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THE STRUCTURE AND FUNDING FOR CRIMINAL DEFENSE OF INDIGENTS IN INDIANA

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I METHODOLOGY

A. General

In October of 1973 the National Legal Aid and Defender Association (NLADA) was approached by the Indiana Criminal Justice Planning Agency to conduct a statewide survey of indigent defense services in Indiana. The request resulted from inquiries raised by the Indiana legislature about financial aspects of a statewide public defender bill which had been introduced into the Indiana General Assembly. Specifically, the legislature wanted to know how much such a system would cost the state government and how much relief the legislation would provide to the local governments.

As the Indiana Criminal Justice Planning Agency (CJA) had not budgeted for such a survey, funds were requested through the LEAA technical assistance contract with American University. The Indiana planning agency requested that NLADA conduct the actual on-site work and prepare the report.

A request was sent by the Indiana Planning Agency to LEAA Region V detailing the specific areas which were to be addressed by the indigent defense study. Among the matters which the Indiana Planning Agency requested to be under study were how many public defender areas should be established and the scope of representation that must be offered in light of Supreme Court decisions and present standards.

The National Legal Aid and Defender Association agreed to conduct the study. NLADA selected a team of three consultants, all with extensive field experience in indigent defense systems, to conduct the study under the guidance and suprevision of the national office. The members of the team were Arthur LaFrance, Patrick Hughes and Louis Frost. Professor LaFrance was a criminal specialist with New Haven Legal Assistance Association for three and one-half years prior to entering teaching. He is on the faculty

of the University of Maine, teaching criminal law and procedure, and is the co-author of a recent book, The Law of the Poor. Louis Frost is the chief public defender of the Fourth Judicial District (Jacksonville and Duval County) Florida, where he is in his second elective term. His staff consists of twenty-two attorneys, and he has been active nationally in defender programs, being a member of both the Board and Executive Committee of the National Legal Aid and Defender Association. Patrick Hughes was director of Defender Services for the National Legal Aid and Defender Association for three years. His practice included criminal trial work and he is now the director of a six attorney post conviction unit in the Illinois Appellate Defender Program. All three members of the team have been involved in defender studies in other states.

The Team's perspective and survey were statewide. Its base of operations, however, was Indianapolis, the largest population center. Any resulting bias was somewhat offset by compilation of statewide statistics and interviews (as indicated within) with individuals whose responsibilities and insights reached to other parts of Indiana. Any remaining bias may be corrected in an evaluation of Lake County's program to be undertaken within the next few months by a separate team from the National Legal Aid and Defender Association.

The Team spent much of its time gathering and reviewing statistics. A good deal of time was also spent analyzing past related studies and reports, to determine past relevant experience. The remainder of the time was spent interviewing those people who could afford a statewide overview of the state's court and public defense system or insights into particular problems in other parts of Indiana. All of this could most efficiently be

done from Indianapolis. In view of the limited time for the study, the team chose not to travel to other parts of the state.

The Team's methodology was as follows. It reviewed two extensive volumes of loose-leaf materials prepared by the National Legal Aid and Defender Association. These included material from the Indiana Criminal Justice Planning Agency (JPA) on caseload statistics. It also included statutory material concerning Indiana, including three recent legislative proposals concerning public defender systems. Several recent reports were excerpted, including those of the Indiana Criminal Law Study Commission, Indiana Civil Liberties Union, Institute of Court Management (ICM), American Judicature Society (AJS) and the recent comparative study for Indiana of the American Bar Association (ABA) Criminal Justice Standards and the National Advisory Commission (NAC) Standards and Goals.

Ample use was also made of two recent excellent publications. The first is NLADA's national defender survey, The Other Face of Justice, and the second, the National Center for State Courts (NCSC) publication, Implementing Argersinger v. Hamlin: A Prescriptive Program. Both of these studies are thorough, authoritative and contemporary and extensive references are made to them throughout this Report.

The team met in Chicago for a full day on March 25, 1974 at the offices of NLADA. There the members received orientation from NLADA staff and consultants. The team also reviewed the problems, materials and methodology. From there the team proceeded to Indianapolis, meeting with JPA staff on Tuesday. The team operated largely from

Indianapolis, drawing heavily upon the office facilities and staff of the JPA. Much of the data forming the basis of this report was obtained from the JPA, supplemented by extensive interviewing--either in person or by telephone--of people involved in the Indiana justice system: including judges, bar officials, prosecutors and defense counsel.

The Team was assisted immeasurably by several individuals. Among these were Professors Ivan Bodensteiner of Valparaiso University and Shelvin Singer of Chicago-Kent Law School, who were most helpful in orienting the Team. Jerry L. McIntosh and Antonia Cordingly of the Indiana Criminal Justice Planning Agency and their staff were of great assistance, particularly in collecting data.

The members of the Team were fortunate to be able to interview--and are greatly indebted to--a considerable number of people, including Harriette B. Conn, Public Defender of Indiana; Charles Thompson, former Reporter to the Indiana Law Revision Commission; Bobby Small, present Reporter to the Commission; Robert Colker, Deputy Attorney-General; The Honorable D. William Cramer, Presiding Judge of the Marion Municipal Court; Carl Stipher, Esq., President-Elect of the Indiana Bar Association; Michael Hunt, Public Defender of Monroe County; Darrell Diamond, Deputy Attorney-General; David Bahlman, Director of the Indiana Prosecuting Attorneys Council; Professor Patrick Mulvaney of the University of Indiana School of Law at Indianapolis; Niles Stanton, Director of the Indianapolis Lawyers Commission; Norman Metzger, Director of the Indianapolis Legal Services Organization; Dean Foust of the Indiana Lawyers Commission; The Honorable John Wilson, Judge of the Criminal

Court of Marion County; and The Honorable James J. Richards, Chief Judge, Superior Court of Lake County, Indiana.

From due respect for the candor and openness of these individuals, no views are specifically attributed to them in this report. The comments which follow are based instead upon a composite of interviews, research, observation, and statistical analysis, all weighed in the light of the Team's own experience and expertise. As such they reflect the views of the authors, who alone vouch for their reliability.

B. Statistical Analysis

A major obstacle for the team was in the basic area of statistics. There is no integrated, statewide reporting system for financial expenditures for defender services. Nor is there such a system for caseload data from courts. Such information is of course critical for estimating the defender needs of the state of Indiana and the cost of an effective system.

The statistical data underlying this Report is--of necessity--approximated. In the Team's judgment, however, these approximations are conservative and reliable. Statistical data were sought from the Indiana state government, the courts, the JPA, prosecutors and defender offices. These sources were checked against each other and against national sources, such as the NAC Commentary and Standards, the recent NLADA Defender Survey, The Other Face of Justice, the NCSC study of Argersinger, and earlier studies, such as the 1967 President's Crime Commission Report, The Challenge of Crime in A Free Society and its Task Force Report: The Courts and Silverstein's study, Defense of the

Poor (1967). These sources were reviewed in the light of the Team's own experience in criminal practice, in defender administration, and in evaluating other programs in other states.

To remedy statistical deficiencies, the Team undertook two direct studies. The first task was to determine, county by county, caseload statistics for felonies, misdemeanors, and juvenile prosecutions. The Criminal Justice Planning Agency had compiled, from a survey of court clerks, total criminal case load statistics (see Appendix A). The team further analyzed the underlying reports which went into the Appendix A charts for caseload breakdown and errors and omissions. Selected inquiries were also made to determine the presence and scope of error. The team then developed the indigent caseload totals which are reflected infra, at Part VI.

The Team undertook an extensive telephone survey, using three assistants, of all county auditors and public defenders. The purpose was to determine the present level of public defense or assigned counsel expenditures. The questionnaires used are attached as Appendices C and D. A high percentage of response was obtained, and the Team feels there is a high degree of reliability in the data obtained. That data and methodology are discussed infra, at Part VI E 2.

This Report does not contain a full evaluation of the quality and effectiveness of the present Indiana public defender and assigned counsel programs. That was not the purpose of the request for assistance from the Indiana Justice Planning Agency. Instead, this Report attempts to develop a statewide plan for

effective, adequate defender services. Some analyses of the scope and quality of existing programs is therefore necessary. But the primary purpose of this Report is to assess the need, cost and resources required for a statewide program.

II THE INDIANA COURT SYSTEM

A. Generally

The Indiana judicial system is a confusing asymmetrical composite of several layers of courts, often times with overlapping jurisdiction. For the Team's purposes and for the purpose of this Report the system may be summarized as follows. With the exception of two counties, there is a constitutionally mandated Circuit Court in each county for a total of eighty-eight courts. There is only one judge in each. Consequently, there are also thirty-six Superior

Courts of roughly co-equal jurisdiction with the Circuit Court. The staffing, powers and organization of the Superior Courts vary in each county. Most criminal prosecutions originate in either Superior or Circuit courts, which have established working relationships varying from county to county. Misdemeanors may also be heard in Justice of the Peace Courts, which cease to exist in 1976, or the eighty-four City Courts.

The Supreme Court is the highest court of appeal of the State. By Rule, it establishes procedures controlling the business of more than 150 local trial courts, and it administers standards of practice and conduct for lawyers and judges as well.

The Court is served by a Chief Justice and four Associate Justices. However, the Constitution now provides that the number of Associate Justices may be increased to as many as eight by action of the legislature. The incumbent Justices are subject to Statewide yes-or-no votes on the question of their retention in office as their former six-year elective terms expire. With approval by the electorate, they begin 10-year terms, and are subject to identical retention votes at 10-year intervals in the future. Under current law, retirement is required at the age of 75 years.

During the year ending January 1, 1973, approximately 200 appeals were filed in the Supreme Court. In addition, approximately 150 petitions to transfer to review the action of the Court of Appeals were filed in the Supreme Court, and 35 original actions requiring a hearing before the Court and requesting mandate or prohibition, primarily against trial courts, were filed in the Supreme Court. Thus, the Supreme Court deals in one year with approximately a total of 400 reviews, appeals and other matters for five Justices to consider.

The Court of Appeals was created as a constitutional court by amendment to the Constitution, ratified in 1970, and came into being on January 1, 1972. It succeeded an eight member statutory Appellate Court.

The Court of Appeals is served by nine judges. Three geographical districts of approximately equal populations have been established for the Court. Three judges serve each district and primarily review cases brought from their respective districts. The full court has a chief judge elected for three years by its members, and each district has a presiding judge similarly elected. These judges perform duties designed to facilitate the handling of caseloads and administrative matters.

The jurisdiction of the Court of Appeals is defined by the Constitutional provision and by rules of the Supreme Court. The Court of Appeals receive appeals from trial courts throughout Indiana and interpret and decide questions of law which

they raise. Generally, the Appellate jurisdiction of the Court of Appeals includes all, except that specifically reserved for the Supreme Court. Additionally, the Court of Appeals may review decisions of Administrative agencies, including the Industrial Board, Employment Security Division, and Public Service Commission.

The Circuit Courts are commonly referred to as county courts and are courts of original jurisdiction, presided over by a judge elected for a term of six years from the circuit. A circuit may be one county or a combination of counties.

Jurisdiction of Circuit Courts includes cases in equity, criminal cases, divorces, and all other matters not specifically conferred by law on some other court, board or officer. In all counties except those having a Juvenile or Probate Court, the Circuit Court and the Circuit Court judge have juvenile jurisdiction. The jurisdiction of each Superior Court is defined specifically in the statute creating and regulating it. For this reason, jurisdiction of a Superior Court in one County may vary considerably from that of such a court in another county.

Thirty counties now have Superior Courts. Eight counties have two each: Delaware, Elkhart, Grant, LaPorte, Madison, Tippecanoe, Vigo, and Wayne. In addition, there are a number of counties having only one Superior Court each but which have multiple judges serving these courts. They are as follows: Howard, two judges; Monroe, two judges; Porter, two

judges; Vanderburgh, four judges; St. Joseph, five judges; Allen (see special account which follows), six judges; Marion seven judges; and Lake, ten judges (plus the Lake Circuit Court Judge if he chooses to sit).

The Criminal Courts are commonly called legislative courts. The establishment of these courts stems from Article 7, Section 1 of the Indiana Constitution which provides for "such other courts as the General Assembly may establish." The Criminal Courts are courts of specialized jurisdiction. Both Lake and Marion Counties have Criminal Courts which exercise exclusive criminal jurisdiction in felony cases. The Marion County Criminal Court has four judges who are elected to four year terms under the party label system.

The Criminal Courts have original exclusive jurisdiction within the County of all crimes and misdemeanors (except where the jurisdiction is by law conferred on justices of the peace) and such appellate jurisdiction in criminal cases as may, by law, belong to the circuit court in counties having no criminal court. While the Criminal Courts have jurisdiction to hear misdemeanors, the Municipal Court in actuality hears these cases almost exclusively. Each of the four Marion County Criminal Courts, in addition to a Judge, employs a staff composed of clerks, court reporters, baliffs, and a secretary.

The Marion County Municipal Courts are unique to Marion County, Indianapolis. Burns Indiana Statutes (Section 4-5801 et. seq., as amended by Acts 1971) provide

for a municipal court consisting of fifteen (15) judges for any county in this State having a first class city. The 1970 census showed Indianapolis to be the only first class city in Indiana. The Municipal Court of Marion County is, therefore, the only court of its kind in the State. As the statute provides, the court consists of fifteen judges, fourteen of whom are trial judges and one of whom is the presiding judge.

The municipal courts are courts of record having jurisdiction of crimes and offenses violative of city ordinances, including the granting of injunctive relief and of cases involving violation of state law, where the penalty for such violation cannot exceed five hundred dollars ($500) in fines or six months imprisonment, or both. They also have original exclusive jurisdiction of all misdemeanor violations of State or city traffic laws or ordinances.

An appeal in any civil case, except those involving only violation of municipal ordinances, may be taken to the Circuit Court of Appeals. Appeals in criminal cases and in cases of violation of municipal ordinances may be taken to the Criminal Court of Marion County.

B. Reforms of Particular Significance for Indigent Defense

While this Report is primarily concerned with defender services, some commentary on--and changes in--the Indiana judicial system are essential. The effectiveness of any defender system depends in large part on the court system. The following observations are therefore submitted.

There is presently no uniform, comprehensive system of

reporting criminal caseload or defender expenditures. Absent such reports, adequate services cannot be effectively estimated, planned or budgeted. Ongoing review and evaluation are equally difficult without reliable statistics. This deficiency is obviously of significance in areas other than defender services and it would seem imperative that the Indiana courts adopt a comprehensive, uniform reporting system.

