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OFFICE OF THE DEFENDER GENERAL

Fifteenth Annual Report

Fiscal Year 1991

April 1992

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OFFICE OF THE DEFENDER GENERAL

Fifteenth Annual Report

Pursuant to Vermont Statutes Annotated, Title 13 §5256, I herewith present the Fifteenth Annual Report of the Office of the Defender General. This report chronicles Fiscal Year 1991, apparently the first of several in which the State of Vermont's commitment to fulfilling its constitutional obligations will be severely tested by diminished financial resources. During this period, this office must make its strongest efforts to provide indigent defense services with economy and efficiency while fulfilling the State's constitutional obligations, however popular and expedient an abandonment of these obligations might be.

As it is with most annual reports, this one is, in large part, comprised of numbers: numbers of cases, percentages of increase, graphs and tables. It is important to remember that these numbers represent individual criminal defendants and juveniles who passed through our court system. These numbers also represent the strenuous efforts of the men and women who provide indigent defense services, whether as public defenders, assigned counsel, investigators or legal secretaries, in the State of Vermont. Their work on behalf of often unpopular clients makes the constitutional promise of fair and equal justice a reality for all of us.



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April 1992

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ACQUISITIONS

I. PURPOSE

As required by statute, the Office of the Defender General provides legal representation for indigent persons accused of criminal offenses carrying a penalty of imprisonment or of a fine of more than \$1,000.00, for children who are the subject of juvenile proceedings, as alleged delinquents or as children in need of care and supervision (CHINS), for other parties to juvenile proceedings, for children in the custody of the Commissioner of Social and Rehabilitation Services, for persons in the custody of the Commissioner of Corrections who have a claim for relief; and for needy persons in extradition or parole proceedings. Title 13 Vermont Statutes Annotated Sections 5232, 5233, 5253; Title 33 V.S.A. Sections 658 and 659; Vermont Supreme Court Administrative Order No. 4, Section 1.

II. STATUS OF PUBLIC DEFENDER SYSTEM

Vermont's commitment to the provision of counsel for indigent defendants and children in abuse, neglect and delinquency cases continues to face significant and critical challenges. The fundamental problem is one of resources keeping pace with caseload demands. Based upon past fiscal years, current staffing, and caseload patterns, the following trends and factors have had, and will continue to have impact upon the public defense mission: a continuing pattern of caseload escalation; an increase in the number of homicide cases in which representation is handled by public defenders; continued increases in the reporting and prosecution of child abuse, neglect, delinquency and sexual assault cases; and increases in the costs of criminal litigation. Increased public awareness and vigorous prosecution of certain categories of cases, such as sex, motor vehicle, and drug offenses, that were formerly less prevalent in the judicial system have strained court dockets. For public defenders, the complexity and volume of caseloads assigned in recent years and continuing into FY 92 have pressed the constitutional and statutory obligations to provide effective assistance of counsel beyond the sustainable capacity of current staffing.

During FY 88, Public Defenders and Assigned Counsel Contractors made unprecedented efforts to provide capable representation. The number of trials conducted was roughly double that of FY 87. However, to respond effectively to the volume of cases, the public defense system increased reliance upon caseload relief measures such as the hiring of temporary employees and assignment of cases to private counsel to provide representation for the poor in FY 88. Beginning in FY 89, the Defender General embarked upon a three-year program of rebuilding and reorganizing Vermont's public defense system. Three new public defender positions were authorized, and the assigned counsel contract system for conflict of interest cases was strengthened. This rebuilding program continued in FY 1990 as two attorney positions were added. Additional staffing was also provided to meet the new demands of DWI legislation. Thereafter, these modest increases were effectively negated by staff and appropriation reductions in Fiscal Year 1991 and continuing into FY 1992.

However, the increase in the public defender caseload, which created the need for the aforementioned rebuilding program, has continued unabated. A rapidly expanding caseload, coupled with a lack of additional resources for defending that caseload, will result in three possible consequences: a general erosion of the quality of representation provided to indigent defendants, a failure by the state to fulfill its constitutional duty of providing counsel to all who qualify, and a devaluing of the quality of justice as Vermont's criminal justice system is forced to abandon its principles in the pursuit of efficiency.

III. HISTORY

In 1972, the Vermont General Assembly created the Office of the Defender General, thereby establishing one of the nation's first state-wide public defense systems. This legislative initiative was entirely consistent with a long-standing Vermont tradition of providing counsel to indigent defendants in serious criminal cases. As early as 1872, the Vermont General Assembly took a preeminent lead in protecting the rights of defendants. Unlike most states, which have had the notion of public defense thrust upon them pursuant to the decisions of the federal judiciary, the Vermont Legislature created a state-supported system of assigning counsel from the private bar to represent indigent criminal defendants on an ad hoc basis. Most states either failed to recognize the constitutional right or had no means for fulfilling the obligation.

In 1932, the United States Supreme Court held in Powell v. Alabama that appointment of counsel was necessary in capital cases where the accused is ignorant, illiterate and unable to afford an attorney. In 1963, the Court discarded these special circumstances in its landmark case, Gideon v. Wainwright, stating that a defendant in a felony case who is unable to afford counsel has a right to be defended by an attorney who is appointed and paid by the state.

During this period, the Vermont assigned counsel system was administered by the Supreme Court. Due to the increasing and unpredictable costs of providing counsel to indigent criminal defendants, in 1969 the House Appropriations Committee requested that the Court conduct a study to ascertain improving the assigned counsel system in order to gain better fiscal control. Chief Justice James Holden appointed a committee to recommend improvements to the system and several studies were commissioned.

In 1971, Vermont's Judicial Council recommended to the Vermont General Assembly that a state-wide public defender system be established. Under the direction of then District Court Judge Hilton J. Dier, Jr. (who retired in 1989 after having served as a Superior Court Judge since 1975), a pilot program was conducted in Addison County during 1971-2. By comparing the assigned counsel system with public defense, the committee found that the overall cost per case was twenty-three percent less expensive when managed by the public defender.

Experts testified that a public defense system would result in a more effective criminal justice system. Consequently, the Legislature enacted a significant portion of the model Public Defender Act which became law on July 1, 1972. Title 13 V.S.A., Ch. 163.

Soon after Vermont established its state-wide system, the U.S. Supreme Court held in Argersinger v. Hamlin (1972) that indigent criminal defendants were entitled to counsel for any criminal charge which could result in any term of imprisonment, whether the charge was a felony or a misdemeanor. Vermont accurately anticipated the Court's decision in Scott v. Illinois (1979) where the Court reaffirmed Argersinger allowing a judge to make a pre-trial determination whether the defendant would not be sentenced to confinement if convicted of a misdemeanor charge. If the Court determines that imprisonment will not be imposed after conviction, the defendant does not have a Constitutional right to counsel. Three years prior to the Scott decision, the Vermont Legislature codified the pre-determination rule in 13 V.S.A. Section 5201(4)(B).

During the early years of the public defense program, Defender General Robert West attracted a substantial amount of federal money to support the program. This initiative partially defrayed the expense generated by the expanding federal mandates requiring that states provide counsel to indigent persons.

Defender General James L. Morse (now an Associate Justice of the Supreme Court) successfully anticipated imminent federal cutbacks. This allowed for a smooth transition from reliance upon federal monies to state funding. In addition to this initiative, in 1978, Defender General Morse inaugurated Vermont's first public defense contracts. By contracting with experienced criminal defense lawyers for an amount that was less than the cost to run a staff office, the State saved money.

Although the proponents of Vermont's public defense system were correct in predicting significant savings over assigned counsel representation, they could not foresee the explosion in caseload as a result of these federal decisions. The caseload expanded at such a high rate that supplemental appropriations were needed to provide required counsel. With the increase in caseload came an increase in the number of conflict cases. This required a more active assigned counsel system to handle conflict cases. In addition to higher-than-anticipated costs of public defense, the assigned counsel system, with its inherent problems, continued to be necessary on a far greater scale than believed desirable.

In 1981, Defender General Andrew Crane recommended a restructuring of the assigned counsel program. The system of assigning counsel was expensive, unpredictable, and sometimes resulted in the assignment of counsel that were unfamiliar with criminal practice. On July 1, 1982, Defender General Crane entered into contracts with private attorneys to provide criminal defense in conflict cases. The system provided savings to the State because a ceiling was placed upon the costs at the beginning of the fiscal year (modeled after the public defense contracts). In July, 1986, Defender General David Curtis implemented a "split contract" system for contract

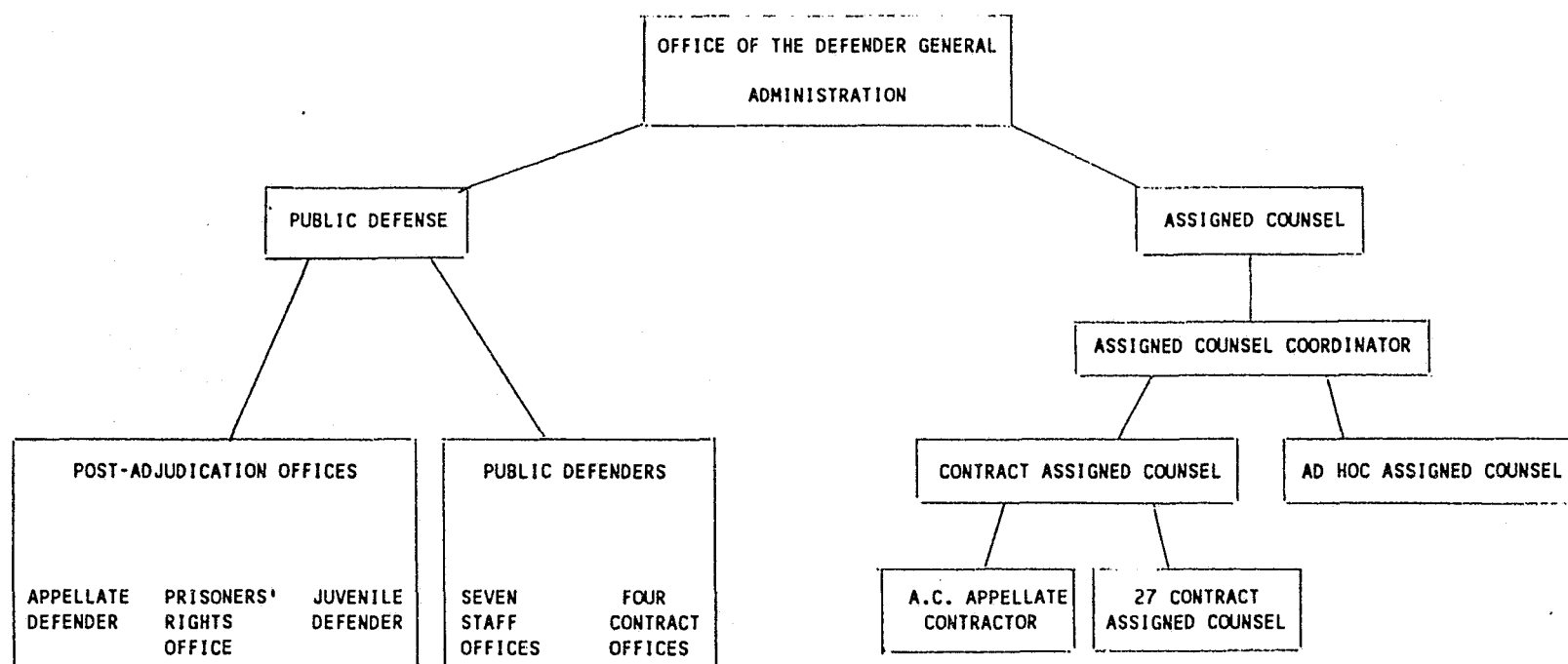
assigned counsel to provide at least two contract assigned counsel for each county, further strengthening the system's capacity to absorb conflict of interest cases.

