

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance



KEEPING DEFENDER WORKLOADS MANAGEABLE

BJA Bureau of Justice Assistance
Monograph

INDIGENT DEFENSE SERIES

#4

U.S. Department of Justice
Office of Justice Programs
810 Seventh Street NW.
Washington, DC 20531

John Ashcroft
Attorney General

Office of Justice Programs
World Wide Web Home Page
www.ojp.usdoj.gov

Bureau of Justice Assistance
World Wide Web Home Page
www.ojp.usdoj.gov/BJA

For grant and funding information contact
U.S. Department of Justice Response Center
1-800-421-6770

This document was prepared by The Spangenberg Group for the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.



KEEPING DEFENDER WORKLOADS MANAGEABLE

January 2001

NCJ 185632

Prepared by The Spangenberg Group

Foreword

Adequately supporting indigent defenders is critical to preserving the constitutional rights of individuals accused of crimes. To function properly, the criminal justice system needs all of its components, including defense, operating effectively.

One important way we can bolster indigent defense in this country is educating criminal justice practitioners, elected officials, and the public about the challenges facing the indigent defense community. This series will help accomplish that goal by addressing key issues that attorneys and managers in indigent defense systems struggle with in their day-to-day work.

The subject of this report, finding ways to better manage defender workloads, is at the heart of ensuring that the administration of justice is fair and equitable. Every day, defender offices and assigned counsel are forced to manage too many clients with inadequate resources. Too often, the quality of service suffers, jeopardizing one of our most important constitutional rights: the right to effective counsel.

It is our hope that the information and recommendations provided here serve as a valuable resource for all of us working to improve the justice system.

Bureau of Justice Assistance

Contents

| | |
|--|----|
| I. Introduction | 1 |
| II. Caseload v. Workload | 3 |
| Importance of Uniform Definition of Case | 4 |
| Ethical Considerations: When To Say Enough? | 4 |
| III. Caseload Standards | 7 |
| National Standards | 8 |
| Case-Weighting Studies | 8 |
| State Standards | 10 |
| Statutory Caseload Provisions | 13 |
| Contractual Standards | 14 |
| Caseload Standards for Private Attorneys | 14 |
| Performance Standards | 15 |
| IV. Withdrawal From Cases | 17 |
| Systemic Litigation | 21 |
| Malpractice Claims in State Court and Federal Immunity | 22 |
| V. Strategies for Keeping Workloads Manageable | 25 |
| VI. Notes | 27 |
| VII. For More Information | 31 |

I. Introduction

In 1991, Rick Tessier, a young public defender working in New Orleans, was appointed to represent Leonard Peart. At the time, Tessier was handling 70 active felonies. Peart was charged with armed robbery, aggravated rape, aggravated burglary, attempted armed robbery, and first-degree murder. Tessier's clients typically were incarcerated between 30 and 70 days before he met with them. In the first 7 months of 1991, Tessier represented 418 defendants. His office had minimal investigative support and no funds for expert witnesses.

Tessier filed a motion to have the trial court declare, before disposition of Peart's case, that Tessier was unable to provide Peart with effective assistance of counsel, given his pending workload and lack of investigative and expert resources. Tessier's motion resulted in a sharply worded admonition by the Louisiana Supreme Court that the state legislature must take action to remedy indigent defense in Louisiana. The situation was so bad that the court threatened to "employ the more intrusive and

specific measures it has thus far avoided to ensure that indigent defendants received reasonably effective assistance of counsel."¹

While refusing to make a blanket pretrial finding that Tessier provided ineffective assistance to his clients, the court instructed the trial court to which Tessier was assigned to hold individual hearings for all defendants making such a pretrial assertion. Furthermore, the trial court was ordered to apply a rebuttable presumption that such defendants were not receiving assistance of counsel effective enough to meet constitutionally required standards.

Tessier's experience conjures stereotypical images of young, overworked lawyers juggling too many files, too many courtrooms, and too many clients at the expense of the indigent defendants they represent. Although in many instances this public image is a far cry from the truth, excessive workload is one of the most pressing issues facing indigent defense programs in the United States.

About the Authors

This report was researched and written by the staff of The Spangenberg Group, a nationally recognized criminal justice research and consulting firm working to improve the delivery of indigent defense services. Located in West Newton, Massachusetts, The Spangenberg Group has provided research and technical assistance for justice organizations in every state in the nation.

Historically, public defenders have had little control over the number of cases they receive. Most public defender offices began by representing a small percentage of criminal defendants. Today, in some jurisdictions, public defender offices are appointed as many as 80 percent of all criminal cases. As populations and caseloads have increased, many public defender offices have been unable to obtain corollary increases in staff. Every day, defenders try to manage too many clients. Too often, the quality of service suffers. At some point, even the most well-intentioned advocates are overwhelmed, jeopardizing their clients' constitutional right to effective counsel.

The problem is not limited to public defenders. Individual attorneys who contract to accept an unlimited

number of cases in a given period often become overwhelmed as well. Excessive workloads even affect court-appointed attorneys. Rules of professional responsibility make it clear that every lawyer must maintain a reasonable workload. In practice, meeting this standard has been more difficult for lawyers who represent indigent criminal defendants than for those who represent paying clients.

In the past decade, defender organizations, state legislatures, state courts, and other entities have developed approaches to managing the workloads of attorneys who represent indigent defendants. This monograph discusses these approaches and presents strategies for keeping caseloads manageable.

II. Caseload v. Workload

Many practitioners still tend to think of their caseload only in terms of the number of clients they are assigned to represent. Yet, this captures only a portion of their full workload. With the advent of sentencing guidelines and the expanded use of mandatory minimum sentences, the complexity of criminal defense practice has increased dramatically. There are fewer and fewer “easy” cases, and with the growth of public defender programs many attorneys find themselves spending more and more time on administrative matters. Thus, the amount of time an attorney must spend to competently represent a client is not accurately reflected by the number of clients alone.

Likewise, given the different amounts of time required for different kinds of cases, measuring caseload in terms of the number of clients is not an accurate means of comparing the amount of work done by attorneys handling different types of cases.

In addition to zealous advocacy in court, effective defense work requires client contact, investigation, legal research, social work, conferences with prosecutors, and case preparation. In the chapter “Coping With Excessive Workload” of the American Bar Association’s (ABA) *Ethical Problems Facing the Criminal Defense Lawyer: Practical Answers*

to *Tough Questions*, authors Edward C. Monahan and James Clark set out the dimensions of competence and quality for criminal defense lawyers as defined by the ABA in several substantive areas:

- Legal knowledge and skill.
- Timeliness of representation.
- Thoroughness and preparation.
- Client relationship and interviewing.
- Communicating with the accused.
- Advising the accused.
- Investigation.
- Trial court representation.
- Sentencing.
- Appellate representation maintaining competence and ensuring quality.