At present, Indiana courts lack coherent organization. The pattern of overlapping jurisdictions and individual judicial autonomy makes efficient administration and distribution of defender services extremely difficult. In addition, as noted infra, the autonomy of individual judges poses serious questions concerning the professional obligations and effectiveness of defense counsel. Reorganization of the Indiana courts, particularly in the light of the abolition of Justices of the Peace by 1976, has been proposed and seems in order. Pending such reorganization, it is important that defender services be given maximum autonomy in order to represent clients effectively before the courts.

Indiana Supreme Court Rules require that cases be tried within one year if the accused is on bail. Defendants in jail must be brought to trial within six months. Nevertheless, delay in processing cases, both civil and criminal, appears to be a severe problem. The American Judicature Society study in 1973, Criminal Court Calendar Management in Lake County, notes several causes for delay in court calendars.

It notes (p. 6) that "...cases become lost while defendants remain in jail," at least in the sense of not being regularly reflected on court calendars.

The Institute for Court Management conducted a study in 1972 of Lake County, reflected in a report, A Program for The Improved Administration of Justice in Lake County. In twenty-five previous studies, the ICM said, it had never before encountered such widespread dissatisfaction coupled paradoxically with "feelings of resignation, apathy and impotence." Extensive delays, of periods of several years, were found in civil court backlogs, caused in part by an automatic change of venue rule. Delay in the criminal courts prompted the ICM to recommend presentment within twenty-four hours of arrest; immediate appointment of counsel; probable cause hearing within seventy-two hours; and a pre-trial conference within three weeks.

Delay in part stems from the practice in some counties of "filing charges." In Lake County, the Institute for Court Management found, an arrested person will be lodged in a jail. Two to five days later the officer appears before the prosecutor, who reviews the evidence. An "affidavit of probable cause" is then prepared and reviewed by a commissioner. This constitutes the only inquiry into probable cause, and it is ex parte. At this point, a week may have passed since arrest and several more days may pass prior to arraignment. Defendants who cannot post bond according to schedule will remain in custody throughout this time. The average time lapse, once in

court, was three months from docketing to sentencing.

Delay in processing places an increased premium on the provision of adequate defense services. Understaffed defense services cannot process cases efficiently and may only contribute further to delay. An effective system of defense can expedite disposition, of particular importance to those in custody prior to trial.

Release on recognizance and use of summons to avoid custody are little used. There is no ROR for felonies. Limited ROR is available in one or two communities, but even then only for misdemeanors and in quantity limited by inadequate staffing of the ROR projects. Many people who insist on pleading not guilty remain in custody pending trial.

The extent of pre-trial detention in lieu of bond in Indiana was the subject of a recent study by the Indiana Civil Liberties Program, reflected in A Summary of Findings of The Pilot Justice Program (1973), submitted to the Board of Directors of the Irwin-Sweeney-Miller Foundation. In the counties studied, approximately half of those charged with misdemeanors were incarcerated prior to trial. Most of those in jail pending trial were charged with misdemeanors were from the county when they were being held. Often they were held on alcohol-related crimes and often (15%), they were juveniles. The average stay in jail was four days, while the average sentence if convicted was only ten days.

The American Bar Standards Relating to Pretrial Release (1968) 1.2 urge adoption of programs of release on recognizance. Conditions on release may be imposed. But exclusive reliance, as in Indiana, on money bail is unwarranted. A number of other states, and the federal courts with the Federal Bail Reform Act of 1966, have adopted successfully the Vera Foundation model of release on recognizance. Until ROR is adopted in Indiana, increased urgency exists for the creation of effective defense services, to reach detained persons quickly and to either effect release or a disposition of their cases.

III PUBLIC DEFENSE IN INDIANA

A. The Present System

Indiana has long guaranteed--as a matter of law--the rights of an accused to counsel in both felony and all misdemeanor cases. Bolkovac v. State, 229 Ind. 295 (1951). Everyone with whom the Team spoke was quick to point this out, and then to add that the guarantee was virtually ignored as to misdemeanors. Indeed, the legislative proposal for a statewide defender system (See Appendix E) was more restrictive than Bolkovac, being limited to those cases leading to imprisonment.

Defenders presently serve under three separate statutory authorities. One allows employment of public defenders in counties of 400,000 or more population. A second authorizes employment of defenders in counties of 100 to 175,000 people.

A third, passed in 1971, is a blanket provision allowing any county to contract with lawyers for defense services. There is thus statutory authority for county-by-county hiring of counsel, either as public defenders or on an appointed, case-by-case basis. Indiana has a mixed system, although the majority of counties employ only assigned counsel. Public defenders are used only in a few urban courts, and most of them are part-time.

Compensation varies widely. Assigned counsel may receive $200 for a felony in a rural county or $2000 in an urban setting; appeals reportedly range from $500 to $1500. Public defenders in the major courts receive approximately $6000 per year for roughly one-third of their professional working time. There are only three or four full time trial level public defenders, in model programs, and their compensation is approximately $13,000 to $16,000. The State Public Defender, who handles only post conviction matters and belated appeals, is paid $21,500. Her staff, which is fuil time, is paid $10,000 to $12,000 annually.

The Team did not conduct a qualitative survey of Indiana defense systems. In those counties operating by assigned counsel, selection is entirely within the discretion of individual judges. It may therefore be expected that the assigned counsel system works no better or worse in Indiana than it does nationally. And certain defects of particular importance will be noted later (infra, part III,C,). At this point, some aspects of the Indiana public defender programs, which were examined in more detail may be discussed briefly.

The State Public Defender office has as its principal function and responsibility the representation of individuals seeking relief from the denial of post-conviction remedies and are a consequence of collateral attack. By statute, trial court judges in Indiana may request the state public defender to represent defendants appearing before them, but in actuality, this is rarely done. The office does not undertake training or administrative functions affecting local defenders.

The major source of cases come from assignment by Indiana appellate courts after a petition has been filed by a prisoner. Some late appeals are handled by the office and on a few occasions appeals will be prepared for recent conviction. The number of appeals of any kind handled by the office is considerably less than the number of cases handled which do not result in appeal.

Since the new post-conviction remedy rules became effective in Indiana on August 1, 1969, the office has received from trial courts 1,415 petitions for post-conviction relief in addition to unnumbered other referrals of petitions for hearings to avoid laying out fines and costs.

The average of post-conviction petitions filed annually by the office is 300. Last February, there were 349 filed on the desks of eight deputies handling trial court petitions still in those courts or in the preliminary interview stage. At the present time, the office calendar lists 61 cases in which appellate records or briefs are presently being filed.

Ms. Conn has greatly enlarged her staff over four years to ten attorneys and has a budget of approximately $180,000.

There are presently two model defender programs being funded by the Indiana Justice Planning Agency, one in Monroe County and the other in Tippecanoe. Each has two fulltime attorneys and is budgeted at $40,000 and $30,000 respectively. They represent a response by the JPA to the defeat of legislative proposals for statewide public defender systems, and an effort to provide models for an effective statewide system.

The Monroe County public defender is full time, as will be his deputy by June. His salary of $16,000 comes from a budget of $47,000. There are two part-time secretaries and a dozen law students. The caseload in 1973 was approximately 200 felonies, 200 misdemeanors, and 30 juvenile matters. This was a substantial increase over previous indigent defense. In felony matters, the public defender is appointed in some 69% of cases, but in a lesser percentage of misdemeanors. The public defender is hired by and responsible to a panel of judges and lawyers.

The Tippecanoe program has lesser funding and staff and is appointed in some 51% of felony cases.

Elsewhere, felony representation is by public defenders who are part-time, serving at salaries of approximately $6000 for one-third of their professional, working time. In this respect the Marion County Criminal Court is typical. Four judges each have five public defenders. Each judge appoints his own attorneys. They serve in no other courtroom and rarely appear before other judges.

As limited as felony representation may be, that afforded in misdemeanors is even more limited. Misdemeanor representation in Marion Municipal Court, for example, has been little affected by Argersinger v. Hamlin. The present public defender budget is $52,000, which the Presiding Judge does not expect to increase, despite a misdemeanor caseload in the court of some 50,000 defendants and a traffic volume of 200,000. Presently, attorneys are assigned on a case-by-case basis, at approximately $200 to $300. This would generate a caseload of 250 to 300, or perhaps .1% of the court's total volume or 1.2% of its misdemeanor volume.

In Marion County, misdemeanor representation is also provided by a panel of volunteers administered by the Indianapolis Lawyers Commission. The services are inadequately funded, by definition. They are also inadequate for the total volume of thousands of cases and, of course, often cannot provide a full range of services even to those clients actually represented.

The panel has only fifty to sixty attorneys, of whom only ten to fifteen are active at any one time.

Juvenile representation most often occurs in the Circuit or Superior Courts, since there are only four Juvenile Courts. The Team could not estimate the quality or adequacy of juvenile representation, except to note that many juveniles go unrepresented and there have been reports that In Re Gault has little impact in juvenile courts in Indiana. This appears not to be true of the Marion County Juvenile Court, where the Indianapolis Legal Services Organization has been providing three attorneys to 1000 juveniles annually for the past three years. There are no other full-time juvenile services in the state, and the Marion County demonstration project will end in June, 1974. There is presently no plan for continued service.

An analysis of the Lake County Juvenile Court appears in the Institute for Court Management's 1972 study, A Program for the Improved Administration of Justice in Lake County, at pages 97-124. It is, with Marion County, the only specialized Juvenile Court in the state. Public defense services are rendered in some degree by legal aid lawyers. Court appointments, rare prior to 1972, apparently were increasing. But the overall picture, in contrast to Marion County, is of deficient defense services.

B. The Quality of Service

The uniform reports are that the volume and quality of service are low, although the Team could not confirm this by direct observation.

Defenders may have private practices. Their public defender practices are limited to the appointing judge's court. In consequence, pretrial motions, hearings, jury trials and appeals are reportedly rare. Limitation of practice by and before the appointing judge inevitably creates an aura of political patronage surrounding defender services, with a consequent chilling of vigorous advocacy.

Undoubtedly there are extremely competent attorneys representing indigents in Indiana. This Report cannot attempt to present a comprehensive evaluation of how widespread may be the deficient or competent services. But certainly many indigents are not being reached (see infra, Part VI) and the quality of service being rendered may be gleaned from the following excerpt from Kittel, Defense of the Poor: A Study in Public Parsimony and Private Poverty, 45 Ind. L.J. 90, 91-95 (1971):

> (X)County employs a public defender system to provide for defense of the poor in the criminal courts; no defense attorneys are supplied poor defendants who appear before municipal or magistrates' courts. The criminal court judges appoint the public defenders on a partisan political basis, although they do not clear their appointments with the local political organizations. Public defenders generally leave office with the appointing judge. Although the applicable statute is silent on the matter, it appears to be generally accepted that the judges may dismiss as well as appoint their public defenders. Several attorneys interviewed said that public defenders had been fired.
>
> In the summer of 1969, each judge appointed four public defenders; in the past, some judges had appointed three. The positions are part-time, and all public defenders practice law on a full-time basis. All public defenders were allowed to practice in civil and criminal courts other than the court to which they were assigned. Some criminal court judges have allowed their public defenders to handle private cases in their own courts.

The resources furnished the public defenders are extremely limited. They operate without the support of a central office and depend for advice solely on informal consultation with former or present public defenders or fellow attorneys...

No investigation staff is assigned to the public defenders. Virtually all the individuals interviewed stated that this was a weakness of the system, resulting in the presentation of poorly prepared cases. Several public defenders indicated that a white public defender investigating a case in a black neighborhood frequently is distrusted and unable to secure information...

Public defenders are not supplied to poor defendants for any proceedings (including preliminary hearings) in the municipal or magistrates' courts. Occasionally a judge may ask an attorney, if one is present, to advise a defendant of his rights. The attorney gives immediate, on-the-spot advice for which he is not compensated. However, even this limited representation is not supplied regularly in these courts.

As a result of the failure to supply public defenders in municipal or magistrates' courts, the poor are not assigned counsel until arraignment in criminal court. Thus police arrest, initial appearance, filing of the affidavit or grand jury indictment and preliminary hearing will have preceded the assignment of counsel. Generally a defendant will have to wait at least 2 weeks following arrest, and frequently much longer, for his arraignment. This is particularly the case when the prosecutor asks for a grand jury indictment. When the grand jury has a heavy backlog of cases, an occasional defendant may wait as long as 3 months following his arrest before arraignment.

There is no provision made for defense of the poor prior to arraignment day. There is no public defender office to visit or telephone listing to call. The police do not put the defendants in touch with the public defenders.

On arraignment day, the judge assigns a public defender to represent poor defendants. Assignment is made by rotation; the public defenders in each court are given approximately equal numbers of defendants. Determination that a defendant cannot afford to hire his own attorney is made at this time. If a defendant has neither posted bail nor hired an attorney and states that he does not have the means to hire an attorney, he will be determined to be without sufficient funds and assigned a public defender. If a defendant is able to post bail, he generally will not be assigned a public

defender. No investigation of lack of means is made other than the judge's brief questioning on arraignment day. After the assignment of a public defender, the defendant and public defender confer privately for a few minutes. This is the public defender's first contact with his client, who has been arrested, imprisoned, and perhaps questioned by the police; who either will have been indicted by a grand jury or will have had an affidavit filed against him, and who may have signed a written confession or made damaging oral admissions. Almost without exception, the poor defendant then waives reading of the affidavit or indictment, pleads not guilty and asks for an early trial.

Frequently, the public defender client later will change his plea from not guilty to guilty.

When a poor defendant pleads guilty, the total court time spent by the judge rarely exceeds 10 to 20 minutes. Court trials generally do not take longer than an hour or two; some are finished in 30 minutes. The judges occasionally may express irritation with lengthy testimony and take steps to shut off testimony they deem irrelevant. Jury trials require elaborate preparations, are more formal and generally require 1 or more days to try. A trial for a major offense, such as first-degree murder, may take a week or two.

C. Problems of Particular Concern

Later in the Report, there will be a discussion of a proposed system of defense services for Indiana. But certain aspects of particular concern in the existing system may be noted here. These should be considered in the light of the discussion earlier (Part II.B) concerning needed reforms of the judicial system.

First, there is no structure or system to defense services in Indiana. This is true on a state-wide basis in the sense of an administrative, training or appellate structure. Nor is there a state prescription for a pattern of services within a county. Each county is free to determine the mode, form, extent and support of defense services.

