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→ DESCRIPTION OF DEFENSE SERVICES  
IN NINE STATES  
SUPPLEMENT A TO:

IMPLEMENTATION OF ARGERSINGER V. HAMLIN: →

III  
→ A PRESCRIPTIVE PROGRAM PACKAGE,

Supplement A →

**National Center  
for  
State Courts**

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Publication No. R0009  
Supplement A

April 1974

This project was supported by Grant Number 72-TA-99-0022 awarded by the Law Enforcement Assistance Administration, U. S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the contracting agency and do not necessarily represent the official position or policies of the U. S. Department of Justice.

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INTRODUCTION

This report is one of three supplements to the Prescriptive Program Package entitled, "The Implementation of Argersinger v. Hamlin." As part of the research for the prescriptive package, members of the staff of the National Center for State Courts visited nine states that provided counsel to indigents in misdemeanor cases prior to the Argersinger decision. These site visits were made between January and April 1973, and their main purpose was to examine the structures and procedures for providing indigent defense services in these nine states. The reader should bear in mind that the conditions described in these nine states may have changed since the visits one year ago; however, their value as illustrations of the situations are still valuable.

The following pages contain brief descriptions of the public defender and assigned counsel systems that were found by our researchers in California, Colorado, New Jersey, New York, North Dakota, Pennsylvania, Washington, West Virginia, and Wyoming. These descriptions include information about the size of the defender system, the procedures used to provide indigent defense services, the types of services provided, and the budgets under which these systems operate. It was on the basis of the information gathered in these nine states that we were able to develop the recommendations that are included in the Prescriptive Program Package. It should be noted that the following sections are not and were not intended to be complete detailed histories and descriptions of indigent defense services in these states. Rather, an effort was made to provide an overview of the systems that are currently in use

throughout the country. There is some additional information about these systems in the Prescriptive Program Package, along with general information on various types of defense services.

#### CALIFORNIA

In 1913 the first public defender system in the United States was established in Los Angeles County. Two years later a separate system was formed in the City of Los Angeles. Because of the success and effectiveness of these offices, the state legislature, in 1971, adopted a local option law which permitted all counties to establish public defender systems by ordinance. Today 43 of California's 58 counties have public defenders, with the remaining providing indigent defense services through assigned counsel systems.

County control of public defender systems in California has resulted in wide variations in the size, structure, and operations of these systems. During the course of this study the research team found some of the most effective and innovative defense services in California counties. On the other hand, county control has also resulted in wide discrepancies in the quality of defense services provided. The level of funding and the variations in services differ considerably from county to county. For example, in 1971 the statewide per capita cost for defending indigents was 95 cents. However, among the counties, the per capita expenditures for indigent defense ranged from less than 50 cents to more than a dollar. There are, of course, many factors contributing to these discrepancies in the expenditures on defense services. Such factors as the number of attorneys, investigators, and clerical staff, as well as the provision of ancillary services, all affect the cost of defense services to indigents in 1971 in several counties studied during the research for this report.

Alameda	\$1.15
Los Angeles	1.15
Sacramento	.60
San Diego	.94
San Francisco	.87
Santa Clara	.62

California law requires that counsel be provided to all persons who are financially unable to employ counsel and who are charged with any contempt or criminal offense that may be tried in the superior, municipal, or justice courts at all stages of judicial proceedings, including the preliminary hearing. Since the California law preceded the decision of the Supreme Court in Argersinger v. Hamlin, that decision had little impact on defender systems throughout California. In most of the larger urban counties, such as Los Angeles, San Francisco, Alameda, and Santa Clara, the public defender keeps one or more attorneys in the misdemeanor arraignment courtrooms. This type of system insures that all indigent misdemeanants will be represented by counsel at a point early in the judicial proceedings, and also facilitates the disposition of cases. In the less urban areas, as well as those counties with assigned counsel systems, however, the systems used for assigning counsel in misdemeanor cases is not as efficient. In San Diego county, for example, all indigent misdemeanants are represented by assigned counsel. This system of providing indigent defense services often slows down the judicial process by requiring unnecessary additional appearances in court.

In addition to the variations in per capita costs for indigent defense, as well as the point at which appointed counsel enters a case, there are many other differences among the defense systems in

California. During the course of the research for this study, members of the staff of the National Center for State Courts visited and examined the public defender systems or the assigned counsel systems in Alameda, Los Angeles, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara counties. The following paragraphs include a very brief description of each of these systems.

#### Alameda County

The public defenders office was formed in Alameda County in 1927. It is one of the few systems where all of the staff attorneys are civil service positions, although the Chief Public Defender is appointed by the County Board of Supervisors. In April 1973, there were 77 attorneys and 16 investigators on the staff who handle approximately 27,000 cases per year, including misdemeanor, felony and juvenile cases.

The determination of indigency in Alameda County is based on several factors, including the nature of the case, and the financial situation of the defendant. In misdemeanor cases, the defendant usually must have less than \$100 in reachable assets. An eligibility form is used and all defendants are accepted only after an interview with an attorney. Staff attorneys assigned to interview defendants in jail spend approximately 50 percent of their time at the jail and 50 percent in court. Thus, many staff attorneys become involved in cases before the cases get to the courtroom. Attorneys also conduct factual interviews with defendants. Under no circumstances is a public defender permitted to enter a guilty plea for a defendant to a lesser charge if the defendant says he is not guilty.

The Chief Public Defender stated that he would like to see each case handled by an individual attorney. However, because of the size of the public defender caseload, this is impossible. Therefore, a system has been instituted whereby a defendant in a felony case may have up to five attorneys and in a misdemeanor case he may have up to two attorneys. In misdemeanor cases, a member of the arraignment staff handles the case initially, and it then goes to the trial attorney. Under this system, trial attorneys usually see the defendant approximately three days prior to the last day allowable for court appearances.

The Alameda County public defender also has an appellate staff of three attorneys, two of whom are designated for motions. If the public defender did anything during the trial that might lead to a reversal, the public defender asks the court to appoint private counsel for the appeal. In misdemeanor appeals, the Chief Public Defender makes all decisions concerning whether the public defender should remain in the case. Whatever the decision, the public defender attorney remains in the case long enough to prepare the "settled statement of fact" which becomes the record in the next level of court.

The Alameda County Public Defender Office provides in-service training and orientation for its staff. New attorneys are initially given only misdemeanor cases and are later moved to felony preliminary hearings and eventually to felony cases. However, in homicide cases all assignments are made by the Chief Public Defender.

Most of the attorneys on the staff are hired immediately after graduation from law school. At the time of our research, the size of the staff has doubled in two years. The starting salary for attorneys on the staff was \$1,030 per month and was automatically raised to

\$1,340 per month after one year. The highest salary for a working attorney on the staff was \$1,700 per month.

#### Los Angeles County

Los Angeles County has one public defender operation serving more than seven million people. During fiscal year 1971/1972, the public defender had 513 full-time employees and a budget of \$9,578,764. During that year, the public defender handled 209,653 cases. The Office of the Public Defender is organized into 35 offices with eight departmental divisions. The Public Defender represents indigent defendants in 245 courts: 97 superior courts, 146 municipal courts, and 2 justice courts. The Office handles criminal, juvenile, mental illness, and civil proceedings.

In 1965, the legislature provided public defender representation to all indigents accused in cases involving misdemeanors. Prior to this legislation, the public defender of the City of Los Angeles provided the only defense in the county to indigents charged with misdemeanors. Subsequent to the passage of the 1965 legislation, the City of Los Angeles public defender operation was abolished by law, and its functions were assumed by the county public defender. According to the Chief Public Defender of Los Angeles County, legal representation in the misdemeanor area has been only a partial success. Until recently misdemeanor defense has suffered from inadequate investigative and clerical support services. There have been increases in these support services, but the public defender believes additional clerical and investigative staff are required to assist attorneys in misdemeanor cases.

The initial determination of indigency in Los Angeles County is made by the Deputy Public Defender who is handling the case. If that attorney determines that the defendant is indigent, a request for representation is made at the first appearance before a judge. Final determination is made by the court. There are no stringent guidelines regarding indigent status in Los Angeles County. Thus, eligibility for defender services is usually left to the discretion of the Deputy Public Defender. In cases involving multiple indigent defendants, the Public Defender may choose to represent only one defendant. If such a situation occurs, the Public Defender notifies the court and asks to be relieved of all but one of the defendants. The court usually grants such requests and assigns private counsel to those indigents not defended by the Public Defender.

In assigning counsel judges usually have rotating lists of attorneys who are willing to represent indigent defendants. In cases involving difficult questions of law, the judge may select an attorney without regard to rotation, based on the attorney's particular expertise in criminal law. Most judges will accept reasonable excuses from attorneys who decline to represent indigents. There is no set fee schedule for court assigned counsel in Los Angeles, and judges usually determine the amount to be paid.

Although the Los Angeles Public Defender does not permit law students to participate in courtroom proceedings, law students are used extensively in the operation. They are usually employed to perform such paralegal functions as research, interviewing, and some investigations. Both second and third year law students are used to fulfill these

functions, and Deputy Public Defenders are often recruited from this group.