In 1988 and 1989, Defender General Walter Morris (now a District Court Judge) successfully sought additional funding necessary to maintain the number of contractors and thereby to limit the number of cases assigned to the more expensive ad hoc assigned counsel. As Defender General, Judge Morris also recognized that the combination of increasing caseloads and unchanged funding would eventually discourage practitioners from entering into such contracts.

In upholding its impressive history of concern for the rights of the individual, Vermont has assumed the responsibility of its constitutional and historical mandates. However, increasing caseloads and economic hard times imperil the abilities of the Public Defense and Assigned Counsel programs to provide effective legal representation for their clients in FY 1992.

IV. PROGRAM STRUCTURE

To the extent that its services are required by the United States Constitution and the Vermont Statutes, the Office of the Defender General is unique in state government. Vermont laws governing the services of the Office require the Defender General to administer both the Public Defense and Assigned Counsel programs. The Defender General directly supervises the public defense staff; the assigned counsel program is managed by an Assigned Counsel Coordinator, in consultation with the Defender General.



A public defender is assigned once a presiding judge has determined that an individual is financially eligible for public defense services and subject to an incarcerative penalty. There is a three-tiered system of appointment in most of the twelve regions of the State as provided by the Vermont Supreme Court's Administrative Order No. 4, Sections 3 and 4. First, assignments are made to the local public defender. Second, in the event of a conflict of interest, the appointment is shifted to a local assigned counsel contractor. If the conflict situation continues because, for example, the case involved more than two co-defendants charged with the same crime, the court assigns counsel from another assigned counsel contractor lawyer or firm from that region (some counties have three contractors and the majority have two). Third, if the public defender and all of the assigned counsel contractors have a conflict of interest, the court will appoint an attorney from the private bar on an ad hoc basis.

A. Public Defense

There are eleven public defense field offices located throughout the State. Entering FY 92, seven of these offices are full-time staff offices: Bennington County (located in Bennington); Chittenden County (located in Burlington); Franklin and Grand Isle Counties (served from an office in St. Albans); Lamoille County (located in Hyde Park); Orleans County (located in Newport); Rutland County (located in Rutland City); and Windham County (located in Brattleboro).

Four of the offices are public defense contract offices, private law firms that have entered into a contract with the Defender General to provide public defense services. They are: Sessions, Keiner, Dumont, Barnes and Everitt (Addison County); Rubin, Rona, Kidney and Myer (Washington County); Welch, Graham and Manby (Windsor and Orange Counties); and Sleigh and Williams (Caledonia and Essex Counties).

While representation provided by Vermont's public defenders continues to be of high caliber, the quality of services is threatened by burgeoning caseloads, which include significant increases in the number of homicides, sexual assault and other crimes of violence without corresponding increases in public defense staff.

Both field offices and post-trial offices are managed by the Office of the Defender General in Montpelier. The Defender General also relies upon an Assistant and an Accountant to assist in the business management of both programs.

Post-trial representation for Public Defense clients is provided through three post-adjudication offices based in Montpelier. If initial conflicts of interest no longer exist after disposition of a case, those offices may, and do, serve assigned counsel clients as well.

1. Appellate Defender

The Appellate Defenders prepare briefs and argue appeals before the Vermont Supreme Court for clients who decide to exercise their right to appeal their convictions or sentences. The workload of the Appellate Defenders was given additional dimension as a result of the Vermont Supreme Court's decision in State v. Jewett, 146 Vt. 221 (1985), creating new emphasis upon the State's Constitution. Since Jewett, state constitutional questions have been raised increasingly in appellate cases necessitating additional effort in the development of an independent state constitutional jurisprudence. In addition to their principal work of briefing and arguing appeals, the Appellate Defenders assist public defenders in bail appeals and other proceedings before the Supreme Court, and they represent clients in appeals that are taken up by the State. For example, if the State decides to appeal a pretrial ruling suppressing a confession of a public defense client, or to challenge a final decision of the court in a juvenile case, the Appellate Defenders will respond on the client's behalf. The Appellate Defenders are assisted by one Administrative Secretary.

Caseload pressures in the Appellate Defender's office have required the development of a system of priorities. The appeals of incarcerated individuals are handled immediately. During FY 1988, appellate caseload pressures on the two appellate defenders became so great that several appeals had to be assigned to private counsel in response to progress orders entered by the Supreme Court to advance pending cases. The number of appellate cases increased sharply during the late eighties and overwhelmed the capacity of appellate staff. In response to this increase in caseload, a third appellate defender position was added in FY 1990. As a result, this office has managed in both FY 90 and FY 91 to dispose of more cases than were added to its caseload during those years and has reduced its backlog of pending cases to the lowest level since FY 86. Briefs are now being filed in a timely fashion rather than in response to court orders following missed deadlines and requests for extensions.

2. Prisoners' Rights Office

Pursuant to 13 V.S.A. §§5253(a), 5232(2) and 5233(a)(1), the Office of the Defender General is responsible for providing legal services to persons in the custody of the Commissioner of Corrections. This responsibility, which originally involved parole revocations, habeas corpus petitions and post-conviction relief but was broadened by statutory amendment in 1973, is fulfilled by the Prisoners' Rights Office. The staff of this office consists of two attorneys, one investigator and one secretary who have the duty of providing representation to more than 1,000 persons who are in the custody of the Commissioner of Corrections at any given time.

The scope of the legal issues addressed by the Prisoners' Rights Office is limited to the conviction which resulted in a prisoner's incarceration and to the conditions under which the prisoner is confined, such as mistreatment by staff and

inadequacy of physical facilities. As the prison population in Vermont has grown far faster than correctional capacity and as special needs groups (e.g. youthful offenders, sex offenders, offenders with mental health needs) have appeared within that population, the demands for legal services have greatly increased. The present staffing level, unchanged for the last seven years, is increasingly inadequate, and it has been necessary to prioritize the issues to which the staff will devote its efforts.

Thus, the Prisoners' Rights Office fulfills the statutory requirements, the state's constitutional duty to provide access to the courts and the need for an effective means for the prison population to raise complaints in a safe and constructive manner.

3. Juvenile Defender

The Office of the Juvenile Defender represents children who are in state custody as a result of abuse, neglect, unmanageability or delinquency. Representation includes: administrative and dispositional review proceedings; outreach and representation of juveniles in restrictive and secure facilities (including Woodside and out-of-state institutions); representation of juveniles in CHINS, termination of parental rights, and delinquency proceedings; and technical assistance to public defenders representing juveniles in CHINS or delinquency proceedings. The office consists of one and a half Attorneys and two Investigators.

During FY 1991, the Office of the Juvenile Defender participated in 1,079 Administrative Review hearings and 339 Dispositional Review hearings; it monitored the placement of 250 juveniles in the Woodside Facility. The office also represents children in out-of-state placement hearings, habeas corpus proceedings and at Eighteen-Month Court Reviews to assure that the children's custody and permanency planning is in their best interests. As more and more abused and severely emotionally disturbed children come into state custody, the Juvenile Defender's Office has actively supported efforts to improve the juvenile court process and efforts to provide a coordinated system of treatment for those children.

The large number of juveniles confined in the Woodside facility has added significantly to the amount of legal and paralegal work required of the Juvenile Defender's Office. In recent years there have been more admissions, an increased average length of stay, a higher average daily population and more restraints. In response to litigation filed by the Juvenile Defender's Office, the Department of Social and Rehabilitation Services has implemented hearing procedures for admitting and releasing juveniles to and from Woodside. These changes, while important for safeguarding the rights of juveniles, have required a substantial increase in workload, travel time and expense for the staff of the Juvenile Defender's Office to assure that the juveniles confined at the facility receive appropriate treatment opportunities and placements.

B. Assigned Counsel

Assigned Counsel contracts were entered into with twenty-five law firms or individual attorneys in FY 1991. Despite efforts in recent years to achieve a more equitable compensation by reallocating the contract amounts for all counties based upon their past caseload, adequacy of compensation for assigned counsel contractors continues to be of major concern. A significant indicator of the seriousness of the problem is that experienced and effective assigned counsel contractors are declining to renew their contracts in increasing numbers due to the low rate of compensation in relation to caseloads. In the last three years, twenty firms have declined to renew their contracts.

The Assigned Counsel Contractors bring stability and savings to the budget. Beginning in FY 86, the Defender General established a "split" system of assigned counsel contracts in each county, to reduce the number of "third tier" conflicts requiring ad hoc assignment of counsel from the private bar. The objective is to assure that in most counties, there are at least two contractors to take conflict cases (for FY 92, there are 27 law firms under contract throughout the state). This initiative has functioned very well as a cost containment measure within the assigned counsel program, notwithstanding systemic pressures resulting from the sheer volume of new cases. However, it has become increasingly difficult to find prospective contractors in certain counties. Caseloads in these offices have increased dramatically in recent years; added cases have increased 52.9% in the last three fiscal years alone.

The Defender General has a contract with an Assigned Counsel Coordinator to oversee the general management of the program. The Coordinator's duties consist of overseeing the daily operations of the program.

The Defender General and the Assigned Counsel Coordinator continue to closely monitor costs of the assigned counsel program, especially those for ad hoc, or random assignment of counsel by the courts. Of course, the contractual system was never designed to handle all assigned counsel cases. There will always be a need for some ad hoc appointments to handle multiple conflict of interest cases. Steps are taken to control the costs and reduce the number of conflicts, to the extent that this is possible. Beginning in FY 1986, the Defender General required that in conflict juvenile cases, the public defender represent the child and the assigned counsel contractor represent the adult. Therefore, the dispositional (18-month) juvenile review hearings and administrative review hearings are handled primarily by the Juvenile Defender's office or local public defenders, providing continuity in representation for these children and cost savings through staff, rather than private counsel, services.

Through many of the same procedures used to limit expenditures in the public defender system as well as other methods, the Assigned Counsel Coordinator, in cooperation with the Office of the Defender General, has endeavored to control costs in the Assigned Counsel program. However, an increasing number of homicides and other serious felonies have reached the assigned counsel caseload due to conflicts and

have generated significant budget problems. The costs associated with such cases are increased by the need for investigative services and expert scientific services, such as DNA identification analysis.

