5
Writs Filed (except Pro Se)	551	633	471	162
Writs Refused*	420	474	352	122
Writs Granted	154	128	100	28
Pro Se Writs Filed	709	615	128	487
Pro Se Writs Refused*	778	564	103	461
Pro Se Writs Granted	56	52	27	25
Appeals Dismissed/Transferred	84	85	79	6
Consolidated Opinions	46	17	16	1
Opinions Rendered **	650	526	360	166
Rehearings Acted Upon ***	149	97	86	11
Appeals Pending	356	396	335	61
Argued But Not Decided	66	51	44	7
To Be Argued	290	345	291	54
Opinions Rendered Per Judge by Circuit	54	44	30	14
<b>SECOND CIRCUIT</b>				
Appeals Filed	295	344	222	122
Motions Filed	5	6	2	4
Writs Filed (except Pro Se)	205	197	133	64
Writs Refused*	146	157	106	51
Writs Granted	54	46	22	24
Pro Se Writs Filed	336	275	8	267
Pro Se Writs Refused*	249	214	8	206
Pro Se Writs Granted	65	70	1	69
Appeals Dismissed/Transferred	22	27	24	3
Consolidated Opinions	25	19	11	8
Opinions Rendered **	257	269	160	109
Rehearings Acted Upon ***	36	48	43	5
Appeals Pending	150	175	112	63
Argued But Not Decided	36	46	37	9
To Be Argued	114	129	75	54
Opinions Rendered Per Judge by Circuit	29	30	18	12
<b>THIRD CIRCUIT</b>				
Appeals Filed	470	404	299	105
Motions Filed	19	16	15	1
Writs Filed (except Pro Se)	376	340	240	100
Writs Refused*	276	243	182	61
Writs Granted	74	65	38	27
Pro Se Writs Filed	479	449	23	426
Pro Se Writs Refused*	370	395	14	381
Pro Se Writs Granted	77	77	2	75
Appeals Dismissed/Transferred	46	34	31	3
Consolidated Opinions	0	0	0	0
Opinions Rendered **	535	391	298	93
Rehearings Acted Upon ***	77	51	43	8
Appeals Pending	198	165	117	48
Argued But Not Decided	20	22	16	6
To Be Argued	178	143	101	42
Opinions Rendered Per Judge by Circuit	45	33	25	8

LOUISIANA COURTS OF APPEAL *Two Year Trend in Activity*

	2014 Total	2015 Total	2015 Civil	2015 Criminal
<b>FOURTH CIRCUIT</b>				
Appeals Filed	366	355	251	104
Motions Filed	18	22	18	4
Writs Filed (except Pro Se)	646	628	299	329
Writs Refused*	462	465	235	230
Writs Granted	154	138	57	81
Pro Se Writs Filed	387	385	8	377
Pro Se Writs Refused*	230	223	4	219
Pro Se Writs Granted	156	146	1	145
Appeals Dismissed/Transferred	40	37	23	14
Consolidated Opinions	4	3	3	0
Opinions Rendered **	358	268	185	83
Rehearings Acted Upon***	73	31	20	11
Appeals Pending	199	243	185	58
Argued But Not Decided	72	74	55	19
To Be Argued	127	169	130	39
Opinions Rendered Per Judge by Circuit	30	22	15	7
<b>FIFTH CIRCUIT</b>				
Appeals Filed	314	252	176	76
Motions Filed	16	36	28	8
Writs Filed (except Pro Se)	249	251	156	95
Writs Refused*	183	165	101	64
Writs Granted	66	64	35	29
Pro Se Writs Filed	387	275	16	259
Pro Se Writs Refused*	328	239	10	229
Pro Se Writs Granted	57	26	6	20
Appeals Dismissed/Transferred	37	20	19	1
Consolidated Opinions	0	0	0	0
Opinions Rendered **	309	251	153	98
Rehearings Acted Upon***	59	60	36	24
Appeals Pending	118	93	66	27
Argued But Not Decided	3	5	5	0
To Be Argued	115	88	61	27
Opinions Rendered Per Judge by Circuit	39	31	19	12
<b>TOTAL FOR ALL CIRCUITS</b>				
Appeals Filed	2,050	2,053	1,495	558
Motions Filed	86	115	93	22
Writs Filed (except Pro Se)	2,027	2,049	1,299	750
Writs Refused*	1,487	1,504	976	528
Writs Granted	502	441	252	189
Pro Se Writs Filed	2,298	1,999	183	1,816
Pro Se Writs Refused*	1,955	1,635	139	1,496
Pro Se Writs Granted	411	371	37	334
Appeals Dismissed/Transferred	229	203	176	27
Consolidated Opinions	75	39	30	9
Opinions Rendered **	2,109	1,705	1,156	549
Rehearings Acted Upon***	394	287	228	59
Appeals Pending	1,021	1,072	815	257
Argued But Not Decided	197	198	157	41
To Be Argued	824	874	658	216
Opinions Rendered Per Judge	40	32	22	10

\* Includes writs denied, writs not considered, writs dismissed and transferred  
 \*\* Includes opinions on appeals, writs, rehearings & supplemental opinions  
 \*\*\* Includes rehearings on writs



# AN ACTIVE JUDICIARY

Judges at all levels of court are active partners in justice reform initiatives. Judges at all levels participate on a variety of boards, committees, task forces and other statewide bodies. These include:

- Judicial Budgetary Control Board
- Judicial Council
- Judicial Council Trial Court Committee on Judgeships
- Judicial Council Committee to Evaluate Requests for Court Costs and Fees
- Judicial Ethics Committee
- Judicial Compensation Committee
- Judiciary Commission
- Uniform Rules Committee of the Louisiana Courts of Appeal
- Louisiana Bar Foundation
- Louisiana Judicial College
- Louisiana Sentencing Commission
- Supreme Court Standing Committee on Court Security
- Advisory Committee to the Supreme Court for Revision of the Code of Judicial Conduct
- Louisiana State Law Institute
- Supreme Court Self-Represented Litigant Task Force
- Supreme Court Uniform Rules Committee
- Louisiana Children’s Cabinet
- Child Support Review Committee
- Interagency Coalition on Domestic Violence
- Louisiana Diversity Awards Nominating Committee
- Sexual Assault Task Force
- Uniform Forms Committee for the City and Parish Courts
- DWI Task Force

Needs in other areas of particular importance to the courts are addressed through the involvement of judges working on committees of court organizations such as the:

- Conference of Court of Appeal Judges
- Louisiana District Court Judges Association
- Louisiana Council of Juvenile and Family Court Judges
- Louisiana City Judges Association



# DISTRICT COURTS

The trial court of general jurisdiction in Louisiana is the district court. District courts generally have authority to handle all civil and criminal cases.

Civil cases involve actions to enforce, correct, or protect private rights. In general, civil cases include all types of actions that are not criminal proceedings.

In a criminal proceeding, a person is charged with a crime and brought to trial and either found guilty or not guilty. The purpose of a criminal case is to punish the person who violates criminal laws.

District Courts are typically the level of court where judicial branch innovations find their broadest application. Drug Courts and other problem-solving courts are currently the most widespread examples of such innovations. There are 69 problem-solving courts spread throughout the state, with approximately 70 judges taking an active role in their operation.

These programs require intensive judicial oversight of program participants in mandatory treatment, drug testing, employment, and educational activities and involve weekly staffing and court proceedings outside of a judge's regular court duties.

## 2015 District Court Stats

During 2015 there were 663,118 filings in the district courts, a decrease of 2.2% compared with 2014. In 2015 Civil filings increased by 1,280, an increase of 1.0%, and criminal filings decreased by 4,085 filings, a decrease of 2.7%.



# JUVENILE COURTS

The juvenile courts have exclusive jurisdiction over delinquency cases involving persons under 17 years of age, with the exception of felony offenses for which 15-16 year olds can be bound over to the district courts. Juvenile courts also handle adoption proceedings of children under the age of 17. Similarly, family courts have jurisdiction over all family matters ranging from delinquency proceedings to divorce and child custody proceedings.

## 2015 Juvenile Court Stats

Juvenile filings in Louisiana's four specialized juvenile courts decreased by 15.5% from 12,921 in 2014 to 10,915 in 2015.

## LOUISIANA DISTRICT COURTS Two Year Trend in Activity

DISTRICT	PARISH	2014	2015	2015	2015	2015 <sup>2</sup>	2015	JURY TRIALS	
		Total Filed	Juvenile Filed	Civil Filed	Criminal Filed	Traffic Filed	Total Filed	Civil	Criminal
1	Caddo <sup>1</sup>	22,063	258	7,180	8,396	4,922	20,756	6	29
	<b>District Totals:</b>	<b>22,063</b>	<b>258</b>	<b>7,180</b>	<b>8,396</b>	<b>4,922</b>	<b>20,756</b>	<b>6</b>	<b>29</b>
2	Bienville	4,794	42	461	490	4,811	5,804	0	1
	Claiborne	2,930	114	349	382	1,761	2,606	0	0
	Jackson	1,639	205	479	654	786	2,124	1	1
	<b>District Totals:</b>	<b>9,363</b>	<b>361</b>	<b>1,289</b>	<b>1,526</b>	<b>7,358</b>	<b>10,534</b>	<b>1</b>	<b>2</b>
3	Lincoln	5,049	375	727	1,205	4,951	7,258	1	2
	Union	2,524	275	508	1,182	981	2,946	1	2
	<b>District Totals:</b>	<b>7,573</b>	<b>650</b>	<b>1,235</b>	<b>2,387</b>	<b>5,932</b>	<b>10,204</b>	<b>2</b>	<b>4</b>
4	Morehouse	7,243	327	519	1,068	5,385	7,299	2	4
	Ouachita	39,118	1,681	4,382	7,204	21,134	34,401	7	12
	<b>District Totals:</b>	<b>46,361</b>	<b>2,008</b>	<b>4,901</b>	<b>8,272</b>	<b>26,519</b>	<b>41,700</b>	<b>9</b>	<b>16</b>
5	Franklin	2,613	153	635	832	1,027	2,647	0	2
	Richland	5,420	182	498	1,107	2,648	4,435	0	2
	West Carroll	1,643	99	248	504	624	1,475	0	1
	<b>District Totals:</b>	<b>9,676</b>	<b>434</b>	<b>1,381</b>	<b>2,443</b>	<b>4,299</b>	<b>8,557</b>	<b>0</b>	<b>5</b>
6	East Carroll	3,197	42	142	316	3,545	4,045	1	0
	Madison	5,538	81	250	866	4,125	5,322	0	1
	Tensas	2,020	21	135	430	1,221	1,807	0	0
	<b>District Totals:</b>	<b>10,755</b>	<b>144</b>	<b>527</b>	<b>1,612</b>	<b>8,891</b>	<b>11,174</b>	<b>1</b>	<b>1</b>
7	Catahoula	2,871	9	295	747	1,060	2,111	0	1
	Concordia	3,792	137	555	1,296	1,411	3,399	0	1
	<b>District Totals:</b>	<b>6,663</b>	<b>146</b>	<b>850</b>	<b>2,043</b>	<b>2,471</b>	<b>5,510</b>	<b>0</b>	<b>2</b>
8	Winn	2,282	53	365	542	1,122	2,082	0	0
	<b>District Totals:</b>	<b>2,282</b>	<b>53</b>	<b>365</b>	<b>542</b>	<b>1,122</b>	<b>2,082</b>	<b>0</b>	<b>0</b>
9	Rapides	20,349	868	3,175	4,172	8,074	16,289	6	6
	<b>District Totals:</b>	<b>20,349</b>	<b>868</b>	<b>3,175</b>	<b>4,172</b>	<b>8,074</b>	<b>16,289</b>	<b>6</b>	<b>6</b>
10	Natchitoches	13,319	1,447	949	1,598	10,295	14,289	1	1
	<b>District Totals:</b>	<b>13,319</b>	<b>1,447</b>	<b>949</b>	<b>1,598</b>	<b>10,295</b>	<b>14,289</b>	<b>1</b>	<b>1</b>
11	Sabine	4,009	284	638	1,013	1,455	3,390	0	6
	<b>District Totals:</b>	<b>4,009</b>	<b>284</b>	<b>638</b>	<b>1,013</b>	<b>1,455</b>	<b>3,390</b>	<b>0</b>	<b>6</b>
12	Avoyelles	8,718	337	1,648	2,554	4,004	8,543	1	4
	<b>District Totals:</b>	<b>8,718</b>	<b>337</b>	<b>1,648</b>	<b>2,554</b>	<b>4,004</b>	<b>8,543</b>	<b>1</b>	<b>4</b>
13	Evangeline	7,674	689	897	1,918	4,224	7,728	1	2
	<b>District Totals:</b>	<b>7,674</b>	<b>689</b>	<b>897</b>	<b>1,918</b>	<b>4,224</b>	<b>7,728</b>	<b>1</b>	<b>2</b>
14	Calcasieu	31,045	2,162	5,619	14,789	7,891	30,461	15	17
	<b>District Totals:</b>	<b>31,045</b>	<b>2,162</b>	<b>5,619</b>	<b>14,789</b>	<b>7,891</b>	<b>30,461</b>	<b>15</b>	<b>17</b>
15	Acadia	5,937	185	1,364	1,678	3,116	6,343	1	2
	Lafayette	19,333	1,548	6,856	5,069	5,164	18,637	10	19
	Vermilion	5,775	229	1,575	2,528	2,389	6,721	1	7
	<b>District Totals:</b>	<b>31,045</b>	<b>1,962</b>	<b>9,795</b>	<b>9,275</b>	<b>10,669</b>	<b>31,701</b>	<b>12</b>	<b>28</b>
16	Iberia	7,506	509	2,268	1,865	4,120	8,762	4	4
	St. Martin	10,544	235	1,452	1,450	5,691	8,828	3	1
	St. Mary	6,659	293	1,492	2,480	2,768	7,033	1	1
	<b>District Totals:</b>	<b>24,709</b>	<b>1,037</b>	<b>5,212</b>	<b>5,795</b>	<b>12,579</b>	<b>24,623</b>	<b>8</b>	<b>6</b>
17	Lafourche	14,205	579	2,405	3,987	8,360	15,331	3	9
	<b>District Totals:</b>	<b>14,205</b>	<b>579</b>	<b>2,405</b>	<b>3,987</b>	<b>8,360</b>	<b>15,331</b>	<b>3</b>	<b>9</b>
18	Iberville	5,209	249	1,591	1,411	1,423	4,674	2	2
	Pointe Coupee	5,225	118	530	596	5,938	7,182	0	2
	West Baton Rouge	2,974	55	869	1,079	980	2,983	1	0
	<b>District Totals:</b>	<b>13,408</b>	<b>422</b>	<b>2,990</b>	<b>3,086</b>	<b>8,341</b>	<b>14,839</b>	<b>3</b>	<b>4</b>
19	East Baton Rouge <sup>1</sup>	53,843	0	9,017	11,201	34,263	54,481	47	46
	<b>District Totals:</b>	<b>53,843</b>	<b>0</b>	<b>9,017</b>	<b>11,201</b>	<b>34,263</b>	<b>54,481</b>	<b>47</b>	<b>46</b>
20	East Feliciana	2,226	201	1,121	834	921	3,077	1	2
	West Feliciana	1,028	5	249	557	365	1,176	1	0
	<b>District Totals:</b>	<b>3,254</b>	<b>206</b>	<b>1,370</b>	<b>1,391</b>	<b>1,286</b>	<b>4,253</b>	<b>2</b>	<b>2</b>