Each of these facets of effective representation is compromised when caseloads are too high. Defenders’ job responsibilities extend beyond representing clients. They consult with colleagues about their own and others’ cases. They keep abreast of recently decided cases and new laws and rules by attending training sessions and through routine professional development reading. All defenders must perform administrative tasks,

and many have supervisory responsibilities, often of both support staff and lawyers. In addition, public defender managers have commitments to participate in community and policy meetings. All of these responsibilities detract from the time a lawyer can spend on individual case work but are essential to the functioning of an effective defender office. In short, a defenders overall workload comprises a defenders active caseload combined with these duties.

Many defenders who face excessive caseloads make decisions analogous to those made by physicians in a M.A.S.H. unit. They perform triage. Defendants facing serious felony charges receive primary attention, whereas defendants facing misdemeanor, juvenile delinquency, or lower-level felony charges receive much less. Too often in these cases, early investigation and regular client communication fall by the wayside.²

Importance of Uniform Definition of a Case

In developing workload or caseload standards for a given jurisdiction, it is critical to use a common definition of what constitutes a case. The National Center for State Courts and the Conference of State Court Administrators, in *State Court Model Statistical Dictionary, 1989*, instruct court administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.”³ In developing its standards, the National Advisory Commission (NAC) defined a case as “a single charge or set of

charges concerning a defendant (or other client) in one court in one proceeding.” Whereas it is important for the indigent defense system (including public defenders, court-appointed attorneys, and contract defenders) in a given jurisdiction to count cases using a uniform definition, it is optimal when the courts and prosecution in the jurisdiction also use the same definition. This affords the greatest opportunity to develop and approve budget requests for the adjudication component of the criminal justice system accordingly on a systematic and balanced basis.

Ethical Considerations: When To Say Enough?

The first rule in ABA’s Model Rules of Professional Conduct (as amended through August 1998) requires a lawyer to provide competent representation to a client.⁴ Model Rule 1.3 requires that a lawyer “act with reasonable diligence and promptness.” Model Rule 1.4 covers attorney-client communication, mandating that a lawyer keep a client reasonably informed about the situation and promptly reply to reasonable requests for information. Model Rule 1.7(b) prohibits attorneys from representing clients “if the representation of that client may be materially limited by the lawyer’s responsibilities to another client.” Many public defenders fail to acknowledge the conflict of interest that arises when excessive caseloads force them to choose which of their clients will receive the defense to which they are entitled.

In *State v. Smith*, considered by many defense practitioners to be the most important opinion on public defender workload, the Arizona Supreme Court found that Mohave County's contract system violated indigent defendants' rights to due process and counsel as guaranteed by the Arizona and United States Constitutions.⁵

The court, placing blame for the system with the participating attorneys and the county, reasoned that the attorneys are usually in a better position to recognize when a contract will likely result in inadequate representation than is the county board of supervisors. The court quoted the Arizona Rules of Professional Responsibility, which forbids attorneys from accepting employment that cannot be adequately performed, and cited ABA standards on delay and punctuality (Standard 4-1.2) and workload (Standard 5-4.3).

ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed., 1992) and *The Defense Function* (3d ed., 1993), establish quality representation as the benchmark for criminal defense lawyers. Standard 4-1.2, "The Function of Defense Counsel," states that the basic duty of defense counsel is to "render effective, quality representation." Standard 5-1.1 reinforces this principle: "The objective in providing counsel should be to assure that quality representation is afforded."

The fact that overburdened attorneys are reluctant to stand up and

say enough is enough makes the problem even more difficult to address. Reasons for this reluctance include ego, fear of rocking the boat in the local criminal system, and fear of reprobation from the appropriate disciplinary committee of the governing bar if an attorney suggests that he or she is unable to provide effective representation.

This fear is particularly acute for attorneys such as public defenders and court-appointed attorneys who serve at the will of a particular judge. ABA cautions against the potential conflict caused by such an arrangement in Standard 5-1.3(a) of the *Standards for Criminal Justice*, which states:

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-service programs.

Moreover, it is the primary responsibility of the judiciary to ensure that court proceedings are fair and equitable. If a judge with responsibility for appointing counsel in his or her courtroom recognizes that overwhelming caseloads may jeopardize a defendant's right to competent representation of counsel, it is the judge's responsibility to identify and rectify the situation.

In their guide to coping with excessive caseloads, Monahan and Clark explain how attorneys should—in

fact, must—deal with these situations:

A lawyer who has so much work, so many cases, so many other clients that she is materially limited in her ability to effectively represent another client has an impermissible personal conflict of interest and cannot assume responsibility for an additional client.

Rules clearly establish that a lawyer cannot ethically accept another case or other work when she has so much work that accepting another case will preclude her from competently representing the new client or performing any other ethical requirements, for example, communicating fully and promptly with the client, or investigating the case and adequately advising the client.⁶

III. Caseload Standards

Ethical guidelines set the ultimate standard for determining when an attorney carries an excessive caseload. However, numerical standards also play an important role in putting concerns about excessive caseload in context. Some standards establish a limited number of cases that a defender should not exceed in any given year. Others are aspirational, encouraging indigent defense lawyers to accept reasonable caseloads in accordance with professional responsibility requirements.

Caseload standards take different forms, including statute, court rule, contractual terms, court opinion, and published guidelines by national organizations. The latter—national standards promulgated by organizations including ABA, the National Legal Aid and Defender Association (NLADA), and NAC—typically form one starting point for states and localities that develop their own standards. The second starting point is a case-weighting study, in which caseload/workload standards are developed to reflect the actual cases handled in a particular jurisdiction.

Programs that have developed successful caseload or workload programs share a common set of characteristics, including

- A sound management information system based on reliable and empirical data.
- A statistical reporting procedure that has been accepted by the funding sources.
- A sound managerial/administrative system.
- The ability to tie caseload standards to budget requests.
- A mechanism (e.g., a statute or court rule) that kicks in once caseloads reach an excessive level to prevent defenders from being assigned to additional cases.
- The ability to mobilize strong local support.

Note that a caseload standard is just a beginning. Without adequate support staff, training, and supervision, a standard will not do much to alleviate case overload. Some jurisdictions, such as Florida and Indiana, have used unit staffing formulas in conjunction with attorney workload standards. In such a system, ratios of adequate support staff to attorneys are developed. For example, for every four felony attorneys there should be one paralegal, one investigator, and one secretary. The bottom line is that caseload or workload standards should be viewed as one part of an overall program to ensure that defender offices have adequate staff and resources to properly represent clients.

National Standards

The only national body that has attempted to quantify a maximum annual public defender caseload is NAC, which published its standards in 1973.⁷ The commission, made up of elected officials, law enforcement officers, corrections officials, community leaders, prosecutors, judges, and defense attorneys, was appointed by the administrator of the federal Law Enforcement Assistance Administration. In NAC's report, Standard 13.12 on courts states:

The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding 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 25.⁸

NAC caseload standards have served as a benchmark for other entities. Commentary to Standard 5–5.3 of ABA's *Standards Relating to the Administration of Criminal Justice* references the public defender caseload standards developed by NAC, noting they “have proven resilient over time and provide a rough measure of caseloads.”⁹

Additionally, some state organizations, such as the Washington Defender Association, have adopted NAC standards or standards similar to

them. Washington state law requires counties and municipalities to establish caseload standards and encourages counties and municipalities to use the Washington Defender Association's standards as guidelines.