Costs of providing representation are also increased by the appointment of ad hoc counsel when the case in question could be handled by the public defender system or the assigned counsel contractor system at a significantly lower cost. In an effort to reduce such unnecessary ad hoc assignments, the Defender General, with the cooperation of the courts, began in the final months of FY 91 and continued into FY 92 a program of maximizing the use of public defenders and contractors. This program, discussed in detail in the two reports of the Defender General on the Assigned Counsel Program (September 1991 and February 1992), has already yielded significant results, and hopefully, will affect the pattern of repeated budget supplement requests resulting from ad hoc debentures. However, this effort will be effectively negated if the public defender caseload exceeds the ethically acceptable capacity of the staff and ad hoc assignments must be resorted to as a caseload relief measure.

V. DEMAND FOR SERVICES

A. Public Defense Added Clients

One of the measures of the demand for defense services is the number of Added Clients during a fiscal year. The constant influx of new cases, coupled with cases pending, creates the "caseload" (i.e., the total number of cases, criminal or juvenile, for which offices are responsible during the fiscal year). Added client statistics illustrate the total demand on an office or the system's resources during the fiscal year. Most cases turn over rapidly and few individual cases have a lengthy life expectancy. Ideally, the majority of defense work occurs when a case is opened, when the events and circumstances surrounding a charge are still fresh in memory.

During FY 1991, public defenders experienced a 7.5% increase in added clients over FY 1990. This increase was not consistent from county to county and likewise varied as to types of cases. For example, the caseloads of the Bennington and Washington County offices, which had risen by more than 20% in FY 1990, declined by 9.4% and 17.8% respectively. However, the Chittenden County caseload increased by 21.8%, and the caseload of the office serving Windsor and Orange Counties rose by 22.8%. The statewide caseload of felony clients increased by 9.6%, while the number of juvenile clients rose by only 2.3%. Thus, the overall pattern of increasing caseloads throughout the 1980's is continuing unabated into the 1990's; decreases are rare and, when they do occur, invariably follow larger increases.

<u>FISCAL YEAR</u>	<u>NO. ADDED CLIENTS</u>	<u>YEARLY CHANGE</u>
1980	4,736	7.0%
1981	5,281	11.5%
1982	5,878	11.3%
1983	6,859	16.7%
1984	6,759	-1.5%
1985	7,463	10.4%
1986	8,026	7.5%
1987	9,204	14.7%
1988	8,947	-2.8%
1989	9,600	7.3%
1990	9,979	4.0%
1991	10,726	7.5%

From FY 80 through FY 91, the number of public defense Added Clients increased 126%, while the number of public defenders available to represent them in district court increased only 76%. As a result of the growing number and complexity of cases, the public defense system has been chronically understaffed, and, with the number of public defenders likely to decline in FY 1993 while the caseload increases, the situation will worsen.

B. Public Defense Understaffing and Caseload Relief

Understaffing is the most serious problem the Defender General faces. The modest increase of seven trial lawyers from FY 80 through FY 88 had proven insufficient to meet the caseload demands experienced in this span of years. With approval of the Governor, the Defender General requested and obtained authorization for new attorney positions in FY 89 and FY 90. While these positions served to avoid a virtual breakdown of the system for providing counsel for the poor, the problem was not solved. Subsequently, some of the positions were lost due to budgetary constraints, though the caseload has continued to increase.

For several years, the Office of the Defender General has assessed the caseload capacity of staff resources through a formula developed by the National Legal Aid and Defender Association. This formula, the Lawyer Equivalency Caseload (LEC), translates cases and their type into the number of lawyers required to handle such cases. The standard is that no criminal defense lawyer should handle, without running the risk of professional malpractice, more than 150 felony, or 400 misdemeanor, or 200 juvenile or miscellaneous new clients per year, or a combination thereof. Such maximum caseloads cannot be handled without the hard work and dedication of public defenders, their investigators and support staff. Caseloads in excess of these standards raise concern about effective client representation.

In the following chart, the LEC column indicates the number of attorneys that the client caseload required under the standards for the fiscal year. The TRIAL

ATTORNEYS column states the actual number of public defenders who handled that fiscal year caseload. The chart and attached Graph A, establish that for the last three fiscal years, public defense understaffing has reached levels of serious concern, with great risk of compromising the quality of client representation.

<u>FISCAL YEAR</u>	<u>LEC</u>	<u>TRIAL ATTORNEYS</u>	<u>PERCENT UNDERSTAFFED</u>
1980	18.8	16.8	10.6%
1981	20.6	17.6	14.6%
1982	22.4	19.0	15.2%
1983	25.7	20.0	22.2%
1984	24.9	22.0	11.6%
1985	27.4	23.0	16.1%
1986	29.8	23.0	22.8%
1987	33.7	24.0	28.2%
1988	33.4	24.0	28.1%
1989	35.6	28.5	19.9%
1990	36.7	29.5	19.6%
1991	39.3	29.5	24.9%

Through FY 1987, it was clear that the expanding caseload had pressed public defenders' constitutional, statutory and ethical obligations to provide effective assistance of counsel to the very limit. Consequently, the Defender General developed and implemented a caseload relief policy (see Page 32) that provides for a range of relief measures, including assignment of certain public defense cases to private attorneys at a significantly greater cost. The caseload relief policy is implemented only where necessary to assure effective representation of indigent clients. Limited programs of caseload relief have been implemented in several counties since the policy went into effect. While no such relief was implemented in FY 91, reduced staff and increased caseloads may require such measures in FY 93.

VI. SPECIAL DEMANDS

A. Homicide

During the early years of the Office of the Defender General, outside counsel were routinely hired to represent homicide defendants at substantial expense. The theory supporting this practice was that public defenders did not yet have the experience and expertise to provide adequate representation to homicide defendants. This situation has changed dramatically over the past several years with the advent of experienced staff public defenders and public defense contractors. At present, several public defender offices have at least one pending homicide case, as do a number of the assigned counsel contract offices. These cases require a great deal of time from the attorneys involved for legal research, investigation and trial preparation, and through

the displacement of resources, such cases place significant hardships on other attorneys, investigators and secretaries.

Homicide cases also pose a special financial problem for the indigent defense system. Pursuant to Administrative Order No. 4, the maximum payment for representation by ad hoc assigned counsel in murder cases (and in cases involving other offenses which carry a possible penalty of life imprisonment) is \$10,000. Pursuant to the terms of their agreements with the Office of the Defender General, assigned counsel contractors are entitled to \$5,000 in addition to the normal contractual amount for providing representation in a murder case. As it is difficult to predict the number of homicide cases in any given year and impossible to know the pattern of conflicts which will arise from those cases, budgeting for the payment of these amounts is problematical. In spite of the additional compensation, it is not realistic to assume that a homicide defense can be conducted without a significant pro bono contribution on the part of assigned attorneys beyond the time for which they are compensated.

B. Sexual Assault

There has been a staggering increase in the last eight years in the prosecution of sex crimes in Vermont. There are no more profound and serious cases routinely processed in the trial courts than charges of sexual assault and lewd and lascivious conduct. These cases are less likely than other charges to be resolved without a trial and, if proven, are likely to result in lengthy sentences of incarceration. In all, such cases require an exceptional amount of work and consume a large part of the indigent defense resources.

Much like homicide cases, the costs of representing persons charged with sex crimes are high. For example, expert evaluations for sex offenders require more than the average psychological examination. Novel evidentiary procedures which limit constitutional rights of the accused consume a great deal of effort. Expert testimony regarding "syndrome", DNA and other forensic evidence is often presented on both sides of such cases.

The pattern of high volume sexual offense cases first set in FY 84 continues. In FY 1991, public defenders represented 113 persons charged with lewd and lascivious conduct, and 141 persons charged with sexual assault. As is true of homicides, it does not appear there will be any significant decrease in the number of sex crimes prosecuted in Vermont in the foreseeable future;

PUBLIC DEFENSE - SEX OFFENSES

<u>FISCAL YEAR</u>	<u>L & L</u>	<u>SEXUAL ASSAULT</u>	<u>YEARLY TOTAL</u>	<u>CHANGE</u>
1976	38	23	61	
1977	40	13	52	-14.8%
1978	63	23	86	65.4%
1979	24	38	62	-27.9%
1980	42	35	77	24.2%
1981	31	34	65	-15.6%
1982	32	32	64	-1.5%
1983	30	39	69	7.8%
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1984	56	59	114	65.2%
1985	83	74	157	37.8%
1986	86	109	195	24.2%
1987	71	116	187	-4.1%
1988	75	109	184	-1.6%
1989	81	114	195	5.9%
1990	107	132	239	22.6%
1991	113	141	254	6.3%

C. Motor Vehicle Caseload

Motor vehicle misdemeanor charges accounted for 31.6% of the total public defender caseload in FY 91. Within the category of all motor vehicle offenses, DWI charges (1,480) and DLS charges (2,404) are the most common.

Recent changes in the DWI and DLS statutes are having a significant effect on the motor vehicle caseload. Enhanced penalties, new evidentiary issues and increased enforcement is resulting in a greater burden for public defenders handling DWI cases. On the other hand, decriminalization of some DLS offenses is significantly reducing the number of such cases assigned to public defenders in FY 92.

PUBLIC DEFENSE - DWI AND DLS OFFENSES

FISCAL YEAR	DWI	YEARLY CHANGE	DLS	YEARLY CHANGE
1976	432	---	322	---
1977	609	41.0%	569	76.7%
1978	567	-6.9%	680	19.5%
1979	587	3.5%	414	-39.1%
1980	517	-11.9%	555	34.1%
1981	592	14.5%	670	20.7%
1982	808	36.5%	852	27.2%
1983	1,185	46.7%	1,148	34.7%
1984	1,325	11.8%	1,259	9.7%
1985	1,512	14.1%	1,375	8.4%
1986	1,542	2.0%	1,643	19.5%
1987	1,570	1.8%	1,938	18.0%
1988	1,423	-9.4%	2,172	12.1%
1989	1,455	2.2%	2,082	-4.1%
1990	1,551	6.6%	2,279	9.5%
1991	1,480	-4.6%	2,404	5.5%

D. Juvenile Caseload

Public defense disposed cases involving CHINS petitions declined slightly in FY 1991 over FY 1990 with 923 petitions reported. However, delinquency cases increased by 31%.

JUVENILE CASELOAD

<u>FISCAL YEAR</u>	<u>CHINS</u>	<u>DELINQUENCY</u>	<u>TOTAL</u>	<u>CHANGE</u>
1976	311	244	555	---
1977	312	346	658	18.6%
1978	385	372	757	15.0%
1979	424	369	793	4.8%
1980	419	410	829	4.5%
1981	305	326	631	-23.9%
1982	421	381	802	27.1%
1983	708	428	1,136	41.6%
1984	612	315	927	-18.4%
1985	625	382	1,007	8.6%
1986	758	411	1,169	16.1%
1987	831	470	1,301	11.3%
1988	888	479	1,367	5.1%
1989	944	516	1,460	6.8%
1990	950	384	1,334	-8.6%
1991	923	503	1,426	6.9%

Juvenile cases require the same quality of representation provided in other serious cases. There are many parties involved in these cases including: juvenile(s); parents and other adult parties; SRS; state's attorneys; and lawyers representing each of these parties. These cases can require extended litigation, whether involving CHINS petitions, modification requests, termination of parental rights, or delinquency matters. Although the Juvenile caseload represents 12% of the public defense caseload, the complexity of the legal, social and emotional aspects of these cases assumes a much larger proportion of the workload than statistics might indicate. The establishment of the Family Court, while providing a better venue, has also resulted in greater demands on attorney time.