LOUISIANA DISTRICT COURTS *Two Year Trend in Activity*

DISTRICT	PARISH	2014	2015	2015	2015	2015 <sup>2</sup>	2015	JURY TRIALS	
		Total Filed	Juvenile Filed	Civil Filed	Criminal Filed	Traffic Filed	Total Filed	Civil	Criminal
21	Livingston	16,632	768	3,327	4,415	11,897	20,407	3	6
	St. Helena	2,125	66	345	661	1,602	2,674	0	1
	Tangipahoa	28,666	769	3,666	3,502	18,975	26,912	2	12
	<b>District Totals:</b>	<b>47,423</b>	<b>1,603</b>	<b>7,338</b>	<b>8,578</b>	<b>32,474</b>	<b>49,993</b>	<b>5</b>	<b>19</b>
22	St. Tammany	42,217	1,319	6,178	5,051	24,767	37,315	10	42
	Washington <sup>3</sup>	4,641	328	1,093	929	1,857	4,207	1	21
	<b>District Totals:</b>	<b>46,858</b>	<b>1,647</b>	<b>7,271</b>	<b>5,980</b>	<b>26,624</b>	<b>41,522</b>	<b>11</b>	<b>63</b>
23	Ascension <sup>1</sup>	5,048	440	3,350	1,688	0	5,478	4	14
	Assumption	2,851	319	565	770	1,444	3,098	0	4
	St. James	3,004	223	665	552	1,884	3,324	2	1
	<b>District Totals:</b>	<b>10,903</b>	<b>982</b>	<b>4,580</b>	<b>3,010</b>	<b>3,328</b>	<b>11,900</b>	<b>6</b>	<b>19</b>
24	Jefferson <sup>1</sup>	18,923	0	10,963	8,245	0	19,208	30	44
	<b>District Totals:</b>	<b>18,923</b>	<b>0</b>	<b>10,963</b>	<b>8,245</b>	<b>0</b>	<b>19,208</b>	<b>30</b>	<b>44</b>
25	Plaquemines	4,204	57	736	1,199	2,669	4,661	3	3
	<b>District Totals:</b>	<b>4,204</b>	<b>57</b>	<b>736</b>	<b>1,199</b>	<b>2,669</b>	<b>4,661</b>	<b>3</b>	<b>3</b>
26	Bossier	14,616	1,132	2,879	6,728	4,854	15,593	0	4
	Webster	6,027	230	804	1,114	3,189	5,337	0	7
	<b>District Totals:</b>	<b>20,643</b>	<b>1,362</b>	<b>3,683</b>	<b>7,842</b>	<b>8,043</b>	<b>20,930</b>	<b>0</b>	<b>11</b>
27	St. Landry	28,538	563	2,405	2,396	20,774	26,138	3	17
	<b>District Totals:</b>	<b>28,538</b>	<b>563</b>	<b>2,405</b>	<b>2,396</b>	<b>20,774</b>	<b>26,138</b>	<b>3</b>	<b>17</b>
28	LaSalle	3,299	110	413	536	1,819	2,878	0	3
	<b>District Totals:</b>	<b>3,299</b>	<b>110</b>	<b>413</b>	<b>536</b>	<b>1,819</b>	<b>2,878</b>	<b>0</b>	<b>3</b>
29	St. Charles	33,698	531	1,898	1,369	20,850	24,648	2	2
	<b>District Totals:</b>	<b>33,698</b>	<b>531</b>	<b>1,898</b>	<b>1,369</b>	<b>20,850</b>	<b>24,648</b>	<b>2</b>	<b>2</b>
30	Vernon	10,051	274	1,346	1,490	6,029	9,139	0	3
	<b>District Totals:</b>	<b>10,051</b>	<b>274</b>	<b>1,346</b>	<b>1,490</b>	<b>6,029</b>	<b>9,139</b>	<b>0</b>	<b>3</b>
31	Jefferson Davis	8,877	99	881	730	6,091	7,801	1	3
	<b>District Totals:</b>	<b>8,877</b>	<b>99</b>	<b>881</b>	<b>730</b>	<b>6,091</b>	<b>7,801</b>	<b>1</b>	<b>3</b>
32	Terrebonne	20,522	652	2,565	4,565	15,836	23,618	3	16
	<b>District Totals:</b>	<b>20,522</b>	<b>652</b>	<b>2,565</b>	<b>4,565</b>	<b>15,836</b>	<b>23,618</b>	<b>3</b>	<b>16</b>
33	Allen	5,365	216	538	1,001	2,838	4,593	0	9
	<b>District Totals:</b>	<b>5,365</b>	<b>216</b>	<b>538</b>	<b>1,001</b>	<b>2,838</b>	<b>4,593</b>	<b>0</b>	<b>9</b>
34	St. Bernard	12,551	192	1,772	2,619	3,892	8,475	0	6
	<b>District Totals:</b>	<b>12,551</b>	<b>192</b>	<b>1,772</b>	<b>2,619</b>	<b>3,892</b>	<b>8,475</b>	<b>0</b>	<b>6</b>
35	Grant	4,187	185	450	1,125	3,210	4,970	0	2
	<b>District Totals:</b>	<b>4,187</b>	<b>185</b>	<b>450</b>	<b>1,125</b>	<b>3,210</b>	<b>4,970</b>	<b>0</b>	<b>2</b>
36	Beauregard	7,234	248	900	872	3,533	5,553	1	1
	<b>District Totals:</b>	<b>7,234</b>	<b>248</b>	<b>900</b>	<b>872</b>	<b>3,533</b>	<b>5,553</b>	<b>1</b>	<b>1</b>
37	Caldwell	1,870	50	328	642	1,029	2,049	2	1
	<b>District Totals:</b>	<b>1,870</b>	<b>50</b>	<b>328</b>	<b>642</b>	<b>1,029</b>	<b>2,049</b>	<b>2</b>	<b>1</b>
38	Cameron	2,924	49	191	440	1,909	2,589	0	1
	<b>District Totals:</b>	<b>2,924</b>	<b>49</b>	<b>191</b>	<b>440</b>	<b>1,909</b>	<b>2,589</b>	<b>0</b>	<b>1</b>
39	Red River	1,595	18	266	546	939	1,769	0	2
	<b>District Totals:</b>	<b>1,595</b>	<b>18</b>	<b>266</b>	<b>546</b>	<b>939</b>	<b>1,769</b>	<b>0</b>	<b>2</b>
40	St. John the Baptist	20,529	363	1,662	2,054	19,803	23,882	2	5
	<b>District Totals:</b>	<b>20,529</b>	<b>363</b>	<b>1,662</b>	<b>2,054</b>	<b>19,803</b>	<b>23,882</b>	<b>2</b>	<b>5</b>
42	DeSoto	10,991	163	832	1,028	11,742	13,765	1	7
	<b>District Totals:</b>	<b>10,991</b>	<b>163</b>	<b>832</b>	<b>1,028</b>	<b>11,742</b>	<b>13,765</b>	<b>1</b>	<b>7</b>
	Orleans Civil <sup>1</sup>	12,199	0	11,913	0	0	11,913	42	0
	Orleans Criminal <sup>1</sup>	4,331	0	0	4,679	0	4,679	0	110
	<b>District Totals:</b>	<b>16,530</b>	<b>0</b>	<b>11,913</b>	<b>4,679</b>	<b>0</b>	<b>16,592</b>	<b>42</b>	<b>110</b>
<b>Statewide Totals:</b>		<b>678,029</b>	<b>23,411</b>	<b>124,374</b>	<b>148,946</b>	<b>366,387</b>	<b>663,118</b>	<b>230</b>	<b>537</b>

**2015 Report of the Total Number of Awards and the Total Amount of Funds Distributed for Wrongful Conviction and Imprisonment\***

In 2015 the number of new judgments for wrongful convictions, imprisonment, or loss of life opportunities: 1 Total amount paid on new and prior judgments in calendar year 2015 = \$568,546.50

1. Violations of Traffic, Misdemeanors, and/or Juvenile/Family Laws are Processed by Parish, City, and/or Juvenile/Family Courts. 2. DWI is included in the criminal totals beginning in 1990. 3. Reflects updated figures received after the publication of the 2014 Annual Report.

\*Pursuant to R.S. 15:572.8, Act 262, Regular Session 2007.

## Louisiana Juvenile Courts

## JUVENILE JUDICIAL ACTIVITY: FORMAL PROCESS – CALENDAR YEAR 2015

	CADD0			E. BATON ROUGE		
	Filings	Charges	Children <sup>1</sup>	Filings	Charges	Children <sup>1</sup>
Formal FINS	785	785	785	33	136	33
Juvenile Traffic	138	190	138	241	375	241
Juvenile Delinquency	1,275	1,494	1,275	1,576	2,914	1,576
Mental Incapacity to Proceed <sup>2</sup>	0	0	0	0	0	0
Interstate compact for Juveniles	0	0	0	0	0	0
Contempt of Court	317	317	0	211	211	211
Child in Need of Care Cases	243		243	201		342
Voluntary Transfer of Custody	29		29	49		57
Jud. Certification of Children for Adoption Cases	23		23	17		23
Surrender of Parental Rights	10		10	94		79
Adoption	44		44	62		71
Child Support	253		0	0		0
Mental Health	153		153	21		21
Misdemeanor Prosecution of Adults /Other	5		5	54		0
Minor Marriages	0		0	0		0
Protection of Terminally Ill Children	0		0	1		1
Domestic Abuse	164		164	0		0
Other	13		13	56		64
Subtotal	3,452	2,786	2,882	2,616	3,636	2,719

1. The category of Children denotes the number of children listed in filed petitions for each case type.

2. Mental Incapacity to Proceed is a subset of the category of Delinquency. The event is enumerated separately as it is considered a significant delinquency event.

## Family Court

The Family Court of East Baton Rouge Parish was originally established by the Louisiana Legislature under LA Acts 1990, No. 158 and is the only stand-alone family court in the state of Louisiana. The court consists of four judges who preside over matters including, but not limited to: divorces, community property division, spousal support, child visitation, child custody, child support, garnishments for spousal and child support, and domestic violence in the parish of East Baton Rouge. In 2015, 5,289 new cases were filed with the East Baton Rouge family court.

JEFFERSON			ORLEANS			GRAND TOTAL		
Filings	Charges	Children <sup>1</sup>	Filings	Charges	Children <sup>1</sup>	Filings	Charges	Children <sup>1</sup>
176	201	188	22	49	22	1,016	1,171	1,028
298	427	297	130	249	130	807	1,241	806
660	991	633	455	806	455	3,966	6,205	3,939
30	30	17	0	0	0	30	30	17
0	0	0	0	0	0	0	0	0
251	251	251	0	0	0	779	779	462
285		232	101		101	830		918
192		147	33		33	303		266
72		50	0		0	112		96
26		15	9		9	139		113
172		170	60		63	338		348
1,696		0	1		1	1,950		1
0		0	0		0	174		174
0		0	0		0	59		5
0		0	0		0	0		0
0		0	0		0	1		1
0		0	0		0	164		164
0		0	178		178	247		255
3,858	1,900	2,000	989	1,104	992	10,915	9,426	8,593

# CITY AND PARISH COURTS



The city courts are courts of record. This means that their decisions are reviewed on appeal on the record, as opposed to being tried anew in a higher court. City courts generally exercise concurrent jurisdiction with the district court in civil cases where the amount in controversy cannot exceed \$50,000. In criminal matters, they generally have jurisdiction over ordinance violations and misdemeanor violations of state law. City judges also handle a large number of traffic cases.

Louisiana's 3 parish courts are distinguishable from city courts only in that they are always staffed by full-time judges and their jurisdiction is a bit broader. Parish courts exercise jurisdiction in civil cases worth up to \$20,000 and criminal cases punishable by fines of \$1,000 or less, imprisonment of six months or less, or both. Cases are appealable from the parish courts directly to the courts of appeal.

## 2015 City & Parish Court Stats

Filings in Louisiana city and parish Courts decreased by 4.3%, from 756,353 filings in 2014 to 723,773 filings in 2015.

LOUISIANA CITY AND PARISH COURTS Cases Processed Report Year 2015

CITY	CIVIL		CRIMINAL		TRAFFIC*		JUVENILE		TOTAL CASES		OTHER PROCEEDINGS**	
	Filed	Term.	Filed	Term.	Filed	Term.	Filed	Term.	Filed	Term.	Filed	Term.
Abbeville	493	410	801	613	2,194	1,849	152	158	3,640	3,030	0	0
Alexandria	3,491	1,980	8,832	6,479	12,023	11,491	0	0	24,346	19,950	0	0
Ascension	612	222	2,542	2,879	10,577	11,735	163	288	13,894	15,124	0	0
Baker	434	341	551	537	6,744	3,949	0	0	7,729	4,827	0	0
Bastrop	869	698	673	596	662	591	12	5	2,216	1,890	0	0
Baton Rouge	11,405	10,643	18,618	16,949	90,814	88,165	0	0	120,837	115,757	39,418	49,227
Bogalusa	331	294	1,559	1,043	1,764	1,589	227	309	3,881	3,235	3,080	3,068
Bossier City	2,527	1,876	2,189	2,100	6,615	7,344	882	900	12,213	12,220	219	200
Breaux Bridge	502	284	981	307	1,016	182	140	35	2,639	808	379	232
Bunkie	86	89	114	113	485	486	18	17	703	705	0	0
Crowley	647	490	1,306	1,064	1,112	1,046	127	107	3,192	2,707	0	0
Denham Springs	2,338	1,848	1,391	1,718	15,343	13,363	471	500	19,543	17,429	163	163
Eunice	463	297	849	1,038	1,202	839	172	230	2,686	2,404	0	0
Franklin	313	128	482	262	641	645	87	61	1,523	1,096	36	14
Hammond	2,483	2,389	2,331	4,946	7,191	10,365	869	286	12,874	17,986	0	0
Houma	4,214	2,197	2,454	2,733	5,494	5,976	880	861	13,042	11,767	1,647	1,389
Jeanerette	135	192	583	604	6,201	4,040	99	47	7,018	4,883	0	0
Jeff. 1st Parish Ct.	2,315	4,781	3,520	9,138	49,806	92,880	0	0	55,641	106,799	0	0
Jeff. 2nd Parish Ct.	3,958	6,824	2,832	8,538	37,799	81,812	0	0	44,589	97,174	0	0
Jennings	430	418	623	287	800	499	19	24	1,872	1,228	0	0
Kaplan	70	63	188	194	566	550	59	75	883	882	0	0
Lafayette	4,274	3,873	4,643	4,369	23,159	22,648	493	714	32,569	31,604	764	764
Lake Charles	4,041	2,863	7,446	5,832	6,155	6,387	18	15	17,660	15,097	0	0
Leesville	185	40	906	553	2,796	2,309	74	37	3,961	2,939	0	0
Marksville	479	427	579	532	785	755	105	100	1,948	1,814	0	0
Minden	463	382	743	379	854	691	128	57	2,188	1,509	1	1
Monroe	4,520	3,267	3,377	4,405	11,520	8,791	236	191	19,653	16,654	0	0
Morgan City	505	391	1,034	1,435	1,965	1,782	192	192	3,696	3,800	0	0
Natchitoches	606	287	1,045	952	3,428	3,194	182	190	5,261	4,623	93	93
New Iberia	1,387	1,113	1,324	1,520	2,736	3,043	178	171	5,625	5,847	374	203
N.O. 1st City Ct.	9,022	5,076	0	0	0	0	0	0	9,022	5,076	0	0
N.O. 2nd City Ct.	1,427	1,332	0	0	0	0	0	0	1,427	1,332	0	0
N.O. Municipal	0	0	25,174	21,986	0	0	0	0	25,174	21,986	0	0
N.O. Traffic	0	0	1,243	1,994	104,737	113,386	0	0	105,980	115,380	0	0
Oakdale	242	208	302	391	2,075	1,808	92	56	2,711	2,463	0	0
Opelousas	735	737	2,168	1,722	3,978	3,776	318	325	7,199	6,560	0	0
Pineville	675	870	5,359	3,400	4,501	4,350	0	0	10,535	8,620	98	0
Plaquemine	353	259	378	123	717	375	40	29	1,488	786	0	0
Port Allen	247	160	375	248	5,705	5,350	33	14	6,360	5,772	0	0
Rayne	544	507	310	300	1,835	1,970	89	97	2,778	2,874	0	0
Ruston	1,596	837	895	661	1,507	1,526	0	0	3,998	3,024	1,742	721
Shreveport	11,180	10,120	7,255	7,518	36,063	37,121	0	0	54,498	54,759	33,598	0
Slidell	1,954	1,761	1,683	1,469	4,085	3,534	404	309	8,126	7,073	1,551	1,551
Springhill	362	319	1,064	652	1,220	1,210	149	110	2,795	2,291	125	58
Sulphur	994	717	2,903	2,940	6,508	6,787	81	86	10,486	10,530	272	215
Thibodaux	759	336	1,823	1,748	1,795	1,624	263	147	4,640	3,855	0	0
Vidalia	19	14	188	148	1,490	1,612	33	21	1,730	1,795	0	0
Ville Platte	566	405	1,091	982	807	643	102	99	2,566	2,129	0	0
West Monroe	1,830	1,783	2,005	2,044	3,900	3,900	112	116	7,847	7,843	396	396
Winnfield	84	34	634	483	901	604	0	0	1,619	1,121	0	0
Winnsboro	932	27	594	504	906	786	51	51	2,483	1,368	0	0
Zachary	600	409	490	474	1,699	1,795	0	0	2,789	2,678	0	0
<b>STATE TOTALS:</b>	<b>88,697</b>	<b>75,018</b>	<b>130,450</b>	<b>131,902</b>	<b>496,876</b>	<b>581,153</b>	<b>7,750</b>	<b>7,030</b>	<b>723,773</b>	<b>795,103</b>	<b>83,956</b>	<b>58,295</b>