In the absence of guidelines created for a particular jurisdiction, NAC standards are an effective tool to help public defenders plan and discuss resource needs with policymakers and budget committees. However, NAC standards are limited to describing resource needs strictly according to the raw number of cases for which an attorney is responsible. They do not take into consideration administrative or supervisory work, waiting or travel time, or professional development activities. Furthermore, they do not differentiate the amount of time required to work on various types of cases within a case category. For example, all felonies, whether straightforward burglary charges or complicated child sex abuse charges, are given equal weight by NAC standards.

Case-Weighting Studies

Several public defender offices have developed their own caseload standards, using either the Delphi method or the time record-based case-weighting method. Of the two methods, the latter is most reliable.

The Delphi and Case-Weighting Methods

Under the Delphi method, a sample of attorneys is given a series of

scenarios designed to reflect typical cases and clients to be found in any public defender's workload. The attorneys are asked to estimate the time involved in handling the various scenarios. This results in case weights based on "strong educated guesses" about the relative time required to complete various tasks.

The case-weighting method uses detailed time records kept by public defender attorneys over a period, typically ranging from 7 to 13 weeks. The time records provide a means by which caseload (the number of cases a lawyer handles) can be translated to workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). In the broadest context, weights can be given to the total annual caseload of an office to compare with the next year's anticipated volume of cases. Assuming that records are kept of attorney time expended in each case, the translation of projected caseload into projected workload can be accomplished with some precision.

Colorado Case-Weighting Study

In 1996, The Spangenberg Group completed a case-weighting study for the Colorado state public defender.¹⁰ Since then, the Colorado public defender has used the study's weighted caseload formula to determine staffing needs in regional trial offices. It justifies its budget requests with the formula, which sets out different annual caseload standards for trial attorneys working in urban and rural offices.¹¹ The standards are shown in table 1.

The Colorado legislature has accepted the formula for purposes of both budgeting and analyzing the fiscal impact of proposed legislation. As a result, the Colorado public defender office reports that its attorney staffing levels have been adequately funded in recent years. It believes that a critical element in the acceptance of the study was obtaining legislative input in the initial stages of the study's design. This involvement, together with the empirical nature of the study, give

Table 1: Colorado Case-Weighting Standards

| Case Type | Urban Office | Rural Office |
|-------------|--------------|--------------|
| Felony 1 | 6 | 6 |
| Felony 2-3 | 80 | 80 |
| Felony 4-6 | 241 | 191 |
| Juvenile | 310 | 305 |
| Misdemeanor | 310 | 598 |
| Traffic | 259 | 285 |

credibility to the case-weighting study's formula for staffing needs.

State Standards

Using a combination of NAC standards and case-weighting studies as the starting point, several states have implemented workload guidelines for public defenders. Table 2 shows the standards used in 15 states. In reviewing the table, note that making comparisons between various indigent defense systems is an imperfect science, because of the many variables affecting indigent defense services in each state.¹² Naturally, criminal practices and procedures vary from state to state and often between jurisdictions within a single state. Despite this caveat, table 2 illustrates how different states use workload standards. These workload standards represent the maximum annual number of cases a single attorney should carry if that attorney handles only that type of case. For example, most states with misdemeanor caseload standards suggest that public defenders handle no more than 400 misdemeanor cases in a single year, if misdemeanors are the only type of case the attorney handles.

Additionally, many of these states have further restrictions. To cite one example, the Indiana Public Defender Commission's workload standards were designed for use by indigent defense practitioners who have access to adequate support staff, in recognition of the important role support staff play in providing

quality indigent defense.¹³ The Indiana standards in table 2 represent the caseload standards for offices that maintain an adequate level of support staff consistent with the guidelines listed below.

The ratio of support staff to attorneys should be as follows:

- Paralegal
 - Felony, 1:4
 - Misdemeanor, 1:5
 - Juvenile, 1:4
 - Mental Health, 1:2
- Investigator
 - Felony, 1:4
 - Misdemeanor, 1:6
 - Juvenile, 1:6
- Law Clerk Appeal, 1:2
- Secretary
 - Felony, 1:4
 - Misdemeanor, 1:6
 - Juvenile, 1:5

For county public defender offices that do not maintain the required ratios of support staff to attorney, annual caseloads are reduced accordingly (to a maximum of 100–150 felonies, 300 misdemeanors, 200 juvenile cases, or 20 appeals per attorney per year).

Also, Indiana's experience shows how successful statewide indigent defense commissions can be in promulgating standards and guidelines designed to improve and ensure uniformity of practice statewide. These commissions (currently, 31 states have a commission of some kind)

Table 2: Maximum Public Defender Workload Standards in Selected States

| State | Felony | Misdemeanor | Juvenile | Appeals | Authority |
|---------------|----------------------|----------------------|----------------------|---------|---|
| Arizona | 150 | 300 | 200 | 25 | <i>State of Arizona v. Joe U. Smith</i> , 681 P. 2d 1374 (1984). |
| Colorado* | 80–241 ¹ | 310–598 ² | 305–310 ³ | – | The Spangenberg Group. <i>Weighted-Caseload Study for the Colorado State Public Defender</i> . November 1996. |
| Florida* | 200 | 400 | 250 | 50 | Florida Public Defender Association. <i>Comparison of Caseload Standards</i> . July 1986. |
| Georgia | 150 | 400 | 200 | 25 | Georgia Indigent Defense Council. <i>Guidelines of the Georgia Indigent Defense Council for the Operation of Local Indigent Defense Programs</i> . October 1989. |
| Indiana | 200 | 400 | 250 | 25 | Indiana Public Defender Commission. <i>Standards for Indigent Defense Services in Non-Capital Cases: With Commentary</i> . January 1995. |
| Louisiana | 200 | 450 | 250 | 50 | Louisiana Indigent Defense Board. <i>Louisiana Standards on Indigent Defense</i> . 1995. |
| Massachusetts | 200 | 400 | 300 | – | Committee for Public Counsel Services. <i>Manual for Counsel Assigned Through the Committee for Public Counsel Services: Policies and Procedures</i> . June 1995. |
| Minnesota* | 100–120 ⁴ | 250–400 ⁵ | 175 | – | Minnesota State Public Defender. <i>Caseload Standards for District Public Defenders in Minnesota</i> . October 1991. |
| Missouri | 40–180 ⁶ | 450 | 280 | 28 | Missouri State Public Defender System. <i>Caseload Committee Report</i> . September 1992. |
| Nebraska | 50 ⁷ | – | – | 40 | Nebraska Commission on Public Advocacy. <i>Standards for Indigent Defense Services in Capital and Non-Capital Cases</i> . May 1996. |

Table 2: Maximum Public Defender Workload Standards in Selected States (continued)

| State | Felony | Misdemeanor | Juvenile | Appeals | Authority |
|---------------------|-------------------------|-------------|----------|---------|--|
| New York* (City) | 150 | 400 | – | 25 | Indigent Defense Organization Oversight Committee. <i>General Requirements for All Organized Providers of Defense Services to Indigent Defendants</i> . July 1996. |
| Oregon | 240 | 400 | 480 | – | Oregon State Bar. <i>Indigent Defense Task Force Report</i> . September 1996. |
| Tennessee | 55– 302 ⁸ | 500 | 273 | – | The Spangenberg Group. <i>Tennessee Public Defender Case-Weighting Study</i> . May 1999. |
| Vermont | 150 | 400 | 200 | 25 | Office of the Defender General. <i>Policy of the Defender General Concerning Excessive Workloads for Public Defenders</i> . October 1987. |
| Washington | 150 | 300 | 250 | 25 | Washington Defender Association. <i>Standards for Public Defender Services</i> . October 1989. |

*Jurisdictions in which caseload standards have been developed through case-weighting studies.