In contrast to the public defender system, the prosecution is relatively efficient and effective. Prosecutors are organized on a county basis, serving all the courts in a county, and not limited to particular judges or courts. Their staffs are paid up to $17,000. Training programs are conducted; indeed, a three day LEAA state-wide program was being conducted while the Team was on-site. They have extensive supporting services within their own offices and in state agencies, including the Attorney General and the Prosecuting Attorneys Council. The prosecution could thus well serve as a model for the organization of defender services.

One aspect of the existing defender system which the Team found particularly troublesome was the appointment of defenders by an individual judge, before whom the defender must then practice. That is, a defender might be appointed by a judge and then limited to practicing before that judge alone. This practice is far from uniform, but reportedly exists in a significant number of superior courts. In theory, changes of venue are available automatically in Indiana. In practice, defenders appointed by--and obligated to--a single judge are discouraged from appearing before other judges. The implications of this for vigorous, independent advocacy are obvious.

The Institute for Court Management, in studying the courts of Lake County, proposed improvements in the public defender system. Among these, of course, were recommendations concerning increased staff and funding. But also, the ICM urged (A Program

for The Improved Administration of Justice in Lake County, p. 83):

> The system should be established so that all those involved are free from political influence and are subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The existing practice of the Criminal Court judge appointing public defenders should be discontinued. Instead, the system should be administered by an independent board of trustees.../which/ should not include judges or prosecutors...

In a number of counties, there may be substantial delay between the time of arrest and first contact with counsel. This is because counsel usually is not notified or appointed until the first court appearance. In some counties, that appearance may be delayed for a week; in others, it may be only a few hours. Because there is no extensive use of ROR in misdemeanor cases, and virtually none in felony cases, such delay at a minimum precludes early argument as to bail. It may also impede trial preparation.

The extensive use of part-time defenders has led to predictable abuse. This is not limited to rendition of inadequate services. It also involves the practice of approaching an indigent and bargaining over services to be rendered. Upon payment of money, the defender shifts the indigent to his "private" clientele and provides more extensive or effective services. The Team could not ascertain the frequency or extent of this practice, but it is sufficiently widespread to be a matter of urgent concern.

There is presently no standard definition of indigency. This, of course, is true of many states other than Indiana. But there are some particularly troublesome variations in Indiana. Reportedly, some judges will not appoint counsel if the accused has posted bond. Others may raise bond, remand

the defendant to custody and appoint counsel. Still others may require a defendant to sell assets, such as a car. In some felony courts, counsel are appointed in 20% of cases, in others in 60%. In misdemeanor courts, even in major urban centers, the rate may be 1%. The standards seem more rigorous or oppressive with appointed counsel than with public defenders.

These problems are not unique to Indiana. Lack of structure, political patronage, undue judicial influence, delay, part-time inefficiency, unclear standards are all matters which have been--and remain--of concern elsewhere. But they can be dealt with effectively, as indicated infra, Part V.

IV REFORM

A. Past Attempts

The problems noted earlier have been a matter of concern to many Indiana citizens and agencies. The Indiana Criminal Law Study Commission, the Indiana Bar Association and the Indiana Civil Liberties Union were among these. Legislation has been drafted and submitted to create a state-wide public defender system.

In the 1971 and 1973 legislative sessions, public defender bills were defeated. These had been drafted by the Indiana Criminal Law Study Commission. The bills provided, in essence, for a state Public Defender to be appointed for four years at a salary of $25,000. (See Appendix E.) He was empowered to set up a state-wide system, hiring staff and creating Public Defender Areas. He would be subject to the Advisory Committee,

consisting of a Supreme Court Justice, two judges and two attorneys, which would also nominate Defender Candidates for consideration by the Supreme Court. The Public Defender was empowered to provide services to anyone eligible at all "critical stages of the proceeding". (§ 8(b)). This could be through staff, panel attorneys or contract attorneys and could be offered as soon as a person was detained (§12), subject to a later judicial determination of eligibility. (§ 13).

The reasons for the defeat of the Defender bills are not entirely clear. Several people attributed defeat to the unavailability of cost data. But when pressed--and this was confirmed by others--the principal reason seems to be the absence of an effective group seeking passage. There is, the Team was advised, no effective state voice for the indigent bar. Existing defenders are largely wedded to county patronage positions, and the counties do not wish to lose patronage. Only civic groups, such as the Bar Association, the League of Women Voters, the Indiana Civil Liberties Union, and the Law Revision Commission worked for an effective defender system.

It was felt necessary in the bills introduced to the legislature to allow counties several choices of public defense, including contracting for services, setting up a defender agency or assigning counsel. It was also felt that an opportunity not to participate in a state-wide system must be afforded. The reasoning was that some existing defense counsel and

judges would defeat the bill. With these provisions, it was hoped, opponents might be mollified, since they could avoid the harmful effects of imposed public defense.

A major factor causing resistance to change was financial and political investment in the existing system. Many of those interviewed emphasized this. Judges are elected; they in turn hire attorneys, either as assigned counsel or public defenders; those counsel are paid. The potential for patronage is clear. In microcosm it is well represented in the Criminal Court of Marion County, where one judge has five part-time public defenders, each earning $6,200. In addition, his budget for appeals amounted to $50,000. This one judge, then, has sole power to distribute over $80,000 in public funds annually. There are three other judges on the Criminal Court of Marion County.

Another factor cited as defeating the Public Defender bill was that it provided for a fee of $5.00 to be taxed as costs in all criminal and traffic cases, whether or not the Public Defender was involved in the case. This fee would be deposited in the general state fund, but would "be dedicated to the Public Defense Fund and....used for that purpose only." Several people mentioned this provision as contributing to the defeat of the bill. Costs are already close to $45 and are viewed, it is reported, jealously by the prosecution and distastefully by the public. Adding more to that burden is unpopular.

The proposal offered later in this Report reflects somewhat

these political realities. A state-wide public defender office seems essential. But it is coupled, as will be seen, by a maximum opportunity for county or regional autonomy and a minimum of centralized bureaucracy. Nevertheless, the reporting Team declined to consider--and would urge rejection of--political pressure, financial or otherwise, which might affect the quality or scope of effective services.

B. Pressures for Change

The need for expanded defender services stems in part from constitutional imperatives. The United States Supreme Court has steadily broadened those portions of the criminal process which now require counsel, so that counsel must now be available from lineup, Wade v. United States 388 U.S. 218 (1967) and interrogation, Miranda v. Arizona, 384 U.S. 436 (1966) to probation revocation, Mempa v. Rhay, 389 U.S. 128 (1967) and appeal, Douglas v. California, 372 U.S. 353 (1963). The Court has also expanded the definition of those crimes for which counsel must be appointed to include juvenile offenses, In Re Gault, 387 U.S. 1 (1967) and misdemeanors where incarceration may result, Argersinger, V. Hamlin, 407 U.S. 25 (1972).

Pressures for reform take many forms. A public defender in Lake County is being prosecuted federally for alleged kickbacks or extortion from indigent appointments. Suits are now pending concerning aspects of defender services and corrections. Other suits are being seriously contemplated concerning defender

services, particularly with respect to misdemeanor representation (or non-representation). Aspects of such litigation would embrace the inadequacy of service in terms of volume, standards of indigency, conflicts between private and public practice for defenders, the limitations imposed upon defenders by their appointing judges, and the overall ineffectiveness of services which do not vigorously pursue pre and post-trial motions, proceedings and relief.

Support for defender legislation or programs may come from several Indiana foundations now considering entry into the criminal justice area. There has been prior involvement by some foundations providing "local match". More extensive involvement is now contemplated, perhaps for funding programs and legislation in the areas of defender services, bail reform, substitution of summons for arrest, or corrections.

Whether these pressures will be sufficient to lead to legislative change can not be predicted. But an adequate defense system can be constructed which may have a somewhat greater chance of legislative success than prior efforts. That is the subject of Part V.

V. AN ADEQUATE SYSTEM

A. State-wide Standards

The bill which was defeated in the past legislature and which appears in Appendix E is in many respects very like the proposals of the Model Public Defender Act, the model proposed in the

National Advisory Commission Criminal Justice Standards and Goals and the American Bar Association Standards for Criminal Justice. It is also akin to those statutes adopted in states now having state-wide public defender systems. It proposes, as noted earlier, a strong, extensive state-wide defender office.

The National Advisory Commission on Criminal Justice Standards and Goals has urged a system of effective state-wide public defense. Selection of the Chief Public Defender should be non-political, by a state board, and he would have full authority to hire staff. The ABA, NAC and Model Defender Act all agree on this. Assigned counsel would be used to complement the defenders, and would be coordinated by the defenders. Standards 13.5, 13.15 (NAC). Financing would be by the State, not localities, Standard 13.6, with some allowance for local differences. Hiring, under such proposals, would be by the centralized State Public Defender office.

Sixteen states now have state-wide defender systems. A profile of a typical state, New Jersey, appears in NLADA's survey, The Other Face of Justice, at pgs. 32-35. Of twenty-one counties, seven have their own defender offices; the others are grouped into administrative areas. There is a separate appellate branch with thirty attorneys and a separate administrative staff. Salaries begin at $13,000 and rise to $35,000 for the State Public Defender. There are 138 full-time attorneys, 55 part-time attorneys, 125 full-time investigators and 136 secretaries. Clinical law students are also involved. A panel

of 600 private attorneys represented some 6,846 defendants, or 22% of the total caseload of 36,000. The total budget was $6,500,000.

State-wide defender systems were adopted in 1972 by Kentucky, Missouri, New Mexico, Nevada and Vermont. Legislation is now pending in fifteen other states. If passed, these bills would bring the total to 31, or a majority of the states. Such legislation varies widely in content, but generally provides for an autonomous Chief Public Defender, a full time professional staff, a panel of private attorneys, and expanded training and supporting services.

The models and experience summarized thus far only establish the need for and general acceptance of state-wide standards for defense services. Such standards could deal with the problems discussed in III. C. Thereby, more effective representation could be afforded.

A separate question remains, however, as to administration and funding of such services. Presently in Indiana these both remain with the counties. The attempt to change this contributed to the defeat of public defender legislation at two separate legislative sessions. Hence, the function of the state-wide office requires special attention. The Team urges in the next sections of this Report that there be a strong state-wide office for appeals, training and liaison, but that trial services remain on a local basis, organized by regions, as described in Appendix F and Part VI D, infra.

V B. Statewide Administration and Local Autonomy

The need for a state wide defender unit is well illustrated by the organization of the prosecution in Indiana. Integrated prosecutorial services are available within each county. In addition, at the state level there are three agencies of significance. The Attorney-General offers appellate services and some technical assistance. The Indiana Prosecuting Attorneys Council offers technical assistance, training and legislative liaison. These are of considerable value. The State Police afford investigative and expert assistance. All of these functions are of value to the prosecution; they would be of no less value to the defense.

A state wide defender system should thus have a strong central office to take appeals, provide training and technical assistance and undertake legislative liaison. This could nevertheless be consistent with county autonomy. Both the NAC Standards 13.6 and 13.7 and the ABA Standards on Defense Services, § 1.3, urge that local governmental units be allowed to choose the plan they wish to implement, although they simultaneously urge creation of a strong state-wide public defender office. Empowering that office to undertake appeals, training, technical assistance and liaison would be a major step forward for Indiana.

Statewide systems are discussed by the National Center for State Courts, in their recent publication Implementation of Argersinger v. Hamlin: A Prescriptive Program Package (1974). The NCSC noted that (p. 12):

> Despite the fact that there are many excellent county-level public defender systems, a major problem with this structure is that unequal distribution of financial and legal resources within a state will often produce severe inequities in defense services on the local level.

A statewide public defender agency was "highly recommended." But the NCSC emphasized they would still leave ample opportunity for local administrative autonomy, with standard-setting, financial and professional, at the state level (pgs. 12-15).

The importance of statewide support and provision of training is underscored by the youth, inexperience and turnover reflected in Indiana's public defender programs. This is also a problem nationally. The NCSC Implementation publication (p. 18-21 emphasizesand develops the role of a statewide public defender office in providing training and technical assistance to local and staff attorneys.

This could be consistent with--and support--county-based or regional (see Appendix F) defender systems, which would hire their own staff. Financial and case service standards could be set either on a statewide or county-by-county basis, depending no doubt on the source of funding. That presently comes from county budgets.

Selection of the State Public Defender should be by a system calculated to assure independence and professionalism. The NAC Standards (13.8) and the ABA Standards (Defense Function, 1.4) concur in this, as does the legislation which

has been proposed for Indiana. This would avoid patronage at the state level. The State public defender then should be free to hire his staff, with possible review in his governing board. Hiring would then be strictly on merit. Hiring of attorneys in the county or regional programs should be similarly structured. The Area Public Defenders should be selected by non partisan boards, and then also be left free to hire their staff or select panel attorneys on merit.

County selection processes and panels similar to those selecting the State Defender could end the risk of patronage now operating at that level. Each county could select its own defender on merit. This should be coupled with a provision that a defender no longer serves only one judge but an entire court. The county would still be assured of being served by local attorneys, pursuant to a plan it chose to adopt.

At present non partisan boards are involved in selections in various aspects of the Indiana criminal justice system. There is a modified Missouri Plan for the Court of Appeals. Judges on the Marion Municipal Court are selected and screened by a nine member commission, which may by a seven vote majority bind the Governor to their recommendation. The public defender of Monroe County is presently selected by a committee of attorneys and judges.

A system of selection by counties may, in some respects, not be as desirable as a state wide staff, centrally hired

and administered. Indeed, multi-county panels might be essential, since many counties are too small to afford adequate defense budgets. Yet the principle of autonomy could still be preserved if hiring were by area panels, along the lines suggested by Appendix F, which reflects population and administration considerations.

A regional defender system was discussed by the National Center for State Courts in its publication, Implementation of Argersinger v. Hamlin: A Prescriptive Program Package (1974 (pgs. 49-50)). It noted such approaches "have considerable potential for improving the quality of defense services in rural areas." Such programs are now in use in North Dakota and Florida.

The need for regional offices is particularly imperative in rural areas, where one county's caseload would not alone justify a public defender. This has been consistently recognized elsewhere. (See NAC Standard 13.14). Regional offices may also be needed in major metropolitan areas where court caseloads, jurisdiction or the urban population may affect more than one county.

The Areas indicated in Appendix F will permit selection of a public defender either by appointment through a panel, however composed, or by election. The Area Public Defender could be listed on the ballot of his constituent counties. This may give due weight to the expressed desire to maintain home rule on the part of many interviewed by the Team. The Team's preference, shared by the ABA, NAC and the Model Defender Act, is however for appointive, non-partisan selection.

Regardless of the mode of selection, the Team's firm conclusion is that the public defender in a county or area should have full authority to select, supervise and administer his staff.