#### Sacramento County

The Sacramento County Public Defender Office is organized into several sections, including two misdemeanor sections that have a supervising attorney who does not carry a caseload. One misdemeanor section consists of one supervisor and four deputy public defenders who serve in the calendar section of the municipal court. Two of these deputies handle regular misdemeanor cases and two handle only traffic cases. In the second misdemeanor division there is one supervisor and four deputies who handle misdemeanor trials. The Public Defender's Office has one supervisor and six investigators to handle all investigative work for the entire office.

There is a policy in the Public Defender's Office to rotate attorneys between the various divisions within the organization. In the misdemeanor section there are always at least one or two attorneys who are experienced trial lawyers. At the time of our research, there were 33 attorneys and 7 investigators in the Sacramento Public Defenders Office.

The in-service training provided by the Sacramento Public Defender Office is on the job training rather than a structured course or orientation program. Law students are used by the office both as researchers and in the courtroom. Many of these law students are later hired as attorneys.

The entire staff of the Sacramento Public Defender's Office, including the Chief Public Defender, is under the regulations of the civil service. However, the successor to the current Chief Public

Defender will serve at the pleasure of the Board of Supervisors.

#### San Diego County

The provision of indigent defense services in San Diego County is rather unique in that the San Diego Defender Program known as Defenders, Inc., is sponsored by the county bar association. The program, which was started in 1968 with a grant from the Ford Foundation, has a Board of Directors that is appointed by the President of the San Diego Bar Association. One of the primary goals of the Defender Program is to keep the general membership of the bar interested and involved in criminal law. The program is currently paid for by the county through the bar association, on a per appearance basis.

In April 1973, there were 25 full-time attorneys in the Defender Program: three in the Court at El Cajon, two in the County Juvenile Court, three in the North County Judicial District, and the remainder in the City of San Diego. In addition, there were two full-time and one half-time investigators, and approximately eight secretaries. At that time, the office in the City of San Diego handled approximately one-third of the total felony caseload in the court. The remaining two-thirds of felony cases, as well as all misdemeanor cases are handled by court appointed attorneys who are compensated on the same schedule as the full-time staff members of Defender, Inc. In 1972 there were approximately 6,000 felony cases filed by the district attorney of San Diego County. Thus, approximately 4,000 of these cases were handled by the 400 to 500 attorneys on the list for court appointments. These attorneys were divided into three groups: the first can handle only misdemeanors; the second may handle minor felonies; and the third

can handle homicide and other serious felonies. The appointed attorneys have access to the brief banks of the defender program as well as investigative and clerical services provided to full-time staff members.

In San Diego County, the judge makes the final decision as to indigency based upon the information gathered at an initial interview by the public defender, as well as from probation reports. In uncertain cases, the defendant is referred to the Borderline Indigents Panel where he will be given the names of one to three attorneys. After discussing his financial status with these attorneys, the defendant then reports back to the court concerning his success or failure in retaining private counsel.

The San Diego program usually hires its attorneys as soon as they graduate from law school. At the time of our research, the salary range started at \$11,000, was raised to \$11,500 after six months, to \$12,000 after another six months, and then raised to \$15,000 after six more months. Once an attorney reached the \$15,000 level, salary increases were only made on the basis of merit.

The defender program sponsors an eight week lecture series on the defense of criminal cases, and staff attorneys as well as all new attorneys in the county are invited to attend. The program also encourages outside attorneys to come and seek assistance from the office.

For fiscal year 1972-73, San Diego County spent approximately \$1,823,000 on defense services. This total includes both the defender program and appointed counsel. Since the budget of the defender program

was approximately \$450,000 during that year, the county apparently spent approximately \$1,373,000 on court appointed counsel.

#### San Francisco County

The City of San Francisco has the only public defender system in the State of California in which the Chief Public Defender is an elective office. The Chief Public Defender is Edward Mancuso, who has held that office for nearly 20 years. There are approximately 30 attorneys and three investigators in the San Francisco Public Defender's Office, which has as annual budget of approximately \$700,000.

Unlike most public defender systems examined in this study, in San Francisco most of the staff attorneys do not come directly out of law school, but enter the public defender system after practicing law privately for several years. In addition, most of the staff attorneys stay within the public defender system for several years, and there is a very low turnover rate in the office.

Although the San Francisco Public Defender Office does not have its own training or orientation program, it does participate in the one week program sponsored by the California Public Defender Association. Law students are used in the Public Defender's Office only as volunteers to assist in research and investigations but not to participate in trials.

The general rule that is used for determining indigency in San Francisco is that the defendant must have an income of \$55.00 per week for himself, plus \$15.00 per week for each dependent. Several individuals who were interviewed indicated that in many cases the judge is more lenient than the public defender in determining indigency.

As a result of the heavy caseload in the San Francisco courts, the public defender has been relying on a zone type of defense; that is, different attorneys will represent defendants at different points in the case. An effort is currently being made, however, to establish teams of two attorneys who will be responsible for cases from the first court appearance through disposition. While this system may require additional attorneys, it will undoubtedly improve quality and effectiveness of representation by the Public Defender Office.

#### San Mateo County

In 1968 the County of San Mateo and the San Mateo County Bar Association entered into a contract whereby the Association was to provide all the attorneys necessary to represent indigent defendants. The resulting program, known as the Private Defender Program, is a combination of private assigned counsel and public defender. Approximately one-quarter of the bar membership of the County of San Mateo has volunteered to represent indigent defendants. The Private Defender Program maintains a small staff consisting of an executive director, two assistant administrators, three full-time secretaries, one part-time clerk, a full-time book-keeper and a full-time investigator, as well as contract investigative services. The main tasks assigned to this staff are the coordination of the overall program.

The Private Defender Program provides counsel in all types of cases ranging from traffic tickets to major felony cases. Cases are assigned by the administrator based upon the type of case and the skill and experience of the attorney.

The determination of indigency in San Mateo County is made by the court based on information provided by the defendant. In cases where there is any question concerning the indigency status of the defendant, the Private Defender Office is requested by the court to provide additional information. If the defendant is not eligible for defender services, but is unable to pay a full legal fee, he or she is referred to the Defendant Referral Service, a service provided by the bar association to individuals of limited means, and arrangements are made with private attorneys for nominal fees to be paid on a monthly basis.

The San Mateo Private Defender Program utilizes law students in several aspects of its work. In addition to being used for research and investigative purposes, the program also has an internship funded by the federal government in which students may participate in criminal defense work.

The Private Defender Program requires new applicants who wish to become members of the attorney panel to serve an apprenticeship in which they work with more experienced attorneys in criminal cases. Following this period, attorneys are assigned to arraignment calendars, and then to misdemeanors, and eventually are given more serious cases. Attorneys always have access to the program administrator and to more experienced trial attorneys if assistance is needed. In addition, the Private Defender Program provides continuing education for attorneys at regularly scheduled meetings where criminal defense techniques and criminal procedure are discussed.

The attorneys who are assigned to cases by the Private Defender Program in San Mateo are paid on a case by case basis. Payments are made according to a fee schedule that has been established by the bar association, and which is revised periodically. Fees in excess of this schedule may be approved by a special fee committee of the Private Defender Program.

#### Santa Clara County

Santa Clara County has one of the most efficient and effective public defender systems in the State of California. In April 1973, there were 75 employees in the office: 40 attorneys, 11 investigators, 4 legal aides, and 20 secretaries. In addition, there were three unclassified positions which were filled by two legal aides and one public service worker. Legal aide positions are usually held by third-year law students or law school graduates who are waiting to take the bar exam. These aides conduct legal research, prepare legal memoranda, and do approximately 40 percent of the initial interviewing of defendants for the public defender office.

The Public Defender Office is divided into four divisions, including clerical, investigative, municipal court, and superior court divisions. The municipal court division handles cases in five municipal courts and two justice courts. The superior court division consists of a felony jury team of 13 deputies who work in the superior court in San Jose.

There are four grades of attorneys in the Santa Clara Public Defender's Office, beginning with an Attorney I who receives a salary of \$994 per month. After at least one year, there is an automatic

raise to an Attorney II level at \$1,365 per month; two years later there is a promotion to an Attorney III position at \$1,581 per month; and finally, after two years as an Attorney III a person may be moved to an Attorney IV at \$1,830 per month. In order to give the Public Defender Office flexibility in promotion, each attorney position is funded at an Attorney IV level. In addition, there are two assistant public defenders, a chief assistant public defender, and the chief public defender.

While each new attorney is initially assigned to municipal court, all positions rotate approximately every six months. Thus, a new attorney will work his or her way up to trying felony cases in about 15 months, remain in that position for six months to one year, and is then rotated back to misdemeanor cases. The public defender office requires a two-year commitment from its attorneys, and eventually encourages its staff attorneys to go into private practice after three or four years. As a matter of policy the Santa Clara Public Defender Office does not hire attorneys who have been in private practice.

The public defender provides an on-going in-service training program for staff attorneys. This program includes guest lecturers from both within the organization and from outside organizations. In addition, at the time of this research the Public Defender Office was developing plans to have one attorney serve as a full-time training officer.

Each morning members of the public defender staff go to the jail to interview clients who need attorneys. An on-line computer system shows which defendants were arrested and have indicated that they

need public defender services. In addition, there is an on-call attorney 24 hours per day, seven days per week.