¹ Colorado’s felony caseload standards establish thresholds based on the severity of the charge and whether defenders are in urban or rural offices. For Felony 2 and 3 cases, the standard is 80 cases per year. For Felony 4, 5, and 6 cases, the standard in rural areas is 191 cases and in urban areas is 241 cases.

² Colorado’s misdemeanor caseload standards establish thresholds based on the severity of the charge and whether defenders are in urban or rural offices. The standards for misdemeanors in urban areas are 259 traffic and 310 nontraffic cases per year. The standards for misdemeanors in rural jurisdictions are 285 traffic and 598 nontraffic cases per year.

³ Colorado’s juvenile delinquency caseload standards establish thresholds based on whether defenders are in urban or rural offices. For juvenile delinquency cases in urban areas, the standard is 310 cases per year. In rural jurisdictions, the standard is 305 cases.

⁴ Minnesota’s caseload standards establish a range of cases a public defender may handle according to local practices throughout the state. Additionally, Minnesota has established a caseload standard (3 cases per year) specifically for homicide cases.

⁵ Minnesota’s misdemeanor caseload standards establish a threshold based on the severity of the charge. For gross misdemeanors, a public defender should not handle more than 250 to 300 cases per year, depending on local practices. For all other misdemeanors, the standard is 400 cases per year.

⁶ Missouri’s caseload standards establish thresholds based on the severity of the felony charge. For Felony A and B cases, the standard is 40 cases per year. For Felony C and D cases, the standard is 180 cases.

⁷ The Nebraska Commission on Public Advocacy has established a felony caseload standard for only the most serious category of felonies. The standard represents the number of violent crime cases (rape, manslaughter, 2-degree murder, sexual assault) that a single attorney could handle during a year if those cases were the only type of cases handled during the year.

⁸ Tennessee’s felony caseload standards establish thresholds based on the severity of the charge. The standard is 55 per year for Felony A cases; 148 for Felony B cases; and 302 for Felony C, D, and E cases.

provide oversight and troubleshoot to avoid serious problems in the delivery of indigent defense services.¹⁴ In Indiana, the commission's noncapital standards were adopted in 1995. By 2000, 42 of the state's 92 counties were in compliance with its noncapital standards.

Statutory Caseload Provisions

Several jurisdictions have public defender workload limitations written into statutory provisions. Most do not set specific numeric limitations but include language requiring public defenders to accept caseloads that allow them to provide effective representation, or representation that comports with codes of professional responsibility. At least two states' statutory provisions contain specific annual caseload caps based on case-weighting studies conducted for the statewide public defender organizations.

New Hampshire requires the statewide public defender program to adopt a plan for the allocation of cases between public defender staff attorneys and assigned counsel.¹⁵ The purpose of the plan is twofold. First, it establishes caseload limits for defender attorneys in accordance with professional standards under the code of professional responsibility. Second, it provides for appointment of assigned counsel when public defender attorneys reach maximum caseload limits. Pursuant to the statutory requirement, a caseload plan loosely modeled after NAC

standards is incorporated into the contract between the public defender and the state. Unlike NAC standards, the New Hampshire plan gives some consideration to factors such as travel time and average case processing time.

The New Hampshire public defender does not rely on the caseload plan alone. In fact, greater emphasis is placed on an informal, weighted caseload plan developed over the years that guides the public defender program's internal case assignment process. Case weights, or units, have been developed based on summaries of time reported by public defenders on how long they devote to individual cases.

Washington state mandates each county or city to adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office.¹⁶ Among other things, the standards are to include caseload limits, and the standards endorsed by the Washington Defender Association "may serve as guidelines to contracting authorities."

Wisconsin's statute sets out specific annual caseload standards for assistant state public defenders that are used to help make budget decisions.¹⁷ The standards take into account the results of a case-weighting study conducted by The Spangenberg Group for the Wisconsin state public defender in 1990, and they are occasionally adjusted by the state

legislature, with the input of the state public defender, to reflect changes in practice. Wisconsin's statute also acts as a safety valve when caseloads reach the standards set out in the statute by allowing the public defender to seek legislative approval to assign overload cases to the private bar.

Contractual Standards

Like public defenders, contract attorneys can run into excessive workload situations, particularly when they have entered into low-bid, flat-fee contracts to handle all of the cases in a given jurisdiction for a set price. In *State v. Joe U. Smith*, the Arizona Supreme Court struck down Mohave County's contract defense system, which solicited sealed bids from private bar members for several years.¹⁸ In the underlying case, the defendant was represented by a lawyer who contracted with Mohave County to represent indigent defendants on a part-time basis. (The lawyer also had a civil practice). The court found that the contract lawyer handled 149 felonies, 160 misdemeanors, 21 juvenile cases, and 33 other types of cases in 11 months.

The Arizona Supreme Court opinion established a widely cited standard for assessing the constitutionality of a low-bid contract system. The decision cites the *NLADA Guidelines for Negotiating and Awarding Indigent Defense Contracts* and ABA's *Standards for Criminal Justice* and concludes that Mohave County's

system did not conform with the standards and guidelines for four reasons: (1) it did not take into account the time the attorney was expected to spend in representing his or her share of indigent defendants; (2) it did not provide for support costs for the attorney, such as investigators, paralegals, and law clerks; (3) it did not take into account the complexity of each case; and (4) it did not take into account the competency of the attorney.

In Nebraska, a statutory provision governs indigent defense contractors' caseloads. Neb. Rev. Stat. § 23-3406 (1999) states that any contract negotiated between an attorney and a county for the provision of indigent defense services may specify a maximum allowable caseload for each full- or part-time attorney working under the contract. Although no specific numbers are prescribed, caseloads "shall allow each lawyer to give every client the time and effort necessary to provide effective representation." In addition, the statute states that such contracts must require contracting attorneys to adhere to minimum standards set forth by ABA and the Nebraska Canons of Ethics for Attorneys.