The state-wide defender office could support and supplement the independence and service of the regional defenders. To some extent Ms. Conn's office does this now. Indeed, the recently expanded legislative authority for her office provides much of the framework recommended in this report. The Team therefore recommends that initial implementation of this Report begin with a Justice Planning Grant to Ms. Conn's office, both to expand her office and to provide a vehicle for full implementation of this Report.

In conclusion, then, the Team urges that Indiana adopt the values inherent in earlier legislative proposals: autonomy, merit hiring, expanded service and improved administration. But that this be done consistent with a de-centralized system, with trial service not being rendered by the state wide office. Trial service would be rendered by counties or preferably by area defender offices, embracing several counties, as indicated in Appendix F. The staffing and caseloads of those offices is projected infra, Part VI D.

C. Part-Time Defenders and Assigned Counsel

While local autonomy may be a necessary political compromise, it will nevertheless compound the difficulty of assuring effective counsel. The smaller the administrative unit, the greater becomes the likelihood of using only part-time defenders or assigned counsel. Most commentators and studies agree that full time defenders render better services at less expense. Hence the multi-county area defender concept proposed herein (see Appendix F) is important to assure improved full time defender services.

Part time defenders are used in other states. NLADA's national survey, The Other Face of Justice, p. 19-21, reflected that some 60% of all staff attorneys have outside practices, but only 30% have outside criminal practices. Certainly Indiana should prohibit the present practice of defenders representing "private" criminal clients, particularly if administration of defense services remains with local government. As to part time staff, § 3.2 of the ABA standards on Defense Services provides:

> 3.2 Restrictions on private practice. Insofar as local conditions permit, the defender office should be staffed with full-time personnel. All full-time personnel should be prohibited from engaging in the private practice of law, and part-time personnel should be prohibited from engaging in the private practice of law in criminal cases.

The National Center for State Courts, in their publication Implementation of Argersinger v. Hamlin: A Prescriptive Program Package (1974) discussed the problems of part-time public

defenders. It noted (p. 15) that part-time employment leads to poorer quality service, and concluded :

> 1. To avoid conflicts of interest, a part-time public defender should not be permitted to maintain a private practice in criminal law;
>
> 2. Under no circumstances may the attorney represent a client who was found to be ineligible for a public defender's services...
>
> (emphasis supplied)

Assigned counsel systems are used in two thirds of our nation's counties. The NLADA Survey, The Other Face of Justice, pgs. 38-48 summarizes important data concerning such systems. They are generally used in rural counties having low caseloads, with case-by-case compensation at approximately one-half prevailing bar rates. Indigency is usually determined by judges. As in Indiana, standards vary widely, and many judges deny counsel if a defendant posts bail. Selection of counsel also varies widely, with a large range for favoritism.

Appointed counsel were consistently--on the average--younger, less experienced, less well versed in the criminal law, less prepared and less successful than defenders and prosecutors. They are not, on the whole, criminal specialists. (See Survey, pgs. 49-50). Assigned counsel systems were disfavored by most defense and prosecution counsel and judges, who generally prefer defender systems (Survey, pgs 53-57).

Assigned counsel have a definite place in a state-wide defender program. But both the ABA and NAC agree that there are dangers of political patronage and of attorney inexperience

in most present assigned counsel systems. The NAC (Standard 13.15) therefore urges that the defender--not the courts--administer panels for appointed counsel. (See also ABA Standard 1.5, Defense Services). The defender office is also charged with the responsibility of selecting cases, selecting counsel and providing training and support services. Panels should be administered without favoritism. (See ABA Standard 2.2-2.5 Defense Services.)

The NCSC Implementation of Argersinger publication reviews and discusses assigned counsel systems (p. 38-44). In general, it finds them appropriate only to augment a defender system. It notes three major problems. First, court appointments lead to inefficiency and favoritism. Secondly, inconsistent standards govern fees and representation. Thirdly, uniform administration of cases, caseloads, attorneys and costs is extremely difficult. The NCSC recommended central administration and limited use of assigned counsel. These observations and recommendations would all seem to apply to Indiana.

The Team strongly recommends that Indiana incorporate its assigned counsel system into the public defender system recommended earlier. Selection, training and appointment of counsel should receive detailed, apolitical attention. Because of the lack of centralized administration and the risk of political influence, Indiana's present system cannot assure effective, efficient use of the private bar in indigent criminal defense.

D. Miscellaneous

Representation should begin at arrest and not await appointment or arraignment in court. This is the conclusion of the NAC Standards (13) and the ABA Standards. Representation should continue throughout the process, including prisoners' litigation. NAC Standard 13.4 emphasizes the importance of structuring a system using full time public defenders, who can be more responsive to the needs of clients than part-time attorneys or assigned counsel.

On financial eligibility, ABA Standard 6.1 recommends simply providing counsel for anyone "unable to obtain adequate representation without substantial hardship to himself or his family." Bond or partial ineligibility should not bar appointment. A preliminary determination should be made, subject to later review, in order to facilitate early contact with the client. NAC Standard 13 is in accord. This is a matter appropriate for state-wide prescription, again best administered by public defenders not assigned counsel.

The National Center for State Courts publication, Implementation of Argersinger v. Hamlin: A Prescriptive Program Package (1974) (pgs 53-57) reviewed the problems of defining indigency. In view of the problems of delay and inconsistency in judicial determination, it recommended (p. 57) that "determination of both financial resources and eligibility for court-appointed counsel should be made by an interviewer from the probation department or a pretrial release agency; if this is not possible the determination should be made by the public defender." Later review may be made by the trial judges.

Supporting services are extremely important in the light of the high caseloads in defender services. ABA's Standards and those of the NAC both stress this, and the latter (Standard 13.4) emphasizes that supporting services should be "equivalent to, and certainly not less than, that provided for other components of the justice system." In Indiana, such sources are presently very limited. It is difficult to estimate adequate supporting services. The NAC Standards (13.14) simply note their importance, and include quarters, facilities, library, copying and communications equipment, and investigational and secretarial personnel as being essential to an effective office. This is equally true of the ABA Standards on Defense Services, § 1.5.

In the next sections of this Report, an attempt will be made to estimate the cost of supporting services for an adequate state-wide defense system in Indiana. These estimates will be based in part upon the model budgets contained in the NCSC Implementation of Argersinger publication.

CONTINUED

1 OF 3

VI THE COST OF DEFENSE SERVICES

A. The Volume of Court Cases

As noted earlier, Indiana has no comprehensive uniform reporting system for its courts. Hence there is no readily accessible source for determining how many criminal cases are processed or how many of those may need counsel at public expense.

The statistical data concerning caseload were gathered by the Indiana Criminal Justice Planning Agency by questionnaire. These were sent to two sources: court clerks and prosecutors. The responses of the latter were clearly unreliable, even as to the counties reporting, and have not been used for this Report. The data reported by the court clerks, in contrast, is reliable although incomplete. Appendix A contains data from 58 of 88 Circuit Courts; 22 of 36 Superior Courts; 58 of 84 City Courts, two of two Juvenile Courts; and 3 of 4 criminal courts.

All eighteen of the counties with major cities are included in Appendix A. From those counties, only the City Courts of Hammond and Anderson and one Superior Court in Michigan City, New Albany and Columbus failed to respond. By comparison with similar courts in communities of comparable size which <u>did</u> report, it is estimated that the missing courts processed 2000 felonies, 6000 misdemeanors, and 2000 juvenile matters.

Allowing a 5% factor for error, the total caseload for Indiana would then be approximately 43,000 felonies; 82,000 misdemeanors and 26,000 juvenile matters.

The caseload statistics probably reflect charges, not defendants. There is no way of determining what percentage of defendants face multiple charges arising from the same incident, since the practices vary widely within Indiana and the nation. Based upon information from Indiana and elsewhere, the Team reduced the number of charges by 20%, to reflect multiple charges, except with juvenile petitions. This would leave a caseload of <u>defendants</u> of 35,000 felony clients; 65,000 misdemeanor clients; and 26,000 juvenile clients. This reduction in caseload is supported by the caseload figures for model jurisdictions in the NCSC publication, <u>Implementation of Argersinger v. Hamlin: A Prescriptive Program Package</u> (1974) pgs. 29 and 37.

B. The Rate of Indigency and Defender Caseloads

The number of attorneys needed depends upon the number of clients to be served. This depends, then, upon the definition of indigency, and as noted earlier, is an area of great variance and subjectivity in Indiana.

At present, as Appendix A indicates, public defenders are appointed in somewhere between 0% and 60% of the cases in Indiana courts. The figure is consistently lower, as might be expected, in the City Courts. In the Superior Courts, public defenders are involved in an average of approximately 30% of the cases.

This figure is lower than national averages which range around 60%, and may be attributed, in the Team's judgment, to the unavailability of services rather than to the unavailability of indigents. The Indiana Justice Planning Agency has funded two model defender programs, one in Tippecanoe County and the other in Monroe County. In their first year of operation, both programs increased dramatically the number of cases receiving public defense. In Tippecanoe, the percentage of felony appointments went from 23% (33/143) to 48% (51/108). In Monroe, there was a similar increase: from 37% to 55%. (1974 Comprehensive Plan for Criminal Justice and Law Enforcement, Vol. II, p. 322-324).

The rate of indigency may be estimated from NLADA's national survey, The Other Face of Justice, pgs. 70-72. The average rate of indigency in felony cases is estimated to be 65%, while in misdemeanor cases it appears to be 47%.

These figures were based upon figures from some 1300 to 1400 counties across the nation. They are consistent with earlier estimates by the President's Crime Commission, The Challenge of Crime in A Free Society and Silverstein's national study, The Defense of The Poor. There is no reason to believe that Indiana's indigency rate is less. The Institute of Court Management Study of Lake County report, A Program for the Improved Administration of Justice in Lake County (1972) concluded (p. 82) "that at least 50% of the defendants are indigent since they are unable to post bond (in all liklihood, the number of indigents is much higher)."

In determining the indigency rate for misdemeanors, the Team discussed the impact of Argersinger, 407 U.S. 25 (1972). Counsel is constitutionally required only for misdemeanors resulting in imprisonment, less than 30% in Indiana. But the figures in this Report are not appropriately reduced for two reasons. First, Indiana courts do not have a procedure for segregating those prosecutions with a probability of incarceration. Secondly, as noted earlier, the Indiana Supreme Court requires counsel in all misdemeanors.

If an indigency rate of 60% is used for felonies, some 21,000 felony defendants need public counsel. An indigency rate of 40% for misdemeanor defendants yields a caseload of 26,000. A rate of 50% with juveniles yields a defendant caseload of 13,000.

Appellate caseloads may be estimated as follows. NLADA's national survey, The Other Face of Justice, found that 12%

of felony convictions and 9% of misdemeanors are appealed. Since conviction figures are not available for Indiana, the best estimate of appellate volume may be sought from existing agencies. The present State Public Defender's office is presently filing approximately eighty appellate briefs a year. This does not include many appeals by defenders or assigned counsel. It is expected these will increase. The appellate deputy Attorney-General estimates there presently are some 380 criminal appeals each year, 80% of which involve indigents. This would make a total of approximately 300.

From these figures for felonies, misdemeanors, juvenile court cases and appeals, it should be possible to calculate the number of attorneys needed.

VI C. Attorneys Needed State-wide

The NLADA national survey, The Other Face of Justice, indicates that full time staff caseloads for felonies average 173 annually (p. 29). Misdemeanor caseloads average 483. Most defender offices indicated that these figures, in their judgment, are above the maximum tolerable caseloads for effective defense services. The preferred figure would be approximately 100 to 140 for felonies and 200 to 225 for misdemeanors.

The only national authority which has estimated caseload maxima for public defenders is the National Advisory Commission. It proposed (Standard 13.12) 150 felonies per year; 400 misdemeanors; 200 juvenile cases; 200 mental health cases; or 25 appeals. These are lower than now undertaken in many defender offices. But the general view, as noted in NLADA's national survey, The Other Face of Justice, is that even the NAC maxima are too high in many contexts for effective defense services.

The Team discussed and chose to depart from the NAC standards only with respect to juvenile cases, because of peculiar difficulties in working with Indiana statistics. The caseload figures do not clearly indicate whether juvenile matters are felony or misdemeanor, delinquency or some other form of offense, or--indeed--still other forms of categorization. Which NAC caseload standard is appropriate cannot therefore be determined. The Team has therefore chosen a

midpoint between the suggested juvenile maximum of 200 and the misdemeanor maximum of 400, and projected an average juvenile caseload of 300.

Using the NAC figures, the following numbers of attorneys would be needed: for felonies, 21,000 /150 or 140; for misdemeanor representation, 26,000 /400 or 65, for juvenile representation, 13,000 /300 or 44; and for appeals, 300 /25 or 12. This would make a total of 261 attorneys. To this figure should be added a State and Deputy State Public Defender and 8 Area Public Defenders, thereby adding ten attorneys for administration, training and liaison purposes. The total is thus 271 attorneys. There should also be added the present staff of eleven attorneys in the present State Public Defender Office for post conviction purposes, making a total of 282 attorneys.

These figures compare favorably with the model programs designed by the National Center for State Courts, in their publication Implementation of Argersinger v. Hamlin: A Prescriptive Program Package (1974), pgs. 29 and 37. For a rural county defender program serving a population of 65,000 the NCSC projects a staff of one attorney with an assigned counsel panel. For a "small urban" state of 1,100,000, the NCSC projects a staff of seventy-five attorneys. Indiana, with a population of some 5,000,000 people would--by this calculus--well warrant 282 attorneys.