\* DWI is included in the Criminal Column

\*\* Other proceedings include actions not considered cases, such as post-conviction remedy, preliminary hearings, sentence review and extraordinary writs.

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**THE LOUISIANA PUBLIC DEFENDER BOARD**  
**AT THE CROSSROADS**  
**ETHICS AND LAW IN PUBLIC DEFENSE**  
**(Executive Summary)**

**JAMES T. DIXON, JR.**  
**STATE PUBLIC DEFENDER**  
**LOUISIANA PUBLIC DEFENDER BOARD**  
**JULY 15, 2015**

The noble ideal [of a fair trial] cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. *Gideon v. Wainwright*, 373 U.S. 335 (1963).

## EXECUTIVE SUMMARY

On April 27, 2015, in support of House Bill 605, a highly misleading and inaccurate memorandum and other documents were sent by the Louisiana District Attorneys Association (LDAA) to every member of the Louisiana Legislature’s House of Representatives. Through HB 605, the membership of the Louisiana Public Defender Board (LPDB) and enabling legislation contained in the Louisiana Public Defender Act (Act 307 of the 2007 Regular Legislative Session) came under attack. First the bill brought by the LDAA sought to strip capital representation from the LPDB. Imbedded within the bill was the removal of the rights of appeal and post-conviction representation. Based on the district attorneys association paper, replete with misinformation, untruths and inaccuracies, the Louisiana Public Defender Board responds with evidence-based factual corrections.

### MYTH #1: Restriction of Services is a surprise

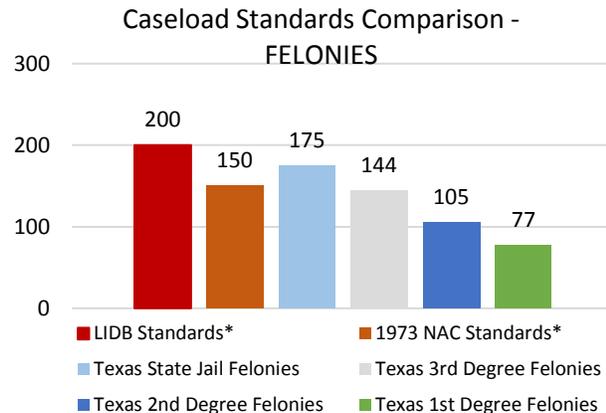
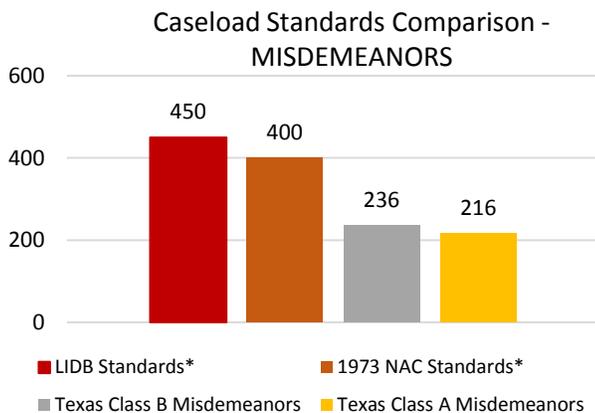
**FACT**

- ✓ The Service Restriction Protocol (LAC 22: XV, Chapter 17) was promulgated in 2012 to address excessive workload and insufficient funding.
- ✓ For years districts have been dependent on fund balances to meet the gap between local revenues, supplemental state funding, and expenditures.
- ✓ Legislative auditor reports have consistently noted fund balance depletion caused by insufficient revenues.

### MYTH #2: LPDB attorney caseload standards are arbitrary

**FACT**

- ✓ Louisiana standards were promulgated by the Louisiana Indigent Defender Board (LIDB) in 1994. LIDB took the National Advisory Commission on Criminal Justice Standards and Goals (NAC Standards, 1973) and added 50 cases to all categories except capital.
- ✓ Louisiana standards exceed those of every other known caseload standard in the United States.



\*Note: LIDB and NAC Standards are disjunctive. For example, if a public defender is assigned cases from more than one category, the combined weighted total should not exceed the equivalent of 450 misdemeanors.

The noble ideal [of a fair trial] cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. *Gideon v. Wainwright*, 373 U.S. 335 (1963).

**MYTH #3: LPDB inflates attorney caseloads**

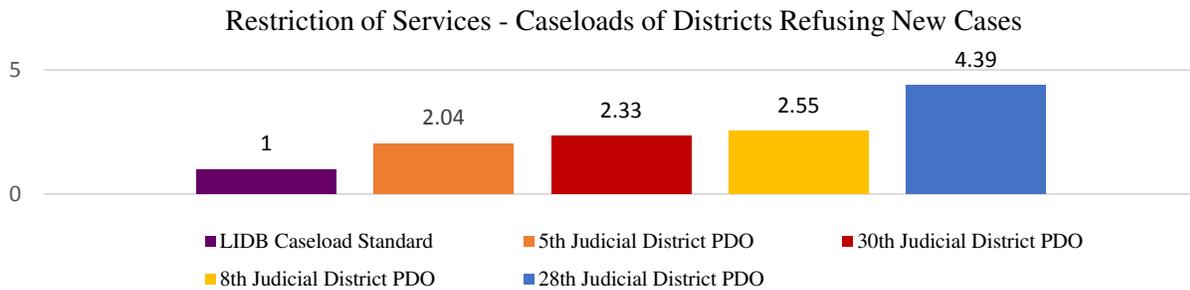
**FACT**

- ✓ LPDB’s database automatically changes the status of cases which have been dormant for more than six months, these cases are not considered open.
- ✓ LPDB conforms to the definition of a case as established in Louisiana R.S. §15:174(C).

**MYTH #4: LPDB uses caseload standards to close district offices**

**FACT**

- ✓ No local Public Defenders Offices have closed.
- ✓ Of the eight districts currently in restriction of services – three districts have eliminated the offices’ conflict panels (1<sup>st</sup>, 20<sup>th</sup>, and 26<sup>th</sup>); four districts are refusing new cases due to excessive existing caseloads (5<sup>th</sup>, 8<sup>th</sup>, 28<sup>th</sup>, and 30<sup>th</sup>); one has implemented a hiring freeze which has not affected client representation (19<sup>th</sup>).
- ✓ The four districts which are refusing new cases due to excessive caseloads all maintain caseloads more than two times the caseload standards.



**MYTH #5: LPDB lacks accountability and oversight**

**FACT**

- ✓ LPDB is an agency established within the Office of the Governor, overseen by the Senate Judiciary B Committee, the House Committee on the Administration of Criminal Justice, and the Louisiana Legislative Auditor.
- ✓ The Governor either directly appoints or must approve the appointments of six of the 15 board members, including the Board Chairperson.
- ✓ Other appointing entities include the Louisiana Supreme Court, Louisiana Bar Association, Louisiana Legislature, Louis A. Martinet Society, Louisiana Interchurch Conference, and the Louisiana Law Institute’s Children’s Code Committee.

**MYTH #6: LPDB is short-changing local Public Defenders Offices to fund capital programs**

**FACT**

- ✓ Capital cases are expensive. During testimony on HB 605, it was noted that one capital case can cost a District Attorney’s Office anywhere from \$500,000 to \$1,500,000. In contrast, LPDB spent approximately \$5,800,000 at the trial level on more than 70 potentially capital cases in calendar year 2014 – an average of less than \$83,000 per case.

The noble ideal [of a fair trial] cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. *Gideon v. Wainwright*, 373 U.S. 335 (1963).

# Louisiana's Debtors Prisons: An Appeal to Justice

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**A report by the American Civil Liberties Union of Louisiana  
August 2015**



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**Fine Payment Receipt** (p. 15) courtesy Dianne Jones

**Ville Platte Courthouse** (p. 18) by Jimmy Emerson via [CC BY-NC-ND 2.0](#)

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**Orleans Parish Criminal District Court** (p. 22) by Paul Sableman via [CC BY 2.0](#)

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*Since poverty is punished among us as a crime, it ought at least to be treated with the same lenity as other crimes: the offender ought not to languish at the will of him whom he has offended, but to be allowed some appeal to the justice of his country. —Samuel Johnson*

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## EXECUTIVE SUMMARY

We tend to think of “debtors prisons” as a Dickensian practice, one that may have thrived in less civilized centuries but has long been consigned to the dustbin of history. We are comfortable believing that locking people up because they can’t pay their debts doesn’t happen in the modern world, and certainly not in America. The truth is the opposite: debtors prison practices are very real and present, both across the country, and here in Louisiana.

In January 2014, Orleans Parish grandmother Dianne Jones was sentenced to time served (ten days), an almost \$800 fine, and six months probation for first-time possession of marijuana. Although unemployed and the primary caregiver for her three young grandchildren, Jones paid monthly installments of more than \$100 over several months, until she was unexpectedly forced to move. The expenses associated with the unplanned move caused her to fall behind in her court payments, leaving her owing a balance of \$148. Because she did not complete her installment payments in the six months allotted by the court, her probation period was extended and a warrant with a \$20,000 bond was issued for her arrest. At risk of being jailed, and leaving her grandchildren without care, Jones only found relief when a community group rallied to take up a collection on her behalf. With the money raised, Jones was able to pay her remaining fines and court costs, and the warrant was lifted.

Jones’ case is not unlike one from 1983, involving a man named Danny Bearden. It began when Bearden was sentenced to three years probation and ordered to pay \$750 in fines and restitution for burglary and receiving stolen property. Bearden’s family initially paid part of his fine, but illiterate and unemployed, he was unable to keep up his payments. In June 1981, he was sentenced to serve the remainder of his probation term in prison because he hadn’t paid the \$550 he still owed. He languished in prison for two years, and appealed his sentence all the way to the U.S. Supreme Court in 1983.

The Supreme Court held that, under the Due Process Clause of the Fourteenth Amendment, an individual may face incarceration for failure to pay fines only if that failure was willful or the individual failed to make bona fide efforts to pay. Sentencing courts must inquire into the reasons that a defendant fails to pay a fine or restitution before imposing a prison sentence; to imprison someone merely because of their poverty would be fundamentally unfair. In short,

*Bearden v. Georgia* established that it is illegal to imprison someone who cannot pay a fine simply because the person is poor.<sup>1</sup>

More than a decade before the *Bearden* case, in 1972, the U.S. 5th Circuit Court of Appeals, which includes Louisiana, ruled in *Frazier v. Jordan* that courts may not impose “pay or stay” sentences—sentences which require a defendant to pay a fine at the time of sentencing or serve a jail term.<sup>2</sup> Between *Bearden* and *Frazier*, the illegality of both these practices—imposing a jail sentence for failing to pay a court-ordered fine, and imposing sentences that present a choice between a fine and jail time—is long established.

Yet despite clear and longstanding law, courts across Louisiana continue to disregard the protections and principles established by the Supreme Court and by the 5th Circuit in *Bearden* and *Frazier*. Louisiana courts routinely incarcerate people simply because they are too poor to pay fines and fees—costs often stemming from very minor, nonviolent offenses. Others are given the impossible choice between a fine they can’t afford and a stay in jail. In this report, the ACLU of Louisiana details the experiences of people who were incarcerated because they were unable to pay relatively small fines. That these practices have continued to flourish for decades after being outlawed demonstrates not only a disregard for the law, but also for the people of Louisiana. Debtors prisons are supposed to be a thing of the past. It’s time to make that true.

## KEY FINDINGS

The ACLU of Louisiana (“ACLU”) investigated the imposition and collection of fines, fees and court costs or other legal financial obligations (LFOs) in twelve parishes and two cities from across Louisiana. We also examined instances of “pay or stay” sentences. These practices are examined together because their impact on individuals is the same.

We sought records of jail bookings during the 45-day period from January 1–February 15, 2014, as well as specific bookings for contempt or failure to pay fines, fees, or costs. In some cases, we also requested city court records when necessary to clarify parish jail booking records. We screened records for individuals booked on contempt or other charges for failure to pay fines and fees, as well as for individuals sentenced to “pay or stay sentences.” ACLU staff visited courtrooms to observe the practice of jailing people for inability to pay in parishes across Louisiana. The ACLU interviewed court officials and advocates as well as people who were subject to debtors prison practices in Bossier, Orleans, Caddo, St. Martin, and Evangeline parishes. Several themes emerged in our analysis:

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<sup>1</sup> *Bearden v. Georgia*, 461 U.S. 660 (1983)

<sup>2</sup> *Frazier v. Jordan*, 457 F.2d 726 (5th Cir. 1972)

## Families and Communities Pay a Tremendous Financial and Emotional Cost

Many poor defendants and their families prioritize paying a fine in order to avoid incarceration, and to do so must forgo paying for essentials such as rent or food. Getting out of jail or avoiding jail time because of unpaid fines and fees may require significant support from already stretched family and friends. Those who provide help may themselves struggle financially as a result and see their own fragile stability jeopardized.