Assigned counsel play a critical role in juvenile cases, by assuring that the system deals rationally with the competing interests of children, who must be protected from abuse and neglect, and preservation of the family unit where possible, an interest which must be accorded great value in our society. In FY 91, 38% of the assigned counsel caseload was comprised of juvenile cases.

VII. COSTS/CLIENT CONTRIBUTION FOR PUBLIC DEFENSE SERVICES

As former Defenders General have indicated, the demands on the public defense and assigned counsel programs have always exceeded the capacity of their resources. This is so because program appropriations have always followed major trends and demands of the justice system, often by several years. The Office of the Defender General is unique among departments of state government in that it has no ability to reduce either the number of clients served or to alter the nature of the service rendered in the event of unmitigated economic hardship. The United States and Vermont Constitutions and the Vermont statutes require that vigorous and effective public defense services be made available to eligible defendants. The Code of Professional Responsibility requires zealous advocacy. The "product" of the programs cannot simply be reconfigured to provide more for less, despite rigid cost containment efforts.

In this context, contribution to the costs of criminal defense services by clients having some ability to pay has been an issue and problem with which the Legislature, the courts and the Defender General's office have attempted to deal since the inception of Vermont's public defense program in 1972.

In FY 88, at the urging of the Defender General, the Legislature approved a comprehensive revision of the state's system for seeking client contributions to the costs of public defense. Under the revised system, the process of "recoupment" (post-case recovery of fees) was replaced with a procedure by which a modest contribution (a minimum of \$25 to \$50) by clients having an ability to pay is ordered, with the payment being made at arraignment or as soon as possible thereafter. Although such contributions were rarely ordered and little effort was put into collection, this system did generate significantly more revenue than its predecessor.

However, a valid concern as to inconsistency in the application of eligibility standards and a desire to increase revenues have now resulted in a new co-payment proposal as well as a planned pilot project designed to provide the capability to verify financial information. Thus, FY 1993 will provide some answers as to the feasibility of significant client contribution and of substantial improvement in the application process.

VIII. CONCLUDING REMARKS

More than a quarter century ago, Justice Black wrote in his opinion in Gideon v. Wainwright, 372 U.S. 335 (1963), "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." It is the role of public defenders and assigned counsel in our criminal justice system to make the "ideal" of fair and equal justice a reality. This role becomes more difficult but

also more vital in an atmosphere of frustration with the courts, outrage over particular crimes and impatience for success in campaigns against such crimes as drunk driving and drug trafficking. As our system of justice attempts to reconcile the desire for a safe and orderly society with the preservation of constitutional rights and principles, the efforts of public defenders and assigned counsel to obtain fair and equal justice for their indigent clients serve the interests of all our citizens.

PUBLIC DEFENSE FY 1991: STATE-WIDE

CASES ADDED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>
Charges	2095	14.6	9173	64.0	1437	10.0	1634	11.4	14,339
Clients	1503	14.0	6736	62.8	1299	12.1	1188	11.1	10,726

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>
Charges	2104	14.7	9083	63.3	1426	9.9	1743	12.1	14,356
Clients	1577	14.6	6752	62.4	1271	11.7	1226	11.3	10,826

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Guilty	11	40.7	23	46.9
Not Guilty	6	22.2	10	20.4
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	1	2.0
Guilty LIO	3	11.1	1	2.0
Hung Jury	1	3.7	7	14.3
Mistrial	1	3.7	1	2.0
Court Dismissal	5	18.5	6	12.2
TOTAL	27	100.0	49	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Guilty as Charged (Plea)	577	43.2	4326	60.3
Guilty Reduced Charge	28	2.1	536	7.5
Guilty Fel. Reduced to Misd.	267	20.0	0	0.0
Transfer to Juv. Court	14	1.0	37	0.5
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	239	17.9	1184	16.5
Insufficient Evidence	60	4.5	349	4.9
Diversion	54	4.0	188	2.6
Other	55	4.1	290	4.0
Dismissed by Court	43	3.2	260	3.6
TOTAL	1337	100.0	7170	100.0

CONVICTIONS

	<u>Felonies</u>		<u>F. Reduced to M.</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Incarceration	420	68.0	94	35.1	1858	38.0
Probation	124	20.1	124	46.3	1003	20.5
Deferred Sentence	60	9.7	10	3.7	78	1.6
Fine Only	14	2.3	40	14.9	1947	39.8
TOTAL	618	100.0	268	100.0	4886	100.0

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:		No.	%	Felonies-Fraud		No.	%
Arson		26		Embezzlement		35	
Assault & Robbery		32		Extortion		5	
Larceny from Person		14		False Personation		16	
TOTAL		72	0.5	False Token		110	
				Forgery		53	
Felonies-Serious Crimes Against Persons:				Perjury		1	
Aggravated Assault		94		Utt. Forged Instr.		136	
Kidnapping		17		Welfare Fraud		70	
Lewd & Lascivious		113		TOTAL		426	3.0
Unlawful Restraint		12					
Murder		6		Felonies-Drug Related			
Sexual Assault		141		Fraud to Procure		50	
TOTAL		383	2.7	Dispensing		55	
				Possession with Intent to Sell		50	
Felonies-Serious Crimes Against Property:				TOTAL		155	1.1
Burglary		410					
Grand Larceny		166		Felonies-Motor Vehicle:			
Receiving Stolen Property		107		DWI-Death/Injury Result.		12	
Retail Theft		68		TOTAL		12	0.08
Unlawful Mischief		33					
Unlawful Trespass		25		Felonies-Other:			
TOTAL		890	6.2	Escape		67	
				Obstruction of Justice		19	
				Impede Police Officer		18	
				Miscellaneous		62	
				TOTAL		166	1.2

MISDEMEANORS

Misdemeanors-Fraud		No.	%	Misdemeanors-Drug Related:		No.	%
Bad Check		200					
False Statement		89		Fraud to Procure Drugs		1	
Welfare Fraud		<u>8</u>		Possession Marijuana		152	
TOTAL		297	2.1	Possession Pills		<u>36</u>	
				TOTAL		189	1.3
Misdemeanors-Disorderly and Endangering Crimes:							
		Misdemeanors-Property:					
Annoying Telephone Calls		29		Petit Larceny		357	
Disorderly Conduct		556		Receiving Stolen Prop.		98	
Viol. Abuse Order		114		Retail Theft		303	
Viol. Cond. of Release		87		Theft of Services		31	
Reckless Endangering		46		Unlawful Mischief		424	
Simple Assault		1168		Unlawful Trespass		<u>260</u>	
Simple Assault-Police		90		TOTAL		1473	10.3
Poss/Furn. Malt Bev.		<u>279</u>					
TOTAL		2369	16.5	Misdemeanors-Miscel.:		235	1.6

Misdemeanor Motor Vehicle Offenses:

	No.	%
Careless & Negligent	182	
Driving to Endanger	29	
Driving W/ License Suspended	2404	
Driving While Intoxicated	1480	
Elude Police Officer	153	
Leaving Scene Accident	144	
Operating W/O Owner's Consent	<u>128</u>	
TOTAL	4520	31.5

OTHER

Non-Criminal Proceedings		No.	%	Juvenile		No.	%
Contempt		153		Children in Need of			
Extradition		85		Care & Supervision		923	
Habeas Corpus		0		Juvenile Delinquents		<u>503</u>	
Post-Conviction Relief		2		TOTAL		1426	9.9
Violation of Probation		1406					
Sentence Reconsideration		29					
Other		<u>68</u>					
TOTAL		1743	12.1				

Charges Partially Handled: 2605

ASSIGNED COUNSEL FY 1991: STATE-WIDE

CASES ADDED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>
Charges	1116	27.4	1488	36.6	1223	30.1	240	5.9	4,067
Clients	766	26.6	850	29.5	1091	37.9	174	6.0	2,881

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>
Charges	984	25.7	1334	34.9	1230	32.2	276	7.2	3,824
Clients	666	24.9	795	29.7	1016	38.0	199	7.4	2,676

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Guilty	25	56.8	16	48.5
Not Guilty	11	25.0	12	36.4
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	1	2.3	1	3.0
Hung Jury	2	4.5	1	3.0
Mistrial	0	0.0	0	0.0
Court Dismissal	5	11.4	3	9.1
TOTAL	44	100.0	33	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Guilty as Charged (Plea)	404	51.5	627	55.4
Guilty Reduced Charge	18	2.3	36	3.2
Guilty Fel. Reduced to Misd.	112	14.3	0	0.0
Transfer to Juv. Court	14	1.8	25	2.2
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	149	19.0	296	26.2
Insufficient Evidence	47	6.0	70	6.2
Diversion	9	1.2	20	1.8
Other	17	2.2	32	2.8
Dismissed by Court	14	1.8	26	2.3
TOTAL	784	100.0	1132	100.0

CONVICTIONS

	<u>Felonies</u>		<u>F. Reduced to M.</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Incarceration	324	72.6	46	40.7	315	46.3
Probation	73	16.4	47	41.6	208	30.6
Deferred Sentence	45	10.1	3	2.7	14	2.1
Fine Only	4	0.9	17	15.0	143	21.0
TOTAL	446	100.0	113	100.0	680	100.0

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:		No.	%	Felonies-Fraud		No.	%
Arson		25		Embezzlement		9	
Assault & Robbery		26		Extortion		5	
Larceny from Person		8		False Personation		0	
TOTAL		59	2.2	False Token		19	
				Forgery		3	
Felonies-Serious Crimes Against Persons:				Perjury		0	
				Utt. Forged Instr.		19	
				Welfare Fraud		11	
				TOTAL		66	2.5
Aggravated Assault		52		Felonies-Drug Related			
Kidnapping		10					
Lewd & Lascivious		62		Fraud to Procure		20	
Unlawful Restraint		5		Dispensing		31	
Murder		6		Possession with Intent to Sell		27	
Sexual Assault		102		TOTAL		78	2.9
TOTAL		237	8.9	Felonies-Motor Vehicle:			
Felonies-Serious Crimes Against Property:							
Burglary		278		DWI-Death/Injury Result.		1	
Grand Larceny		88		TOTAL		1	0.04
Receiving Stolen Property		52		Felonies-Other:			
Retail Theft		26					
Unlawful Mischief		14		Escape		13	
Unlawful Trespass		25		Obstruction of Justice		12	
TOTAL		483	18.0	Impede Police Officer		13	
				Miscellaneous		22	
				TOTAL		60	2.2