This is a large number of attorneys, representing a substantial increase in Indiana's present investment. As will be seen in the

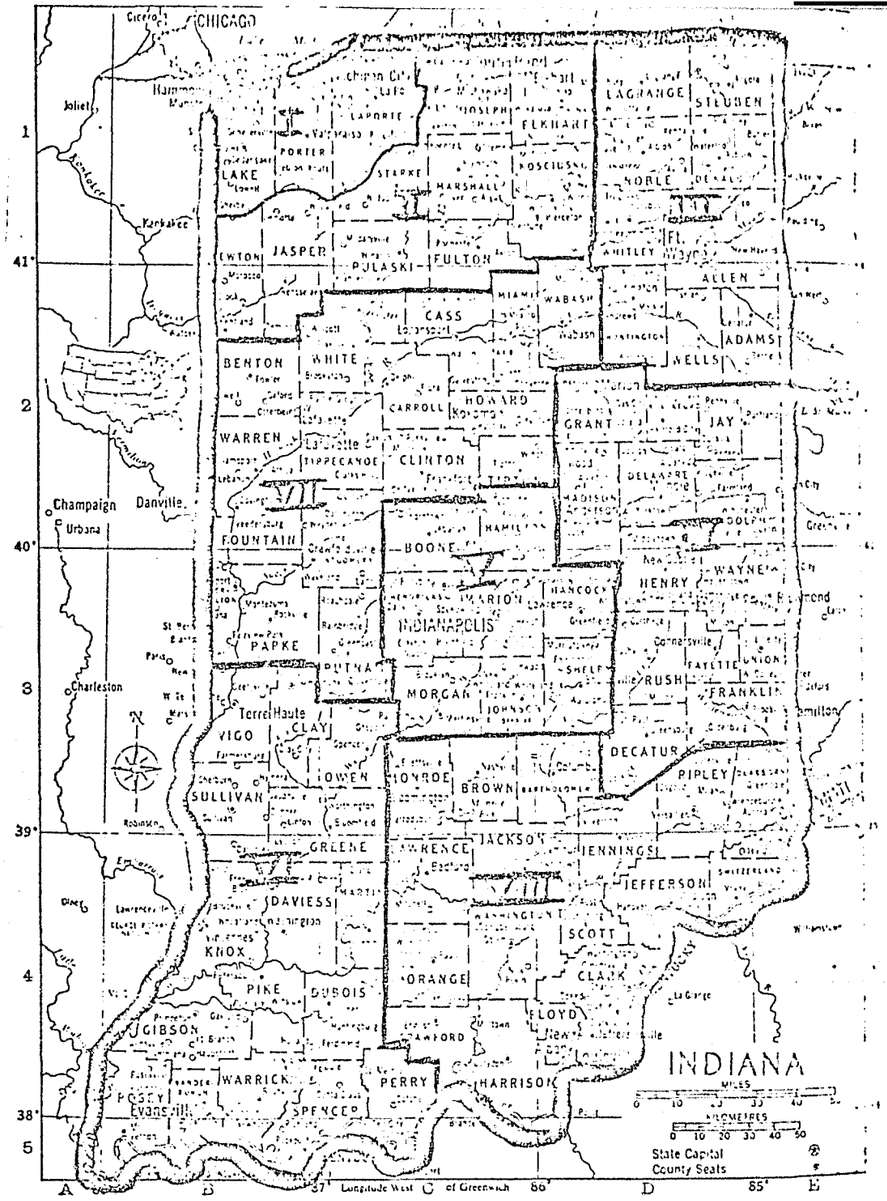
succeeding portions of this Report, with supporting services, the budget for defense services will approximate $6,000,000. There will therefore be pressure to offer lesser service.

It may therefore be appropriate to emphasize that these figures have been established with care. The court caseloads are reasonably accurate and compare favorably with those from similar states. The indigency rates have been verified elsewhere. The caseload maxima are, in the Team's experience, dictated by necessity. Any reduction, therefore, below the figure of 282 attorneys will mean one or all of three things: clients are not being served, clients are being served badly, or defender services are being overburdened.

D. Distribution of Attorneys by Administrative Area

Attached is a map suggesting eight administrative units for a statewide defender program. The map parallels existing court jurisdictions and is based upon an earlier study projecting multi-county court districts. Whether such a consolidation will be effected is conjectural, but the proposal is useful administratively for defender purposes. As the map indicates, there would be eight areas. The smallest geographically contain the highest populations; conversely, the largest in geography are sparsely populated. In the descriptions which follow, the major urban centers are noted; to their population should be added (unless otherwise noted) an equivalent figure for the remaining population of the area.

Area I, with three counties, containing Gary, East Chicago and Michigan City would be relatively compact, with a 1970 urban population in excess of 250,000. The estimated defender caseload would be 1100



VI D. Distribution of Attorneys by Administrative Area

Area	# of Counties	# of Attorneys	Area	# of Counties	# of Attorneys
I	3	33	V	8	126
II	9	14	VI	16	22
III	9	16	VII	15	14
IV	13	19	VIII	16	13

Total Area Attorneys -- 257

felonies (7 lawyers), 4100 misdemeanors (10 lawyers), and 4500 juvenile matters (15 lawyers), warranting a staff of thirty-two, plus the Area Chief Public Defender, for a total of thirty-three.

Area II is more geographically diverse, since its major cities of South Bend and Elkhart have a 1970 population of only 170,000. Hence, some nine counties are embraced. The remaining rural population would raise Area II to a population less than Area I. The estimated defender caseload would also be less: 1000 felonies (7 lawyers), 1400 misdemeanors (4 lawyers), and 450 juvenile matters (2 lawyers). The Area Defender and his staff would thus total fourteen.

Area III contains nine counties, encompassing the cities of Fort Wayne and Huntington. Their population in 1970 was approximately 200,000. The rural population would raise this area to a level akin to that of Area II. The Defender caseload would be 1000 felonies (7 lawyers), 1900 misdemeanors (5 lawyers), and 1000 juvenile matters (3 lawyers). The total staff would be sixteen, including the Area Chief Defender.

Area IV contains thirteen counties in the eastern part of Indiana. The major population centers are Marion, Anderson, Muncie, Richmond and Greensburg. Their total 1970 population was approximately 240,000. The defender caseload would be approximately 1350 felonies (9 lawyers), 3100 misdemeanors (7 lawyers), and 800 juvenile matters (2 lawyers). The staff, including the Area Defender, would total nineteen. Presumably some of these positions might be part-time or indeed be supplanted by panel attorneys, to cope with problems of geography.

Area V contains eight counties, but is relatively compact in size. Its chief metropolitan area is Indianapolis, with a population of 750,000. The surrounding environs bring the population of Area V well in excess of one million people, the largest of the eight areas. The defender caseload is estimated to be 13,800 felonies (92 lawyers), 8600 misdemeanors (22 lawyers), and 3400 juvenile matters (11 lawyers). The population of the area, coupled with the additional problems attendant upon an urban criminal practice, would warrant an attorney staff of one hundred and twenty-six.

Area VI contains sixteen counties, with an urban population in Terre Haute, Vincennes and Evansville of 230,000. The additional rural population and travel or administrative problems make Area VI comparable to Areas I and IV. The public defenders would serve some 1100 felonies (7 lawyers), 3300 misdemeanors (8 lawyers), and 1700 juvenile cases (6 lawyers). The staff attorneys should therefore be comparable in number, totalling twenty-two, including the Area Defender.

Area VII is similar, with fifteen counties. But Logansport, La Fayette and Crawfordsville had a total population in 1970 of only some 80,000 people. The remaining rural population raises the area to substantially less than any of the other areas. The 1100 felonies (7 lawyers), 1200 misdemeanors (3 lawyers), and 700 juvenile matters (3 lawyers) would be assigned to the public defenders. This would warrant--with due allowance for travel--a staff of fourteen, with the Area Defender.

Area VIII, with sixteen counties in the southeast part of the state, is the largest in geography. The major urban areas of Columbus, Madison and New Albany, however, had a 1970 population of only 80,000. The

remaining rural population may raise the total population to 150,000 which would still make this area the smallest. The Defender staff would serve approximately 900 felony defendants (6 lawyers), 2100 misdemeanors (5 lawyers), and 450 juveniles (1 lawyer), warranting a total staff of thirteen.

The attorneys thus distributed by area total only 257. As noted earlier, VI.C., it is estimated that some 282 attorneys statewide will be needed. To the former figures should be added two administrative attorneys (the State and Deputy State Defenders), 12 appellate attorneys, and the present 11 post conviction attorneys. The total estimated attorneys then remains, 282.

VI E. Cost of Counsel

1. Salaries of attorneys

Salaries must be competitive. The NAC Standards provide that the state public defender should receive a salary comparable to the presiding trial court judges. (Standard 13.7). Salaries of staff "should be comparable to those of attorney associates in local private law firms" (Standard 13.11). The Team was advised that the larger firms in the urban areas of Indiana offer starting salaries of $11,000 to $15,000 for new associates.

The Model Defender grants by the Justice Planning Agency in Monroe and Tippecanoe Counties pay their full-time defenders $16,000. Two attorneys under a JPA grant for defender services in Marion County Juvenile Court were budgeted at $35,800 or approximately $18,000 each. Indiana prosecutors receive $12,000 to $17,000 per year. The county chief prosecutor now has a statutory option to commit himself full-time to the position. If he so chooses, he shall be paid no less than the judge of his Circuit Court. These salaries may then range from $21,000 to $26,500.

It may be useful to note that the Farm Bureau County Government Statistical Report (p. 21) for 1973 indicates court clerk salaries in the largest forty-five counties as ranging from 9000 to 20,000, with an average of approximately $12,000. County auditors are in a similar salary range, as are County Treasurers (p. 23). County sheriffs have the same salary pattern (p. 25). Coroners, surveyors and assessors receive somewhat less.

Salaries for full-time chief defenders vary nationally. But one-half, according to NLADA's survey, The Other Face of Justice, p. 18, are paid in excess of $21,000 per year. Staff attorneys often start at less than $11,000, but about one-half of the defender offices start attorneys at $11,000 to $14,000 per year (p. 20). Even at this, such salaries are often less than paid by comparable agencies or private law firms.

Salaries of $24,000 to $26,000 are hardly excessive. The Team was advised that such salaries have been insufficient for recruiting top quality attorneys for a number of agencies. Indeed, the Municipal Court for Marion County, which has a bipartisan selection panel and process, has had only a limited number of judicial candidates to consider because such salaries are non-competitive. The proposal for a $25,000 salary in the defeated legislation, then, was not excessive, particularly in light of the need to encourage career service by defender personnel. See ABA standard 3.1, Defense Services.

Salaries of full-time staff can best be keyed to those of prosecutors. The State Public Defender would thus earn $27,000, as with the Attorney-General. The eight full-time Area Defenders would be paid $21,000 to $26,000, as with prosecutors, for an approximate total $200,000. The remaining 271 full-time defenders would be paid a range of $12,000 to $20,000, depending upon experience. This would make an approximate total of $4,336,000, for a full expenditure of $4,600,000.

A large portion of this may be expended, where appropriate,

for assigned counsel or part-time defenders. But the total figure for expenditures remains constant. Indeed, expenses for assigned counsel per case at federal Criminal Justice Act rates ($20/30 per hour) might well increase this amount. It might be reduced, of course, because of voluntary attorneys or clinical law students.

To the amount of $4,600,000 should be added the cost of secretarial and investigative assistance. There are no national standards to suggest appropriate ratios. An average salary of $6,000 for secretaries and $10,000 for investigators seems appropriate in Indiana. A ratio of one secretary to four attorneys would produce an amount of $516,000. One investigator per four attorneys would cost $860,000. This would bring the total for services for a full, effective defender program to approximately $5,900,000.

It seems safe to assume that travel, supplies and other expenditures would raise operating expenses to $6,000,000. Rental of office space is not included, since it may well be contributed by public facilities or, with assigned counsel, by private offices. Capital expenditures are also not included, since they (e.g., typewriters, tape recorders) are not recurring expense. However, a figure of 5% for all such expenditures might raise the total annual expense to $6,250,000.

This is a substantial outlay of public funds. It must, however, be seen in perspective. For these purposes, it is therefore important to consider the present level of expenditures and, following that, comparable budgets.

VI E.2. Present Level of Expenditures

In Indiana, each county bears the responsibility for providing counsel to indigent felony defendants and juveniles at both the trial and appellate levels, except for the office of the Public Defender of Indiana which is essentially a state-wide post-conviction program funded by the State of Indiana. Only 21 of the 92 counties in the state employ public defenders. All of them are part-time in that they engage in private practice in addition to their public defender duties. In the other 71 counties in the state, private lawyers are appointed by the court to represent indigents in the felony trial and appellate levels as well as in juvenile matters.

In an attempt to ascertain the amount of money presently spent to provide defense services in the state of Indiana, the Team decided to begin by obtaining the amounts spent by the various counties for payments of fees to assigned counsel and for appointed lawyers in felony and juvenile cases and on appeals in those counties which had no defender. In those counties with a defender or defenders, it was decided to attempt to obtain the cost of the defender's services as well as any amounts paid assigned counsel and amounts paid in fees for appointed appeals.

A visit to the State Auditor's office and communication with the office of the State Board of Accounts indicated that the figures reflecting the amounts expended by the counties for appointed counsel and public defenders were not available in any accessible form in either of those offices. Such visit and

communication further indicated that the only source for such information was the County Auditor in each County because the figures supplied the State were not sufficiently broken down as to specific nature of the expenditures we sought.

Accordingly, arrangements were made using law and graduate student assistants to contact each county auditor by telephone. The students were supplied with a questionnaire developed by the survey team (See App. C and D).

The questionnaire essentially attempted to ascertain the total amount paid by all of the courts in the county (Circuit, Superior, Criminal, Juvenile) in 1973 to attorneys as appointed counsel fees in felony and juvenile cases. A separate inquiry was made as to the amounts paid appointed counsel as fees on appeals from such courts. After being instructed in the use of the questionnaire, each auditor was telephoned. In almost every case, the County auditor or a deputy auditor supplied the requested information which the student assistant then recorded on a separate questionnaire for each county.

In the 71 counties which do not employ defenders, most of the expenditures for appointed counsel were reported as disbursements ordered by the Circuit Court because such counties because of their size, did not have Superior, criminal or juvenile courts and thus felonies and juvenile matters were all tried in the Circuit court.

In such counties however, the auditor's office was not able to segregate the amounts paid assigned counsel for trial representation

on appeal. Therefore the total amount that such counties spent for appointed counsel in felony and juvenile in 1973 is a combined figure of the total spent by such counties for attorneys, fees in felony and juvenile trial representation and representation on appeal. In 1973, these 71 counties reported a total of $459,153.36 spent for such purposes.

Using the same questionnaire, the graduate assistants also telephoned the County Auditors in each of the 21 Counties known to employ a public defender or defenders and requested the same information. The person interviewed was either the auditor or a deputy auditor and the responses were recorded on a separate questionnaire for each county. Again the information provided from most of the counties contained no separation of the amounts paid for representation at trial and those paid on appeal. Since a separate questionnaire was developed to obtain the amounts spent in 1973 by each defender, the auditors in the 21 counties were requested to provide only the amounts paid assigned counsel for trial, juvenile and appellate representation and not those paid to the public defenders for their duties as public defender. In some cases, both figures were provided but such costs were, as far as it was possible, subsequently segregated from the expenditures accounted for by our survey of public defenders.