The 1972 budget for the Santa Clara County Public Defender Office was originally \$1,435,909, and was increased at mid-year by \$50,000. The 1973-74 budget request was \$1,768,361.

The Santa Clara County Public Defender Office is a well-managed and highly efficient operation. There are clear lines of communication throughout the organization, and an interest in developing innovative programs and policies for providing defense services.

#### Conclusion

The previous paragraphs describe the defense services provided for indigents in only seven of California's 58 counties. It is clear from these descriptions that there is wide variation in the type of systems utilized as well as in the quality and effectiveness of these systems. It is also clear, however, that some of California's counties provide some of the best indigent defense services in the country.

Recognizing the need for some coordination and communication among public defender systems in the state, the California Public Defender Association was formed in 1969. The primary goal of the organization was to influence legislation dealing with indigent defense services. In addition, the Association wants to provide urgently needed training for public defenders throughout the state. There are now two training programs provided by the Association: a defender orientation program that is one week long and is sponsored once each year; and an advanced criminal law seminar for attorneys with two years of criminal practice. These training programs, as well as the

communication network provided by the Association, will undoubtedly serve to raise the quality of defense services in California.

COLORADO

In 1966, as a part of a statewide court reorganization plan, a state public defender system was created under the jurisdiction of the Colorado Judicial Department.

The act creating a State Public Defender provides:

(1) The State Public Defender is to be appointed by the Colorado Supreme Court for a term of five years. He may be reappointed for one or more subsequent five-year terms;

(2) The State Public Defender is required to be a qualified attorney, licensed to practice law in Colorado for at least five years, and can be removed from office only for cause by the Colorado Supreme Court;

(3) The State Public Defender and deputy public defenders in the regional offices are required to devote full time to the performance of their duties and cannot engage in private practice;

(4) The State Public Defender is authorized to establish such regional offices as he deems necessary to carry out his duties;

(5) The Public Defender is required to represent as counsel, without charge, each indigent:

- a. under arrest for or charged with a felony if the defendant does not affirmatively waive his right to counsel;
- b. charged with a crime which constitutes a misdemeanor;
- c. facing possible confinement because he is accused of being a juvenile delinquent;

- d. held in any institution or facing commitment against his will for the treatment of any mental disease or disorder, if he claims he is restored to reason or was illegally committed in the first instance;
- e. seeking appeal or post-conviction relief while serving in the Colorado State Penitentiary or the Colorado State Reformatory; or
- f. accused of municipal ordinance violations.

STRUCTURE, STAFFING PATTERN AND BUDGET

The Public Defender system in Colorado is organized into three types of offices: the state headquarters office; an appellate division, and twenty urban and rural regional offices.

Headquarters Office The headquarters office, located in Denver, includes the State Public Defender, the Chief Deputy, the Chief Trial Deputy, an Administrative Assistant, and a Secretary. This office is the administrative arm of the organization, and it is responsible for establishing and designing programs and delivery systems. The office also performs internal statistical analysis and develops the annual budget which is submitted to the Joint Budget Committee of the state legislature. Occasionally, the three top administrative personnel in this office will also participate in the defense of indigents charged in difficult cases.

Appellate Division The appellate division of the Colorado Public Defender system is also located in Denver. It has five major functions:

- 1. appeals from the State's District Courts to the Colorado Supreme Court;
- 2. some post-conviction remedies under Title 35(b) of Colorado's Rules of Criminal Procedure;
- 3. handle appeals to Federal courts;
- 4. appearances before the State Commutation Board;
- 5. operate as the basic research arm of the Public Defender system, maintaining current information on defender operations and distributing information to the regional offices.

The appellate division currently has a staff of five attorneys and two secretaries.

Regional Offices There are 20 regional defender offices in Colorado. The largest is Denver where the 20 staff attorneys are organized in the four criminal divisions of the District Court, a misdemeanor unit, a juvenile court unit, and a jail-check unit. For each of the four criminal divisions in the District Court, there are three felony attorneys, one investigator, and one secretary. In the juvenile court unit, there are four attorneys and one investigator, and a secretary who is shared with a felony unit. Similarly, in the misdemeanor unit, there are three attorneys and one investigator handling state misdemeanor cases. The misdemeanor unit is placed in one of the felony units for administrative purposes where it uses the services of the felony unit's secretary. The jail-check unit has one attorney, one investigator and one secretary, and is primarily an intake unit which canvasses Denver's city jail for indigent defendants. In addition to the unit secretaries, there is one pooled secretary who operates a magnetic

card typewriter for all of the units, as well as one receptionist who assists in assigning indigents to specific units, and orients prospective clients.

In the Denver office two attorneys are assigned full time to the county courts to defend indigents charged with non-traffic ordinance violations. The City and County pays the State Public Defender for this service. The Denver office is the only office in the state that defends indigents accused of ordinance violations.

There are three programs in the Denver Public Defender Office through which college and law students may work for the Public Defender. Under a grant from LEAA, the public defender directs a training program for third-year law students from the University of Denver College of Law. The student assistants earn 4 law school credits for participation, and are permitted to handle ordinance, misdemeanor and juvenile cases, under close supervision by regular staff. LEAA funds also support a Summer Student Law Clerkship Program in the Denver office which employs third-year law students to assist in investigations and in legal research. Finally, students in work-study programs at various colleges are also hired by the Denver office; the Public Defender pays 20 percent of these salaries, and the federal government pays the remaining 80 percent.

Table I briefly describes the important facts about each of the remaining nineteen regional offices of the Colorado Public Defender system.

The Colorado Public Defender Program has developed training and promotion programs for its personnel. Lawyers with little or no trial

experience are hired as an Intern I at a monthly salary of \$884 and with experience can eventually advance up the rank to a Public Defender III at a salary of \$1667 per month. Table II shows the usual progression for attorneys within the Defender system. A similar training and promotion program exists for the investigative and secretarial staff.

The staffing pattern of each regional office depends primarily on the size and the complexity of its operation. A one-attorney office will generally have a Public Defender II (or, in unusual circumstances, a Public Defender III), since that attorney is relatively unsupervised. A large office, such as Denver, will include attorneys from Intern I to Public Defender III (an administrative position). The Colorado Public Defender organization uses its promotional system to encourage attorneys to transfer to regional offices to broaden their experience.

Approximately 93 percent of the Public Defender's \$1,631,631 budget for FY 1972-1973 was paid out of the State's General Fund. The remaining seven percent came from Federal funds, and the City and County of Denver.

By its second fiscal year the statewide Colorado Public Defender system had shown that it was an economically viable alternative for indigent defense. Cost per-case comparisons between court appointed, private counsel and the Public Defender Office for FY 1971 are shown below:

Type of Case	Statewide		Urban Areas*	
	Public Defender	Private Counsel	Public Defender	Private Counsel
Felony	\$163	\$318	\$151	\$321
Misdemeanor	28	90	127	100
Juvenile	85	102	77	130

\*Metropolitan Denver Area, Colorado Springs, Pueblo.

Comparing all costs involving felonies, misdemeanors, juvenile cases and appeals, it cost the Public Defender an average of \$102 and private counsel an average of \$265 per case.

Costs for felony, misdemeanor and juvenile cases in the metropolitan areas of Denver, Colorado Springs, and Pueblo, which handled 77% of the total cases during this period tend to be less than in the more rural areas. Several reasons account for lower costs in the urban offices: (1) there can be more specialization among public defenders in urban offices, thereby promoting faster handling of certain types of cases; (2) the more compact caseload of an urban area requires less travel time; and (3) there are more attorneys in the urban offices (currently one attorney to every 36,552 persons in the urban area as compared with one attorney to every 49,914 persons in the rural areas), more investigators and a larger secretarial staff (approximately one secretary for every three attorneys in the urban offices, versus approximately one secretary to every four attorneys in the rural offices), all of which enables urban office staff to handle cases more quickly.

FY 1971-1972 the Public Defender Office completed 19,012 cases of all types, versus 831 cases completed by assigned counsel. Although

there are no official statistics showing disposition of all cases in which there were attorneys appointed by the court to represent criminally accused indigents, the Public Defender Office keeps statistics from its regional offices serving the five county Metropolitan Denver Area.

In 1972 these regional offices closed 8,699 cases involving felony, misdemeanor, and juvenile offenses. 5,946 cases (68 percent of the total) resulted in conviction. 733 (eight percent) were tried, resulting in 436 convictions (59 percent). There were 2,991 felony cases, resulting in 2,047 convictions (68 percent); 160 (five percent) were tried, resulting in 80 convictions (50 percent). There were 4,390 misdemeanor cases, resulting in 3,117 convictions (71 percent); 405 (nine percent) were tried, resulting in 261 convictions (64 percent). There were 1,318 juvenile cases, resulting in 782 adjudications (59 percent); 168 (13 percent) were tried, resulting in 95 adjudications (57 percent).

#### INTERAGENCY RELATIONSHIPS

There are several organizations in Colorado, in addition to the State Public Defender Office, which provide counsel to indigents. The largest of these is the Denver Metropolitan Legal Aid Society, which has offices in the cities of Denver, Brighton and Englewood. Although the Society primarily represents indigents in civil cases, it has an agreement with the State Public Defender Office to handle some juvenile cases, mental health proceedings and commitments, and ordinance violations. In the juvenile area, the Legal Aid Society does not handle delinquency cases, but only cases involving children

in need of supervision, dependent children and neglected children.