Caseload Standards for Private Attorneys

At least two states' standards recognize that private attorneys who accept court appointments are susceptible to excessive caseloads, particularly when compensation in

court-appointed cases is inadequate. In Indiana, where many of the state's 92 counties use some sort of court-appointment system, state standards regarding appointment of private counsel in capital cases address this potential problem.

In the late 1980s, the Indiana Commission on Public Defense drafted standards regarding representation in death penalty cases. The standards were ultimately adopted by the Indiana Supreme Court in Indiana Criminal Rule 24 and went into effect in January 1990. Under Rule 24, for the first time in the history of indigent defense in Indiana, state funds became available for counties that complied with the requirements of the rule in providing representation to indigent defendants charged with crimes where the state asked that the death penalty be imposed. Rule 24 includes qualification standards for both lead counsel and co-counsel, maximum caseload standards (outside of the capital case) for counsel, requirements for sufficient support staff, and compensation, as of January 1, 2001, of \$90 per hour.¹⁹ Any county that is able to meet these standards is reimbursed by the state for one-half the cost of representation.

Rule 24(B)(3) of the Indiana Rules of Criminal Procedure specifically addresses "Workload of Appointed Counsel" in capital cases, stating:

(a) Attorneys accepting appointments pursuant to this rule shall provide each client with quality

representation in accordance with constitutional and professional standards. Appointed counsel shall 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.

(b) A judge shall not make an appointment of counsel in a capital case without assessing the impact of the appointment on the attorney's workload.

Additionally, Rule 24(J)(2) focuses on the workload of appointed appellate counsel:

In the appointment of appellate counsel, the judge shall assess the nature and volume of the workload of appointed appellate counsel to assure that counsel can direct sufficient attention to the appeal of the capital case. In the event the appointed appellate counsel is under contract to perform other defense or appellate services for the court of appointment, no new cases for appeal shall be assigned to such counsel until the appellant's brief in the death penalty case is filed.

Performance Standards

Performance standards are another important tool for attorneys facing a work-overload crisis. When a jurisdiction adopts performance standards for attorneys who represent

indigent defendants, defense attorneys can use the standards to explain to the court—through informal discussions with judges or, if necessary, litigation—that appointment to additional cases will make it impossible to properly represent their current clients. Performance standards describe minimum requirements for competent representation by public defenders and private court-appointed counsel. Such standards, which are in place in several states, are designed to

ensure that, among other things, attorneys maintain contact with the client, conduct a factual investigation, examine the complaint for legal sufficiency, file appropriate motions, and conduct discovery.²⁰ NLADA's *Performance Guidelines for Criminal Defense Representation* (1995) is an excellent resource for defense counsel and a good starting point for a jurisdiction seeking to tailor performance guidelines to local practice and procedure.

IV. Withdrawal From Cases

What should an attorney do when facing a caseload that she believes will jeopardize her ability to provide effective representation? A request by an attorney to a court to withdraw from assigned cases and/or temporarily refrain from taking new cases typically comes as a last resort, after the attorney has endured a mounting case-overload situation. Often, in the case of a public defender office, the chief public defender will have made unsuccessful attempts to secure supplemental funds needed to hire additional attorneys who can absorb the overload. The situation typically screams “Crisis!” in the indigent defense system. A successful motion to temporarily cut off appointments to an individual attorney or to a public defender office can trigger ripple effects through the entire local criminal justice system.

In November 1991, the Knox County public defender in Tennessee moved the four general session court judges to suspend further case appointments to the public defender office. Excessive caseloads, as high as five times the national standards, formed the basis for the motion. The public defender argued that continued appointments would create a conflict of interest between present and future clients. To temporarily relieve the situation, the general session judges granted an order that halted all further

appointments of cases to the public defender for 60 days. A similar motion filed in criminal court resulted in suspension of misdemeanor appointments to the public defender office so that the attorneys could work down their caseloads to more manageable levels.

In such a situation, cases normally assigned to the public defender would typically be assigned to the private criminal defense bar, who would take additional case appointments until the public defender’s caseload reached a manageable level. At the time, other factors were at play that affected indigent defense statewide, not just in Knox County. One primary factor was that Tennessee’s Indigent Defense Fund was running out of money, just 4 months into the fiscal year. The fund is used to pay for the operation of public defender offices, compensate attorneys in court-appointed cases, and pay for associated expert fees in those cases.

To make up this shortfall, the state proposed to reduce the rate of reimbursement for court-appointed cases to 25 percent of the total claim. Rather than the \$20 hourly rate for out-of-court work and \$30 hourly rate for in-court representation, attorneys’ fees would be reduced to \$5 and \$7.50 an hour. This proposal was unacceptable to appointed attorneys, who had

complained about the inadequacy of the \$20/\$30 rates that had been in place since 1965. The proposal was not implemented.

For attorneys practicing in Knox County, news about the reduced fees came in the wake of a new plan, announced by the General Sessions Court, to distribute cases to private counsel during the temporary suspension of case appointments to the public defender. The court issued notice to every bar member in the county advising them that they would be expected to accept an appointment to a criminal case. The mandate applied to all lawyers, regardless of whether they were currently practicing or familiar with criminal defense.

At about the time the temporary freeze on new appointments to the Knox County public defender office was set to expire, the Indigent Defense Fund was almost entirely depleted. The Shelby County (Memphis) public defender office announced that it would stop taking new appointments and begin layoffs because of the state's inability to provide funding to the office. When the Shelby County public defender sought an order for continued funding for his office in federal court, the judge indicated that he did not have the authority to order the state to provide funding. However, he noted that he did have the authority to prevent the state from contributing directly to unconstitutional conditions in the local jail, which was under a consent decree that included

a maximum population cap. If the public defender stopped accepting cases, it would trigger a backlog in the criminal justice system, including the jail.

The crisis in Tennessee was finally remedied by moving funds from other program areas to keep the Shelby County public defender office operating, and court-appointed lawyers were paid the full \$20/\$30 rate.²¹ The 60-day halt in appointments to the Knox County public defender office gave the office the breathing room it needed to make it through the fiscal year.

In the next legislative session, the Tennessee legislature appropriated funds to increase public defender staff at offices throughout the state. The Knox County public defender office almost doubled in size. As years passed, it became clear that additional staff were needed. The legislature requested that the state comptroller oversee case-weighting studies for judges, prosecutors, and public defenders to determine the level of staff needed.

In 1999, The Spangenberg Group conducted a weighted-caseload study for public defenders in Tennessee that found an additional 59 attorneys were needed statewide. Weighted-caseload studies were conducted for judges and prosecutors at the same time by the National Center for State Courts and the American Prosecutors Research Institute. It is expected that any state-funded increases in the numbers of judges,

prosecutors, or public defenders will be made according to the recommendations in these studies. However, because of fiscal restrictions, Tennessee has not yet funded additional public defenders, prosecutors, or judges.