Beyond the financial impact on families, the collateral damage is impossible to calculate. Children suffer from the uncertainty that their parents or caregivers may be imprisoned, from the fear that they may lose their homes, even that they may not have enough to eat. When the result is incarceration, families are torn apart. Poor defendants often emerge from even short jail terms less able to pay their remaining court debt and still meet other financial obligations such as rent and child support. People who know they are behind on payments and fear arrest may avoid driving, going to family events, to church, or otherwise participating in family and community life. The impact of debtors prison practices falls not just on the individual but also on their families and the wider community.

- A pregnant single mother of three children in Bossier Parish reported using rent money to get out of jail after being incarcerated for an unpaid fine, putting her family at risk of homelessness. Her alternative – to serve out her time in jail – would have left her young children without their mother.
- In St. Martin Parish, one man’s elderly mother paid part of his fine in coins—with help from law enforcement personnel—so that he could avoid time in jail for a traffic ticket after being told he had to pay with exact change.
- A young mother from Caddo Parish spoke about her children’s fear of seeing police or even riding in a car after they witnessed her being arrested and taken to jail for an unpaid traffic ticket.
- A woman in Orleans Parish told us that she skipped family events and avoided leaving the house for fear of being arrested when she was behind on fine payments.
- One man in Orleans Parish reported being afraid to wait for first responders after calling 911 because of his fear of arrest due to unpaid traffic tickets

Incarcerating people to poor to pay is also expensive for taxpayers. While individual court systems may reap some benefit from aggressive collection of court costs, the cost of incarceration stretches already thin state and municipal budgets. At a cost of at least \$24 per day<sup>3</sup>—and possibly as high as \$90 per day in Orleans Parish<sup>4</sup>—the price of incarceration can quickly exceed the amount likely to be collected via fines and court fees.

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<sup>3</sup> [Louisiana Department of Public Safety and Corrections Website](#)

<sup>4</sup> Austin, James, and Allen Patrick. 'Orleans Prison Population Trends And Facility Options'. 2015. Presentation.

## **Municipal and Traffic Courts Frequently Jail People for Failure to Pay Fines**

Although regular criminal courts do often impose sentences for LFO's, the practice is mostly concentrated in municipal (city) and traffic courts. In these courts, individuals face charges on minor offenses such as littering, driving without proof of insurance, playing loud music, and other similar charges. An advocate with the public defender in New Orleans Municipal Court reported that the practice of jailing people unable to pay fines or court costs was "so common you stop noticing it."

In these cases, judges typically issue warrants or "attachments," and often add contempt or failure to appear charges when individuals either fail to pay a fine on time or miss a court date to pay. Hefty court costs can drive up the amount a person has to pay to satisfy LFO's, rendering compliance virtually impossible. Unpaid traffic fines and fees often lead to suspension of a person's driver's license, which can lead to further arrests and often makes working and meeting other obligations more difficult.

- In Shreveport, a \$154 red light ticket ended up costing a woman almost two thousand dollars and resulted in multiple arrests.
- One man in Orleans Parish has been to jail at least six times and had his driver's license suspended repeatedly since 2008 because of his inability to pay traffic fines. As a landscaper, these frequent incarcerations and repeated suspensions of his driver's license have made it difficult for him to maintain stable employment.
- In Shreveport City Court nearly every sentence imposed during our observation period was a "pay or stay" sentence. The amount of money each day in jail is "worth" varied, with amounts between \$10 and \$25 per day being most common. Some sentences also included court costs amounting to more than the actual fine.

## **Fine and fee collection processes are often arbitrary, capricious, and unnecessarily punitive.**

There is wide variety even within individual court systems as to how fine and fee collection is handled, and there may be significant variation from day to day. One judge may grant almost everyone facing incarceration for unpaid fines and fees an "ability to pay" hearing as the law requires, while another routinely doles out community service in lieu of fines, and another incarcerates almost everyone who cannot pay. Some judges will accept partial payment while others jail anyone who cannot pay in full. John Cormier was told at his court appearance that he must pay in full and with exact change on the spot, or be jailed. He had not been told in advance that being ordered to "pay or stay" was a possibility, and so was completely unprepared for it.

To court watchers, some judges appeared to vary their practices from day to day, and their determinations appeared capricious. People navigating the court system may face erroneous or

contradictory information and inconsistent fine collection practices by judges and court personnel, which can increase their chances of ending up in jail.

Facing unclear and inconsistent information, a poor person who wants to comply with the court but lacks the full fine amount may conclude that skipping court is the safest way to avoid jail. The consequence of missing a court date is the issuance of a bench warrant, and often additional criminal charges—and yet more fines and fees. Of course, courts have a legitimate interest in ensuring that people appear for assigned court dates. However, a poor person who is trying to pay the fines but is unable to pay in full faces a difficult choice because of the inconsistent information and harsh practices in many courts.

- In Orleans Parish Gregory Nogess, recently hired for a new job, appeared with \$60 towards the \$200 he was scheduled to pay on his \$400 dollar fine for marijuana possession. Because he hadn't yet received his first paycheck, he didn't have the full amount owed. Despite his promise to bring the additional \$140 on payday, he was jailed. At a previous court appearance, he had been permitted to make a partial payment. This inconsistency landed Nogess in jail and nearly cost him his job.
- One court watcher in Shreveport City Court noted that a particular judge seem to have “good mood” days when he gave payment extensions to everyone and “bad mood” days when no one got an extension.
- One judge from Orleans Municipal Court said they denied an indigency hearing to a defendant because the defendant had made bail.
- In several courts, court personnel routinely tell people not to come to court unless they have all the money for their fines. Until very recently, a sign in the “fine room” in Orleans Parish Criminal Court informed people that they must pay a minimum of \$100 on their fine.\* Yet when an advocate called and asked personnel in the office about this policy, the collection agent said it was dependent on the case number and section of court. People who want to fulfill their obligations, but lack the total amount necessary, are unable to determine the correct course of action.

*\*As of July 29, 2015, the sign had been removed; however our staff observed it as recently as May 2015*

### **Defendants are Often Denied their Right to Counsel at LFO Hearings**

Even before *Bearden*, the U.S. Supreme Court, held that anyone facing charges that might lead to incarceration for even the shortest length of time has a constitutional right to counsel, including a public defender if appropriate. This right applies to those facing probation if that sentence could be enforced by incarceration. In Louisiana, defendants facing debtors prison charges are often not provided the opportunity to have counsel, leaving them vulnerable and in violation of their rights. In the cases illustrated below, not one of the defendants was informed of the right to counsel when facing charges that could lead to incarceration.

## RECOMMENDATIONS

The ACLU offers the following recommendations to state and local officials, including judges, law enforcement agencies, and district attorneys, to address the serious abuses resulting from debtors prison practices:

- Require judges to conduct meaningful indigence hearings and consider alternatives to incarceration prior to jailing people for failure to pay fines. Any incarceration for financial obligations must be imposed only after such a hearing and standardized amounts for credit upon the fine (ex: \$50 credit per day or fraction of a day) must be set.
- Create sliding scales of fines so that they will be equally affordable to all. If a fine is supposed to be a deterrent against future misconduct, the fine should be proportional to the defendant's income.
- Ensure that all defendants are offered the opportunity to have counsel, including a public defender when appropriate, at an indigence hearing or a hearing on revocation of probation for inability or failure to pay.
- Establish clear and consistent guidelines for imposing community service as sentencing in lieu of fines. The community service must be reasonably achievable for the defendant given their particular circumstances, taking into account such factors as work schedules and travel constraints.
- Consider the relative costs of debtors prison in all such sentencing decisions. Courts should provide a fiscal impact statement estimating the cost of incarceration and comparing it with the value of the LFO. These costs should include ancillary costs borne by the family, including the loss of income and possibly a job, as well as costs borne by society including the family's increased need for public assistance.
- Adopt a "bench card" that instructs judges on methods of collecting fines and fees that meet constitutional requirements, and informs them that "pay or stay" sentences or sentences that offer fines in lieu of incarceration are illegal.

## CONCLUSION

The United States banned debtors prisons on the federal level in 1833<sup>5</sup>, a century and a half before Danny Bearden's case came before the Supreme Court: the illegality of the practice could not be more firmly established. The courts of Louisiana, however, continue to incarcerate people who simply lack the financial means to avoid jail by paying fines. Legality aside, it is a counterproductive practice, and deeply damaging to the communities in which these sentences are imposed. The cost of jail time often exceeds the value of the fine, adding a burden to the

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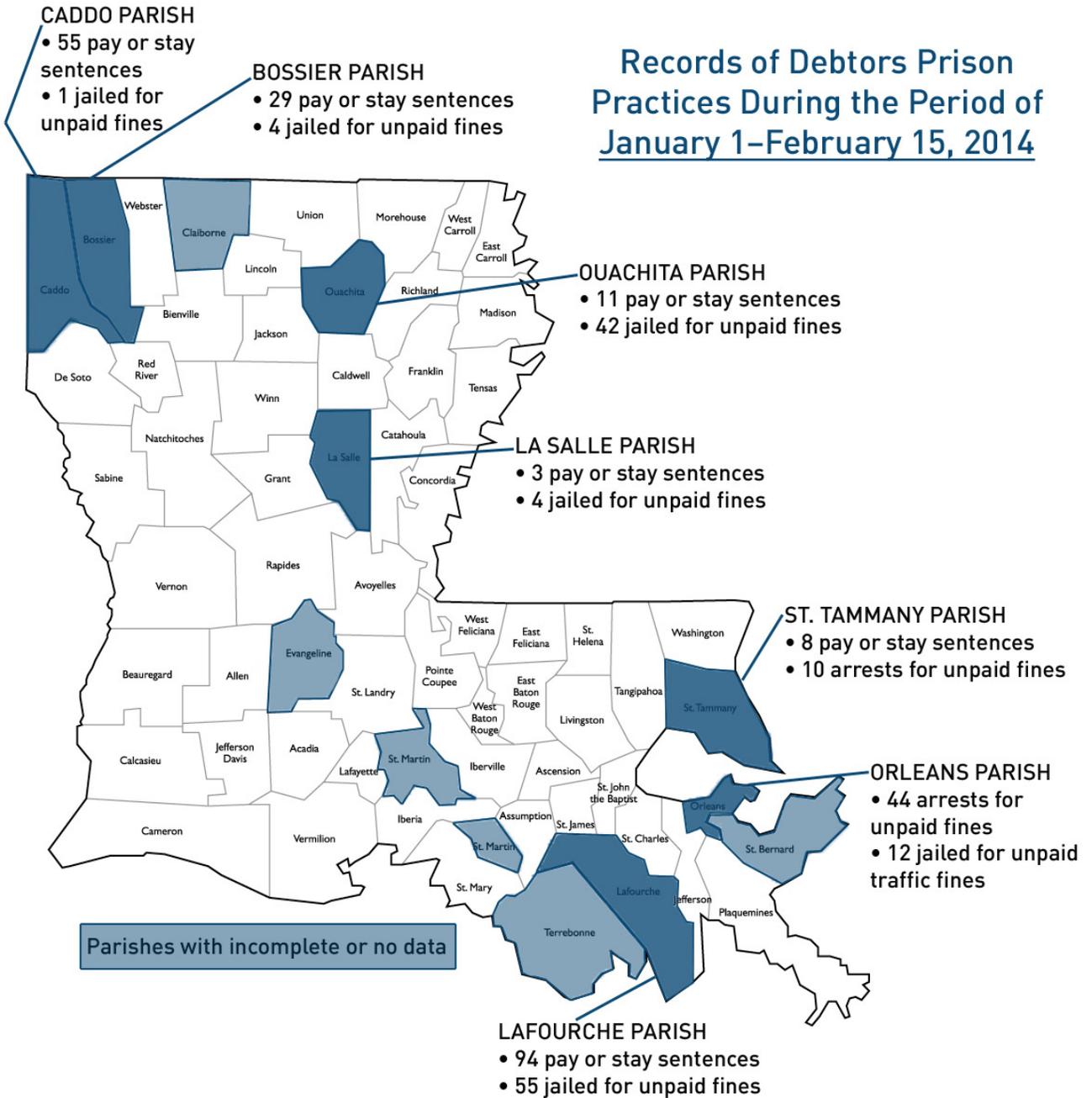
<sup>5</sup> The Marshall Project, . 2015. 'Debtors' Prisons, Then And Now: FAQ'. <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq>.

taxpayers at large in addition to the burden on the individual. The problem isn't hard to solve—many alternatives to incarceration are available, such as community service, and fines can be imposed on a sliding scale. In short, debtors prisons are not just illegal, they don't make sense.

Criminal justice in Louisiana is in crisis, and one reason is the systemic over-reliance on imprisonment for minor offenses. Eliminating debtors prison practices will have no effect on public safety, because the defendants are not charged with violent offenses. They are simply poor. Poverty is not illegal—what is illegal is imprisoning the poor for their inability to pay. It is past time for Louisiana's courts to abolish debtors prisons in more than just name, and move forward into a more just future.

# MAP OF PARISH DATA

## Records of Debtors Prison Practices During the Period of January 1–February 15, 2014



## APPENDICES

### Appendix A: Case studies

#### R. Caldwell

##### **Charge: Expired Auto Registration**

##### **Caddo Parish**

In August 2014, R. Caldwell was pulled over by a Caddo Parish Sheriff's deputy for an expired auto registration. The deputy found a warrant had been issued because she owed \$100 on a red light ticket from the previous year, and she was arrested and taken to jail. With the help of family, Caldwell was able to bond out of jail and was ordered to appear in court to resolve her traffic tickets.

When she appeared in court the day of her hearing, she was ordered to sign documents without reading them. Because Caldwell refused to sign the documents she hadn't read, she was arrested for disturbing the peace and resisting arrest. She was then charged with failure to appear because her arrest—while in court but before her case was heard—caused her to miss the hearing itself, which had been scheduled for that morning to resolve the matter of her red light and expired registration tickets.

Caldwell did not have a lawyer and says that when she was arrested at court she was not read her Miranda rights. Caldwell paid a bondsman \$700 to get out of jail.

Caldwell received a new court date for the new charges of disturbing the peace, resisting arrest and failure to appear. Her new court date was set for a time shortly after Caldwell was due to return from a trip out of town. Unfortunately, she ran out of money while away and called the authorities to let them know that she was stranded and would miss the scheduled court date. In response, the court issued a new warrant for her arrest for missing the scheduled appearance, despite her having notified them of her delay.

On January 5, 2015, when she was able to return home, Caldwell went to the Marshall's office to try to work things out. Caldwell says, "I had been trying to call and no one would answer me. My kids were with me and my kids' father was there. They pull up my name and arrest me in front of my children. They want you to stay in twelve days but it would be really hard for me to stay because I have to take care of my children and my husband works." A family member bonded Caldwell out the next day and she was issued another court date.

Caldwell's resisting arrest and disturbing the peace charges stemming from her desire to read court documents before signing them were eventually dropped. Although she has now spent more than \$2000 attempting to resolve the original ticket of \$154 and charges stemming from

her arrest for failure to pay in full, Caldwell is still going to court for the remaining traffic tickets and still owes the court money.

Caldwell says, "I can no longer afford to live because they have sucked so much money out of me and my family. If you don't come up with more money you are going to jail."

### **John Cormier**

#### **Charge: Speeding**

#### **St. Martin Parish**

John Cormier was pulled over for speeding in St. Martinville in October 2014. The officer gave him an additional ticket for not wearing a seatbelt, despite Cormier explaining to the officer that he had only removed it to get his registration and insurance papers from his glove box.

Cormier pleaded not guilty at his initial appearance, and was not offered an attorney. When he asked why he wasn't given the option of having a court appointed attorney, he was told that he didn't need an attorney because his was not an offense for which he would go to jail. Unfortunately, that turned out to not be true.