In Colorado Springs, the El Paso Legal Aid Society assists the State Public Defender and extends its services to all cases involving juveniles, including those accused of being delinquents. The Pueblo Legal Aid Society also handles juvenile cases, ordinance violations, and some mental health commitment proceedings, but to date does not represent misdemeanor cases.

Another organization involved in representation of indigents is Colorado Rural Legal Services which has one office in Denver and six rural offices serving 19 counties throughout the state. The Colorado Rural Legal Services organization has reluctantly assumed representation of indigents in all types of juvenile cases, ordinance violations (both traffic and non-traffic), violations of state misdemeanor laws, and some mental health commitment proceedings.

If the Public Defender finds a particular case or a case involves a class action or a violation of Federal laws, the American Civil Liberties Union may be invited to take the case. In such instances, the Public Defender may assist the ACLU in investigation and research for such cases.

The City of Denver contracts with the Public Defender Office to provide two deputy public defenders to staff the Denver County Court, and to represent indigents charged with non-traffic violations. This arrangement was necessary because the Denver County Court is outside the administration of the State court system, and is funded and administered by the City and County of Denver.

#### NEW JERSEY

In 1971, in the case of Rodriguez v. Rosenblatt, et. al., 58 N.J. 281, 277 A. 2d 216, the New Jersey Supreme Court extended the right to assigned counsel to indigents in all cases in which "imprisonment in fact or other consequence of magnitude is actually threatened or is a likelihood on conviction."<sup>1</sup> This decision preceded Argersinger, and is broader in that it is not limited to cases involving a possibility of incarceration, but also includes the loss of driving privileges.

Prior to Rodriguez, appointed counsel in New Jersey was provided to indigent defendants only where the charge was an indictable offense.<sup>2</sup> Such services are provided by the Office of the Public Defender, which was established in 1967 by the state legislature to provide counsel to any person who is "formally charged with the commission of an indictable offense, and who does not have the present financial ability to secure competent legal representation and to provide all other necessary expenses of representation."<sup>3</sup>

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1. Rodriguez v. Rosenblatt, 277 A. 2d at 223.
  2. New Jersey has never used the common law felony/misdemeanor dichotomy for crime classification. Crimes are classified as misdemeanors and high misdemeanors, with jurisdiction in these cases resting with the county courts of the state. Misdemeanors and high misdemeanors are considered "indictable" offenses, and all other offenses are "non-indictables."
  3. N. J. Stat. Ann. 2A: 158 A-4.

The State Public Defender must be an attorney, licensed to practice in the state. He is appointed by the Governor with the advice and consent of the Senate for a term of five years. The services of the Public Defender are available in some juvenile matters, as well as in indictable cases.

Inasmuch as the services of the Public Defender are limited by statute to those persons who are charged with indictable offenses or offenses of juvenile delinquency, the municipal courts have been unable to draw upon the services of this agency to represent indigents charged with non-indictable offenses. Assembly Bill No. 1171, introduced May 11, 1972, and presently pending before the legislature, would amend Section V of Public Law 1967, C. 43 (N. J. Stat. Ann. 2A: 158-A5) to provide as follows:

5. It shall be the duty of the Public Defender to provide for the legal representation of any indigent defendant who is formally charged with the commission of an indictable offense or a non-indictable offense which in the judgment of the local criminal court judge may result in actual imprisonment or other serious consequences.

This attempt to incorporate the holding of Rodriguez into statute and to expand the jurisdiction of the Public Defender has been reported out of committee, but as of this writing has not yet been voted on by the Legislature.

The major opposition to this bill is based upon the fiscal requirements that it would impose on the state. Although the bill itself does not include an appropriation, the Public Defender's office prepared a Fiscal Note that estimated the cost of implementation. By projecting the increased staff needs and overhead costs, it was estimated that the bill would result in a need for approximately \$12.2 million for three

fiscal years. This estimate includes salaries for 100 additional attorneys, 50 senior investigators, 75 legal secretaries, other support staff, as well as such items as travel, supplies, furniture, and telephones.

Since the Office of the Public Defender could not be used to implement the Rodriguez decision, the Administrative Office of the Courts in New Jersey issued a memorandum to all Assignment Judges and Municipal Court Judges outlining the method to be used to comply with the requirements of the decision. Each Assignment Judge was asked to solicit a list or panel of attorneys from each municipal court district, from which attorneys would be assigned in appropriate cases. The judges were also asked to establish appropriate screening procedures to determine in advance of trial:

1. Whether the charge made in the complaint is likely to result in the event of conviction in imprisonment or other consequence of magnitude, and
2. Whether the defendant is indigent.

In a later letter from the Administrative Office of the Courts to all mayors in New Jersey, it was suggested that each municipality provide in its court budget for both a municipal prosecutor and defender. At the time of our research in the state, however, only a few of the 254 municipalities had made provisions for a public defender at the municipal level.

In those courts which have adopted a rotating list system, counsel is usually notified by mail of his assignment and then reports to court on a scheduled hearing date. Variations of this system include assignment

of one attorney per courtroom per day to represent all indigents charged with non-indictables, and designation of counsel in the courtroom by the bench on a case-by-case basis.

Compensation is apparently not available to private attorneys assigned to indigents in non-indictable cases in New Jersey. However, there is at least some authority to reimburse assigned counsel only for expenses. The trend in other states where indigent defense was provided by uncompensated assigned counsel is toward a judicial position that holds that forcing attorneys to accept criminal defense appointments without compensation amounts to a deprivation of property without due process of law.

While the determination of indigency in non-indictable cases remains a function of the discretion of the trial court, the memorandum to the Assignment Judges recommended consideration of "the fee ordinarily charged by attorneys to handle such cases." Such a standard necessarily involves a "lower threshold" for indigency than that required for indigency in indictable cases.

In indictable cases, a defendant who claims to be indigent is required to fill out a Form 5-A (see attached), which was developed by the Office of the Public Defender to be used in determining indigency. While this form appears to be used universally in all indictable cases, a recent revision to include non-indictables has not yet found wide acceptance in the municipal courts studied. Although some municipal court judges use the 5-A criteria in their interviews with defendants, the defendants are rarely required to fill out or sign the prescribed

form. The most common practice seems to be a very informal questioning, although some judges put the defendant under oath before questioning him about his financial status.

There is very little investigation as to the veracity of the statements of defendants concerning their indigency. Concern was voiced by several judges on this lack of investigation. There was some feeling that, especially in non-indictable cases where attorney fees tend to be lower than in indictable cases, there was a need for standardizing the procedures for determining indigency. At least one municipal court judge indicated that he would like to see a uniform standard of indigency applied across the state, such as is used to determine eligibility for welfare.

In February 1972, several months after the Rodriguez decision, the Administrative Office of the Courts conducted a survey of municipal courts to determine the number of assignments made in non-indictable cases. During that month there were only 289 assignments made, although 1,019 defendants were sentenced to jail and 929 drivers' licenses were revoked. It can be assumed that in the 1,659 cases that did not have counsel assigned the defendants were either able to afford their own attorneys or waived their right to counsel and decided to proceed pro se. This survey seemed to indicate that the problems of implementing Rodriguez were not as great as had been anticipated by the State Supreme Court, the Bar and the Administrative Office of the Courts. In September and October of that year, however, the number of assignments in non-indictable cases had risen to 513 and 445, respectively. This increase can probably be attributed to a greater awareness of the requirements of Rodriguez by both municipal court judges and defendants.

With the number of defense attorneys required to provide services to indigents in non-indictables growing, it will probably be necessary to either establish more municipal defender systems, or to provide state and county funds to compensate assigned counsel. During the interviews conducted for this study there was widespread agreement that there was a need for change in the methods used for providing counsel in non-indictable cases, but there was no sense of urgency and there was apparent satisfaction with the current system. With the exception of Newark, there has been considerable cooperation from the local bar, thus enabling municipalities to implement Rodriguez at little or no cost. The increasing demand for assigned counsel will undoubtedly result in greater reluctance on the part of private attorneys to provide counsel without compensation. The establishment of local defender systems or the extension of the State Public Defender's jurisdiction to non-indictable cases would resolve the problem of the lack of compensation, and would also improve the efficiency and effectiveness of the provision of counsel in municipal courts in New Jersey.