These funding limitations prompted Knox County Public Defender Mark Stephens to work with county officials to avoid a repeat of 1991. State law now gives localities the option to adopt an ordinance requiring that 75 cents be appropriated for the local public defender's office for every dollar of county money appropriated for the local district attorney's office. Knox County adopted such an ordinance. Furthermore, state law allows revenue from a local litigation tax assessed on criminal defendants convicted in general sessions court to fund indigent defense in Knox County. These local measures currently fund almost one-third (7 of 22) of the attorneys in the Knox County public defender office.

In the early 1990s, Dade County, Florida, was in a crisis similar to that faced by Knox County. In October 1992, the Dade County public defender office, arguing that crushing caseloads had rendered its lawyers unable to represent criminal defendants competently, filed petitions with four juvenile court judges to withdraw from 500 juvenile cases and to request that further juvenile case appointments be suspended. Dade County Public Defender

Bennett Brummer called the situation "a reflection of a failure of state government. I have a constitutional and ethical responsibility to provide effective legal representation. I've been very reluctant to withdraw from cases. But it gets to the point where you can't justify being a self-respecting professional and pretend you're providing legal representation under those circumstances."²²

At the time of the public defender's request to withdraw, Florida, like many states, was experiencing revenue shortfalls. Brummer had requested an increase in funding from the state legislature to hire additional lawyers but ended up with a budget smaller than that appropriated for his office the previous year. Meanwhile, caseloads were on the rise. Individual defenders had an average of 98 open juvenile cases, and the office was assigned to roughly 100 additional cases each week. At that rate, attorneys were on their way to handling 400 juvenile cases apiece in 1992, double NAC standards.

Although workloads were up for attorneys handling all types of cases, Brummer reportedly withdrew from juvenile cases because they are cheaper than adult cases for court-appointed counsel to handle and because the overload situation was especially severe in the office's juvenile division. Brummer was granted leave to withdraw, but that amounted to a temporary reprieve. It would not prevent a repeat occurrence.

In Florida, 20 elected public defenders provide representation to indigent defendants at the trial level throughout the state's judicial circuits. Appellate cases are handled on a regional basis by 5 of the 20 offices. All funds for these programs are provided by the state, but the counties are responsible for representing indigent defendants in proceedings in which the state public defender withdraws because of a conflict of interest and where an excessive workload precludes adequate state public defender representation. The Dade County public defender's request to withdraw from cases in 1992 was not an isolated incident. Because of their professional standards, 6 of Florida's 20 elected public defenders have found it necessary to withdraw from cases or to seek county funds to supplement their inadequate state budgets.²³

Because state funds have not filled the needs for additional public defender staff, public defenders have sought local assistance. After Brummer withdrew from cases in 1992, the county provided an influx of special assistant public defenders, which it continues to do. In FY 2000, the county funded 82 of the 183 attorneys in Dade County's public defender office.²⁴ These so-called special assistant public defenders work as staff in the public defender office and handle cases that otherwise would be assigned to appointed counsel because of excessive workload. The average cost per case to the county for cases handled by special assistant

public defenders is much lower than the average cost per case for court-appointed attorneys.²⁵

In 2004, the state will assume the responsibility of funding conflict and overload counsel. Five public defender offices currently receive county funds to hire special assistant public defenders to handle what would be overload cases. For these five offices, including the Dade County public defender, the top legislative priority is to obtain adequate state funds for the positions before transfer of financial responsibility for overload cases to the state.

Public defenders in Georgia have also been forced to take action in regard to overwhelming caseloads. In 1990, after 4 years as a public defender in Fulton County (Atlanta), Georgia, Lynne Borsuk became uncomfortable with her expanding caseload and its effect on her clients.²⁶ After consulting with the Georgia Association of Criminal Defense Lawyers, Borsuk appeared in court and requested that the judge not appoint her to any more cases. She filed a motion stating her caseload was so overwhelming that it violated her clients' right to effective counsel and the canon of ethics of the State Bar of Georgia. Borsuk explained her action to a reporter: "I recognized I was no longer doing my clients a service by keeping quiet. It was a sham. We were pretending that we were providing adequate representation. We weren't."²⁷

Borsuk's stand led to the formation of the Atlanta Bar Association Blue Ribbon Commission to study the problem of case overload in the Fulton County public defender office. After reviewing the bar's findings, the Fulton County Commission appropriated additional funds to the public defender office.²⁸ Borsuk, however, paid a price for her initiative. She was demoted from handling felony cases to juvenile court and resigned shortly thereafter.

Borsuk's experience raises an important issue: Whose responsibility is it to have an attorney withdraw from a case—the individual defender or the chief public defender? If an assistant defender is not getting workload relief and works for a chief public defender who does not want to create friction in the local criminal justice system, there are few appealing options. She can resign and leave colleagues with an even greater workload. She can go over the boss's head to the court and ask to withdraw. Or she can attempt to build a coalition of bar, defender, and other criminal justice system players to look at the issue, which could take weeks or longer to orchestrate. Because these alternatives may not be palatable or feasible for a young defender, the chief defender should monitor the workload and take steps to ease it when it becomes excessive.

Of course, individual defenders should not stand idly by when a workload situation becomes untenable. Recall the example of Rick

Tessier, the young defender in New Orleans who filed a motion for relief when he felt he could no longer provide constitutionally required standards of representation for his clients. The Louisiana Supreme Court upheld the promise it made in *State v. Peart* to take action if none was forthcoming from the legislature. In 1994, after its landmark decision in *Peart* and a statewide study of Louisiana's indigent defense system conducted by The Spangenberg Group, the Louisiana Supreme Court promulgated a rule creating the Louisiana Indigent Defense Assistance Board (LIDAB) (formerly called the Louisiana Indigent Defender Board). LIDAB was given \$7.5 million in state funds and charged to supplement the budgets of local indigent defender boards, defray the costs of court-ordered defense experts and tests throughout the local boards, and more adequately fund counsel representing indigent defendants charged with capital crimes.

In December 1997, the governor and legislature assumed responsibility for LIDAB to avoid conflicts of interest arising from the judiciary's stewardship of the program. In the 1999 legislative session, LIDAB acquired the additional responsibility of ensuring that counsel is appointed in state postconviction death penalty cases.

Systemic Litigation

Sometimes defenders' excessive workloads become so intractable in a

jurisdiction that seeking relief through traditional channels—promulgating performance standards, documenting case overload and presenting the evidence to criminal justice system officials, seeking supplemental appropriations, requesting to withdraw from cases, and seeking to temporarily decline additional appointments—fails to make progress. At this point, bringing a lawsuit charging systemic deficiencies may be the only alternative.

In the 1990s, attorneys in Connecticut's statewide, state-funded public defender system were chronically overworked, carrying caseloads far in excess of NAC standards. In 1993 and 1994, Connecticut public defenders each handled an average of 1,045 cases in "geographic area" courts, where misdemeanors and lesser felonies are tried. The average caseload for an attorney representing juveniles was 716 cases a year.²⁹ The situation was corrected through settlement of a class action lawsuit, *Rivera v. Rowland*, alleging violations of the 6th and 14th Amendments to the Constitution, violations of the Connecticut constitution and various state statutes, and failure to provide the state public defender system with adequate funding.³⁰ The lawsuit was filed by the American Civil Liberties Union against the Governor of Connecticut, the state's public defender services commissioners, and others.