When he appeared for trial, Cormier says, "They called the police officer on the stand first, and asked him questions.". Then it was his turn to testify. After calling the officer back to the stand, Cormier says the judge simply looked at him and said, "You're guilty." Cormier was ordered to pay \$315 on the spot or he would be sent jail. Cormier did not have the full amount in cash, but was prepared to call family and friends to try and acquire the rest of the money. When he did not immediately provide the full amount, Cormier was handcuffed and taken away. Cormier says the bailiff told him that he would have to either pay the fine, or do three days in jail. Cormier says, "I had started a new job maybe a week or two before I had to go to court, and you know I go to court not thinking I would go to jail, because the judge, the other judge or maybe the assistant told me I wouldn't be going to jail and come to find out they handcuffed me, walked me across to the jail, and put me in the little cage, you know? And it kinda messed with me because I just started a new job, I couldn't afford to go to jail for 3 days."

Cormier told authorities he would pay to keep out of jail, but that he would need to pay partly in cash and partly using a debit card. "It has to be all cash or all debit," he was told. "All right, I'll use my debit card," Cormier responded. "Well, that's good and fine, but we don't take debit cards after four o'clock." Cormier says that he realized then "it was like they're just trying to get us to jail. How do you expect people to pay this fine if you don't take the debit cards after 4:00?"

Cormier eventually called his mother, who brought additional cash, but not the exact amount, and court officers refused to make change. Cormier said his mother began counting quarters, nickels and dimes, until finally, "I guess it was the 911 dispatcher, she was like, 'I got a few cents,' so she gave it to me." It was only then that Cormier was released.

## Jane Doe

### **Charge: Littering**

#### **Caddo Parish**

In November 2014, Jane Doe was stopped and cited by a Shreveport City Police Officer for littering, for having thrown a cigarette butt out of her car window. Doe had never been arrested before and had no prior criminal record. She appeared for her court date on January 19, 2015 in Shreveport City Court. She was represented by a court appointed attorney.

Without being allowed to speak to the judge, Ms. Doe was found guilty and ordered to pay a \$500 fine plus court costs of \$154.50, as well as a \$40 fee to the public defender because the court didn't find her "indigent." Doe was told that if she didn't pay the fees immediately she would go to jail. She was not offered a payment plan by the judge, nor did her attorney ask for one. Working only part time, and with the added expense and difficulty of caring for a special needs child, Doe was unable to pay the fees.

Eventually, Doe's attorney negotiated a plea and she was given the choice of paying the fees or serving 80 hours of community service. She avoided jail only because the attorney was able to negotiate this for her.

## John Doe

### **Charge: Traffic Fines and Fees**

#### **News Orleans Traffic Court**

In 2008 John Doe was charged in Orleans Parish with driving without a license on his person.

Doe says he was never offered an attorney while in traffic court in New Orleans. He fell behind on his payments, and now, seven years later, owes several thousand dollars in traffic fines. His inability to pay the original fines and fees led to his driver's license being suspended, but in order to be able to work to try to make payments—as well as earn a living—Doe kept driving for some time. This led to more charges and more fines for driving with a suspended license. In addition to these Orleans Parish traffic charges, Doe also owes traffic fines in a neighboring parish.

Doe does his best to stay in contact with the courts, believing he can avoid arrest even if he comes to court empty-handed. Despite his best efforts to make his court appearances and pay something each time, Doe estimates that he has been incarcerated several (around six) times per year for unpaid fines and fees since that first ticket in 2008. He has been jailed for one to ten days at a time because of the unpaid traffic fines, usually following a traffic stop or other encounter with a police officer. He now avoids any situation that might bring him into contact

with police. He told us, "Like if I have to call 911 for someone, I wouldn't stick around. If there's a warrant out, they have to take you."

Most of the times Doe has been arrested, he has been booked and released without being held for a significant period of time. However, the length of incarceration depends on circumstances each time. He says, "It depended on what time of day or week [I] went. If you're arrested on a Friday, you would spend the weekend. Otherwise like a night and half a day. You get out late at night, damn near the next day. If you go a certain time of night, and you don't get out of court. Rolling out takes a long time, sometimes eight hours." The longest period Doe has spent in jail because of his unpaid traffic fines was ten days. On that occasion, he says, he was told that he would not be let out unless he paid something substantial. Doe says, "I waited there for ten days and found out in hindsight I could have served another five and gotten it over with. But I went to court and the judge said I could get out on an ROR (release on own recognizance) if I would come back and pay something. If not, there [would] be a warrant out and I would just have to serve the length of the sentence."

Doe is a self-employed landscaper, and also does some construction work. Between his suspended license and the resulting frequent incarcerations, his ability to earn a living has been severely compromised. For example, if he's offered a painting job in Jefferson Parish, he says "I'd have to think about if it's worth it to pay someone to drive me, whereas if I had a driver's license this wouldn't be an issue, I could work a job no matter how far away it is."

Doe continues returning to court in an effort to resolve his debt, but still owes thousands of dollars of unpaid traffic fines.

### Dianne Jones

#### Charge: Marijuana Possession, 1st Offense New Orleans Municipal Court

Dianne Jones was arrested in January 2014 in Orleans Parish and charged with possession of marijuana. Unable to pay bail, Jones spent a week in jail before being sentenced to six months probation, and ordered to pay \$834 in fines and costs. Although she told the judge that she could not afford to pay such a large fine, Jones was not offered an indigency determination. Instead the judge offered her the choice between a six-month payment plan with monthly payments of almost \$150, or 6 months of six months of weekends in jail.

As the primary caregiver for three grandchildren, including an infant, Jones knew she could not accept the jail time. She agreed to the fine and payment plan, and six months probation. For several months Jones was able to make her payments more or less on time,

Orleans Parish Criminal District Court  
2700 Tulane Avenue, Room 100  
New Orleans, LA 70119  
(504) 658-9440

Date: 12/12/2014  
Receipt Number: 206561

**PAYMENT RECEIPT**

Collections Department  
Defendant: Jones, Dianne A Case # Section Judge

Assessed	Fund	Amount Paid	Balance
\$234.00	Court Cost	\$0.00	\$0.00
\$400.00	Misdemeanor/Felony Judicial Expense Fund	\$63.90	\$0.00
\$200.00	Indigent Transcript Fund	\$62.00	\$148.00
\$834.00			TOTAL REMAINING BALANCE \$148.00

Total Amount of Today's Payment: \$105.00

Next Payment Due On:  
**Monday, January 12, 2015**

Pay Type  
Tender Amount / Cash: \$105.00  
Money Order: \$0.00  
Charge Card: \$0.00

Joy March, Collector Agent

sometimes with support from family and friends—but because she took longer than six months to finish the fine payments, her probation was extended.

When she was unexpectedly forced to move in early 2015, Jones was unable to make her final payment, and a warrant was issued for her arrest. Despite the fact that Jones had paid the court almost \$700, and owed only \$148, the bond amount on her arrest warrant was set at \$20,000. Eventually, a community organization with which Jones volunteers took up a collection to pay her remaining debt. The warrant was lifted, and her probation declared complete.

### **Gregory Nogess**

**Charge: Marijuana Possession, 1st offense**

**New Orleans Municipal Court**

Gregory Nogess was arrested in 2013 for marijuana possession. It was a first offense, and he was fined \$400 in New Orleans municipal court. He says was not offered an indigency determination or any alternatives to the fine, despite being unemployed and unable to pay. In the fall of 2014, Nogess failed to appear in court because he was still unemployed and did not have the money for payment. He was arrested for failure to appear, and spent three days in jail. He was released after making a partial payment of about \$100. After that experience, Nogess was determined to appear in court for scheduled payments even if he lacked money for payment. “I had to spend a whole weekend in jail, they arrested me on a Friday and I spent the whole weekend in jail.” He returned to court once after that and made another partial payment.

In June 2015, he was scheduled to appear to make a \$200 payment. Days before his court appearance, Nogess found a job as a truck driver delivering produce and was scheduled to receive his first paycheck three days after his court date. Although he did not have all of the money, he went to court with the money that he did have—fifty dollars—and a promise to return as soon as he received his first paycheck.

“I told the judge, I said, Your Honor, I just found this job last Wednesday. They just hired me last Wednesday. I said, Your Honor, I’m gonna lose this job, I’m gonna lose this job. But he was saying, ‘Well you know we done gave you chances, we gave you chances,’ things of this nature. I said Your Honor, I’m only asking for one more chance. I get paid Saturday. I promise I will bring you \$200 on my fine.”

Despite his offer of a partial payment, Nogess was returned to jail for failing to pay in full.

Nogess was released from jail after his boss helped him with the payment. He was fortunate to be able to return to his job upon his release and is still working to finish his remaining payments.

## John Roe

### Charge: Simple Burglary

### Orleans Parish

John Roe was convicted of simple burglary in 2012 at the age of 20. He received three years probation, and was ordered to pay \$700 in fines and court costs. During his time on probation, he also had an open case (for marijuana possession and unauthorized use of a moveable) , which has resulted in additional fines and court costs, also of about \$700, including a \$300 indigent defender fee. In addition to fines and fees, Roe is also obligated to pay probation costs. His total payment obligations for fines, fees, and probations costs total about \$3000. Roe is now employed and earns minimum wage, but was unemployed for two years following his burglary conviction. Roe has a son who he helps care for and support financially.

During his time on probation, he says he has paid "50 dollars here and there" towards his fines, fees and probation costs, but has struggled to comply with payment obligations set by the court. He has continued to appear regularly in court for scheduled payment status hearings. Roe has not had a lawyer at any of his payment status hearings.

Roe was part of a job-training program, which on one occasion sent someone to court with him. They requested that Roe be ordered to community service in lieu of fines and costs, but the judge denied their request. Roe says, "I told them I had time to dedicate to community service if we could do half and half. They didn't want to do no community service".

During the period when Roe was behind on his fine and fee payments, he tried to be very careful about avoiding interactions with police, including limiting driving or going to places where police might be present. Despite his caution, Roe has been arrested three times for failure to meet payment obligations.

In spring 2014 during a random traffic stop, he was arrested after an officer ran his name and discovered a warrant for failure to pay fines and fees. He spent 14 days in jail before being released with a payment plan. He was arrested again in the summer of 2014 and spent three more days in jail before being released with a new payment plan. In spring 2015 he was walking down the street when an officer stopped him, asked for his name and requested to search him. When the officer discovered that he had a warrant, again for failure to make payments, Roe was arrested again. He was released after three days only because a friend paid \$1400 towards his fines and fees.

Roe was employed all three times that he was jailed for failure to pay fines and fees. Each arrest nearly cost him his job, caused him to miss days of work, and made him unable to meet his obligations to his son.

Roe is currently paying his friend back the \$1400 they paid to get him out of jail, which has caused him to fall behind on his probation fees. He still owes almost \$1500 in probation fees,

which must be paid in full before his probation ends in October 2015. Because of inconsistencies in the way incomplete fee payments are handled, Roe has no way of knowing what will happen to him if he doesn't finish paying by the deadline.

### **Art Sampson**

**President, NAACP, Ville Platte, LA  
Evangeline Parish**

Art Sampson is the president of the NAACP in Ville Platte and advocates for people navigating the criminal justice system.

According to Sampson, fines, fees and other LFO practices keep many poor people caught in a revolving door. To illustrate his point, Sampson told the story of a young man originally arrested for drugs. "They arrest a young man...and they give them a deal, and they put them on probation. When they put them on probation, well it used to be \$25, \$50 a month; now what they do, you pay on your fine, but



every time you pay, say you pay \$100 on your fine, then \$50 go towards your probation, so you're really only paying \$50 toward your fine. If your fine is \$500, you pay the court costs, then you pay the probation, and you're paying a fine, and it takes you a year and a half on a little \$500 fine, so add that up. You add that up and it comes out to maybe \$2000-\$3000 on a \$500 fine. "

Sampson said another common practice is to let a person go months without paying a fine and then put a bench warrant out on them for contempt of court—another charge and more fees. "Some individuals go six months without paying a fine. Then they put a bench warrant out on you. They tell you your fine went towards your probation fee. Well, you didn't pay the fine and you got a probation fee of \$50 a month, or \$25 a month. So now you owe \$300 probation fee and they say, 'I'll tell you what, just put \$200 down and I'll let you out of jail.' Then they let you out of jail and let you go another six months, and it takes you three to four years to pay one \$500 fine."

According to Sampson, a person’s life can be completely turned upside down over very minor charges. “The main charge is disturbing the peace, reflective gear, public intoxication, flight by police officer. That’s mostly it.”

Sampson said that most people who end up City Court in Ville Platte are poor. “Many of them are on SSI, no income. They get a little \$700 check and pay \$300 per month on a fine. How can a person live off of that?” He also said that community service or any other alternative sentencing is only rarely offered to poor people facing charges in Ville Platte City court.

## APPENDIX B: Parish Data

The ACLU submitted records requests to twelve parishes and two city courts, seeking records of debtors prison practices between the dates of January 1 and February 15, 2014. All information comes from that time period unless otherwise indicated.

The parishes surveyed were: Bossier, Caddo, Claiborne, Evangeline, Lafourche, La Salle, Orleans, Ouachita, St. Bernard, St. Martin, St. Tammany, and Terrebonne. The city courts were Shreveport and Ville Platte. Every effort was made to acquire complete data from each court, however some courts either failed to respond to multiple requests, or their data was unusable for analysis: Claiborne, St. Martin, St. Bernard, Terrebonne, and the city of Ville Platte.

### Bossier Parish

Bossier Parish is located in the northwest corner of Louisiana, and adjoins Caddo on the eastern side. Bossier Parish court records showed 33 instances of debtors prison practices during the survey period. Four people were jailed for unpaid fines, while 29 were given “pay or stay” sentences.

### Caddo Parish

#### Shreveport City Court



Caddo Parish is located in the far northwest corner of the state. Shreveport is its major city. Shreveport City Court handles both traffic and municipal charges. The ACLU requested both Caddo Parish jail records and Shreveport City Court records.

Caddo Parish jail records indicated 56 instances of debtors prison practices during our survey period. Fifty- five of those were “pay or stay” sentences, the other involved an unpaid fine. Jail records suggested that more people may have been incarcerated for unpaid fines and fees, but the records were not detailed enough to verify the reasons for their incarceration.

Shreveport City Court records indicated 15 instances where people clearly faced incarceration because of partially or fully unpaid fines or court costs. Other possible instances of incarceration for inability to pay may have occurred, but records did not include enough information to verify whether or not someone was incarcerated for failure to pay fines and fees.

Nearly every Shreveport City Court record reviewed included a pay or stay sentence. In fact, in the original response to our records request, the Shreveport City Court administrator said, “Normally, the judge will sentence a defendant to a fine and/or serve jail time. Defendant is free to either pay the fine or serve—all are part of the sentence combined with a portion of the fine. The defendant may even choose to serve all the time in lieu of paying the fine. The option chosen by the defendant is not recorded in the court minutes. In fact, many times the [defendant’s] choice is not known at that time.”

None of the records reviewed by the ACLU mentioned ability to pay determinations. Attorney Danielle Brown, who practices in Shreveport City Court, says, “I honestly have never seen a Bearden determination done or heard about it in any of the courts. Once a person pleads guilty and is sentenced, a public defender is no longer in court with them. I don't think people are aware that they can ask for an indigency determination.”