\_\_\_\_\_ County Court \_\_\_\_\_ Municipal Court  
 CHARGES:  Non-Indictable \_\_\_\_\_ Docket No. \_\_\_\_\_  
 Indictable \_\_\_\_\_ Ticket No. \_\_\_\_\_

PLEASE PRINT

STATE OF NEW JERSEY }  
 County of \_\_\_\_\_ } ss AFFIDAVIT  
 (Income and Assets)

I, \_\_\_\_\_, upon my oath state that:  
 I live at \_\_\_\_\_  
 State of \_\_\_\_\_, My phone number is \_\_\_\_\_  
 My Social Security number is \_\_\_\_\_

I request the court to consider this affidavit as to my ability to:  
 PAY MY FINE  PAY AN ATTORNEY

1. I (am) (am not) employed. The name and address of my employer is \_\_\_\_\_
2. My salary is \$ \_\_\_\_\_ per \_\_\_\_\_.
3. I (am) (am not) married. I am responsible for the support of \_\_\_\_\_ children. Their ages are \_\_\_\_\_.
4. I (own) (do not own) a car. Year \_\_\_\_\_ Make \_\_\_\_\_
5. I (own) (do not own) any real estate. Market value \$ \_\_\_\_\_. Balance due on mortgage \$ \_\_\_\_\_. My mortgage payments are \$ \_\_\_\_\_ per \_\_\_\_\_.
6. I (rent) (do not rent) a (house) (apartment). My rent is \$ \_\_\_\_\_ per \_\_\_\_\_.
7. I owe money as follows: Debts or Bills \$ \_\_\_\_\_. My installment credit payments are \$ \_\_\_\_\_ per \_\_\_\_\_ for the following items \_\_\_\_\_
8. I have the following money: Cash on hand \$ \_\_\_\_\_. In savings or checking accounts \$ \_\_\_\_\_.
9. I receive \$ \_\_\_\_\_ per \_\_\_\_\_ from Welfare, \$ \_\_\_\_\_ per \_\_\_\_\_ from Social Security, \$ \_\_\_\_\_ per \_\_\_\_\_ from (specify) \_\_\_\_\_.

I have read this affidavit and the statements in it to the best of my knowledge and belief are true.

Subscribed and sworn to before me  
 this \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_ 197\_\_\_\_\_  
 Signature of Defendant

\_\_\_\_\_  
 Name and Title  
 (If charged with an Indictable offense, also complete the other side.)  
 A.O. Form: Approved 8/13/71 (R.3:27-1 and 2)

(If the defendant is charged with an indictable offense, asserts he is indigent, and has not affirmatively stated his intention to proceed without counsel, have him complete this application and then refer it to the Office of the Public Defender.)

APPLICATION FOR REPRESENTATION BY THE OFFICE OF THE PUBLIC DEFENDER

I have completed the affidavit on the reverse side to inform the Court as to my ability to pay an attorney and to have the Court refer me to the Office of the Public Defender as an indigent defendant charged with an indictable offense.

Check (and complete) whichever applies:

- I am presently in jail and unable to obtain bail.
I have been released on bail in the amount of \$\_\_\_\_\_ which was posted by\_\_\_\_\_.
I have been released without bail or on my own recognizance.

On the present charge I (was) (was not) represented by an attorney in the municipal court. If you were represented, give his name and address.

\_\_\_\_\_

I (do) (do not) have any other charges pending against me. If you do, and have an attorney, give his name and address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Signature of Defendant

NEW YORK

The requirements for the provision of counsel to indigents in criminal cases in New York State are outlined in Article 18B of the State's County Law. Under this Article, each county must adopt a plan to provide for counsel for indigents in any case where a defendant is charged with a crime. No appropriations from the state are attached to this article, and all funds must come from the county.

Three methods for providing counsel to indigents are described in Article 18B. The first is a public defender system; the second, an assigned counsel system; and the third the use of a legal aid society on a contract basis. A county may have a mixed system, and most have chosen to have a public defender or legal aid society with a back-up plan for assigning private counsel. Each county must submit its indigent defense plan to the state Judicial Conference for approval, and also must submit an annual report to the Conference on the assigned counsel system.

Under Article 18B, each county determines its own requirements for attorneys to be included on the assigned counsel list. Some counties only use volunteer attorneys, while others mandate that all members of the bar within the county serve indigent defendants. Under the state law, however, all attorneys are theoretically eligible, and may not be excluded if they are not a member of a local bar association. The basic fee schedule for assigned counsel is also included in Article 18B. At the time that our research was conducted, the fee was \$15 per hour for in court work, and \$10 per hour for out of court work with a maximum of \$300 per case for misdemeanors and \$500 for felonies. Efforts were being made at that time to double the hourly rates.

Aside from its general requirements for indigent defense services, including attorney eligibility and fee schedules, Article 18B permits counties to establish their own policies and procedures for providing defense counsel. As a result, there is wide variation in defense services throughout New York State. These variations include the type of defense system established, the eligibility requirements for defendants, the caseloads of attorneys, and the extent to which systems utilize students in the defense of indigents.

One example of a mixed defender system in New York State is in Nassau County, where the county contracts with the Legal Aid Society to handle criminal cases in the Mineola District Court, and an assigned counsel plan handles criminal cases in all of the county's outlying courts.

Most Legal Aid Society attorneys are hired as soon as they graduate from law school at a starting salary of \$12,000 per year, and are not expected to stay for more than three years. In the Criminal Division, the new attorneys begin working in the arraignment section of the district court. Later, they move on to felony hearings, then to non-jury trials, and finally to jury trials. This progression requires approximately one year.

During the first year that an attorney is on the staff of the Legal Aid Society, the society provides a series of 14 training lectures. In addition, the Legal Aid Society works with the New York City Legal Aid Society in a summer intern program. Nassau County gets three summer interns from this program, many of whom later join the staff of the Legal Aid Society.

One Legal Aid Society lawyer is present at all times in the arraignment part of the Mineola District Court. If a defendant indicates that he wishes to have an attorney and is indigent, the Legal Aid Attorney will interview the defendant for initial information as to his indigency status. It is a matter of policy that the Legal Aid attorney will not enter a plea of guilty at an arraignment. After the arraignment, the defendant completes a financial statement to establish his indigency. A Legal Aid Society investigator will conduct a very superficial investigation to verify the information given on the affidavit. If it is determined that the defendant is indigent, the Society will handle the case. In some cases of marginal indigency, the defendant will be referred to the county bar association's referral service, or to the assigned counsel program in the county.

In addition to the Legal Aid Society, approximately one-third of all felony and misdemeanor cases in Nassau County are handled by an assigned counsel plan that was developed pursuant to Article 18B. There are approximately 550 active attorneys on the 18B panel who handled 1,743 criminal cases in 1972. Two separate panels of attorneys are maintained for the assigned counsel plan: the first is a comprehensive list that is used to assign attorneys in misdemeanor cases; the second is used for felony case assignments.

In order to be admitted to the 18B panel in Nassau County, an application must be filed in which an attorney describes his or her legal experience. The bar association has a committee that screens these applications and makes the final decision as to eligibility. Although there is no specific training program for these lawyers, lectures

and seminars are occasionally sponsored, and summaries of cases of interest are published several times each year. In addition, a "brief bank" is maintained by the 18B plan administrator in Nassau County. The total budget for the assigned counsel plan in 1972 was approximately \$365,000.

New York City has chosen to provide indigent defense services through the Legal Aid Society, with a "back-up plan" known as the Indigent Defendants Legal Panel, or the 18B Panel. The Legal Aid Society of New York City works on a contract basis to handle legal counsel to indigents in both criminal and civil cases. In the criminal area, the only cases that are not accepted by the Society are Class A felonies, such as murder, and any case that might constitute a conflict of interest. These two categories of cases are handled by the 18B Panel.

During the fiscal year ending June 30, 1973, there were approximately 550 attorneys on New York City's 18B Panel, who disposed of 3,706 cases. Based on the fee schedule set forth in Article 18B of \$10 per hour for out-of-court work and \$15 per hour for in-court work, the City paid a total of \$1,325,217 for private assigned counsel during the fiscal year.

The majority of cases requiring the assignment of counsel in New York City are handled by approximately 370 attorneys on the staff of the Criminal Division of the Legal Aid Society. These attorneys work at all levels of the judicial system and represent clients in all types of cases except Class A felonies. There are Legal Aid lawyers present at all arraignments who are available to represent all defendants at these proceedings. Thus, the determination of indigency is not made until after a defendant's first court appearance.

During the fiscal year ending June 30, 1972, Legal Aid attorneys received nearly 190,000 case assignments in Criminal Court and the State Supreme Court, and disposed of approximately 130,000 cases. The average caseload for Legal Aid attorneys in these courts is 900, including both felony and misdemeanor. It should be noted that the rate of trial is only about 1 percent, which is 5 to 10 percentage points lower than the trial rate of other public defender systems or legal aid societies throughout the state and country.

The New York City Legal Aid Society has an extensive training program for its attorneys. Each new staff attorney attends a 25-day seminar that covers criminal law and trial procedure. After this orientation period, the attorneys begin working in the arraignment parts of the Criminal Courts, and eventually move to misdemeanor trials and then to felonies.

The Legal Aid Society has several programs for law students and legal interns. One program involves approximately 30 law interns from the law schools at Brooklyn College, Fordham, Columbia, New York and Hofstra Universities. The program begins in the spring semester of the students second year in law school and continues through the summer. According to the rules in the Appellate Division, law students who have completed two years of law school are permitted to practice in Criminal Court. Therefore, during the summer the interns handle cases in the criminal courts, and assist in the preparation of cases in Supreme Court. This work is continued in the fall semester, when the interns again work part-time. In this intern program each student is assigned to an individual attorney who supervises in the preparation of briefs and in the trial of cases in the Criminal Court.

Another program is sponsored by New York University and involves approximately 40 students. There are four supervising attorneys in the program, two of whom are paid by the Legal Aid Society, and two of whom are members of the faculty of New York University. Under the supervision of two of the lawyers, the students have a caseload of misdemeanor cases for which they are responsible from arraignment through trial. In addition, the students may assist the two other attorneys in the preparation of felony cases for the State Supreme Court.