MISDEMEANORS

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	6				
False Statement	17		Fraud to Procure Drugs	0	
Welfare Fraud	<u>2</u>		Possession Marijuana	33	
TOTAL	25	0.9	Possession Pills	<u>14</u>	
			TOTAL	47	1.8
Misdemeanors-Disorderly and Endangering Crimes:			Misdemeanors-Property:		
Annoying Telephone Calls	11		Petit Larceny	120	
Disorderly Conduct	98		Receiving Stolen Prop.	31	
Viol. Abuse Order	16		Retail Theft	31	
Viol. Cond. of Release	46		Theft of Services	9	
Reckless Endangering	10		Unlawful Mischief	116	
Simple Assault	300		Unlawful Trespass	<u>33</u>	
Simple Assault-Police	18		TOTAL	340	12.7
Poss/Furn. Malt Bev.	<u>52</u>				
TOTAL	551	20.6	Misdemeanors-Miscel.:	43	1.6

Misdemeanor Motor Vehicle Offenses:

	No.	%
Careless & Negligent	18	
Driving to Endanger	5	
Driving W/ License Suspended	157	
Driving While Intoxicated	72	
Elude Police Officer	26	
Leaving Scene Accident	17	
Operating W/O Owner's Consent	<u>31</u>	
TOTAL	325	12.1

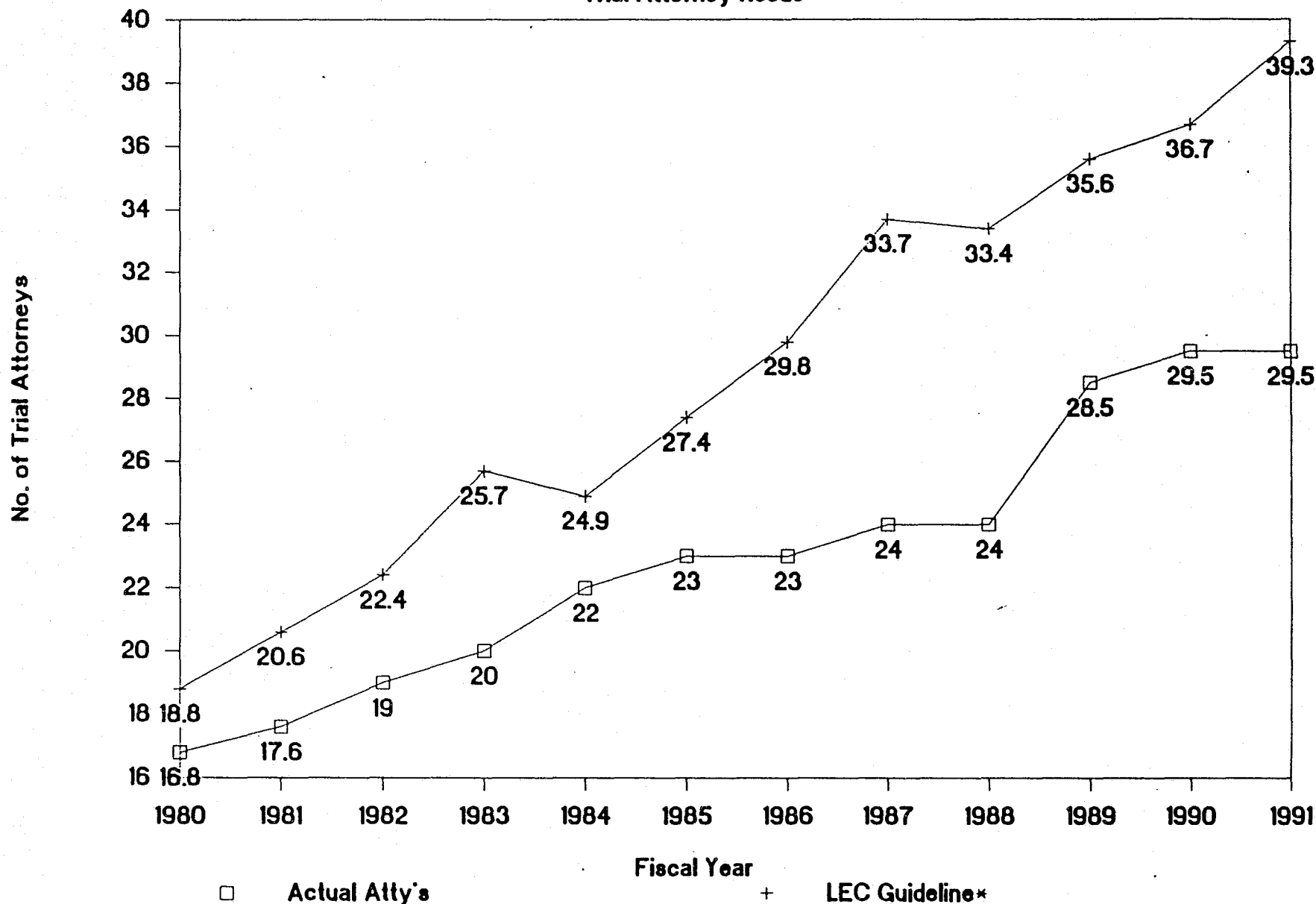
OTHER

Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	28		Children in Need of		
Extradition	5		Care & Supervision	1002	
Habeas Corpus	9		Juvenile Delinquents	<u>228</u>	
Post-Conviction Relief	20		TOTAL	1230	32.2
Violation of Probation	167				
Sentence Reconsideration	18				
Other	<u>29</u>				
TOTAL	276	7.2			

Charges Partially Handled: 327

Defender General's Office

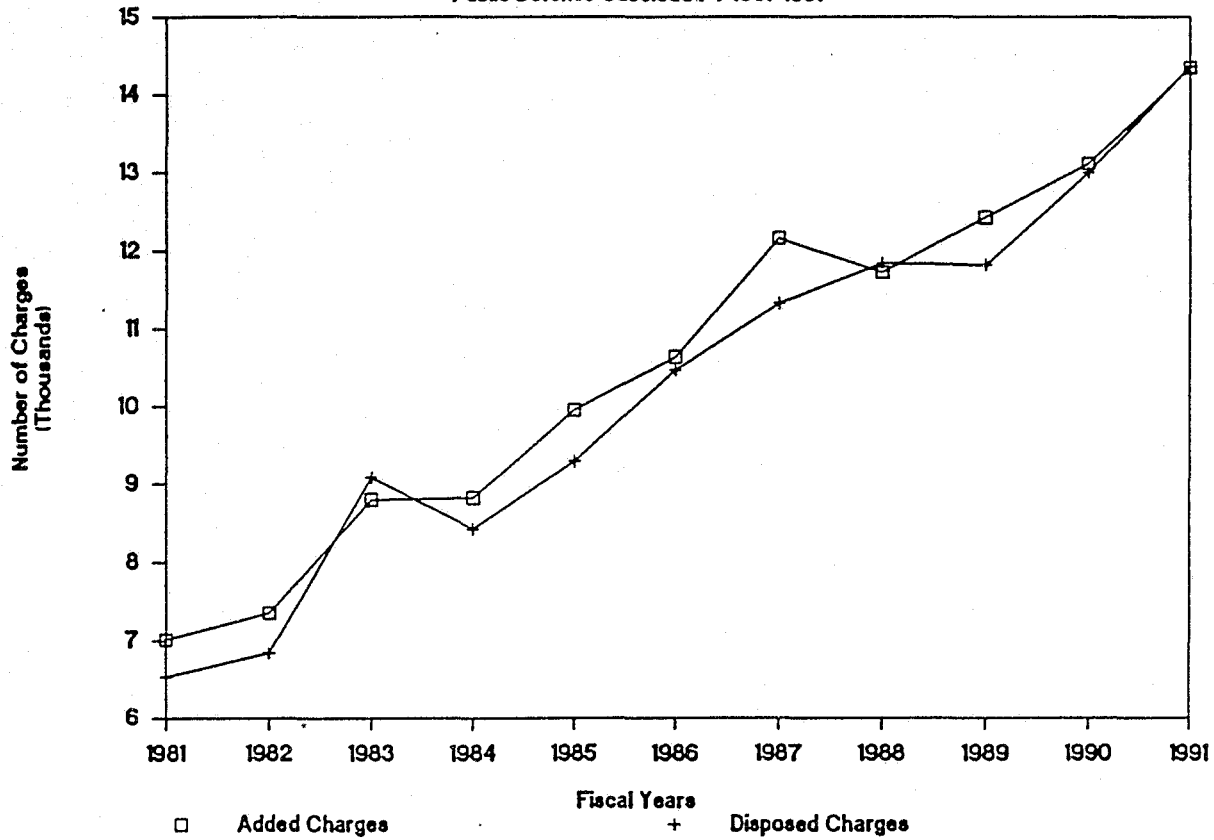
Trial Attorney Needs



*Based upon Lawyer Equivalency Caseload standards, which dictate that public defender caseload should not exceed 150 felonies, 400 misdemeanor or 200 juvenile cases per year.