## **Evangeline Parish**

Evangeline Parish is located near the center of the state. Poor and rural, its largest community is the town of Ville Platte. After reviewing Evangeline Parish jail records, the ACLU identified 13 possible instances of people jailed because of unpaid fines and fees, but the records were not detailed enough to verify in most cases.

Evangeline Parish is currently under investigation by the U.S. Department of Justice for holding people without charge under the booking notation “Hold for Investigation”. The ACLU noted at least 20 people held for one to five days without charge between January 1, 2014 and February 15 2015.

The Ville Platte City Court and Ville Platte City Jail were unable to provide records of people incarcerated for unpaid fines and fees despite multiple records requests to the City Jail and City Court (housed in the same building). See Appendix A for an interview with Art Sampson, an advocate from Ville Platte, about his experiences with fine imposition and collection in Ville Platte City Court.

## Lafourche Parish

Lafourche Parish is located in Louisiana's southeast corner and includes the city of Thibodaux, which is the parish center. The Lafourche Parish jail holds people incarcerated on municipal and traffic charges, as well as housing state inmates. Records indicate that both Lafourche Parish court and municipal courts across the parish are engaging in debtors prison practices.



There were at least 55 instances of people incarcerated for unpaid fines and costs and at least 94 pay or stay sentences during the survey period. Many of these were tied to contempt charges for unpaid fines and fees, but many were for other charges as well. The amount of money a day in jail is “worth” varied widely. For example, one person was sentenced to pay \$2400 or spend 180 days in jail, while another was offered the same amount of time—180 days—for fines and costs totaling less than \$500. Another person was sentenced to \$250 or 10 days in jail, making their time worth more than ten times that of the person with the \$500 fine.

People incarcerated in Lafourche parish for unpaid fines and fees included:

- Someone who served 4 days for contempt because of an unpaid fine for fishing without a saltwater license.
- A person incarcerated for 2 days for unpaid fines and costs on a charge of “failure to comply with compulsory school attendance,” or truancy.
- A person who served one month for unpaid fines of \$903 on a marijuana possession charge.
- Numerous people incarcerated for varying lengths of time for unpaid traffic tickets of various types, including improper parking and failure to stop at a stop sign.
- A person facing contempt charges for failure to pay for his own Spanish language interpreter

Jail records for the survey period did not indicate any ability to pay determinations or alternatives to payment for people unable to pay a fine or court costs.

## La Salle Parish

La Salle Parish is located in central Louisiana, and its largest town is Jena. The parish has a relatively low population, and there were only 45 bookings total during our survey period. Of

those, seven were the result of debtors prison practices—4 arrests for unpaid fines and fees, and 3 “pay or stay” sentences.

## Orleans Parish

Orleans Parish has boundaries that are coterminous with those of the City of New Orleans. People convicted from New Orleans Municipal Court, New Orleans Traffic Court and Orleans Parish Criminal Court are held together at Orleans Parish Prison (OPP). For this case study, the ACLU focused only on people incarcerated because of municipal or traffic attachments from City of New Orleans municipal and traffic courts



During the time we reviewed, 295 people were booked into jail for municipal attachments alone. Reasons for the attachments were not specified. Our research concluded that at least 44 were for unpaid fines and fees. We counted instances where the person had a municipal attachment and fine payment was mentioned in the “reason for release,” or where they served time for municipal attachments plus contempt. We learned from advocates in municipal court that this is how debtors prison practices usually show up in that court.

An additional 13 people were jailed for traffic attachments alone—often the result of unpaid traffic tickets. Times served for traffic attachments alone (no other charges) ranged from one to 22 days.

In many cases, attachments came with charges usually associated with homelessness and intense poverty such as aggressive solicitation, obstructing a public passage, or failure to pay for food and drink. Time served because of municipal attachments and contempt charges together ranged from two days to nearly four months. Some people appeared twice in the data sample because they were arrested, released and then rearrested within survey period.

According to Sam Poe, an advocate with the Orleans Public Defenders office, if you’re indigent and in New Orleans Municipal Court, whether you go to jail or not may depend on which section of court you end up in and what kind of information you receive from court personnel. Some judges, he told us, are more likely than others to give a hearing on ability to pay.

According to Poe, the most common sentencing practice in municipal court is a suspended sentence and a fine. Defendants are usually give a date to return and pay the fine or update the court about their progress towards payment. Poe says that very often people won’t return for

their court dates because of bad information received from some court employees. Poe cites one case in which a probation officer told a defendant that if he didn't make a \$300 payment on the spot, his probation would be revoked and he would be sent to jail. The person remained in court most of the day and eventually pieced together money from relatives. Coming up with the money and leaving work to deliver the money caused substantial hardship to the man's family. Later, when he appeared before the judge, she indicated that she would not have sent him to jail.

Some defendants are told by court personnel that if they return without full payment, they will be sent directly to jail. This misinformation leads many people to skip court dates if they are unable to pay fully. When they skip court, a bench warrant is issued. As a result, according to Poe, "many homeless people remain stuck in a cycle of incarceration, payment schedule, default on payments, missed court dates, attachment and re-incarceration, because they cannot pay." Poe says that repeated incarceration because of a cycle of unpaid fines and contempt charges is so common, "you almost stop noticing it."

### **Ouachita Parish**

Ouachita Parish is located in northeastern Louisiana, and its largest cities are Monroe and West Monroe. We found a total of 53 instances of debtors prison practices during our survey period, with 11 "pay or stay" sentences and 42 people jailed for failure to pay fines and fees.

### **St. Tammany Parish**

St. Tammany Parish is the heart of the "North Shore," on the north side of Lake Ponchartrain opposite New Orleans. During our survey period, ten people were jailed for non-payment of fines, and eight people were sentenced to "pay or stay" sentences.



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# Racial Disparity in Marijuana Policing in New Orleans

JULY 2016

Meghan Ragany • Rose Wilson • Jon Wool

## FROM THE DIRECTOR OF THE NEW ORLEANS OFFICE

New Orleans’s criminal justice system—as in localities throughout the country—is enormous, consuming the lion’s share of our municipal budget to the detriment of other core government functions. The police department and the jail are the biggest consumers. Historically, police and jail budgets have expanded as the number of people arrested and detained has increased. But in recent years, those budgets have grown even as significantly fewer people have been arrested and detained.

Although it is now widely understood that increasing arrests and detention is not the most effective strategy to maximize public safety and promote justice, we also must understand how best to apply criminal justice resources. The city must set objectives for what our systems of safety and justice can reasonably achieve and what must be done outside the justice system in community health and other spheres. Then the city can deploy its police and jail resources in a way that meets public safety goals and aligns with our common determination to foster a just and fair society.

At the front end of the system, it is not the number of police officers that matters so much as how they are deployed. Does deployment focus on preventing and responding to violence and other serious threats to community safety? Are these decisions made with the intention of building trust in those communities most affected by violence? Are policymakers getting the greatest safety and justice return on residents’ investment in policing? Every community must persistently ask and revisit these questions.

New Orleans has made much progress in narrowing and focusing its use of arrest and detention. The number of arrests and crime overall is down—although our homicide rate remains devastatingly high—and the number of people New

Orleans jails is significantly lower than five and 10 years ago, even if the rate is still higher than in almost any other U.S. city.

But as this report shows, racial disparity remains stubbornly high in the city's police responses to marijuana-possession offenses. Eighty-five percent of those arrested for marijuana-related offenses (not including distribution) are black, even though black people make up roughly 60 percent of the population. The disparity is even greater among those arrested for felony marijuana possession: 94 percent of arrestees are black.

Fortunately, the New Orleans City Council passed an ordinance earlier this year allowing police to charge a municipal misdemeanor for what is a felony marijuana possession under state law, enabling them to issue a summons, and lowering penalties dramatically. But the city continues to deploy resources toward policing marijuana possession—resources that deliver low or possibly negative public safety returns and create some harm—while the New Orleans Police Department struggles to respond quickly to matters of community safety. And the city is investing those resources in a way that adversely and disproportionately impacts black residents.

We hope this report helps focus policymakers on the imperative to rethink how New Orleans and other jurisdictions use police and jail resources to invest only in strategies that promise and deliver safety and justice.



Jon Wool  
Director, Vera New Orleans Office

## ABOUT VERA NEW ORLEANS

In 1961, the Vera Institute of Justice embarked on its first project: reforming the bail system in New York City, which at the time granted liberty pretrial based primarily on ability to pay. Since then, Vera has served as an independent, nonpartisan, nonprofit center for justice policy and practice nationwide and has offices in four U.S. cities.

In 2006, Vera came to New Orleans at the request of James Carter, then a City Councilmember. Carter saw an opportunity for the city to reduce unnecessary detention and thus change its approach to fostering public safety. As a city in recovery, New Orleans could not fiscally or morally afford its pre-Katrina level of jail incarceration.

Not unlike New York in the 1960s, almost all people arrested in New Orleans were detained pretrial because they could not afford to pay a commercial bond. In partnership with government and community leaders, Vera New Orleans launched the city's first comprehensive pretrial services program in April 2012. The program uses an empirical risk-assessment tool to help judges make objective, informed decisions about who should be released and who should be detained during the period between arrest and resolution of a case.

For almost 10 years, Vera New Orleans has been a nexus for initiatives that advance forward-thinking criminal justice policies. Vera works with its partners to build a local justice system that embodies equality, fairness, and effectiveness in the administration of justice. Using a collaborative data-driven approach, Vera New Orleans provides the high-quality analysis and long-range planning capacity needed for the city to articulate and implement good government practices.

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# Introduction

There is a growing conversation across the United States about arrest practices that cause disproportionately high numbers of black Americans to face harsh consequences in the justice system. Events in Ferguson, Baltimore, Chicago, and throughout the country have highlighted the critical role that police practices play in a system's racial equity or inequity. More broadly, black people are arrested at significantly higher rates than are other racial and ethnic groups in the United States.<sup>1</sup> Compounding this problem are high rates of pretrial incarceration, and this means racial disparity in arrests leads to severe consequences that overwhelmingly affect the black population, even for relatively minor offenses.

Disparities are especially dramatic in drug cases, which cause disproportionately large numbers of black residents to enter the criminal justice system, frequently facing long pretrial detention (and often long prison terms after sentencing). Arrests for marijuana-related crimes in particular have been scrutinized nationwide. A large portion of the population has recognized marijuana as minimally harmful and some states have legalized its use. But people arrested for marijuana-related offenses are disproportionately black.<sup>2</sup> Because self-reported data indicates that people of different races in this country use marijuana at approximately the same rate, the disparity in arrests and justice-system involvement for the black population is alarming.<sup>3</sup>

These disparities are striking in New Orleans, a majority-black city that incarcerates people at a rate that until recently led all U.S. cities.<sup>4</sup> Although black New Orleanians are just less than 60 percent of the population, they make up almost 90 percent of people detained in the local jail. Furthermore, in Louisiana, the consequences of a marijuana conviction can be severe. Even though a recently enacted statute has reduced some penalties for marijuana-possession offenses, repeated convictions remain punishable by multiyear prison terms under the state code.<sup>5</sup>

With broad community support, the mayor's office and the New Orleans City Council have made concerted efforts in recent years to reduce the city's jail population. One important step was to decrease custodial arrests—when police take defendants into custody and book them into the jail—for minor offenses, including misdemeanor possession of marijuana. Police now typically issue a summons in lieu of making an arrest. This practice changed in mid-2011 as the result of two city ordinances—one in 2008 encouraging summonses for municipal offenses (misdemeanors set out in the city code) and another in late 2010 creating a municipal offense for first possession of marijuana.<sup>6</sup>

Most recently, in March 2016, the city council enacted an ordinance that creates misdemeanor municipal offenses that are parallel to each state marijuana-possession offense—misdemeanor or felony—with penalties substantially lower than those for the corresponding state statutes. (See “Data and Terminology” on page 8 for an explanation of how “possession” and “arrest” are defined in this report.)

## Statutory changes affecting marijuana-possession offenses in New Orleans and Louisiana

- **2008** City enacts an ordinance encouraging the use of summonses for municipal offenses.
- **2010** City creates a municipal first-possession marijuana offense.
- **2015** State amends the marijuana code to make second-possession marijuana a misdemeanor.
- **2016** City creates municipal offenses parallel to all state possession offenses but with reduced penalties.

These measures have succeeded at keeping a large number of defendants out of jail for a first-offense possession charge, but they do not address the other negative consequences of involvement in the criminal justice system due to a marijuana arrest, repercussions that include obstacles to finding or keeping a job, securing affordable housing, gaining access to government benefits, and exercising the right to vote. These effects disproportionately burden black New Orleanians. The next step for the police and other system actors is to address these adverse racial impacts. This report presents marijuana arrest data—including summonses and custodial arrests—by race, discusses the impact of reforms New Orleans authorities have undertaken, and identifies remaining issues and possible solutions based on efforts in other jurisdictions. The reforms so far are having a meaningful impact on people facing justice-system involvement as the result of marijuana possession, but some of the adverse consequences of marijuana policing remain unaddressed.

Various factors can contribute to the observed racial disparity in marijuana arrests, not all of which indicate discriminatory policing. Although it is critical to understand the causes of this disparity, it is also clear that the aggregate racial impact, regardless of its causes, seriously harms the city of New Orleans as a whole—and black individuals, families, and communities in particular.

# The scope of the problem

Historically, New Orleans has arrested people at rates that are significantly above the national average for a city its size.<sup>7</sup> In 2014 and 2015, between out-

## DATA AND TERMINOLOGY

The data in this report comes from Vera’s analysis of New Orleans Police Department (NOPD) arrest data unless otherwise noted. In light of the shift in mid-2011 toward issuing summonses for marijuana offenses whenever possible, Vera analyzed data from January 2010—two years before the shift—through 2015—the most recent data available at the time of analysis. When presenting averages or other specific measures, the report provides date ranges.

Unless otherwise noted, the data for marijuana-related offenses includes all cases for which marijuana possession or possession with intent to distribute was the most serious charge at arrest. Thus, cases were excluded from the analysis when a person’s charges included a crime of violence, a felony charge for another drug or distribution of marijuana, an alleged parole violation, or a local open bench warrant (an arrest warrant issued for failing to appear in court or similar reasons).<sup>8</sup> Cases with additional charges involving a weapon were also excluded, except in circumstances in which weapons possession would not have been a crime if not for the presence of marijuana. The data for persons arrested for a first-possession marijuana offense—whether by summons or custodial arrest—excludes anyone who also had any concurrent felony or DWI charge.

The data for marijuana-possession offenses includes simple possession—whether charged as a misdemeanor or felony—unless otherwise noted. Under Louisiana state law, first-time marijuana possession was the only misdemeanor marijuana offense during the period covered in this report. (The statutory change that went into effect in June 2015 designated second- and sometimes third-possession offenses of small quantities of marijuana as misdemeanors rather than felonies, but the data in this report is from the period preceding this change.) In 2010, New Orleans enacted a municipal ordinance that created a first-possession marijuana offense with penalties mirroring those in the state statute. To analyze

first-possession marijuana charges, the data combines municipal offenses and state misdemeanor offenses. Possession with intent to distribute, regardless of quantity, was a felony during the period covered by the data in this report. (See pages 6 and 7 for details about New Orleans municipal code changes in March 2016.)

Unless otherwise noted, this report primarily uses the term “arrest” to refer to a custodial arrest and the term “summons” for the issuance of a summons (technically a form of arrest) by police, allowing arrestees to appear in court on a certain day without being taken into custody.