Finally, there is a summer law intern program that is funded by the federal government through the New York City District Attorney's Office. The Legal Aid Society cooperates with the District Attorney on this program and receives the services of 15 legal interns for 15 weeks. These interns are assigned to Criminal Court in the five boroughs of the City.

A final example of the type of defense services provided in New York State, and one that is quite different from those of Nassau County and New York City, is the public defender system in Albany County. This office is staffed by 10 part-time attorneys, one full-time investigator, two full-time secretaries, and one part-time secretary who is located at the Police Court.

There is a Public Defender present at police court five days per week from 10:00 a.m. to 4:00 p.m. If a client is assigned to the Public Defender by the judge at arraignment, no eligibility form is completed. However, if a defendant comes to the Public Defender Office to apply for counsel, a financial statement is filled out by the client but no investigation is done.

The average time spent on public defender work by the attorneys is approximately 15 hours per week, for which they receive approximately \$7,800 per year. While the Public Defenders recognize the need for full-time attorneys, the county appears to be unwilling to provide the funds that are necessary.

Since the Public Defender in Albany County can handle all types of cases, including murder, the 18B Panel is rarely used. Cases are assigned to private attorneys only where there is a conflict of interest in the Public Defender Office or multiple defendants in a case. At the time that our research was conducted, there were only 12 members of the bar who had volunteered to be on the 18B Panel, who handled approximately 130 cases during 1972.

#### CONCLUSION

The preceding paragraph includes descriptions of defense services in only three of New York's 68 counties. Other counties were examined during our research, including Erie, Onondaga, Monroe, Saratoga, Schenectady, but we have chosen to present only Nassau County, New York City, and Albany County, because they represent the three major types of defense services in the state.

It was obvious throughout our research that there were broad variations from county to county in New York State in not only the structure and operations of defense services, but also in the quality and effectiveness of criminal representation that was provided. State law, in Article 18B, the county law, specifies the three types of defense systems that may be established by the counties, and also requires the submission of an annual report. However, there are no standards for defense services set forth in this law, and the administration

of 18B at the state level appears to be rather inconsistent. During the course of our research, it was evident that there was growing interest in improving the effectiveness and efficiency of defense services throughout New York State, and this interest along with recent development in the state's judicial system will undoubtedly lead to new developments in the provision of indigent defense services.

#### NORTH DAKOTA

Almost two years before the United States Supreme Court decision in Argersinger v. Hamlin, the State of North Dakota required that counsel be provided to indigents charged with misdemeanors in State v. Heasley (180 N. W. 2d 242). In most of the state's 53 counties, such services are provided through assigned counsel systems.

On January 1, 1970, the Burleigh County Bar Association published a regional survey of counsel to indigents throughout the state. Subsequently, the Governor of North Dakota supported a proposal to create a Regional Public Defender System that would be funded with federal and local monies and monitored by the state's Law Enforcement Council. Federal government funding would finance 75 percent of the project and the counties served by the Regional Public Defender would assume the remaining 25 percent.

The 10-county Regional Public Defender office began operations on April 1, 1971, with an annual budget of \$30,000. The Public Defender serves indigents in state and federal courts who are charged with felonies and misdemeanors, juveniles appearing in juvenile court, indigents facing involuntary hospitalization before the County Mental Health Boards, and those charged with parole violations.

In the case of multiple defendants, the Public Defender will usually represent only one defendant and the remaining defendants are represented by private assigned counsel.

During its second fiscal year (1972-1973), the Public Defender Office had a staff of two full-time attorneys, one part-time investigator, and one secretary. The second year's budget was for \$48,000, with

funding still being divided 75 percent federal and 25 percent local.

From April 1, 1971, to March 3, 1972, the Public Defender handled 112 felony cases, 74 misdemeanors, 22 juvenile cases, 6 mental health hearings, and 5 parole violation hearings. The breakdown of cases by county was as follows:

Burleigh	53.00%
Morton	25.00%
Grant	6.70%
McLean	5.80%
Kidder	4.90%
Mercer	2.70%
Oliver	.90%
Emmons	.45%
Sheridan	.45%
Sioux	0.00%

The Regional Public Defender program is under the general supervision of a five-man Board of Trustees: three attorneys (two from Burleigh County and one from Morton County) appointed by their respective County Bar Associations, "and two persons not directly involved in the judiciary or law enforcement area, one each . . . appointed by the Burleigh and Morton Board of County Commissioners."

In North Dakota, the court generally determines indigency. Some judges require the defendant to sign an affidavit declaring his indigency. Other judges merely take an oral statement from the defendant. If the private assigned counsel or Public Defender later finds that a defendant is financially capable of securing counsel, he notifies the

court of his findings. The court will then remove appointed counsel from the case.

There are no established fee schedules for private counsel in North Dakota. State law merely states that lawyers appointed to represent needy persons "shall be compensated at a reasonable rate to be determined by the court."

In the event an indigent wishes to waive his right to counsel in a felony, he is seldom allowed to do so. In misdemeanor cases, however, waiving the right to counsel is done with little difficulty. The defendant merely expresses a desire to proceed without counsel. Only in misdemeanors involving relatively long sentences is the right to counsel promoted by the court and waiver of counsel discouraged.

During the 1973 legislative session, the state legislature considered and rejected a bill designed to create a statewide public defender system.

PENNSYLVANIA

In 1965, the Pennsylvania state legislature established a Public Defender system under which the County Commissioners of each of the state's 67 counties were to appoint a Public Defender for representation of indigent defendants in felony and misdemeanor cases. At this time, the defender systems, which are not coordinated or controlled at the state level, employ mostly part-time attorneys. In some of the more rural areas of the state, the Public Defender serves a multi-county area.

Prior to Argersinger the right of indigents to have counsel appointed did not extend to summary offenses, although many of these did involve a possibility of incarceration.\* These cases are tried in Justice-of-the-Peace Courts by non-lawyer J. P.'s. Since Argersinger, concern has been expressed about providing counsel in these cases, but there has been no statewide effort to extend defense services. The defenders interviewed for this study indicated that in most cases involving an indigent defendant in a summary offense, if the J.P. thinks that he may impose a jail sentence, the case will be referred to a Public Defender. However, there is no data available to indicate how often a Public Defender is actually called into these cases.

The provision of counsel in summary offense cases in Pennsylvania is further complicated by the fact that J.P. courts are often quite far from the county seat, making it difficult for Public Defenders to represent clients in these courts. To solve this problem, a few

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\* In June 1973, a new criminal code was implemented in Pennsylvania which provided for possible incarceration in all summary offense cases.

counties have established assigned counsel systems for the J. P. courts.

In those cases where counsel is provided to indigents, the determination of indigency is usually made by the courts based upon an interview with the defendant and a subjective interpretation of need. A later determination is also made by the Public Defender based on a variety of standards. In smaller rural courts, J. P.'s and Magistrates ask defendants to fill out questionnaires and, if the defendant is deemed eligible, suggest that the defendant contact the public defender. Since the defendant frequently delays contacting the defender until after indictment, the defender often loses valuable time needed to preserve certain defenses. A somewhat related problem which occurs in certain smaller counties is the practice by some J. P.'s of extracting a waiver of counsel as a "trade-off" for release of a defendant on bail.

A recent evaluation of defender services in Pennsylvania, conducted by the Defender Association of Pennsylvania, concludes that there is a need, particularly in the rural counties of the state, for better representation. Outside of Philadelphia, Allegheny (Pittsburgh), and Dauphin (Harrisburg) Counties, the bar often consists of only a handful of attorneys, and the Public Defender is often a recent law school graduate who needs additional income. In most counties, the Public Defender is permitted to maintain a private practice.

To assist the counties up-grade their defense services, the Defender Association of Pennsylvania, a loose federation of all county defender agencies in the state, has applied for federal assistance to provide technical services and training, primarily in the area of appeals,

for those defender agencies which lack the resources and ability to provide such services.

There are two defender systems in Pennsylvania that deserve special attention because of their size and unique operations.

The Defender Association of Philadelphia

The Defender Association of Philadelphia is a non-profit, private association established in 1934 to provide indigent defense counsel in the Philadelphia area. Since 1964, the Association has been providing counsel on an on-going basis for all felony and misdemeanors assigned to it as well as for summary offenses, mental health commitments and parole and probation hearings in both state and federal courts. The Board of Directors is made up of 32 Association, City and community representatives who supervise the operation of the defender's \$2 million-plus annual budget.

The Philadelphia Defenders Office has 90 staff attorneys who rotate on a 24-hour basis to provide counsel at Central Police Court within approximately six to 14 hours from arrest to the defendant's first appearance. In addition, six staff attorneys serve the federal district court in the Philadelphia area. The defender's staff also includes 25 investigators, 10 social workers, 62 administrative and clerical personnel and 30 law interns -- law students who assist in para-professional activities, excluding representation of defendants in court. State statute does not permit law students to represent indigents in court and attempts by the legislature to permit this have been resisted by the Philadelphia Defender on the grounds that equal protection of the laws prohibits limiting the scope of law students' representation to indigents only.