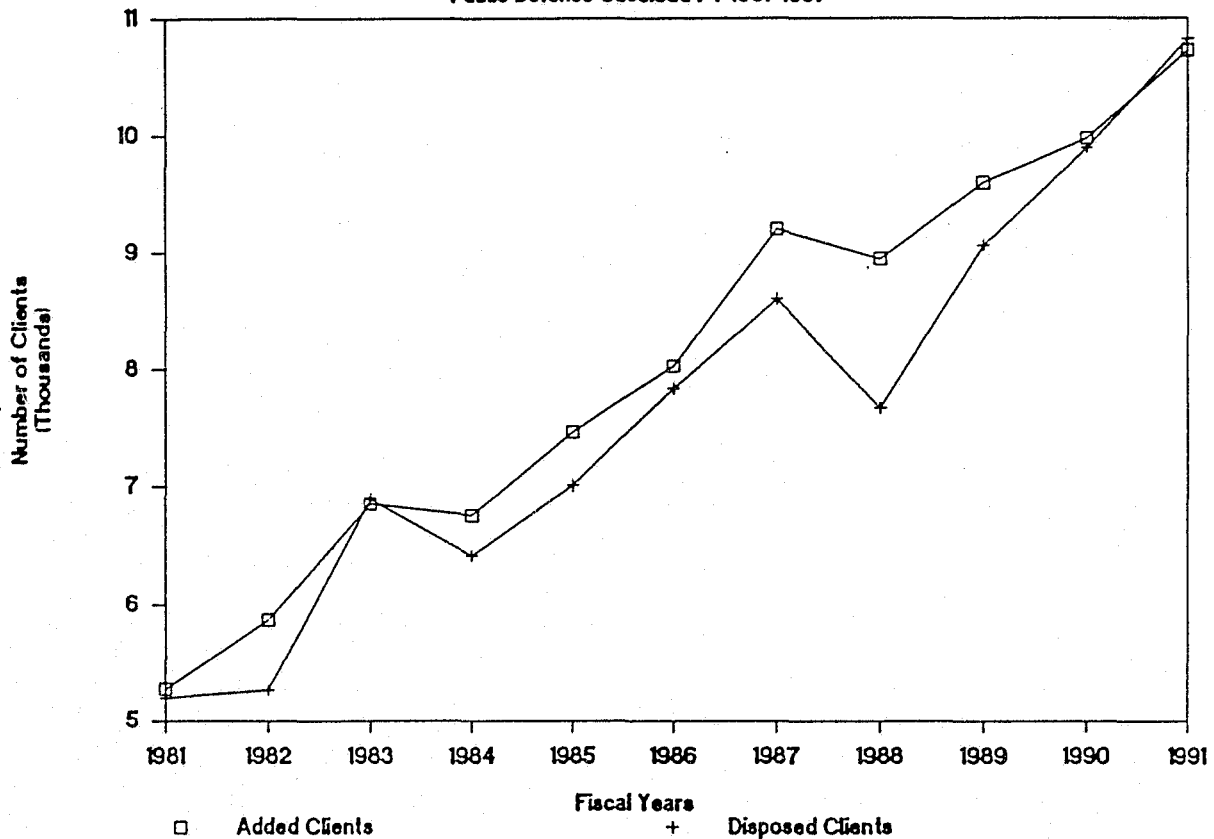
Office of the Defender General

Public Defense Caseload FY 1981-1991



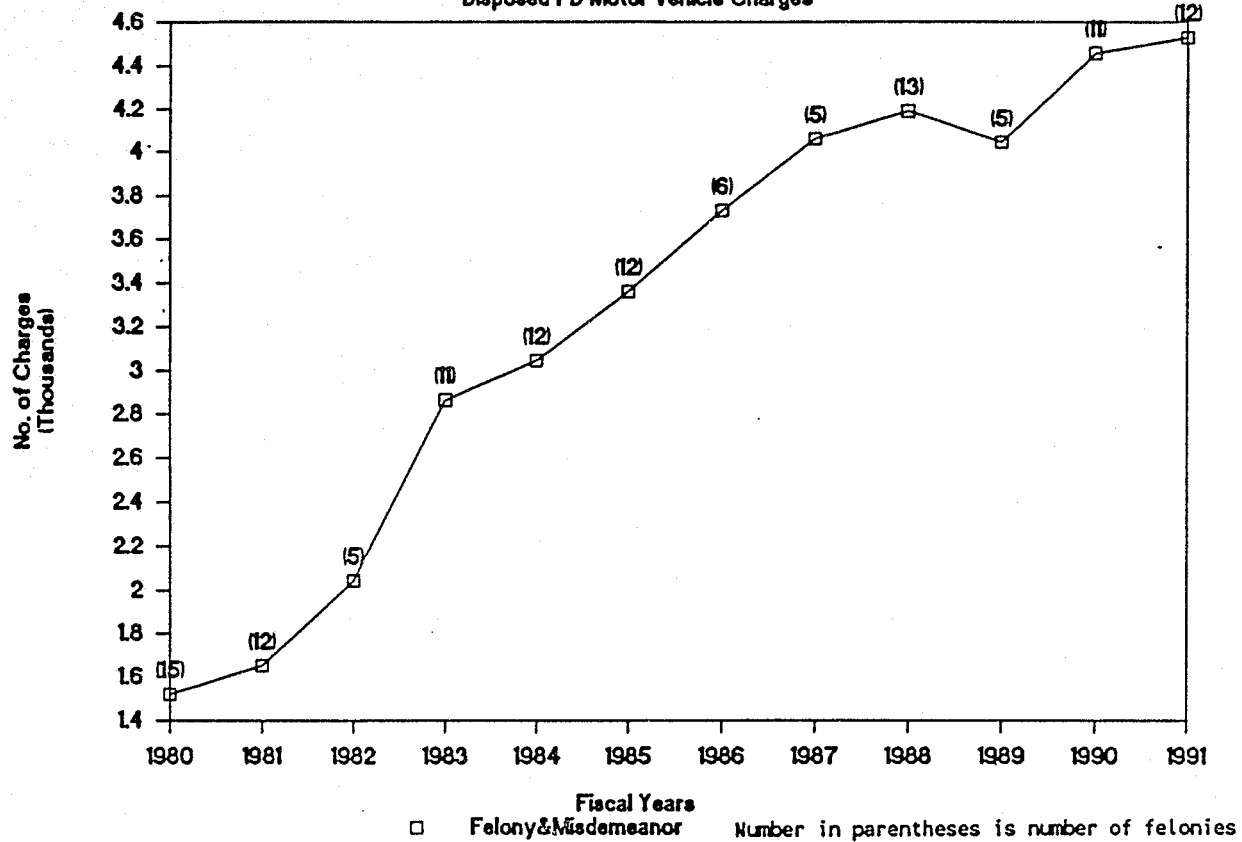
Office of the Defender General

Public Defense Caseload FY 1981-1991



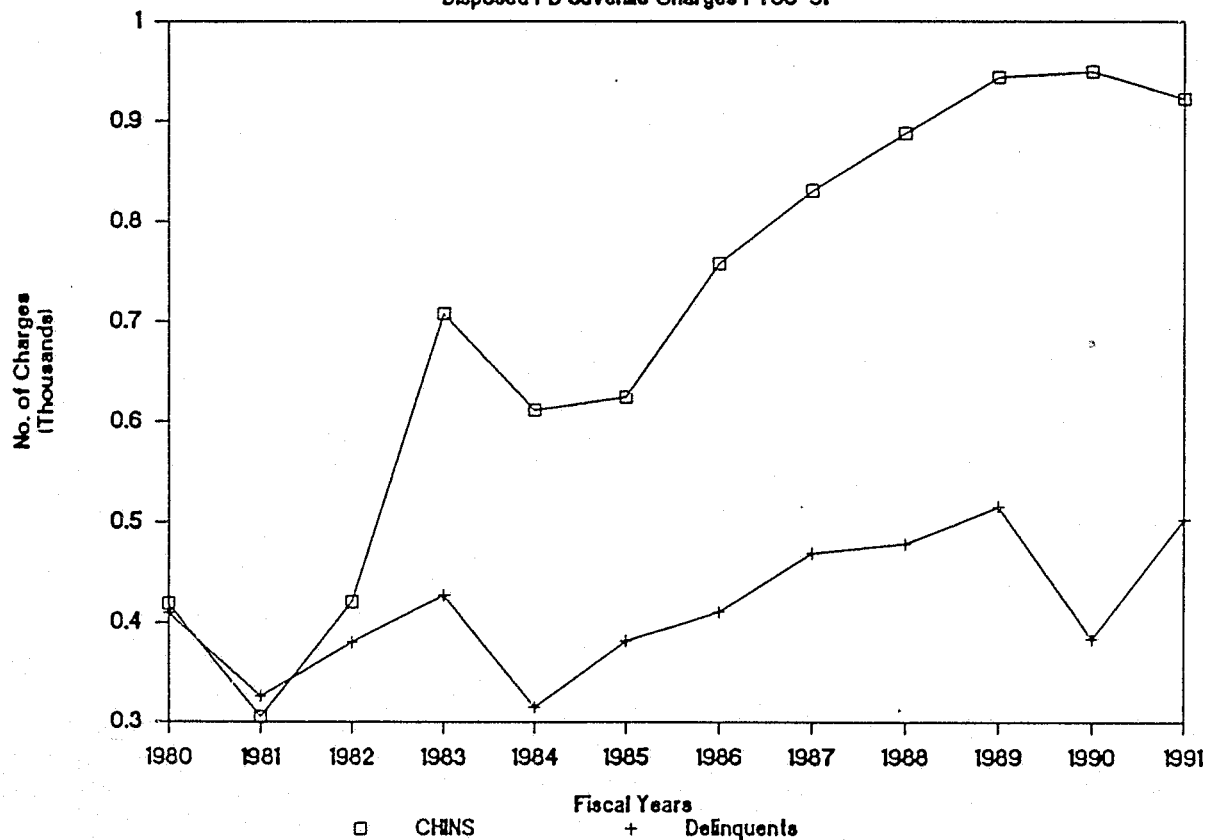
Office of the Defender General

Disposed PD Motor Vehicle Charges

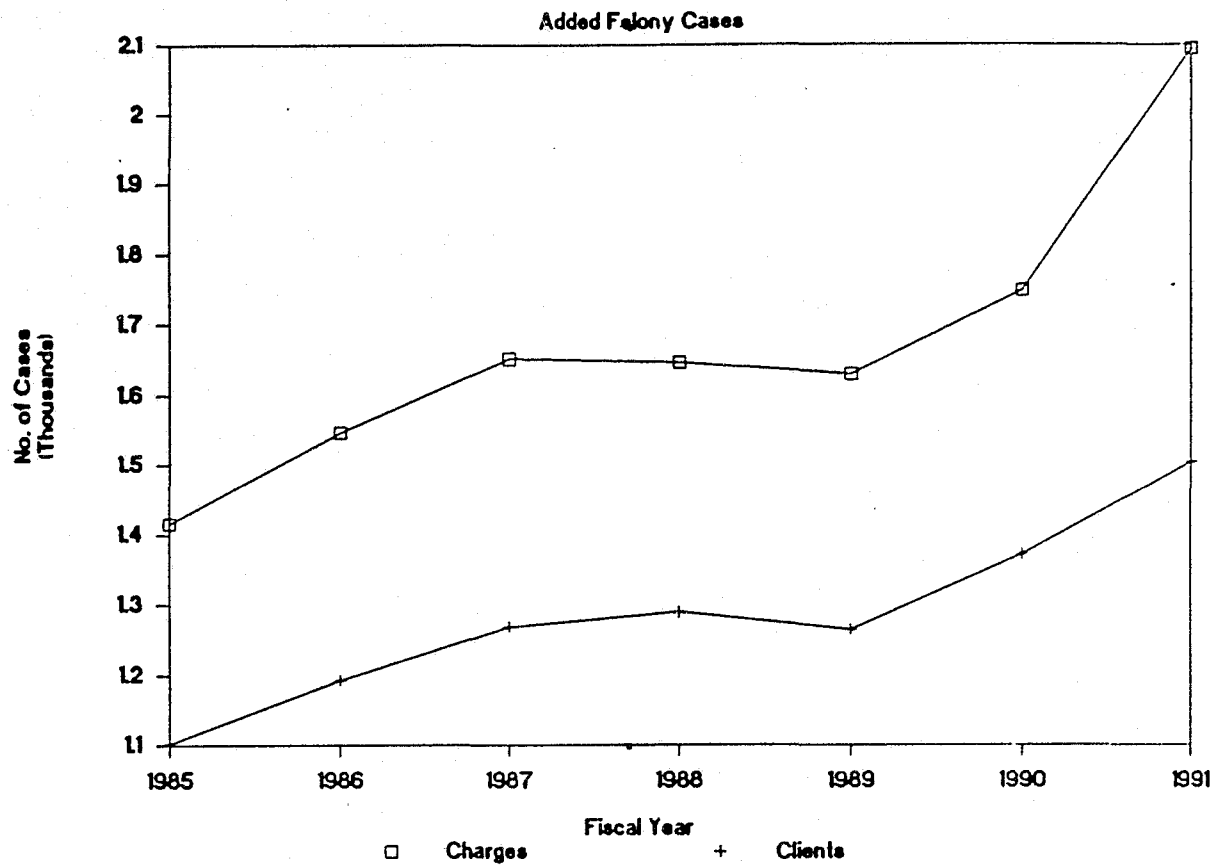


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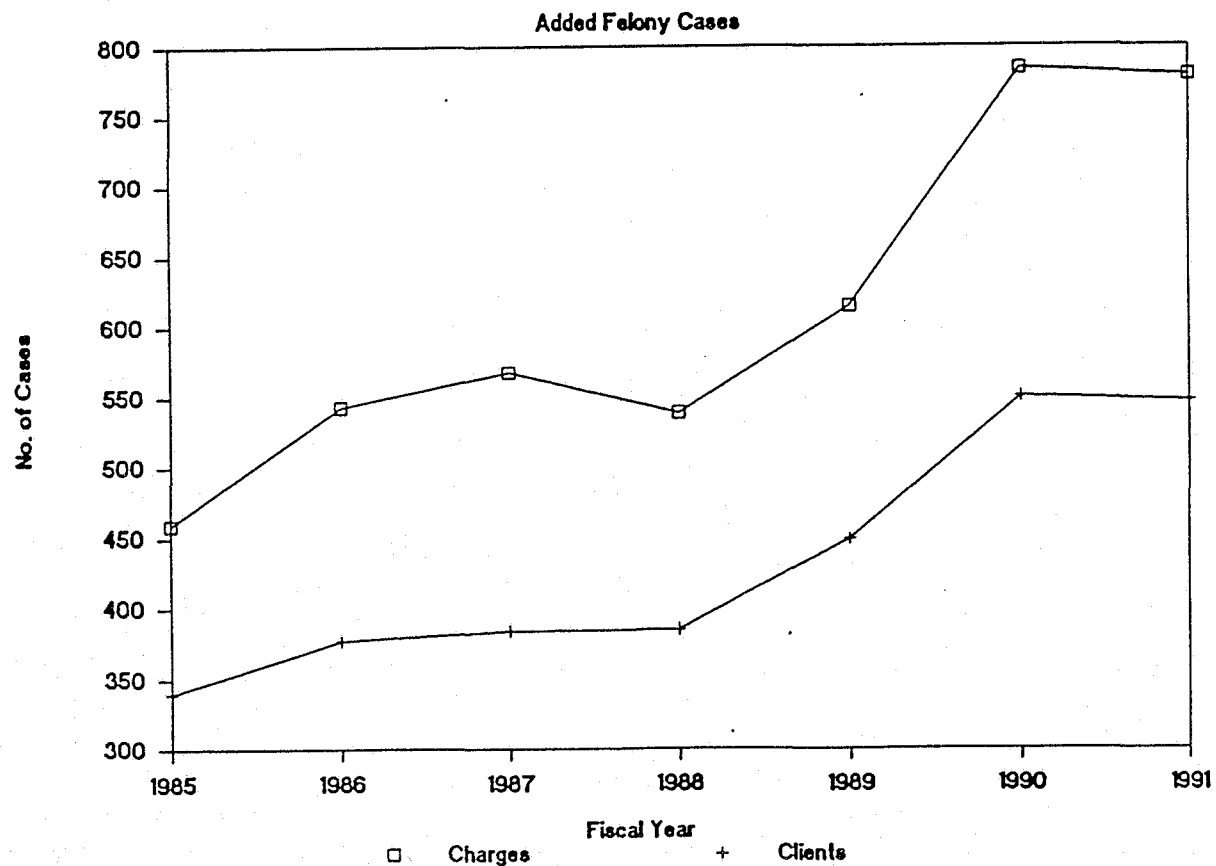
Disposed PD Juvenile Charges FY80-91