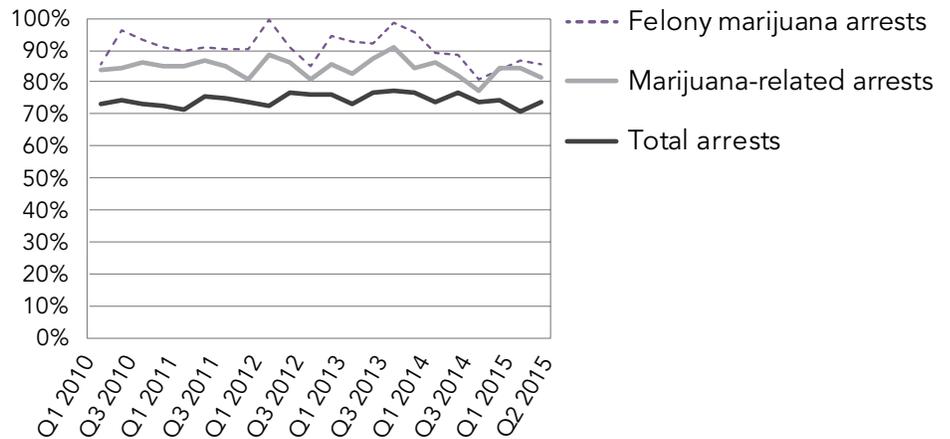
standing warrants and new offenses, NOPD made 1,625 arrests per month, on average. Every month, an average of 53 people were taken into custody for marijuana-related offenses, including possession and possession with intent to distribute. Of these 53 individuals, 40 were arrested for possession offenses. Thirty-one of those 40 people, on average, were taken into custody for misdemeanor marijuana possession and spent an average of five days in jail before their case was resolved. The other nine people—arrested for felony possession offenses—spent an average of 14 days in jail pretrial.

The total number of people the New Orleans Police Department charges with a marijuana-related offense, however, includes those who receive summonses and is thus much higher, at 132 people per month. Although those who receive summonses are not initially detained pretrial, their involvement in the criminal justice system increases the likelihood of detention in the future. For example, many people who receive a summons for a municipal offense fail to appear for their first court dates and have a warrant issued for their arrest. Others are subject to warrants later in the process, often for failing to come to court to make a payment of the fines and fees they owe after conviction. (For more about this topic, see page 12; “Summons Policy: Minimizing Pretrial Costs” on page 14; and “Remaining Challenges” on page 19). The prosecution of marijuana cases also contributes to the high volume of cases in the municipal and criminal district courts, to say nothing of the disruptive effects that involvement in the justice system has on people who are charged and on their communities.

Policing practices contribute to the detention of excessively high numbers of black people in New Orleans. The police arrest black people at disproportionately high rates compared to others, particularly for marijuana offenses, despite similar rates of marijuana use. And although they make up approximately 60 percent of the population, black New Orleanians account for roughly 75 percent of all arrests and 85 percent of arrests for marijuana-related offenses.<sup>9</sup> Thus, not

only are black people in the city more likely than others to be taken into custody overall, their arrest rates for marijuana charges are even more disproportionate than for other charges. (See Figure 1.)

**Figure 1: Percentage of arrests involving black New Orleanians, 2010 through mid-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

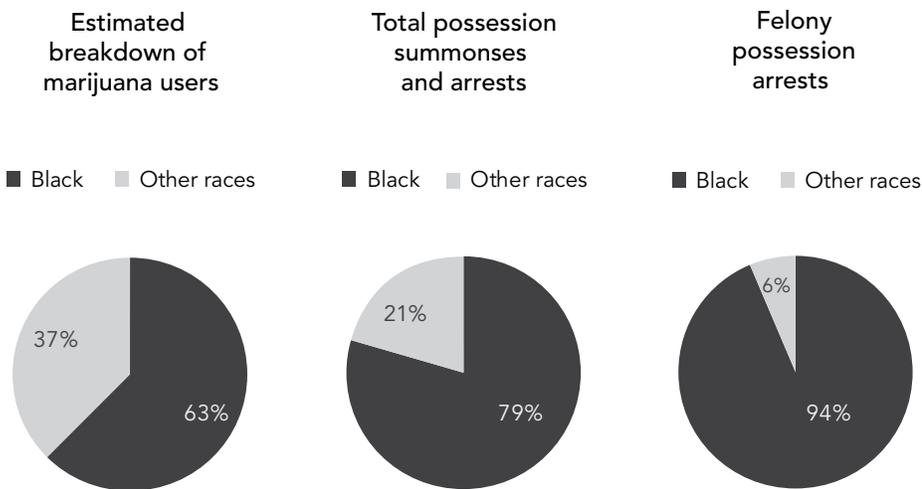
Most strikingly, black New Orleanians are disproportionately arrested for felony marijuana possession (any second or subsequent marijuana possession, excluding a charge of possession with intent to distribute), representing 94 percent of the people arrested for this type of charge.<sup>10</sup> This means that almost all of the people who face the most severe consequences for marijuana charges are black. Although the use of summonses in lieu of arrest is relatively race-neutral among those who are subject to a police response, there is severe racial disparity in arrests—especially for felonies. That is, among those who are subject to a police response for marijuana—a group that is disproportionately black overall—black people are no less likely than others to get a summons but are much more likely to be arrested for a felony. (See “Summons Policy: Minimizing Pretrial Costs” on page 14.)

Whether a police officer decides to charge someone with a misdemeanor or a felony marijuana offense has serious consequences. Under state law, summonses are not authorized for felony marijuana offenses, but only for misdemeanors. Furthermore, people charged with felony possession are less often released without financial conditions and tend to be given higher bail.

The racial disparity in police responses to marijuana possession is particularly alarming because self-reported data nationwide suggests that people

use marijuana at close to the same rates across racial and ethnic groups. Based on this data and adjusting for the racial demographics of New Orleans, one would expect black people to make up about 63 percent of those summoned or arrested for marijuana-possession offenses in the city if police responses were racially proportionate.<sup>11</sup> The actual percentage, however, is significantly greater: in addition to the discrepancies described above, black New Orleanians account for about 79 percent of summonses and arrests for marijuana possession (including misdemeanors and felony arrests for repeat possession of marijuana, but not including possession with intent to distribute; see Figure 2.)

**Figure 2: Estimated marijuana use, possession arrests, and summonses in New Orleans, by race, 2012 through mid-2015**



*Note: The estimated racial breakdown of marijuana users in New Orleans was calculated based on national self-reported use percentages from the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2013, adjusted for racial demographics in New Orleans.<sup>12</sup> Analysis of total possession summonses and arrests and felony possession arrests excluded arrests for possession with intent to distribute, given that this offense does not necessarily reflect these arrestees' personal use.*

*Source of New Orleans data: Vera Institute of Justice analysis of New Orleans Police Department data.*

# Costs of marijuana summonses, arrests, and prosecution

Marijuana possession is typically not a threat to public safety and, as noted above, has been decriminalized and even legalized in some jurisdictions. By contrast, involvement in the criminal justice system can have far-reaching adverse consequences for people and for the city of New Orleans. Taxpayers—as well as defendants and their families—shoulder the costs of marijuana policing and its consequences.

The city government incurs considerable costs by pursuing marijuana charges, particularly when defendants are incarcerated. It costs New Orleans \$113 per day to jail a defendant and these costs are rising due to the mandate of a jail consent decree (an agreement overseen by a federal court, in effect since 2012, to provide constitutional conditions of confinement).<sup>13</sup> In 2014 and 2015, marijuana-possession charges accounted for 280 jail bed days per month, with 152 of those bed days representing people who had misdemeanor marijuana charges. Any detention not necessary to advance public safety makes it more difficult to achieve the city's goal of normalizing its jail incarceration rates. Even with recent reforms (see page 14), current marijuana policing practices impede those goals and divert resources from addressing the city's public safety problems.

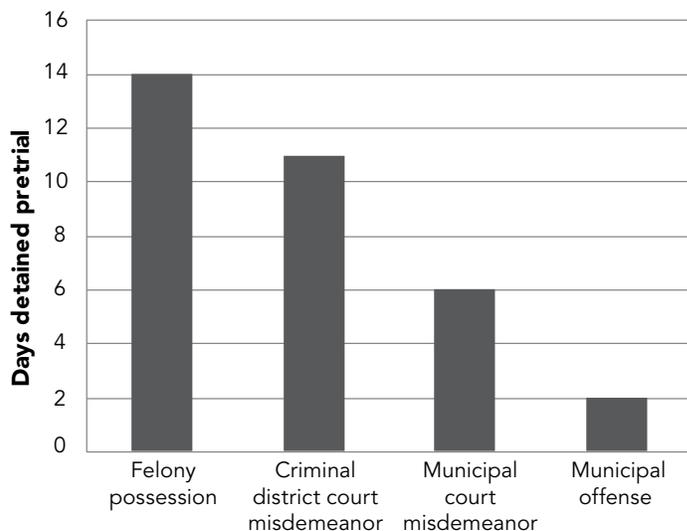
Although it is less expensive to process cases through a summons than an arrest, a criminal case entails costs even when the summoned defendant is not later incarcerated. Processing marijuana charges requires resources from the police department, the courts, the prosecutor, and the public defender. Given the scarcity of city resources, time and money could be allocated to more pressing needs in the criminal justice system.

The impact on defendants and their families and communities is even more dramatic. Most obviously, people arrested for marijuana offenses face the same types of direct financial costs that anyone involved in the criminal justice system encounters. A financial bond is often set for those who are taken into custody. If so, unless they can pay the entire amount of the bail in cash, they must secure a commercial bail-bond and pay the accompanying fees to be released from jail—and the bond and fees are not refundable even if people are not prosecuted or are prosecuted and not convicted. Also, pretrial defendants with marijuana charges are often required to submit to drug testing—and sometimes substance-use assessments and treatment—as a condition of release. They are frequently required to pay for these services themselves. Then, if convicted, defendants face the obligation of paying fines, fees, and court costs. Even a first-possession marijuana offense can involve a fine of several hundred dollars. All of these burdens fall disproportionately on indigent defendants, for whom a few hundred dollars in fines and fees can be insurmountable—and nonpayment may lead to incarceration.

For those who are detained in the jail, many other problems arise. As mentioned earlier, New Orleans’s jail is under a consent decree for unconstitutional conditions—and the jail remains unsafe for inmates. They are exposed to violence and health risks, which are particularly acute for those who already have mental health or other medical conditions.

Both detention and court attendance can have a negative impact on the stability of a defendant’s life. People may lose their jobs because they miss work, particularly if they are detained, but also potentially due to multiple court appearances. The need to find transportation and ensure child care during court appearances are other examples of the costs imposed on defendants and their families. Recent research by the Arnold Foundation found that even short periods of pretrial detention in the United States—as little as two days—contribute to worse trial outcomes, harsher sentences, increased likelihood of rearrest before trial upon release, and increased recidivism rates among those who are convicted.<sup>14</sup> With five days being the average length of detention in New Orleans in 2014 and 2015 among those arrested only for a misdemeanor first-possession marijuana offense, there is sufficient time to increase the risk of negative outcomes and destabilize a defendant’s life (see Figure 3).

**Figure 3: Average pretrial length of stay for marijuana possession in New Orleans, 2014-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

Note: A criminal district court misdemeanor is a state misdemeanor offense heard in the criminal district court.

What's more, if convicted, people face a wide range of possible consequences. Although obstacles to employment, housing, voting (if convicted of a felony), and obtaining government benefits most directly affect defendants and their immediate families by increasing economic vulnerability and instability, these effects also take a toll on the broader community. The repercussions of disproportionate arrest and prosecution for marijuana offenses are significant, particularly in light of the minimal risk of societal harm that marijuana use poses. These consequences exacerbate socioeconomic racial disparities for black New Orleanians and their communities.

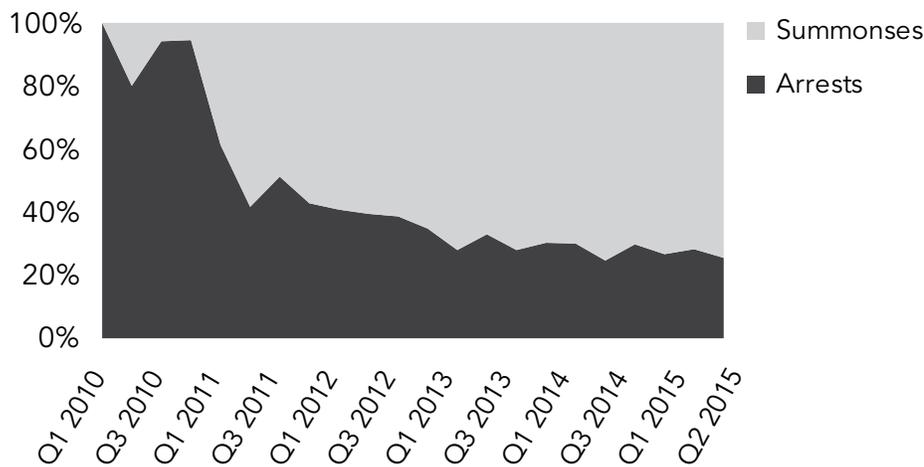
## Marijuana policing reforms

In the past six years, New Orleans has made a number of reforms to reduce the negative impact of some marijuana arrests. The reforms include legislative directives promulgated by the city council and changes in practice carried out by the police department and district attorney. The following section describes these reforms and their impacts, in order of their implementation.

### SUMMONS POLICY: MINIMIZING PRETRIAL COSTS

Local government entities in New Orleans have recognized the damaging effects of inequitable marijuana policing and have attempted to minimize them. In 2010, the Orleans Parish District Attorney began prosecuting first-offense possession of marijuana cases in the municipal court rather than in the criminal district court, enabling the police to issue summonses for these cases rather than making arrests. By the end of 2010, the New Orleans City Council created a municipal offense for first-offense marijuana possession, at which point NOPD adopted the policy of using the municipal charge whenever possible. Because police officers are required by ordinance to issue summonses in lieu of making arrests for municipal offenses in the absence of special circumstances, the intention was to dramatically decrease the number of people detained pretrial for possession of marijuana. This policy has been largely successful, with summonses issued in approximately 70 percent of eligible cases. (See Figure 4.)