A separate Public Defender questionnaire (See App. C) was developed for each county with a defender and a member of the survey team telephoned a defender in 18 of the 21 defender counties. Using such questionnaires, the total amount provided for

and spent by the defender or defenders in each county in 1973 was obtained. That amount included all disbursements provided the defender for his position and the operation of his office. In counties which had more than one defender, the defender contacted provided the required information for all of the defenders in the county and such information was relied upon as accurate.

Information for one defender and for the Office of the State Defender was obtained in a personal interview. Additionally, in one county, the information about the costs of defenders in the county was obtained from a variety of sources, including its County Auditor's office, its Criminal Justice Planning Agency and the Clerk of the Court.

The information provided for the 21 counties which are served by defenders indicates that the cost of defending indigents in such counties is as follows:

Amounts paid to assigned counsel for trial, juvenile and felony representation (21 Counties)-------$416,180

Amounts paid for Public Defenders and Defender Offices (21 Counties)----------$690,977.85

In summary, the survey indicates that the counties in Indiana paid a total of $1,566,311.55[1] for appointed counsel and public defenders for trial and appellate representation in felony and juvenile matters.

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[1] Such amount includes approximately $98,000 for pilot programs in such counties, virtually all of which was supplied by Criminal Justice Planning Agency grants and thus reduces the total amounts paid by the counties by this amount.

Additionally the State Defenders Office expended $152,000 in 1973. Thus in 1973 the counties and state combined spent and reported $1,718,311.55 for representation of indigents in felony and juvenile trials, appeals and post-conviction matters.

VI E. 3. Comparable Budgets

The NLADA survey, The Other Face of Justice, p. 78-81, estimates that nationally an effective system of full defense services would cost approximately $400,000,000. This is only 5% of total state and local criminal justice expenditures; but it is also eight times as much as is now being spent. And it is a minimum figure, based upon an expansion of services at existing, inadequate funding levels. If the New Jersey cost of $175 per case is used, a total of $857,000,000 becomes a more realistic national figure.

State expenditures for criminal defense vary widely. Florida spends $8,500,000 annually, over $1 per capita. Alaska in 1971 spent $710,000, or $2.32 per capita. Minnesota, with a much larger population, spent only $668,850, or $.20 per capita. State defender budgets (The Other Face of Justice, Appendix I D) in selected states were as follows: Colorado, $1,459,761; Kentucky, $1,287,000; Maryland, $1,140,178; Massachusetts, $1,099,938. County expenditures (See The Other Face of Justice, Appendix I C) in Dallas and Harris Counties Texas, exceeded $1,200,000, and in Alameida County they exceeded $1,996,000, while a large number of other less urban counties exceeded $20,000 in 1971 or 1972. The city of New York alone spent $5,400,000 and Los Angeles spent

$9,543,361 in 1972. The team is advised that the budget for defender services in New York City this coming year will be over twice the amount of the 1972 budget. These figures, of course, whether state, county or municipal, do not include all of the expenditures for defense services within the area described.

The National Center for State Courts publication, Implementation of Argersinger v. Hamlin: A Prescriptive Program Package (1974) discusses a model county system. In a rural county of 65,000 the Public Defender would be paid the same as the District Attorney and selected by a specially composed committee. He would hire counsel and/or administer a panel of private attorneys. With an investigator, a secretary and other overhead expenses, a total budget of $48,850 would be needed for an estimated caseload of 1,127.

The National Center for State Courts Implementation publication, also (pgs. 30-38) constructed a model state-wide defender program for a "small urban state" of 1,100,000 population. Salary for the public defender would be $25,000. A deputy, training personnel, four secretaries and other fiscal personnel would raise the central budget to approximately $170,000. Seventy-four trial attorneys at $17,000 each, with twenty-five investigators and thirty-seven secretaries, with overhead expenses, would create a total budget of nearly $2,500,000. The caseload would be 6,428 felonies, 10, 238 misdemeanors, 2,983 juveniles, 2,610 mental health cases and 1,187 others.

The budget of $6,250,000 proposed here represents a substantial increase in spending. But it would represent an outlay

of less than $1.50 per capita, compared with higher rates in other states. And it should be compared with the budgets for other services in the State of Indiana.

Total budgets for other services may be of significance. The Farm Bureau County Government Statistical Report (1973) indicates that in Marion and Lake counties alone $1,285,000 was appropriated for prosecution functions (p.33). Allen, St. Joseph and Banderburgh counties each appropriated over $100,000. A considerable number of counties were in the $20,000 to $50,000 range. Sheriff budgets for Marion County are$410,000 and for Lake County are $2,208,000; some twenty-odd counties are in the $200,000 to $1,000,000 range. Court clerk budgets range from $1,000,000 in Marion County and $500,000 in Lake County to $20,000 to $100,000 for the majority of other counties (p. 21-22).

County jail expenditures for 1973, as indicated by the 1973 Farm Bureau Report (p. 37-38) were $4,777,000 for Marion County and $212,000 for Lake County. Some twenty counties were in the $50,000 to $150,000 range. Another thirty counties were in the $20,000 to $50,000 range. Since a large proportion of those housed in jails are awaiting trial, these expenses could be significantly reduced by programs designed to effect early release. Release on recognizance is such a program. An effective public defender system is another.

These county budgets for law enforcement do not, of course, reflect the additional expenditures in those areas by municipal and state government. At the municipal level, much of the prosecution's investigation is conducted by police departments.

At the state level, the prosecution receives significant support from the state police, the attorney general and the Indiana Prosecuting Attorney's Council. The total prosecution budget, then, is significantly higher than the county figures indicate. In such a light, $6,250,000 for defense of indigents not only seems a tolerable burden but, indeed, seems wholly necessary.

VI E. 4. County Financing

Financing an adequate defender system should be considered in the light of existing funding methods. At present, defender expenses come from county budgets. By all reports, these are already severely strained. Shifting the burden to a state-wide system would thus relieve the counties of an increasingly onerous burden, while making possible a more equitable distribution of costs.

County financing is a prevalent mode of financing defense services across the country. It is also the reason most such services are inadequate and inadequately funded. NLADA's national survey, The Other Face of Justice, pgs 79-81, noted that over half the judges surveyed reported their counties were unable to support adequate services. The uniform opinion that defender budgets, staff and salaries must be dramatically increased can be attributed directly to the inability of county government to support adequate services. The Advisory Commission on Intergovernmental Relations in 1971, (State-Local Relations in the Criminal Justice System) for these reasons, recommended that "each state establish and finance a state-wide system for defense of

the indigent...."

Total county appropriations in Lake County for 1973, according to the Farm Bureau Report, (County Government Statistical Report)(p. 19) exceeded $64,000,000. No total for Marion County was stated, but it presumably exceeded Lake County. Allen, St. Joseph and Vanderburgh Counties were in the $15,000,000 to $27,000,000 range, while twenty other county budgets were between $2,000,000 and $9,000,000. The vast majority exceeded $1,000,000. To these figures should be added, of course, the state funding for complementary or matching services and appropriations.

These budgets seem sufficiently substantial to bear the increased cost of effective counsel for the poor. Particularly does this seem true in the light of the figures noted earlier concerning county budgets for law enforcement. Nevertheless, if the counties are unwilling to pay for effective counsel, then added impetus is given to the advocacy of a state-wide approach to public defense service.

VI E. 5. False Economies

The budget of $6,250,000 could be reduced in various ways, each of which may warrant brief discussion.

Fewer clients might be served. This is, of course, the approach Indiana is now taking, particularly with misdemeanors. Instead of appointing counsel in some 60% of felonies, a figure of 40% might be used. Similarly with misdemeanors, instead of

40% only 30% might be represented. The total effect might be to reduce expenditures to $4,500,000.

However, it would be a false economy. People who could not afford counsel and who need defense services, as indicated by experience in other states and several of the courts in Indiana, would be excluded from those services. In addition, such an attempt to reduce the budget might be followed by later increased caseload. And this might follow although caseloads had been initially reduced to reduce the budget. With fewer attorneys, caseload per attorney would then rise. At $5,000,000, fewer attorneys might be "representing" the same number of defendants, but with intolerable caseloads of 300 felonies per year, 600 misdemeanors or 400 juveniles. The quality of service--as reflected by experience elsewhere--would suffer.

Caseload might also be reduced by limiting misdemeanor service to those imprisoned, as mandated by Argersinger. Perhaps $1,000,000 could then be deleted from the budget. But, for reasons noted earlier, the research team concluded that this was an unwarranted reduction in needed services, contrary to Indiana law, and would require a means--not now available--for predicting probable imprisonment.

Indiana could continue to rely principally on assigned counsel. In such systems, there is often no payment for secretarial, investigative or office expenses. Hence, cash outlay is less. But assigned counsel are able to represent fewer defendants, and the uniform experience is that assigned counsel systems are

more expensive than public defender programs. If Indiana were to continue to pay what seems to be the average rate of $250 per case for assigned counsel, it would require a total outlay of $15,000,000 to provide the services contemplated by the $5,000,000 defender budget discussed above. Paying only $100 per case would still make an assigned counsel system substantially more expensive, while lacking supporting services and rendering inferior service.

Finally, Indiana might curtail juvenile representation. Gault related specifically to "delinquency" cases; Argersinger--it might be argued--narrows this to delinquencies where incarceration is actually imposed. But modification of Gault by Argersinger was not suggested by the latter case. And the need for juvenile representation, as recognized by most commentators and many jurisdictions, sweeps throughout Juvenile Court proceedings.

VII CONCLUSION

Indiana should revise its system of providing public defense in two major respects.

The first has to do with the quality of service. Part-time defenders should be reduced; those remaining should be precluded from private criminal practice. Patronage should be de-emphasized and attorneys should not be restricted to practice before the appointing judge. State wide training and appellate services should be instituted, through the creation of a State Public Defender's Office.

The second has to do with the scope of services. Services badly need expanding, particularly in the misdemeanor area, where Argersinger has been observed largely in the breach. In addition, juvenile services need attention, in the light of Gault. A state-wide public defender program could achieve these objectives and also make possible a uniform definition of indigency and early contact with the client--both seriously lacking in the present system.

It should not be surprising that an effective system of defense will require tripling existing expenditures. This is dictated by the expansion of the constitutional right to counsel in significant respects presently ignored by Indiana courts. But the increase in expenditures is also dictated by the increased criminal court caseloads and the increased investment in prosecution and police by local, state and federal governments during the past few years.

The total cost of $6,250,000 is well within the capabilities of state, if not county, government. That amount may be reduced by significant reforms elsewhere in the criminal justice system, for example--as noted at the outset of this Report--by more extensive use of summons instead of arrest and by release on recognizance. But it seems clear that dramatic expansion of service will remain necessary.

The Team respectfully submits that these conclusions have firm footing in the data and observations of the Team, both with respect to Indiana and defense systems elsewhere. There obviously are margins for error and differences of opinion in the subject matter of this Report. But there seems little room for disagreement with this Report's basic conclusion: the quality, volume system and scope of indigent defense services in Indiana are in urgent need of reform.

APPENDIX A

1972

CASELOAD STATISTICS

IN INDIANA COURTS

WITH CRIMINAL JURISDICTION

BY AREA AND COUNTY

APPENDIX A

Attached is a statistical breakdown of caseload figures by county in the state of Indiana. Of 210 courts, 166 or 79% responded. Of the counties containing the eighteen major cities, only the City Courts of Hammond and Anderson and the Superior Courts of Michigan City, New Albany and Columbus failed to respond. The totals reported were 39,000 felonies, 71,708 misdemeanors and 22,563 juvenile matters.

The text of this report adjusted these figures upward to account for omissions. The total figures were then factored to account for duplicate charges, indigency rates, optimum caseloads per attorney. This process is described in greater detail in the text, and was based on the figures which follow.

The raw figures in this Appendix are at best estimates. They were largely gathered over a period of several weeks by the staff of the Indiana Justice Planning Agency, who did an excellent job in view of the absence of any coherent, routine reporting system. Yet their efforts inevitably can produce, at best, only estimates.

For this reason, the Team reviewed the staff's working papers and conducted limited cross-checking of their figures. In working from these figures, the Team has taken a consistently conservative approach. This has produced, in the text of this Report, conclusions which the Team feels may justify reliance upon the figures in this Appendix.

A review of the figures which follow will provide a useful elaboration of the basis on which attorney distribution was calculated in the text (pgs. 52 et seq.). But it should be emphasized that the text figures have been adjusted and refined and <u>will not correspond directly to the figures in this Appendix</u>.

	Felony	Misdemeanor	Juvenile
Area I			
Lake	1676	11,200	1026
Porter	0	340	0
LaPorte	152	939	463
Totals	1828	12,479	1489
Area II			
Jasper	215	555	62
Elkhart	512	24	337
St. Joseph	571	0	202
Pulaski	56	40	43
Marshall	285	18	112
Newton	0	0	0
Fulton	0	44	0
Totals	1639	681	756
Area III			
Adams	0	290	0
Allen	1478	4535	1910
Dekalb	7	109	150
Huntington	-	-	-
LaGrange	-	-	-
Noble	2	3	0
Stevenson	-	-	-
Wells	71	24	47
Whitley	80	174	306
Totals	1638	5135	2413

	Felony	Misdemeanor	Juvenile
Area IV			
Decatur	0	107	0
Fayette	0	501	0
Jay	0	0	0
Randolph	113	170	74
Blackford	40	20	24
DeLaware	1073	2723	810
Wayne	666	1346	282
Rush	74	26	40
Madison	144	2109	279
Grant	170	236	308
Henry	221	1530	23
Totals	2501	8768	1840
Area V			
Boone	36	10	0
Hamilton	113	-	-
Hancock	0	650	0
Hendricks	365	35	175
Morgan	-	-	-
Shelby	418	-	-
Marion	24,111	25,823	8911
Totals	25,853	26,518	9398

Area VI	Felony	Misdemeanor	Juvenile
Clay	49	49	30
Daires	85	70	142
Dubois	-	10	-
Gibson	104	245	90
Greene	-	-	-
Knox	330	458	151
Martin/Dubois	36	147	0
Owen	90	90	80
Perry	105	248	167
Pike	39	243	73
Posey	100	34	60
Spencer	31	167	5
Sullivan	-	-	-
Vanderburgh	529	7571	3357
Vigo	250	32	246
Warrick	130	202	50
Totals	1878	9493	4351

	Felony	Misdemeanor	Juvenile
Area VII			
Benton	-	-	-
Carroll	65	116	57
Cass	87	-	55
Clinton	105	-	80
Fountain	80	30	60
Howard	491	219	393
Miami	136	8	211
Parke	-	-	-
Putnam	280	79	90
Tippecanoe	556	967	213
Tipton	25	227	62
Montgomery	83	320	69
Vermillion	-	-	-
Wabash	100	30	150
Warren	73	27	17
Totals	2081	2023	1457

	Felony	Misdemeanor	Juvenile
Area VIII			
Bartholomew	149	64	110
Brown	124	308	90
Clark	54	2034	251
Dearborn/Ohio	-	-	-
Floyd	55	823	37
Harrison/Crawford	54	60	32
Jackson	93	481	100
Switzerland & Jefferson	26	-	-
Jennings	-	-	-
Lawrence	-	-	-
Monroe	638	2789	52
Orange	43	52	11
Ripley	-	-	-
Scott	-	-	-
Washington	346	-	148
Totals	1582	6611	859

C. COMPARISON OF MUNICIPAL COURT ACTIVITY - 1972 vs. JANUARY - MAY 1973 * MARION COUNTY

	1972	1973 *	NET CHANGE
New Charges	163,354	206,285	+ 42,931
Continued Charges	103,255	100,178	- 3,077
Total Charges Handled	266,609	306,350	+ 39,741
Continued	96,238	114,151	+ 17,913
Total Dispositions	149,076	158,774	+ 9,698
Fines	115,644	138,439	+ 22,795

* The 1973 figures were arrived at by projecting actual figures recorded for January through May, 1973. A comparison with previous annual reports showed these months to be representative of the entire year.