DEFENDER GENERAL PUBLIC DEFENSE

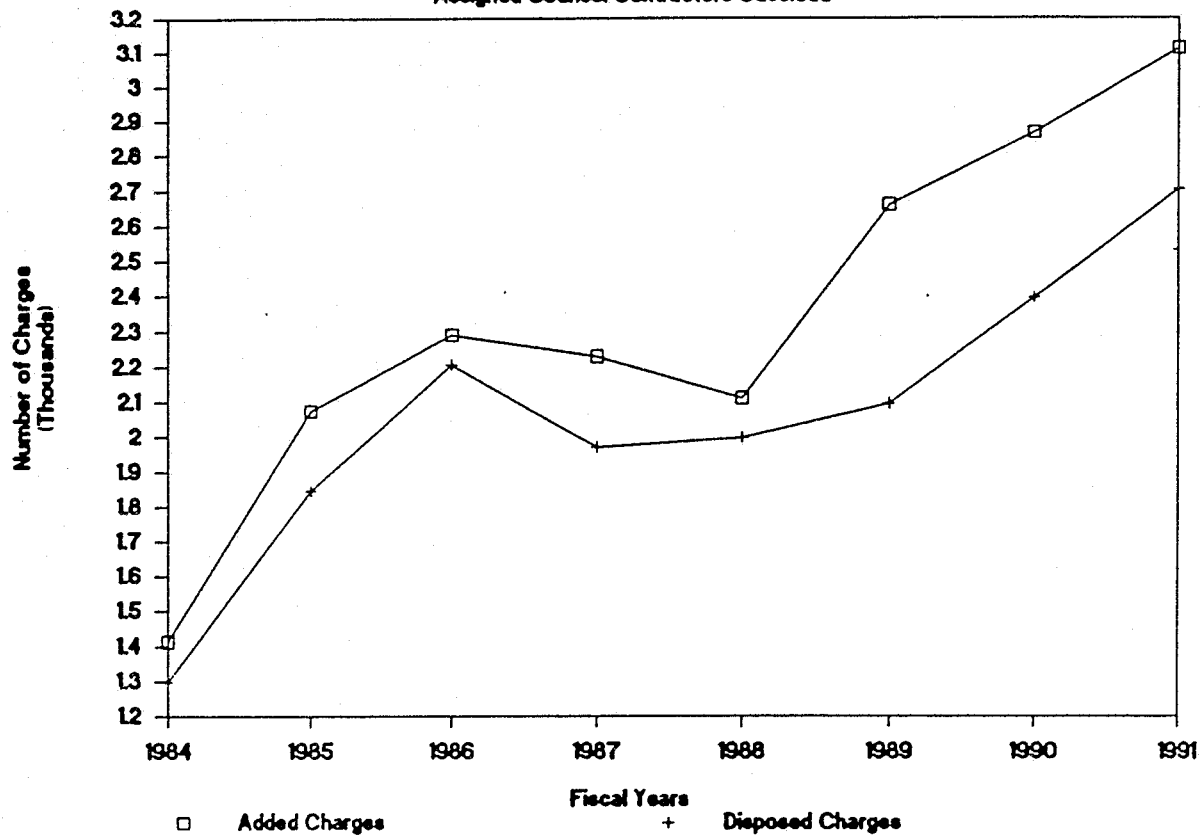


DEFENDER GENERAL - AC CONTRACTORS



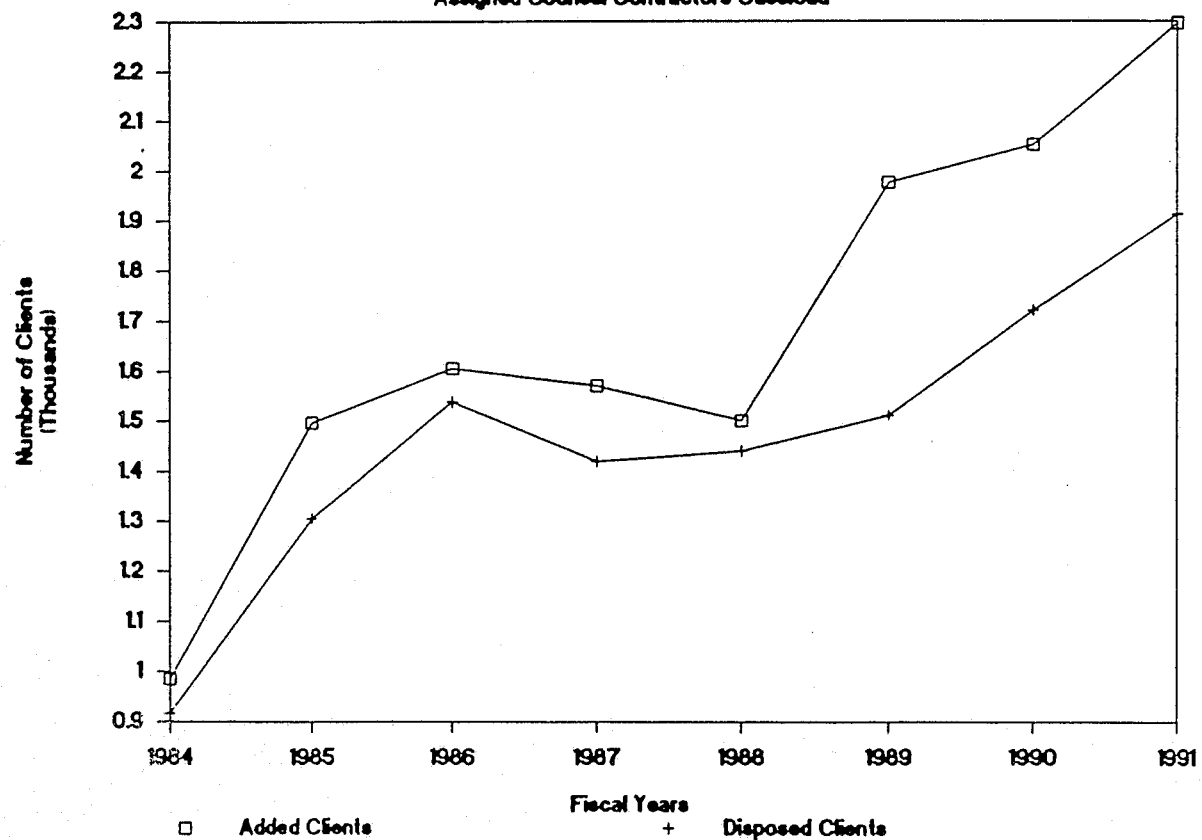
Office of the Defender General

Assigned Counsel Contractors Caseload



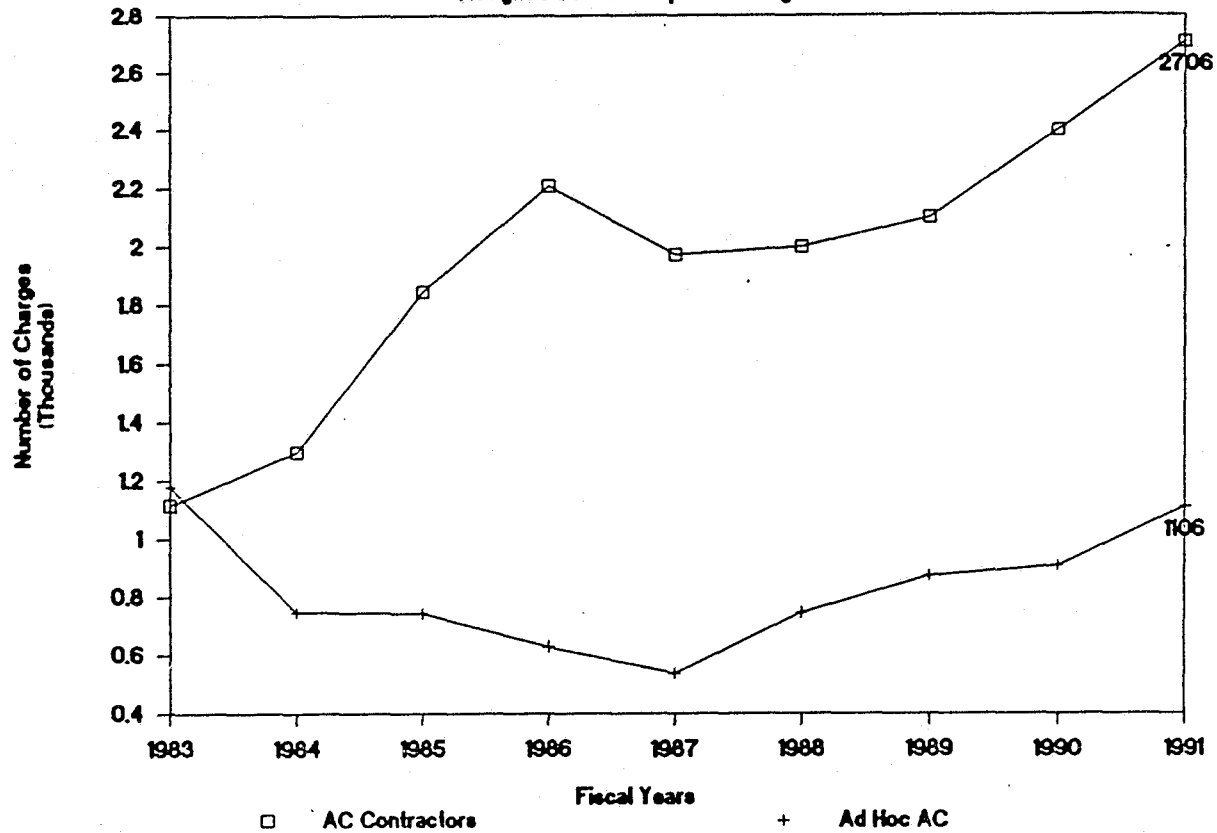
Office of the Defender General

Assigned Counsel Contractors Caseload



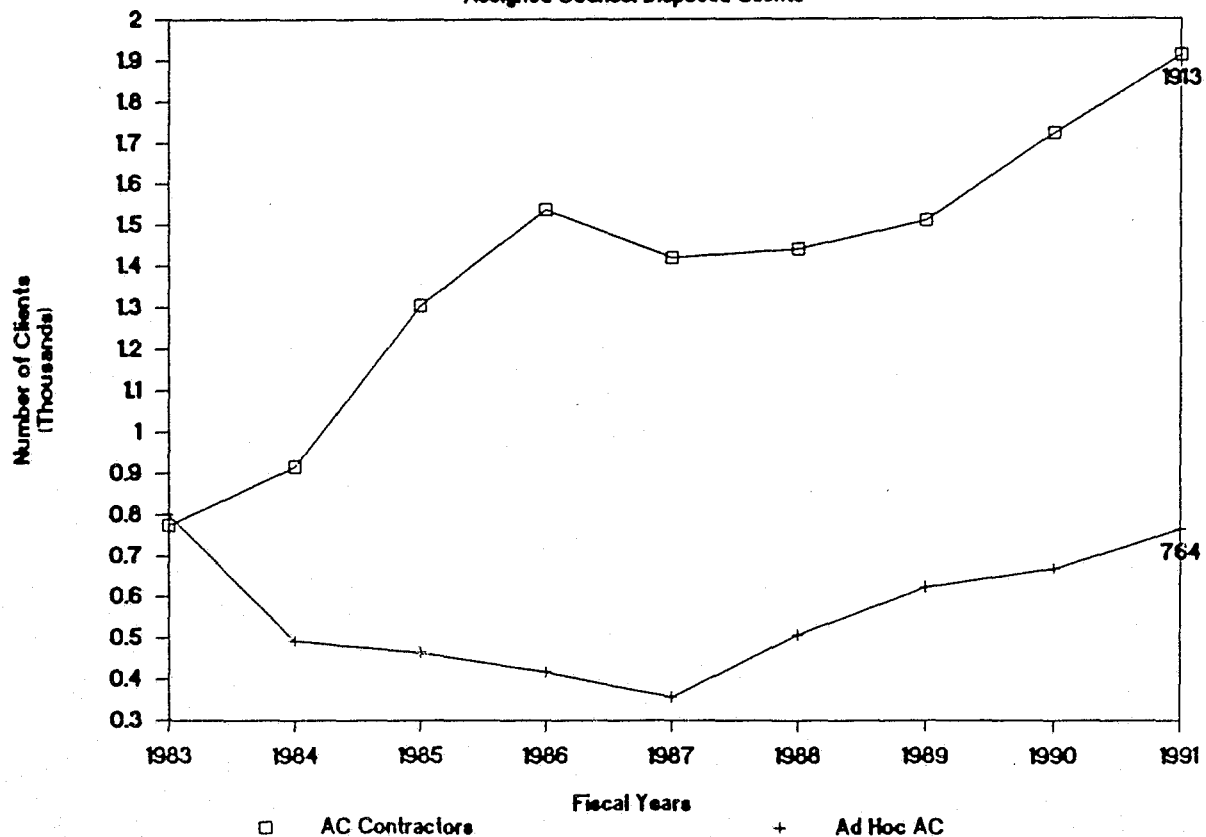
Office of the Defender General

Assigned Counsel Disposed Charges



Office of the Defender General

Assigned Counsel Disposed Clients



OFFICE OF THE DEFENDER GENERAL

EXPENDITURES BY PROGRAM AND APPROPRIATION

Public Defense

<u>Fiscal Year</u>	<u>Personal Services</u>	<u>Operating</u>	<u>Total</u>
1985	\$1,598,993	\$285,000	\$1,883,993
1986	1,751,877	332,400	2,084,277
1987	1,887,381	346,996	2,234,377
1988	2,066,413	361,229	2,427,642
1989	2,463,623	459,848	2,923,471
1990	2,801,630	481,700	3,283,330
1991	2,958,850	454,933	3,413,783

Note: FY 1990 expenditures include \$59,828 of expenses related to flooding in central offices, and FY 1991 includes \$20,955 in flood-related expenses.

Assigned Counsel

<u>Fiscal Year</u>	<u>Personal Services</u>	<u>Operating</u>	<u>Total</u>
1985	\$ 657,685	\$ 18,000	\$ 675,685
1986	672,121	21,400	693,521
1987	634,119	22,139	656,258
1988	759,817	29,966	789,783
1989	886,311	31,475	917,786
1990	919,978	35,041	955,019
1991	1,165,897	30,234	1,196,131

OFFICE OF THE DEFENDER GENERAL
141 MAIN STREET
STATE OFFICE BUILDING
MONTPELIER, VERMONT 05602

Purpose

Policy of the Defender General Concerning Excessive Workloads of Public Defenders

Introduction

Title 13 V.S.A. Section 5253(a) provides:

The defender general has the primary responsibility for providing needy persons with legal services under this chapter.... He may provide these services personally through public defenders..., or through attorneys-at-law....

Canon 6 of the Code of Professional Responsibility adopted by the Vermont Supreme Court states "A lawyer should represent a client competently."

The ABA Standards for Criminal Justice provide, in Standard 5-4.3:

Neither defender organizations nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of their professional obligations. Whenever defender organizations or assigned counsel determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organizations or assigned counsel must take such steps as may be appropriate to reduce their pending or projected workloads.

During FY 1987, public defenders experienced a 14.7% increase in added clients. In most public defender offices, staffing is insufficient to meet the demands of the burgeoning caseload. Accordingly, it is imperative that procedures be

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established to determine when a public defender is in danger of violating professional, ethical and legal obligations to their clients, as well as a range of methods to effectively deal with that problem.

Discussion

The Defender General's Office has relied upon the standards adopted in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals in determining the need for additional staff. Those standards provide:

The caseload of a public defender 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; ...and appeals per attorney per year: not more than 25.

The NAC Standards appear to be the only current national numerical standards governing the limitation of public defender and appellate caseloads.