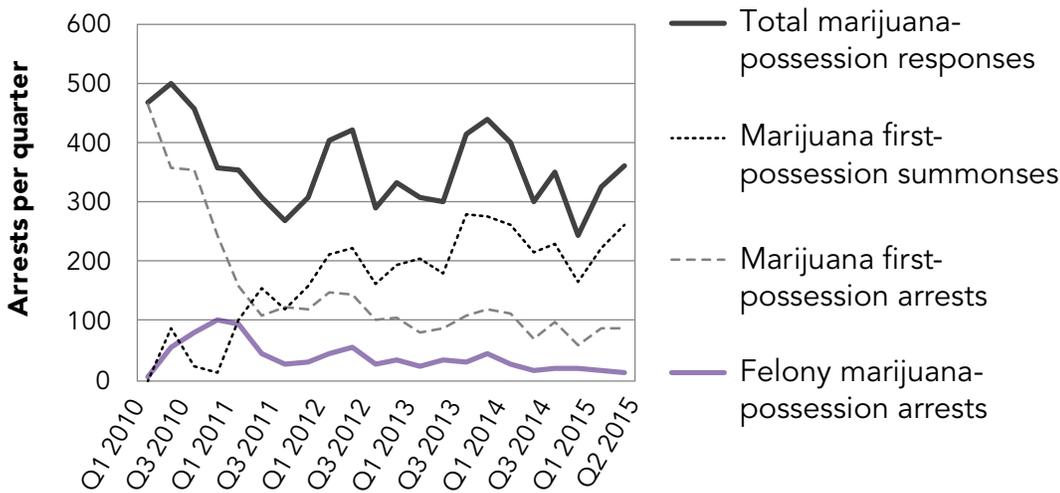
**Figure 4: First-possession marijuana offenses in New Orleans, by police response, 2010 through mid-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

Furthermore, as the use of summonses increased, the number of arrests for marijuana-related offenses declined. (See Figure 5.) From 2012—shortly after the use of summonses for all municipal offenses became the norm in New Orleans—through 2015, the jail population decreased significantly, although it is unknown to what extent that is attributable to the increased use of summonses for marijuana and other misdemeanor offenses.<sup>15</sup>

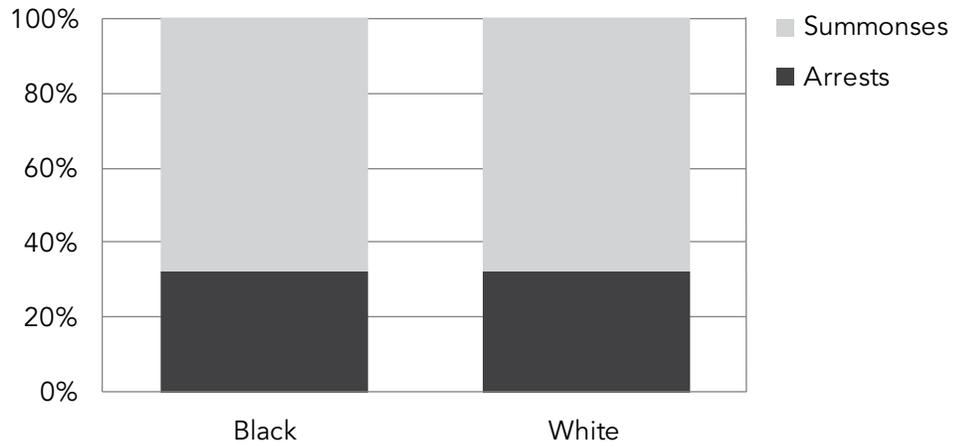
**Figure 5: New Orleans police responses to marijuana-related offenses, 2010 through mid-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

Promisingly, the data since 2012 shows that police in New Orleans have issued summonses to black people and others at similar rates for offenses eligible for a summons, notwithstanding the racially disproportionate rate of police responses to marijuana overall. (See Figure 6.)

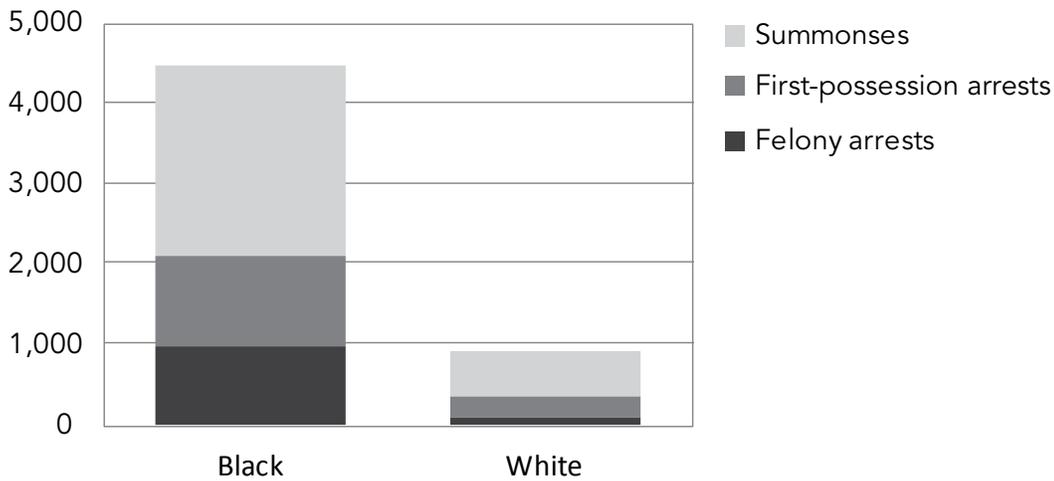
**Figure 6: New Orleans police responses to first possession of marijuana, by race, 2012 through mid-2015**



*Source: Vera Institute of Justice analysis of New Orleans Police Department data.*

Although the summons policy and practice have substantially reduced the number of people detained pretrial for marijuana possession, the dramatically higher marijuana-related arrest rate for black New Orleanians means that policing practices continue to have an outsize impact on the black population in several ways. First, even with the majority of people receiving summonses for misdemeanors, the number of black individuals who are arrested for a first-possession offense remains skewed. Second, the high number of police responses to black people for marijuana-related offenses—whether they receive a summons or are arrested—leads to many people ultimately being detained for failure to appear in court or to pay required fines and fees. Finally, the markedly high number of black New Orleanians arrested for felony marijuana charges—for which summonses are not allowed—means that many people will be detained pretrial and, if convicted, may face prison sentences and the accompanying consequences of a felony conviction. Figure 7 shows the average number of marijuana summonses and arrests, broken down by race.

**Figure 7: New Orleans police responses to marijuana offenses, by type and race, 2012 through mid-2015**



Source: Vera Institute of Justice analysis of New Orleans Police Department data.

## RECENT REFORMS: ADDRESSING FELONY MARIJUANA OFFENSES

As described earlier, the New Orleans City Council recently enacted an ordinance that takes additional steps to address the damaging consequences of marijuana policing. The ordinance creates municipal offenses for all marijuana-possession crimes, including the repeat possession crimes that constitute felonies under state law but excluding charges of possession with intent to distribute. It also provides for solely financial penalties, with a maximum \$100 fine for a fourth or subsequent violation. The ordinance thus provides police officers with an option other than what state law dictates.

To the extent that officers use the municipal option, the March 2016 ordinance will have two main effects. When charging under the revised municipal code, police will be authorized and in fact encouraged to issue summonses to people charged with repeat marijuana possession, even for conduct that would be a felony if charged under state law. The code also decreases penalties and removes the possibility of incarceration sentences for all defendants charged with marijuana possession.

This is likely to have a positive impact on the local jail population and ease the adverse effects of pretrial detention. As noted, in 2014 and 2015 an average of nine people were arrested in New Orleans every month for felony marijuana-possession offenses and were detained an average of 14 days pretrial. Relying on summonses for people charged with repeat marijuana possession should also mitigate some of the racial disparity that derives from inequitable ma-

marijuana policing. Because more than 90 percent of those arrested for felony marijuana possession are black, a considerable number of black marijuana arrestees have been ineligible for summonses. The new ordinance should result in fewer black New Orleanians facing unemployment, financial insecurity, and threats to their health and safety because of pretrial detention.

This is particularly important because the inability in the past to charge a misdemeanor for what state law defines as felony marijuana possession created an additional penalty for people arrested for subsequent possession offenses, a largely disproportionate number of whom are black. The threat to public safety does not dramatically increase because someone is caught with marijuana two or three times as opposed to once. Thirty-five percent of those arrested for felony marijuana possession in 2014 and 2015 were subsequently charged by the district attorney only with misdemeanor possession or had their cases refused altogether. Although the prosecutor ultimately brought misdemeanor charges against many of these defendants, those who came in on felony arrests spent an average of seven days in jail before trial while those initially charged by the police with misdemeanors typically received summonses.

Similarly, the importance of reduced penalties cannot be overstated. Felony marijuana-possession offenses carry strict penalties: up to eight years in prison and a \$5,000 fine for a fourth or subsequent possession conviction, even if the prosecutor does not charge the defendant under the state habitual offender law. Even misdemeanor marijuana possession charged under state law—though it rarely results in people serving jail sentences post-conviction in New Orleans—can lead to fines of several hundred dollars and probation or diversion obligations, as well as a criminal conviction. These consequences hit poor, disproportionately black defendants especially hard.

## IN PROCESS: ADDRESSING POSSESSION WITH INTENT TO DISTRIBUTE

Not surprisingly, people arrested for possession with intent to distribute marijuana face lengthier pretrial detention than those charged simply with possession. In New Orleans, defendants arrested for intent to distribute are charged in criminal district court and—under state law—cannot be issued a summons in lieu of a custodial arrest or be released on their own recognizance; they also tend to be given a higher bail than people charged with felony marijuana possession. As a result, per 2014-2015 data, they spend an average of 18 days in jail pretrial. Whether a police officer arrests someone for possession or for possession with intent to distribute therefore shapes the person's pretrial experience, and the criteria for making this decision appear to be unclear or inconsistent. Seventeen percent of defendants arrested for possession with intent to distribute marijuana in 2014 and 2015 had a judge find no probable cause for the intent to distribute charge, although probable cause was typically found for possession. And in 37 percent of these cases, the prosecutor ultimately charged

only marijuana possession or declined to prosecute altogether. To address these concerns, the mayor's office and NOPD plan to reexamine officers' practices for charging possession with intent to distribute and to set guidelines for quantity and other circumstances for determining intent.

## Remaining challenges

The policies the City of New Orleans has changed so far show an admirable effort to minimize the detrimental consequences of marijuana policing, especially given the way it affects black communities. The 2016 marijuana ordinance specifically references the racial disparity in felony arrests as part of its legislative justification. But although summonses and reduced sentences are meaningful steps forward, they do not address all of the negative consequences of racially disparate arrest practices, which still have costs for the city and for defendants and their families. Inequities in arrests and prosecutions will continue unless policies, practices, ordinances, and statutes continue to change.

Processing a summons-initiated criminal case may take fewer police resources than arrest but still requires time and personnel of a department that has often struggled to carry out its critical functions. Likewise, the use of summonses does not eliminate the costs associated with the resulting court proceedings, including enforcement of the sentences imposed.

Perhaps more significantly, marijuana convictions (whether initiated by summons or arrest) impose costs on defendants that are disproportionate to the harms resulting from marijuana possession. No matter how much the maximum penalty is reduced by ordinance, any marijuana prosecution has repercussions stemming from state and federal law. Drug convictions have a range of serious consequences, and the various fees and court costs assessed at conviction and beyond can have an ongoing impact on poor defendants, even when the fine for the offense is relatively low.

Leaving aside the aftermath of a conviction, involvement in the criminal justice system increases the risk of adverse consequences, including incarceration. One of the most significant of these involves failures to appear in court. According to New Orleans Municipal and Criminal District Court data, 52 percent of the people summoned or arrested for marijuana possession in 2014 and 2015 failed to appear at least once during the proceeding, including after conviction for a failure to appear for a payment hearing. Regardless of the reason for the failure to appear, the resulting arrest warrants mean that people will spend time in jail because they missed a court date in a marijuana matter, despite New Orleans officials' efforts to minimize detention for marijuana-possession offenses.

The policies the city has implemented do a great deal to diminish some consequences of marijuana arrests that fall disproportionately on black New Orleanians, but these are differences in magnitude rather than in kind; the underlying disparity in marijuana arrests remains intact. Future policies should strive to address these differences and make policing practices more equitable.

# Alternative approaches to marijuana policing

New Orleans should continue to mitigate the harms, including racial disparities, of marijuana policing. Lawmakers might consider decriminalization, perhaps by using a civil citation for marijuana possession instead of a summons or criminal arrest, as is done in Massachusetts and Philadelphia. They might empower police officers to refer people possessing marijuana to a center that provides services to address substance use. Or the city might continue with summonses but mandate that no detention may occur as the result of conviction or the failure to pay or appear for payment. The city's leaders should at least determine the causes for the racially disparate outcomes of current policing practices. Regardless of the details of the approach taken, the goal should be to minimize the resources expended on and harms arising from marijuana policing.<sup>16</sup>

## Conclusion

Given the growing national momentum to reduce incarceration, it makes sense to limit the use of jail—where mass incarceration begins—whenever safely possible. By rethinking policing approaches to marijuana possession, which poses negligible public safety risk, jurisdictions can move toward their goals of decreasing jail and prison populations as they help minimize the disruptive consequences for individuals, their families, and their communities.

Racially disparate outcomes in marijuana policing contribute to the harms within the criminal justice system in New Orleans and likely in other jurisdictions throughout the country. The city has made much progress in alleviating these harms. But system actors must continue to understand the reasons black New Orleanians are disproportionately affected and take the necessary steps to eliminate race-based impacts in the criminal justice system.



## ENDNOTES

- 1 Brad Heath, "Racial Gap in U.S. Arrest Rates: 'Staggering Disparity,'" *USA Today*, November 19, 2014, <https://perma.cc/R8LR-W5PC>.
- 2 American Civil Liberties Union, *The War on Marijuana in Black and White* (New York: ACLU, 2013).
- 3 *Ibid.*, 66.
- 4 Allison Plyer, Elaine Ortiz, Ben Horwitz, and George Hobor, *The New Orleans Index at Eight* (New Orleans: The Data Center, 2013), <https://perma.cc/9V6S-Q6GX>. Based on data from the Bureau of Justice Statistics, "QuickFacts: New Orleans" (Washington, DC: U.S. Census Bureau, 2010), <https://perma.cc/82YF-UB8R> and the Orleans Parish Sheriff's Office's "Daily Inmate Count," 2015 (document on file).
- 5 Act 295; La. Rev. Stat. § 40:966(E). A third offense of possession of marijuana remains a felony with a prison sentence of up to two years. The act also reduces the penalty for first possession of marijuana, limits the time period in which misdemeanor possession can be the basis for a multiple-offense felony charge, and reduces the maximum penalties for felony possession.
- 6 New Orleans Municipal Code §§ 54-28, 54-505.
- 7 New Orleans Office of Inspector General, *City of New Orleans Arrest and Detention Policies for Non-Violent Misdemeanors and Traffic Offenses* (New Orleans: OIG, 2011), 7-8, <https://perma.cc/FRB8-NFZL>.
- 8 Crimes of violence are defined by statute in La. Rev. Stat. § 14:2.
- 9 Nihal Shrinath, Vicki Mack, and Allison Plyer, "Who Lives in New Orleans and Metro Parishes Now?" (New Orleans: The Data Center, 2014), <https://perma.cc/R84T-2N4J>.
- 10 Citywide, 90 percent of the people arrested for possession with intent to distribute marijuana are black.
- 11 This number comes from New Orleans demographics (59.1 percent black in 2013, according to the Data Center) and scaling this number based on national self-reported use data for the percentage of people across races who said they used marijuana within the past 30 days. In 2013, 9 percent of black people and 7.8 percent of white people nationwide reported using marijuana within the previous 30 days. For more on self-reported use, see U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2013*. (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2015, ICPSR35509-v3), 11-23, <https://perma.cc/7DYS-A4N5>.
- 12 *Ibid.*
- 13 Criminal Justice Committee meeting, New Orleans City Council, September 23, 2015, <https://perma.cc/6A9W-ANQD>.
- 14 Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (Laura and John Arnold Foundation, 2013), 18, <https://perma.cc/ZZ6C-FH2T>.
- 15 Calvin Johnson, Mathilde Laisne, and Jon Wool, *Justice in Katrina's Wake: Changing Course on Incarceration in New Orleans*. (New York: Vera Institute of Justice, 2015), 11-12, <https://perma.cc/X98D-3LW7>.
- 16 Mike Males and Lizzie Buchen, *Reforming Marijuana Laws: Which Approach Best Reduces the Harms of Criminalization?* (San Francisco: Center on Juvenile and Criminal Justice, 2014), <https://perma.cc/339J-VSMM>.

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