COST-EFFECTIVE ANALYSIS

	Municipal Court Budget *	Total Cases Handled	Cost Per Case
1971	$ 678,265.00	------	-----
1972	$ 813,060.00	266,609	$3.05
1973	$1,011,116.00	306,350	$3.30

* Budget figures for 1971 and 1972 represent total dollars spent while the 1973 figure is the total appropriation. In each case the charted budget figure includes driver improvement school, mental health services and the Municipal Court Probation Department.

( ) No Answer

( ) Refused

( ) Information Not Available

( ) Other _____

Interviewer _____

Call Back Time _____

PUBLIC DEFENDER QUESTIONNAIRE

1. Name of County or Jurisdiction Served _____

2. Office Phone No. _____

3. Name and Title of Person Interviewed _____
(Name)

_____
(Title)

4. What is the amount of your total budget for 1973 $ _____

5. What was your salary in 1973 $ _____

6. How many attorneys does office employ? _____

Full-Time	Part-Time	1973 Salaries
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

How many other people does your public defender office employ?

No.	Job Title	Salary 1973
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. Are you the only Public Defender in your county? _____
If no, are the salaries and budget of the other defenders included in the information you already gave us? Yes _____ No _____
If no, what is the name, address, and telephone number of the other defender or defenders in your county?

Name _____
Address _____
Phone No. _____

8. Can you tell us the number and salaries of other public defenders in your county?

No. _____ Salaries _____

_____

_____

9. What would you estimate was the total amount spent by your county for defense of indigents in 1973.

$ _____

If not the same as the figures you gave us, why not?

_____

_____

_____

( ) Refused Call Back Time _____

( ) Information Not Available

( ) Other _____

COUNTY AUDITOR QUESTIONNAIRE

1. Name of County _____

2. Auditor's Phone No. _____

3. Name and Title of Person Interviewed _____
(Name)

_____
(Title)

4. What was the amount paid by the court or courts in your county in 1973 to Attorneys appointed by the court in criminal cases?

Name of Court (Circuit-Superior-Criminal Juvenile	Total Amount Paid - 1973
_____	_____
_____	_____
_____	_____
_____	_____

5. Do you include payments of attorneys fees for representing juveniles in these amounts?

( ) Yes

( ) No if no

(1) juvenile fees _____

~~6. Do you know the actual number of cases which such total figure or figures represent?~~

~~( ) Yes _____ (number of cases)~~
~~( ) No~~

7. What was the amount paid by each of such court or courts to attorneys for pauper counsel on appeal (or Pauper Appeals)

Name of Court (Circuit-Superior-Criminal-Juvenile	Total Amount Paid - 1973
_____	_____
_____	_____
_____	_____
_____	_____

8. Are there any other expenditures in connection with other trials or appeals, involving public defenders or court appointed lawyers, in indigent or pauper cases?

APPENDIX D

APPENDIX E

PUBLIC DEFENDER BILL

APPENDIX E

(2) House version

March 29, 1973.

PRINTING CODE—The parts in this style type are additions to the text of the existing section of the law. The parts in ~~this style type~~ are deletions from the text of the existing section of the law. The absence of either of the above type styles in an amendatory SECTION indicates that an entirely new section or chapter is to be added to the existing law.

DIGEST

Adds IC 1971, 33-1-7.1, a new chapter creating public defender system for the state of Indiana.

ENGROSSED
SENATE BILL No. 152

A BILL FOR AN ACT to amend IC 1971, 33-1, by adding a new chapter concerning the establishment and administration and funding of a public defender system in Indiana.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 1971, 33-1, is amended by adding a new chapter to be numbered 7.1 and to read as follows:

Chapter 7.1. Public Defender System.

Sec. 1. (a) It shall be the purpose of this chapter to provide legal representation and service for persons financially unable to employ counsel in the trial or appeal of a criminal, juvenile, or post-conviction remedy case.

(b) This chapter shall be administered and construed liberally to effectuate its underlying purposes and policies.

Sec. 2. Unless otherwise inconsistent with the context of this chapter the following terms shall have the following meanings:

(a) "Authorized expenditures" means all expenditures authorized by the public defender and made by an attorney on behalf of a defendant pursuant to the provisions of this chapter;

(b) "Crime", includes all felonies and misdemeanors for the prosecution of which a defendant could be imprisoned;

(c) "Critical stages" means any stage of criminal proceedings including extradition, appeal, post-conviction remedy proceeding and revocation of probation or parole, regardless of where such stage occurs where the absence of counsel would be a violation of constitutional rights;

(d) "Detention institution" means any jail, lockup, prison or custodial institution where arrested or convicted persons are taken and held in custody by law enforcement authorities;

(e) "Fee schedules" means the standards for determining the amount of legal fees to which an attorney is entitled for rendering services under this chapter;

(f) "Fund" means the public defense fund;

(g) "Judge" includes magistrate, associate judge, justice, commissioner, or judge of any court of appellate jurisdiction.

(h) "Juvenile proceedings" means juvenile proceedings wherein the juvenile may be committed to any custodial institution;

(i) "Panel of attorneys" means the list of attorneys maintained by the public defender;

(j) "Rules" means the rules promulgated by the public defender and approved by the public defender advisory committee under this chapter.

Sec. 3. (a) Pursuant to the provisions of this chapter there shall be appointed by the Supreme Court of Indiana a public defender of Indiana who shall be charged with the responsibility for the efficient and just administration of this chapter.

(b) The term of office of the public defender of Indiana shall be four (4) years subject to the condition that he and the public defender of Indiana appointed under prior law may elect to continue serving in his capacity as public defender until his successor is appointed. The public defender may be removed for cause following proper notice and hearing, as herein provided.

(c) The public defender shall maintain an office at the seat of state government from which to discharge his duties and responsibilities as provided by law.

(d) The public defender shall be an attorney of good standing who has been admitted to the practice of law before the Supreme Court of Indiana for a period of not less than five (5) years. He shall not engage in the private

practice of law during his term of office.

(c) The salary of the public defender shall be not less than twenty-five thousand dollars ($25,000) per year and shall not be diminished during his term of office.

Sec. 4. (a) The public defender may establish and administer a public defender program in accordance with this chapter and the rules adopted hereunder.

(b) The public defender shall appoint a chief deputy and such other deputies, assistants, investigative, secretarial and clerical employees as are necessary to establish a statewide public defender organization as directed by this chapter and to discharge adequately the duties and functions of his office. Each deputy and assistant public defender shall be a qualified attorney licensed to practice law in this state and shall serve at the pleasure of the public defender. The compensation of the public defender and the staff shall be fixed by the Supreme Court of Indiana, following recommendation by the public defender advisory committee hereinafter provided, and they shall be reimbursed actual necessary and reasonable travelling expenses, including costs of food and lodging when away from the municipality in which the office of each is based, not exceeding the mileage and per diem allowance established for state employees.

(c) Subject to the approval of the public defender advisory committee, the public defender shall promulgate such rules as are required by this chapter and are reasonably necessary for the proper administration of this chapter. All rules promulgated by the public defender and approved by the public defender advisory committee shall become effective immediately. Such rules shall not be subject to the approval of any other governmental office or agency.

(d) The public defender shall be provided with a seal of office on which shall appear the words "Public Defender, State of Indiana." The public defender may take acknowledgments, administer oaths, and do all other acts authorized by law for notary publics. Provided, each of these acts shall be attested by the official seal.

(e) The public defender shall submit an annual report to the Supreme Court of Indiana and the public defender advisory committee. The report shall contain such information as the supreme court requests.

(f) The public defender shall create public defender areas within the state of Indiana and shall provide the

necessary staff, and facilities within each public defender area as are necessary to properly administer this chapter, Provided, That the public defender of Indiana shall have the power to contract with any attorney or group of attorneys in a public defender area who are duly admitted to practice law in the state of Indiana, to provide legal counsel for all or some of the poor persons entitled to legal defense services in such area.

Sec. 5. (a) There shall be a public defender advisory committee appointed by the Supreme Court of Indiana, who at the time of their appointment shall be:

(1) a justice of the Supreme Court of Indiana who shall act as chairman of the committee;

(2) two judges of Indiana circuit or county courts of record; and

(3) two attorneys admitted to practice law before the Supreme Court of Indiana.

(b) The members of the public defender advisory committee shall serve for terms of four (4) years.

(c) Each attorney member of the public defender advisory committee shall receive twenty-five dollars ($25.00) per diem and mileage while attending to the business of the committee.

(d) The members of the public defender advisory committee shall serve at the pleasure of the Supreme Court of Indiana, and may be removed without cause.

Sec. 6. (a) Whenever a vacancy in the office of public defender occurs, the public defender advisory committee shall submit to the Supreme Court of Indiana a list and a summary of qualifications of three (3) nominees for that office. The list of nominees shall be submitted to the supreme court as promptly as is reasonably possible after a vacancy in the office of public defender occurs, Provided, however, That in no event shall such list be submitted later than thirty (30) days from the time of such vacancy. In the event that the public defender advisory committee has notice of a future vacancy in the office of the public defender, the advisory committee shall submit the list of three (3) nominees for that office to the supreme court within thirty (30) days prior to the vacancy, or within thirty (30) days from the notice of the vacancy if notice is received fewer than thirty (30) days prior to such vacancy: Provided, That, at any time when vacancy is anticipated by reason of expiration of a term of years, the public defender advisory committee may recommend reappoint-

ment of the person then holding the office of public defender of Indiana without submitting the names of two (2) other nominees.

(b) The public defender advisory committee may recommend to the Supreme Court of Indiana removal of any public defender who fails to fulfill the conditions of office as established by section 3(d) of this chapter or to adequately discharge his responsibilities. The advisory committee may promulgate rules prescribing guidelines for the proper exercise of the office of the public defender. The public defender advisory committee shall provide adequate notice and hearing before recommending removal of the public defender from office. A record of the hearing shall be made and the decision of the advisory committee shall be submitted to the Supreme Court of Indiana.

(c) The public defender advisory committee shall pass upon and approve all rules promulgated by the public defender before the rules become effective.

(d) The public defender advisory committee shall submit an annual report to the supreme court containing such information as the supreme court requests.

(e) The public defender advisory committee shall meet as frequently as the chairman of such committee or a majority thereof deems necessary. A quorum of three (3) members present shall be needed to conduct business.

Sec. 7. (a) The Supreme Court of Indiana shall fill a vacancy in the office of public defender by an appointment from the nominees submitted to it by the public defender advisory committee. The supreme court shall fill a vacancy within thirty (30) days of receiving the nominations.

(b) Subject to the provisions of this chapter until a vacancy is filled the chief deputy public defender shall serve in the capacity of the public defender.

(c) Upon receipt by the supreme court of a decision by the public defender advisory committee recommending removal of the public defender, the court shall hold a hearing to determine the matter. The public defender is entitled to be present at the hearing. The supreme court shall make rules implementing this section.

Sec. 8. (a) The public defender shall have the power and duty to provide defense services to every person eligible under the provisions of this chapter. Pursuant to this chapter and the rules adopted hereunder, the public defender must provide legal services either from his offices

or from a private attorney under contract or on the panel of attorneys or legal services in cooperation with any organizations that provide defense services in counties excluded from public defender areas.

(b) Any person eligible for defense services under this chapter is entitled to be counseled, represented and defended at all critical stages of the criminal or juvenile proceedings including appeal, post-conviction remedy proceedings, and revocation of probation or parole, and to be provided investigatory, expert and other services necessary to an adequate defense.

(c) The rights provided under this section shall not be affected by an individual having provided at an earlier time such services at his own expense, or by his having wavied such rights at an earlier stage of the proceedings.

Sec. 9. (a) The public defender shall create and maintain a panel of attorneys for each public defender area within the state; such panels shall contain the names of all private attorneys within each area who have agreed to represent persons under this chapter. The public defender shall by rule prescribe under what conditions and circumstances panel attorneys shall be used in lieu of the services of the public defender. Provided, however, whenever a panel attorney is to be used under this chapter, the defendant shall be required to select an attorney on the panel from those who reside within the county in which the criminal charge has been, or will be, instituted, except that if no panel attorney from the county is available or willing to accept the case, the judge shall direct the defendant to select an attorney on the panel of attorneys from an adjoining county within the public defense area. Any attorney admitted to the practice of law before the Supreme Court of Indiana shall be eligible to participate on the panel of attorneys, Provided, That the cases in which panel attorneys may provide defense services may be classified according to criminal defense experience and training requirements.

(b) The public defender shall have the power and authority to remove an attorney from the panel of attorneys for abuses of this chapter following notice and hearing. Any attorney so removed shall have the right of appeal to the public defender advisory committee.

(c) Any attorney on the panel of attorneys shall retain the same right to decline to represent any person under this chapter as he would have in private practice.

(d) Any attorney on the panel of attorneys who undertakes the defense of any person under this chapter shall be compensated for such services in accordance with the provisions of this chapter and the rules adopted hereunder.

Sec. 10 (a) Any attorney on the panel of attorneys representing any person under this chapter may petition the public defender for authorization of expenditures for investigative, expert or other services necessary to an adequate defense. The public defender may either authorize such expenditures or provide the requested services from the area public defender office.