As in most other counties of Pennsylvania, eligibility for representation by the Defender Association of Philadelphia is determined by the defender based on a cursory interview and affidavit of indigency signed by the defendant. State statute requires that the court either make the determination or designate another agency to make the determination. The Public Defender statute also requires that the defender "be satisfied" that the defendant is indigent. In Philadelphia this has been interpreted to mean that the defender should make the determination. Initially, however, a general determination for referral purposes is made by the court prior to first appearance by the ROR interviewer.

The standard used in Philadelphia by the Defender's Association following the ROR interview is the ABA standard of "substantial hardship." The private bar objects to the use of this standard because it feels that this makes it too easy for a criminal defendant to obtain free counsel. In fact, there are only a handful of private criminal defense attorneys in Philadelphia County. No distinction appears to be made between eligibility for felonies and misdemeanors as opposed to eligibility for representation for summary offenses in Philadelphia where the Defender assumes that all defendants charged with either a crime or a summary offense, if indigent, are eligible to receive representation.

All co-defendant conflicts which arise in Philadelphia are turned over to the Bar Association Referral Service which assigns counsel from a rotating attorney list, under which counsel is reimbursed by the court. The rate of compensation is determined by the local court. In addition, in Philadelphia only, the private bar is assigned all first-degree murder cases and the Defender is not permitted to represent these defendants.

The Defender Association of Philadelphia represents approximately 76,000 people a year. This includes approximately 9,000 juvenile cases, 14,000 Common Pleas cases and 18,000 Municipal Court cases. In addition, the agency files approximately 650 appeals per year, represents defendants in civil commitments, post-conviction hearings and in such administrative procedures as the filing of funeral petitions for release of a defendant from incarceration to attend a family funeral. The Defender Association of Philadelphia represents 75 percent to 80 percent of all criminal cases in Philadelphia.

#### The Allegheny County Public Defender

The staff of the Allegheny County Public Defender is composed of 17 part-time attorneys who practice an average of 25 hours per week in court and 12 full-time attorneys recently retained under a federal grant. The 12 full-time attorneys practice only in the rural J. P. Courts in Allegheny County on a "circuit ride" basis, and represent defendants at preliminary hearings for indictable offenses only. Where it appears that a Magistrate will imprison for conviction of a summary offense, the J. P. Court will initiate a request for counsel to the public defender. Otherwise, counsel will ordinarily not be provided in summary cases.

The court system in Allegheny County and throughout the state, except for Philadelphia, consists of J.P. Courts and Common Pleas Courts. There is no Municipal Court level except in Philadelphia. The Allegheny County Public Defender pointed out the need for establishment of such courts. Appeals of summary convictions from J. P. Courts in Allegheny County are taken directly to the Civil Division of the County Common Pleas Court.

While the court is responsible for the determination of eligibility in Allegheny County, the actual determination of eligibility is made by investigators of the Public Defender staff who have abandoned the "substantial hardship" test in favor of the strict financial eligibility test for civil representatives used by the Neighborhood Legal Services branch of OEO. In addition, a defendant who is unable to make bond, is on welfare, or who depends on a disability pension as his sole source of income is automatically eligible. Occasionally, the Defender's Chief Investigator will determine that a defendant is not eligible and refer him to the local Bar Association Referral Service. This occurs in about 25 percent of the cases. The vast majority of these referrals, however, are ordinarily appealed to the court which, in turn, applies a common sense subjective determination and re-assigns to the Defender Office. About 90 percent of those referral appeals are re-assigned to the Defender.

The 17 part-time attorneys in Allegheny County receive from \$7,000 to \$15,000 a year, and are not permitted to represent defendants assigned to the Defender who are found to be ineligible, nor are they permitted to maintain a private practice of criminal law. Generally, in cases involving conflicts among co-defendants, assignments are referred to the Bar Association.

The county budget for the 17 part-time attorneys and staff is \$368,000 per year. In addition, the 12 part-time attorneys are paid out of a \$260,000 LEAA grant for a total local criminal defense budget of approximately \$650,000. The non-legal staff includes six investigators and a limited number of clerical personnel.

The Allegheny County Public Defender conducts approximately 2,500 to 3,000 trials, and files approximately 400 appeals and post-conviction petitions annually. As there is no pre-trial conviction stage in Pennsylvania, all cases are disposed of at trial. Nonetheless, there is little or no backlog of criminal cases in the court and a defendant's average jail stay pending trial is from four to six weeks, as compared with the average of six to nine months in Philadelphia. Bail cases in Allegheny County average approximately nine months to one year from Grand Jury indictment to disposition.

Disposition statistics were kept by the Allegheny County Public Defender through October 1971. Since that time, disposition statistics are reported directly to the Bureau of Criminal Justice Statistics of the Governor's Justice Commission in Harrisburg by the Allegheny County Clerk of Courts.

One difficulty with the current statistics kept by both the Allegheny County Clerk of Courts and the Governor's Justice Commission is that they do not include summary offenses. Another difficulty in the past was that the Allegheny County Defender's Office reported only the total number of clients served, while the Prosecutor's Office reported total number of cases. The Clerk of Courts is presently compiling computerized statistics on a client basis and these statistics are available on a monthly and annual basis.

## WASHINGTON

Until recently, the State of Washington has depended on court assignment of private counsel for the defense of indigents accused of crimes. Although most jurisdictions in the state continue to rely on court appointed counsel, Seattle-King County, Clark County, and Spokane County have established public defender offices. During the course of this study, these three public defender operations were examined and are described below.

### Seattle-King County Public Defense System

This system, which is the largest in the state, consists of the Office of the Public Defense (OPD) and the Defender Association. The first of these is basically an administrative agency that oversees indigent defense services in the Seattle-King County area. Its staff consists of an Attorney/Administrator, 2 clerical personnel and an investigator. The Office has three main functions:

- 1) To determine eligibility of accused persons for free legal assistance;
- 2) To assign cases to the Defender Association or private attorneys;
- 3) To negotiate and administer the contract between the county and the Defender Association.

In addition, in 1973, the OPD began providing investigative support to private counsel assigned to represent indigents.

In its role as administrative agency for the assigned counsel system, the Office of Public Defense selects private attorneys from

a list that was compiled in 1970 by the King County Bar Association, and is periodically updated by the OPD with the advice of the Association. Attorneys are placed on the list at their own request. Less experienced attorneys are given minor cases initially, and are eventually given more difficult cases. Attorneys may ask to be removed from the list, or they may be removed for repeated non-acceptance of cases, or for poor performance in representing indigents.

Since there is no uniform fee schedule for assigned counsel in Washington, the Seattle-King County Office of Public Defense has established the following maximum fees:

Misdemeanors	\$70.00
Felonies, Guilty Pleas	
Justice Court	75.00
Superior Court	100.00
Felony Trials	
Case Preparation	100.00
For Each Day of Trial	100.00
For Total Case	600.00

In the event a lengthy and difficult trial results in fees in excess of \$600, the Office of Public Defense discusses this matter with the trial judge to decide if the additional fee is justified. If the reasons are valid, payment is usually made. In general, the OPD tries to keep attorney fees at \$12.00 to \$15.00 per hour.

The Defender Association of Seattle-King County began operations in 1969, with 90 percent of its budget coming from the local Model Cities program. The Association is governed by a 15 member Board

of Directors that consists of five individuals appointed by the King County Bar Association, five appointed by the government of the City of Seattle, and five appointed by the Model Cities Program of the City of Seattle.

The 27 full-time attorneys on the staff of the Defender Association are divided into divisions according to types of cases handled (see Exhibit 1 for caseloads). The number of attorneys in each division is as follows:

Felony Cases	10
Misdemeanor Cases	9
Juvenile Cases	7
Mental Illness Hearings	1

The Defender Association has 12 investigators who perform field investigations and initial interviews. In addition, there are approximately nine secretaries, a receptionist, a bookkeeper and an assistant bookkeeper.

A unique aspect of the Defender Association is its correctional counseling unit which is staffed primarily by ex-convicts. The counselors in this unit attempt to develop alternatives to incarceration through employment, treatment or rehabilitation programs for clients of the Defender Association. The Chief Public Defender stated in an interview that the ex-offender/counselors can communicate with and relate to the clients, and thus have been effective in reducing the number of defendants subject to incarceration.

Clark County Public Defender's Office

The Clark County Public Defender began operations on September 1, 1972, in Vancouver, Washington. Within the first three months, the

Office had accepted 70 felony cases, 110 misdemeanors, 4 probation hearings, 5 parole board hearings, 14 juvenile court matters, and 5 appeals from the Superior Court to the Court of Appeals.

In December, 1972, the staff of the Public Defender's Office included 3 attorneys, 2 third-year law student interns, 3 investigators (2 of whom were volunteers), 3 developers of alternatives to incarceration, 1 jail interviewer, and 1 legal secretary.

The Defender's Office places written statements in the jail informing defendants that every person deprived of his liberty, who is unable to retain private counsel, has a right to counsel at public expense. The Sheriff is required to provide all individuals booked into the jail with a copy of this statement at the time of booking.