Such a lawsuit can produce good results but it can take years to resolve, leaving indigent defendants in the hands of overburdened public

defenders. *Rivera v. Rowland*, for example, spent 5 years in the court system.

Malpractice Claims in State Court and Federal Immunity

Attorneys with excessive caseloads are under an ethical obligation to remedy the situation. Failure to do so may result in disciplinary action under professional codes of conduct. Additionally, attorneys may be held liable for legal malpractice. A legal malpractice suit requires proof of four elements: (1) existence of an attorney-client relationship, (2) the attorney's duty to act according to particular standards of care, (3) failure to meet that standard, and (4) damage to the client as a result of that failure.³¹

In a recent Illinois case, *Johnson v. Halloran*, a former client who was convicted of aggravated criminal sexual assault sued his public defender for malpractice. The public defender sought to dismiss the plaintiff's claims on the basis of sovereign duty, arguing that as state employees, public defenders are immune from malpractice claims. The Illinois Appellate Court disagreed, finding that a public defender's duties and obligations, by virtue of his or her status as a licensed attorney, are the same as those of any other lawyer. That status, the court found, is independent of the lawyer's state employment.³²

Although the public defender in *Johnson v. Halloran* did not claim excessive caseload as a defense, the

holding, along with others before it, should encourage public defenders and other attorneys representing indigent defendants to more aggressively request relief from further assignments when they face excessive caseloads.

Public defenders enjoy limited immunity from actions brought under section 1983 of the Civil Rights Act.³³ In *Polk County v. Dodson*, the plaintiffs, who were criminal defendants in the underlying action, claimed that a section 1983 action would be proper when their court-appointed counsel's

negligence led to a denial of the defendants' Sixth Amendment right to effective counsel.³⁴ The court rejected this argument, finding that a public defender does not act under color of state law for purposes of claims under section 1983.³⁵ The court stressed that the professional relationship and obligation of a public defender are the same as those of any private attorney and his client and that the form of payment to counsel does not constitute state action. However, some states grant immunity to public defenders by statute.

V. Strategies for Keeping Workloads Manageable

Of all the approaches public defenders, contract defenders, and private attorneys who handle court-appointed cases have taken to keep their workloads reasonable, none is a foolproof approach to this persistent problem. And, it is important to note that a defender program cannot provide quality representation solely by developing a numerical set of caseload standards. Caseload standards are only one component of an effective indigent defense system. Public defender offices and individual attorneys providing representation must also have fair and adequate compensation; adequate support staff such as investigators, social workers, paralegals, and secretaries; a complete law library; opportunities for continuing legal education; sufficient funds for experts and other costs of litigation; and specialty units for unique cases such as death penalty and juvenile transfer cases or for clients with mental health problems.

However, leaders of a local criminal defense bar, particularly chief defenders, can pursue the following common strategies to prevent caseloads from reaching overwhelming levels:

- Develop working relationships with local criminal justice system players such as judges, prosecutors, funders, and pretrial service programs. Hold regular meetings to discuss common issues and work together on common projects such as task forces or committees.
- Maintain a constant dialogue among judges, public defenders, and prosecutors about the need for balanced funding and resources. Get to know leaders of the private bar and the criminal defense bar. Establish ties with local schools, churches, and community groups that provide pertinent services such as health care, employment training, and counseling. Potential supporters of the public defender must understand the complexities of providing effective indigent defense representation and the vital need to uphold this constitutional right.
- Develop a case definition that your office uses uniformly. Discuss the possible development of a uniform case definition to be used by all criminal justice system participants in the jurisdiction. In the event that caseloads grow beyond capacity, this uniform definition can be used to conduct an “apples to apples” comparison with other components of the justice system.

- Develop a user-friendly system for recording case statistics and producing regular reports on individual attorney workload, overall office workload, and fluctuations in the mix of types of cases assigned to the office. Use these reports for funding requests and for internal supervision. Make use of information systems that simplify case tracking and report production, and make sure staff are trained to use the systems.
- Create caseload standards for the office, and share them with funders, judges, and other players in the system. Caseload standards can be developed in various ways, ranging from a case-weighting study to adoption of NAC standards.
- Develop a way to enforce or encourage compliance with workload standards, as Indiana has done.
- Document your office's excessive caseloads and inadequate staff and resources. Begin by trying to discuss and resolve the problem informally with judges and funders. Make it clear that you want to avoid having to withdraw from cases but that you will do so if no other solutions can be found.

VI. Notes

1. *State v. Peart*, 621 So. 2d 780, 791 (La. 1993).
2. *Ibid.*
3. *State Court Model Statistical Dictionary, 1989*: 19 (definition used by The Spangenberg Group in its weighted-caseload studies).
4. Model Rule 1.1 states a “lawyer shall provide competent representation to a client.”
5. 681 P. 2d 1374 (Arizona 1984).
6. Monahan, Edward C., and Clark, James, 1995, “Coping With Excessive Workload,” *Ethical Problems Facing the Criminal Defense Lawyer: Practical Answers to Tough Questions*, Chicago, IL: American Bar Association, 331.
7. There are no nationally recognized caseload standards for prosecutors. Research is under way by the American Prosecutors Research Institute to determine whether such a set of standards can be produced. The project is funded through a grant from the Bureau of Justice Assistance and should be finalized in 2001.
8. National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, 1973, *Courts*. Washington, DC: National Advisory Commission, 186.
9. *American Bar Association Standards for Criminal Justice, Providing Defense Services*, 3rd ed. Chicago, IL: American Bar Association: Washington, DC, 1992: 72.
10. The Spangenberg Group has conducted statewide weighted-caseload studies for public defender programs in Colorado, Minnesota, Tennessee, and Wisconsin. Another weighted-caseload study was conducted for the New York Legal Aid Society Criminal Defense Division in New York City.
11. Colorado’s felony and misdemeanor caseload standards establish thresholds based on the severity of the charge and whether defenders are in urban or rural offices. Colorado’s juvenile delinquency caseload standards establish thresholds on the basis of whether defenders are in urban or rural offices.
12. Among the most important variables to consider in state-by-state indigent defense comparisons are the following: whether the system is funded entirely with state funds, entirely with county funds, or a mixture of both; whether the system is organized at the county, regional, or state level; whether the state has the death penalty; whether the system has a centralized organization responsible for statewide data collection, oversight, and/or policymaking; the types and percentages of cases handled by various providers in the state; the rate of pay for court-appointed counsel in the state; the state population; and the way in which programs define, and

therefore count, cases (different programs define cases by charge, indictment, defendant, assignment, and disposition).