It is clear that these standards cannot and should not be considered as fixed criteria. Numerous other subjective factors must be considered in making a determination that the workload in a particular office is or is not excessive. For example, those factors are: the level of experience of the public defenders; the speed of turnover of cases in the district; the percentage of cases tried; and the complexity of pending cases, etc. Further, we have historically applied the standards to the number of added clients in a given time period without regard to the number of pending or disposed cases. The implementation of case weighting policies, which are additional means to measure workload, will be undertaken in the balance of FY 1988 and in FY 1989. It is apparent, however, that with the statistical resources presently available to the Defender General's Office, the NAC standards are the best guidelines available for judging whether or not the workload in a particular office is or may become excessive.

In adopting criteria, it is important to recognize that any standards not impair the ability of an individual attorney to perform his/her duties according to professional and ethical standards.

Policy:

The minimum standards promulgated by the NAC pertaining to workload of public defenders are adopted by the Defender General

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as guidelines to determine whether the caseload in a specific public defender office is excessive. Case weighting policies, when implemented by the Defender General, will serve to supplement the NAC standards.

Procedure:

1. Every public defense office shall report statistics relative to the number of added clients on a monthly basis to the central office in Montpelier.

2. After receipt of the statistics, the central office will determine the Lawyer Equivalent Caseload (LEC) for each office.

3. If the LEC for any public defender office exceeds the attorney staff for that office by fifteen percent (15%) or more, the central office will notify the public defender office and the presiding judge of the District Court served by that office.

4. If the added caseload of the public defender office exceeds the staffing level by 15% or more but less than 25%, the Defender General may direct that caseload relief measures be implemented. Before making such a directive, the Defender General shall consider the various factors influencing the caseload in that office and shall also consider reasonable alternative means of dealing with the caseload pressures, within existing office resources.

5. In the event that the added caseload exceeds the staffing levels by 25% for more than one month, the Defender General shall direct that caseload relief measures be implemented, unless she/he finds that there are exceptional circumstances which justify continuing to add to the cases, or that there are reasonable alternative methods to deal with the increase which have been or will be implemented. Caseload relief measures may include, without limitation, a directive that the public defense office not accept additional cases; provision for ad hoc assignment of categories of cases, such as misdemeanors to private counsel; provision of temporary services of attorneys and investigators and other support staff under contract; and other procedural measures effecting allocation of defense resources within the circuit and within the state.

6. The status of caseload relief measures shall be reviewed monthly by the Defender General.

7. The decision to implement caseload relief measures effecting assignment of cases shall be communicated to the presiding judge of the relative District Court(s).

8. These standards shall not impair the ability of an individual attorney to perform his or her duties according to professional and ethical standards, including expressly Canon 6 of the Code of Professional Responsibility.

10/13/87