Each weekday morning, a representative of the Defender's Office interviews every person in the jail who has requested counsel, either through direct contact with the Office or through the Sheriff. During this initial interview information is gathered on the defendant's eligibility, background, and need for or possibility of bail. The interviewer then conveys this information to the Public Defender who makes an immediate, preliminary determination of the defendant's eligibility. If the defendant is eligible, the Public Defender begins to act for his client immediately. If the defendant is ineligible, the Defender's Office assists in securing private counsel.

In determining indigency, the Clark County Public Defender considers the cost of private counsel in the specific case. In addition, defense services are usually provided if a defendant is: (1) "unemployed and

has no assets, insubstantial assets or nonliquid assets which are limited to the necessities of life," (2) "is on public assistance or a similar program, and has no other income," or (3) "is a member of a household which has less than \$2,500.00 income per year for one person, plus \$500.00 per year for each additional dependent person."

#### Spokane County Public Defender

The Spokane Public Defender has recently come under criticism by the State Auditor for unallowable costs, improper accounting of various project revenues, poor timing of grant and match fund monies, late progress reports, extending the grant period without written approval, and a lack of consultant agreements. In addition, the Defender's Office was criticized by the state Law and Justice Planning Office (LJPO) for "no advertisement" of the Public Defender's services in the county jail. The LJPO recommended that "(p)rovision should be made early for 'provisional' designation of indigency prior to defendant's first court appearance. This is already done in certain cases, such as murder and rape. In these cases, where the prosecutor guesses indigency and where he wants an early chance to examine the defendant, he calls the Public Defender." Currently, the Public Defender usually waits until the court refers clients to his office.

Between April 1 and December 12, 1972, three staff attorneys and three legal interns handled 590 felony cases, 44 juvenile appointments and 371 misdemeanor cases.

EXHIBIT 1

OFFICE OF PUBLIC DEFENSE  
CASE STATISTICS - 1972

COST PER CASE:

	<u>Completed Cases - 1972</u>	<u>1971 Comparables</u>
<u>Felony</u> - Completed Cases (Total)	2383 cases	2035
A. Public Defender: 1706 cases closed, \$270,000 paid under contract - average cost per case:	\$158.50	\$161.00
B. Assigned Counsel: 677 cases closed, 126,500 Paid assigned counsel - average cost per case:	\$187.00	\$208.00
<u>Misdemeanor</u> - Completed cases (Total)	935 cases	
A. Public Defender: 760 cases closed, \$46,500 paid under contract, average cost per case:	\$ 61.00	\$ 83.00
B. Assigned Counsel: 175 cases closed, \$15,400 paid to assigned counsel, average cost per case:	\$ 88.00	\$ 83.00
<u>Juvenile</u> - Completed cases (Total)	1090 cases	
1090 cases closed, \$70,000 paid Public Defender - average cost per case -	\$ 64.00	\$ 50.00
<u>Mental commitment, Parole, Misc., Defense Services: COMPLETED CASES (total)</u>		
No precise figures available on mental commitment hearings, (average 10 per week). Est. ment. commitment cases:	520 cases	
Miscellaneous assignments, (material witness, parole revocations, etc.) Total:	172 cases 692	
692 ment. commit. and misc. cases assigned, \$16,000 spent	\$ 23.00	\$ 80.00

(NOTE: This is a misleading figure. One part-time Defender attorney handles all mental commitment proceedings; other misc. case assignments average approximately: \$100.00/case)

EXHIBIT I

(Continued)

Distribution of Office of Public Defense operating costs results in an additional cost per case of \$13.

Costs per case are rounded to nearest dollar.

## WEST VIRGINIA

West Virginia law has long provided that a defendant indicted for a felony or misdemeanor who is shown to be indigent is entitled to have counsel assigned. Since Argersinger, there have been some attempts made to extend the right to counsel to defendants charged with violations of municipal ordinances. More often than not, however, Magistrates have been disinclined to assign counsel or in some cases have simply determined prior to trial not to imprison a defendant if convicted. At this time indigent defense is handled by assigned counsel systems administered at the county level.

In Kanawha County (Charleston), counsel is assigned in the Intermediate Court for felonies and Intermediate Courts were established in some counties by the legislature and have original jurisdiction over all felonies and misdemeanors committed in the county, as well as administrative jurisdiction over assignment of counsel. The Chief Judge of the Kanawha Intermediate Court maintains a complete list of all members of the Bar who practice in the County, excluding those who hold public office or are otherwise unavailable, and assigns cases on a rotating basis.

Counsel submit vouchers to the Court and the Court can certify payment of up to \$200 on a felony charge, which is paid by the State, and up to \$100 for each misdemeanor charge, which is paid by the County. Where counsel is assigned in a violation case, compensation is provided at a rate determined by the County, not to exceed \$100. In counties which do not have an Intermediate Court, counsel is assigned by the

chief judge of the criminal branch of the Common Pleas Court.

A defendant charged with commission of a felony or misdemeanor is interviewed by the Justice of the Peace as to need and if found eligible is referred to the Chief Judge of the Intermediate Court for assignment of counsel at the preliminary hearing. However, the Justice of the Peace ordinarily binds the case over to the Grand Jury and counsel is not usually assigned until after arraignment.

A defendant charged with a violation may also receive counsel but only if he requests it. Following any such request the defendant must file an affidavit alleging that he is "pecuniarily unable to employ counsel" and this affidavit is reviewed by the Chief Judge. The Judge then interviews each defendant and, if satisfied as to the defendant's allegation of indigency, may direct defendant to employ his own counsel. If, for example, a defendant owns an automobile, counsel will usually not be assigned in a violation case. The court feels that a hearing on indigency and the kind of verification required to substantiate indigency are too time consuming for the court and are ordinarily not undertaken.

## WYOMING

Wyoming has had statutes requiring the provision of counsel to indigent defendants for nearly one hundred years. Such services are provided by a decentralized assigned counsel system that is administered by each district court.

After an arrest, a defendant is brought before a justice of the peace for a preliminary hearing. It is at this time that the defendant is advised of his right to counsel and to court appointed counsel if he is indigent. In felony and high misdemeanor cases, if the defendant waives preliminary hearing, he is bound over to the district court where he is formally arraigned and again advised of his right to counsel.

An attorney is usually not appointed to a case until after the defendant's first appearance at a preliminary hearing. Since in most non-felony cases the preliminary hearing and trial are combined, there are instances in which a defendant is advised of his rights but is not really permitted to exercise them. There are some areas of the state, however, where a justice of the peace may appoint counsel prior to the preliminary hearing from a list provided by a district judge of the judicial district where the J.P. court is located. Fees paid to private assigned counsel in Wyoming are set by statute. For representing indigents accused of misdemeanors, an attorney may receive not less than \$15.00 nor more than \$100.00. In felony cases the fee is between \$25.00 and \$250.00; and in capital cases it is between \$50.00 and \$500.00. There are no statutory provisions for related expenses incurred by attorneys in justice of the peace or district court cases. Nor is

more than one fee allowed in cases involving multiple defendants. Thus, the fee determined by the court and paid by the county where the offense occurred is often inadequate, especially in multiple defendant cases.

Within the past five years, efforts have been made to improve and expand indigent defense services throughout Wyoming. The University of Wyoming has attempted to have local attorneys use law students to support appointed counsel. A number of legal service organizations have been created to provide legal counsel to the poor. And, in the 1973 Legislative Session, the Wyoming legislature passed a bill to create countywide public defender systems throughout the state.

Under the new statute, counties with populations of more than 35,000 must have a Public Defender Office, while in smaller counties the board of county commissioners may create such an office. Moreover, two or more adjoining counties within the same judicial district may establish a multi-county public defender system. The Public Defender is to be selected by a vote of the district court judges of his judicial district. The funds for Public Defender Offices will be provided by each county.

There are currently three legal services programs in Wyoming that provide assistance to indigents in misdemeanor cases. The first is Legal Services for Laramie County (Cheyenne), which is funded by the Office of Economic Opportunity and the Department of Housing and Urban Development. The organization, which has four staff attorneys, serves a population in the county of 56,360, with most of its work

concentrated in the city of Cheyenne. Although Legal Services devotes most of its effort to civil cases, it does have one full-time staff attorney assigned to misdemeanor cases.

Casper Legal Services, which is also funded by the Office of Economic Opportunity, represents indigents throughout Natrona County (population 51,264). The two attorneys in the office occasionally represent juveniles, as well as some traffic ordinance and state traffic law violations when there is a possibility of loss of license or incarceration. However, the office does not represent defendants in nontraffic misdemeanor cases.

The third program for indigents in Wyoming is the Wind River Legal Services program which is sponsored by the Arapaho and Shoshone Indian tribes, with funds from O.E.O. The office of the program is located in Fort Washakie and serves clients in Fremont and Hot Springs Counties. The program has a staff of two attorneys, one clerical personnel, and two para-legals who serve as investigators and interpreters of the Indian dialects. Wind River Legal Services represents indigents in justice of the peace and municipal courts, as well as in the Federal Court of Indian Offenses. This latter court has jurisdiction over misdemeanors committed exclusively on the reservation.

Although these three programs provide some legal assistance to the poor in Wyoming, only a small percentage of the work is in the area of criminal law. At this time, most of the defense services for indigents in the state are provided through the assignment of private attorneys in the district courts. With the new law, however, public defender services will be made available to some indigents at the county level.

**END**