13. Indiana's 92 counties have the primary responsibility for funding the indigent defense programs within their jurisdictions. Each county may choose between a county public defender, a contract defender program, or an assigned counsel system. The Indiana Public Defender Commission (IPDC) allocates state funds to offset county indigent defense expenditures in counties that comply with IPDC's standards for indigent defense services in capital and noncapital cases. Counties that enforce these standards are reimbursed by IPDC for 40 percent of the cost of representing indigent defendants in noncapital felony cases, 50 percent of the cost of attorneys' fees, and expert, investigative, and support services in capital cases. Currently, 42 of Indiana's 92 counties, including Marion County (Indianapolis), the state's largest county, are in compliance with IPDC standards and receive funds from the commission.

14. In some states, a commission on indigent defense sets policy to ensure uniformity of practice statewide, and a state public defender implements the policy. In other states, either a commission but no state public defender or no commission but a state public defender develops and implements policy.

15. New Hampshire Revised Statute Ann. § 604-B:6 (1999).

16. Washington Revised Code Ann. § 10.101.030 (1999).

17. Wisconsin Statute Ann. § 977.08(5)(bn) (1999).

18. 681 P. 2d 1374 (Arizona 1984).

19. Until January 1, 2001, compensation for court-appointed counsel under Rule 24 was set at \$70 per hour.

20. Two of the best state examples are the Massachusetts Committee for Public Counsel Services' *Manual for Counsel Assigned Through the Committee for Public Counsel Services: Policies and Procedures* (June 1995) and the Louisiana Indigent Defense Board's *Louisiana Standards on Indigent Defense*, Chapter 6 (1995). Performance standards can also be found for indigent defense systems in California, Colorado, Florida, Georgia, Indiana, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, New York City, New York, North Dakota, Oregon, and Washington.

21. The state gave the public defender \$700,000 from its award from the federal Drug Control and System Improvement Formula Grant program.

22. Viglucci, Andres, *The Miami Herald*, October 25, 1992, p. 1B.

23. Brummer, Bennet H., 10-3 *St. Thomas Law Review*/ 607, 616 See, e.g., *In re A.S.*, no. 92-1607FJ13 (Fla. Cir. Ct. filed October 16, 1992), *In re Certification of Conflict in Motions To Withdraw* filed by public defender of 10th Judicial Circuit, 636 So. 2d 19

(Fla. 1994), and *In re* Order on Prosecution of Crim. App. by the 10th Judicial Circuit Public Defender, 561 So. 2d 1130 (Fla. 1990).

24. While housed at the public defender office and trained and supervised by the public defender, the county-funded special assistant public defenders do not receive the same fringe benefits received by state-employed assistant public defenders.

25. In 1995, the estimated average fee for a noncapital case handled by a court-appointed attorney in Dade County was \$1,400 and for juvenile and misdemeanor cases was \$500. The average cost/per/case handled by special assistant public defenders was estimated between \$50 and \$100.

26. Shumate, Richard, 1991–92, I Will Not Accept Any More Cases, *Barrister* 11 (Winter).

27. See note 26.

28. The county appropriated an additional \$470,000 in 1991 and made further steady increases to the public defender office in the following years.

29. Touchy, Lynne, “CCLU Files Suit Against State,” *Hartford Courant*, January 6, 1995.

30. *Rivera v. Rowland*, Superior Court, Judicial District of

Hartford-New Britain, CT (1999) (No. CV95–545629).

31. Klein, Richard, 1988, “Legal Malpractice, Professional Discipline, and Representation of the Indigent Defendant,” *Temple Law Review* 61. (4) 1191, n. 121.

32. *Johnson v. Halloran*, 2000 WL 21047 (Ill. App. 1 Dist.) (No. 1–98–2365).

33. 42 U.S.C. § 1983 (1982) states: “Every person who, under color of any statute, ordinance, regulation, custom or usage, or any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

34. 454 U.S. 312 (1981).

35. However, in *Tower v. Glower*, 467 U.S. 914 (1984), the Court clarified there is no immunity from liability under section 1983 for public defenders who allegedly conspire with other state officials to deprive a former defendant of his/her constitutional rights. See Klein, *supra* note 31 at 1197.

VII. For More Information

To receive more information about indigent defense contract systems, contact the following organizations:

The Spangenberg Group

1001 Water Town Street
West Newton, MA 02465
617-969-3820
Fax: 617-965-3966
E-mail: tsg@spangenberggroup.com
World Wide Web:
www.spangenberggroup.com

For additional information on BJA grants and programs, contact:

Bureau of Justice Assistance

810 Seventh Street NW.,
Fourth Floor
Washington, DC 20531
202-514-6278
Fax: 202-305-1367
World Wide Web:
www.ojp.usdoj.gov/BJA

Bureau of Justice Assistance Clearinghouse

P.O. Box 6000
Rockville, MD 20849-6000
1-800-688-4252
World Wide Web: www.ncjrs.org

Clearinghouse staff are available Monday through Friday, 8:30 a.m. to 7 p.m. eastern time. Ask to be placed on the BJA mailing list.

U.S. Department of Justice Response Center

1-800-421-6770 or 202-307-1480

Response Center staff are available Monday through Friday, 9 a.m. to 5 p.m. eastern time.

To learn more about indigent defense workloads discussed in this report, contact the following organizations:

American Bar Association Criminal Justice Section

1800 M Street NW.
Washington, DC 20036
202-331-2260
World Wide Web: www.abanet.org

National Legal Aid & Defender Association

1625 K Street NW., Suite 800
Washington, DC 20006-1604
202-452-0620
World Wide Web: www.nlada.org

Bureau of Justice Assistance Information

General Information

Callers may contact the U.S. Department of Justice Response Center for general information or specific needs, such as assistance in submitting grant applications and information on training. To contact the Response Center, call 1-800-421-6770 or write to 1100 Vermont Avenue NW., Washington, DC 20005.

Indepth Information

For more indepth information about BJA, its programs, and its funding opportunities, requesters can call the BJA Clearinghouse. The BJA Clearinghouse, a component of the National Criminal Justice Reference Service (NCJRS), shares BJA program information with state and local agencies and community groups across the country. Information specialists are available to provide reference and referral services, publication distribution, participation and support for conferences, and other networking and outreach activities. The Clearinghouse can be reached by

- Mail**
P.O. Box 6000
Rockville, MD 20849-6000
- Visit**
2277 Research Boulevard
Rockville, MD 20850
- Telephone**
1-800-688-4252
Monday through Friday
8:30 a.m. to 7 p.m.
eastern time
- Fax**
301-519-5212
- Fax on Demand**
1-800-688-4252
- BJA Home Page**
www.ojp.usdoj.gov/BJA
- NCJRS World Wide Web**
www.ncjrs.org
- E-mail**
askncjrs@ncjrs.org
- JUSTINFO Newsletter**
E-mail to listproc@ncjrs.org
Leave the subject line blank
In the body of the message,
type:
subscribe justinfo
[your name]

The logo for the Bureau of Justice Assistance (BJA) features the letters 'BJA' in a large, bold, serif font. The letters are black and have a slightly stylized appearance with some internal shading or texture.

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

Washington, DC 20531

Official Business

Penalty for Private Use \$300

PRESORTED STANDARD
POSTAGE & FEES PAID
DOJ/BJA
PERMIT NO. G-91