(b) Any attorney on the panel of attorneys who makes an expenditure for such investigative, expert or other services necessary to an adequate defense, authorized by the public defender, shall be reimbursed for any expenditures made as provided in this chapter.

Sec. 11. (a) The public defender shall establish a fund to be known as the public defense fund into which shall be paid all monies appropriated by the legislature and all other funds payable to the public defender under the provisions of this chapter.

(b) The public defender, subject to the regulations and the provisions of this chapter shall pay out of the fund,

(1) the expenses of the public defender attributable to the administration of this chapter,

(2) the salaries and expenses of the advisory committee and other persons employed in the administration of this chapter,

(3) the fees and authorized expenditures of panel attorneys. The public defender shall by rule establish a reasonable fee schedule for the payment of panel attorneys who have rendered services under this chapter.

Sec. 12. (a) The public defender shall have a right of reasonable access to all detention institutions, a right to be informed of persons detained therein and a right of reasonable communication with detained persons for the purpose of providing public defender services pursuant to this chapter.

(b) Any detained person who alleges to the public defender under oath financial inability to obtain private counsel shall be entitled to and shall be provided with public defender services as required by this chapter and the rules adopted hereunder. In the event the rules direct the use of a panel attorney, the public defender shall permit the detained person to select an attorney of his choice

from the area panel of attorneys; and the public defender shall notify the attorney of his selection. If the defendant fails to select an attorney the public defender shall do so for him.

(c) Acceptance by a detained person of services of the public defender or a panel attorney shall constitute a legal obligation to pay for so much of the services as he is found able to pay by the court as provided in section 13 of this chapter.

(d) Every detained person shall have the right to waive his right to counsel under this chapter. Failure to request counsel or an announced intention to plead guilty cannot be construed to constitute a waiver of counsel under this chapter.

Sec. 13. (a) When a person who has received services provided by the public defender, whether services of a public defender office or services of a panel attorney, or when a person unrepresented by counsel in any criminal, juvenile or post-conviction remedy proceeding first appears before a judge, the judge shall inquire into the person's financial ability to employ counsel and shall make a determination of eligibility for public defender services. The determination shall include a finding of fact as to the amount, if any, that the defendant is able to contribute toward the cost of the services provided him. The amount that a person is found able to contribute toward his own defense shall be paid to the public defender to be deposited in the public defense fund, and is a civil debt owing to the office of the public defender and may be recovered in any court of competent jurisdiction. Amounts paid shall be dedicated to the public defense fund and at the end of any fiscal year shall not revert to the general fund but shall continue in the public defense fund. The finding of fact rendered by a court as provided in this section shall constitute a judgment for purposes of recording a judgment lien.

(b) If at any stage of a criminal, juvenile or post-conviction remedy proceeding the judge before whom the proceeding is pending determines that any defendant is financially unable to bear the full cost of his defense, the judge shall declare the defendant eligible for partial public defense under this chapter to the extent that the defendant is financially unable to pay the costs of his defense. However, no attorney may be paid under this chapter who is not on the panel of attorneys.

CONTINUED

2 OF 3

(c) Unless and until otherwise ordered by the judge, the public defender, a panel attorney or an attorney contracted for by the public defender who appears to represent any person under this chapter shall continue to represent that person at all stages of the proceedings including appeal.

(d) Any person who wilfully makes false representations of material facts before the court with regard to eligibility under this chapter shall be subject to the penalties for perjury.

(e) The provisions of the chapter shall apply to juvenile proceedings in the same manner and to the same extent as they are applicable to adult criminal proceedings.

Sec. 14. (a) In any case where legal services have been provided by a panel attorney, upon termination of the attorney's services in the trial court, and again upon perfection of any appeal and upon termination of all services, the attorney shall submit a claim to the court for verification. The claim shall state:

(1) The nature and amount of services provided by the attorney; and

(2) The nature and amount of authorized expenditures made by the attorney on behalf of the defendant.

(b) Upon verification of the claim the court shall forward it to the office of the public defender who shall make payment to the attorney under the provisions of this chapter and the rules adopted hereunder.

(c) The public defender shall pay the full amount, as provided in the rules, stated on the verified claim to the attorney named thereon.

Sec. 15. Whenever the public defender has paid for legal representation of an eligible defendant under the terms of this chapter certification thereof shall be made to the Attorney General of Indiana. The attorney general may, any time within ten (10) years of certification, commence an action to recover the amount from the eligible defendant or his estate if the defendant is financially able to repay the claim. Any amounts so recovered by the attorney general shall be forwarded to the public defender to be deposited in the public defense fund. Amounts recovered shall be dedicated to the public defender fund and at the end of any fiscal year shall not revert to the general fund but shall continue in the public defense fund.

Sec. 16. (a) The public defender shall promulgate rules establishing procedures for the implementation of this

chapter. In implementing this chapter the public defender, with the advice and unanimous consent of the advisory committee, may create, in stages, following public hearing, defender areas within the state having regard to workable existing programs, available finances, number of individuals eligible for defense services and other available resources to supplement the services provided under this chapter. When a defense area is established by rule the public defender system cerated by this chapter shall replace all existing public defense programs; provided, however, before implementing this chapter in any county, the public defender shall give 90 days notice in writing to the county council and to every judge of a court of record with criminal jurisdiction of such county. Upon expiration of such 90 days, the county shall be included within the public defense system provided by this chapter unless prior to the expiration of such 90 day period, the county elects not to participate in such public defense system by a majority of the combined vote of all members of the county council and all judges of courts of record with criminal jurisdictions. However, all post-conviction remedies shall be handled by the public defender upon the effective date of this chapter.

Sec. 17. The public defender may in his discretion cooperate with other agencies and organizations in programs and projects for the improvement of the administration of criminal justice.

Sec. 18. The public defender is authorized to accept gifts and grants of money, services or property to supplement the public defender's fund and use the same for any purpose consistent with carrying out the purposes of this chapter.

Sec. 19. On and after January 1, 1974, in all counties wherein a public defender system is created pursuant to this Act a public defender's fee of three dollars ($3.00) shall be allowed and taxed as costs in all criminal cases, including but not limited to all traffic cases involving violations of state statutes and city and county ordinances, and in all juvenile and post-conviction remedy cases, whether or not the public defender or his deputies, assistants or panel attorneys enter an appearance in the action. Such amounts shall be remitted semi-annually by the appropriate officer to whom costs shall be paid in such actions to the state treasurer of Indiana, who shall deposit such amounts in the general fund of the state of Indiana.

Amounts paid into the general fund shall be dedicated to the public defense fund and shall be used for that purpose only. Any amount remaining in the public defense fund at the end of any fiscal year shall not revert to the general fund but shall continue in the public defense fund.

SECTION 2. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 3. There is hereby appropriated annually to the office of public defender from the public defense fund and from funds of the state not otherwise appropriated, a sufficient amount to pay the salaries, expenses and costs of administration of this chapter, notwithstanding the provisions of any other law enacted by the 98th General Assembly, appropriating funds for the representation of persons in penal institutions of the state by the public defender of Indiana created by prior law. Provided, That the public defense fund and specific appropriations to the Public Defender shall be exhausted prior to any expenditure of general funds pursuant to this appropriation. All claims for salary or other expenses authorized by this chapter shall be allowed and approved by the Supreme Court of Indiana.

SECTION 4. IC 1971, 33-1-7 and IC 1971, 33-1-8 are hereby specifically repealed.

SECTION 5. This act shall be in full force and effect on and after January 1, 1974.

COMMITTEE REPORT

MR. PRESIDENT:

Your Committee on Judiciary, to which was referred Senate Bill No. 152, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

Page 1, SECTION 1, line 12, strike the words "shall mean" and insert in lieu thereof the word "means".

Page 1, SECTION 1, line 15, strike the comma and words ", shall include" and insert in lieu thereof the word "includes".

COMMITTEE REPORT

MR. SPEAKER:

Your Committee on Judiciary, to which was referred Engrossed Senate Bill No. 152, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, SECTION 1, line 23, following the punctuation "." and preceding the word "Any", insert a new sentence to read as follows: "Provided, however, whenever a panel attorney is to be used under this chapter, the defendant shall be required to select an attorney on the panel from those who reside within the county in which the criminal charge has been, or will be, instituted, except that if no panel attorney from the county is available or willing to accept the case, the judge shall direct the defendant to select an attorney on the panel of attorneys from an adjoining county within the public defense area.".

Page 10, SECTION 1, line 2, following the word "system" and preceding the word "by", strike the letters "cerated" and insert in lieu thereof the word "created".

Page 10, SECTION 1, line 3, following the word "programs" and preceding the word "However", strike the punctuation "." and insert in lieu thereof the following: "; provided, however, before implementing this chapter in any county, the public defender shall give 90 days notice in writing to the county council and to every judge of a court of record with criminal jurisdiction of such county. Upon expiration of such 90 days, the county shall be included within the public defense system provided by this chapter unless prior to the expiration of such 90 day period, the county elects not to participate in such public defense system by a majority of the combined vote of all members of the county council and all judges of courts of record with criminal jurisdictions.

Page 10, SECTION 1, line 17, following the word "of" and preceding the word "shall", strike the words and numbers "five dollars ($5.00)" and insert in lieu thereof the words and numbers "three dollars ($3.00)".

Page 10, SECTION 1, line 23, following the letters "sistants" and preceding the word "panel", strike the word "of" and insert in lieu thereof the word "or".

Page 10, SECTION 1, line 29, following the word "and"

APPENDIX G

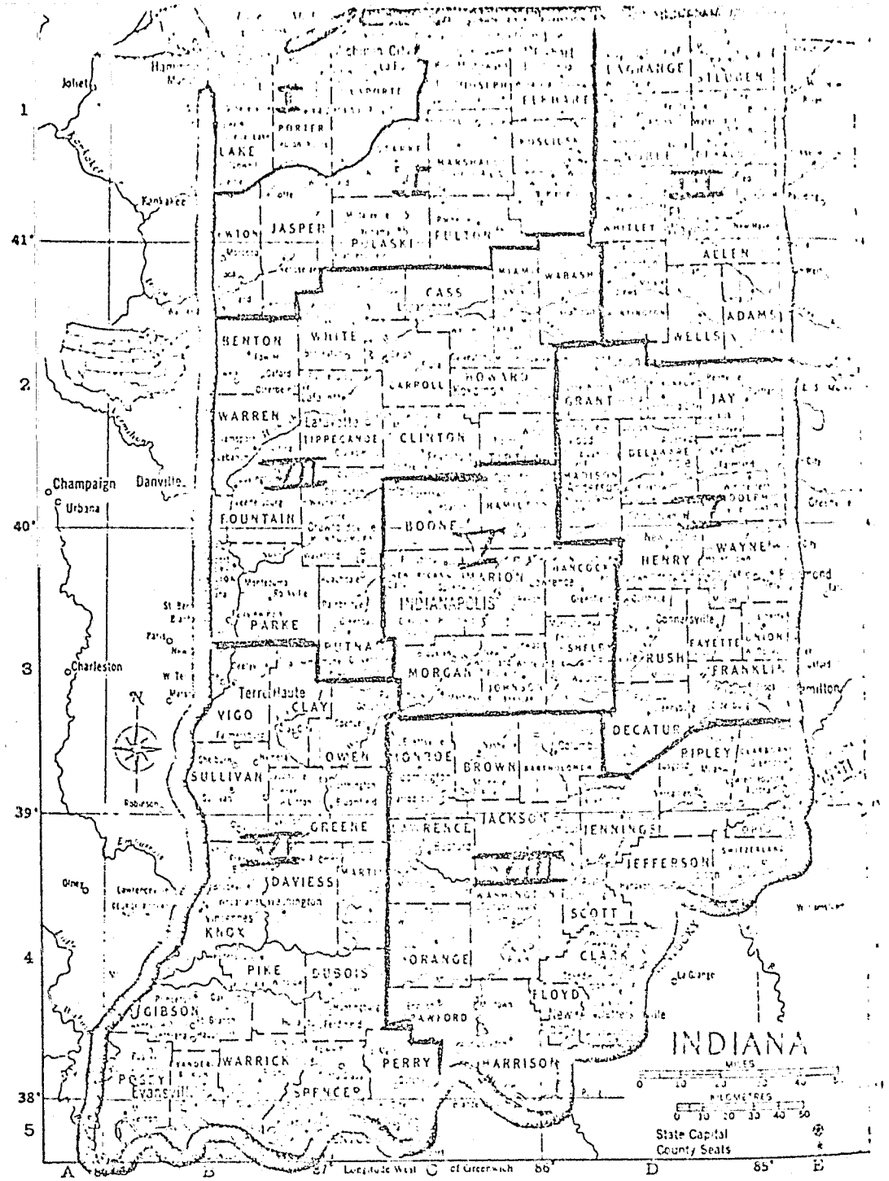
RESUMES OF TEAM MEMBERS:

Louis O. Frost

Patrick J. Hughes

Arthur B. LaFrance

APPENDIX G



VI D. Distribution of Attorneys by Administrative Area

Area I - three counties - 33 attorneys

Area II - nine counties - 13 attorneys

Area III - nine counties - 15 attorneys

Area IV - thirteen counties - 18 attorneys

Area V - eight counties - 129 attorneys

Area VI - sixteen counties - 24 attorneys

Area VII - fifteen counties - 13 attorneys

Area VIII - sixteen counties - 12 attorneys

Total Area attorneys -- 257

Appendix F - [redacted]

LOUIS O. FROST, Jr.

11788 Jocelyn Road
Jacksonville, Florida 32225

BUSINESS ADDRESS: Duval County Courthouse
Mezzanine Floor
Jacksonville, Florida 32202

BIRTHDATE: September 19, 1931

GENERAL: Married to the former Shirley Clyde Bush;
Two children: Louis O. Frost, IV, and
Deborah Allison Frost

RELIGION: Episcopalian (member of St. Andrews Episcopal Church)

EDUCATION: Julia Landon High School (National Honor Society and Valedictorian); BSBA University of Florida 1953; Juris Doctor University of Florida 1958

MILITARY SERVICE: Veteran - First Lt., U.S. Army, 1st Infantry Division, June 1954 to March 1956

PUBLIC OFFICES HELD:

Assistant State Attorney for Duval County, 19 63;
First Assistant Public Defender for the Fourth Judicial Circuit of Florida, 1963-69;
General Counsel for the Florida State Board of Health, 1965-67;
Duval County Democratic Committee, 1960-68;
Public Defender for the Fourth Judicial Circuit of Florida, 1968 to date

PUBLIC OR PROFESSIONAL BACKGROUND:

Entered private practice of law in June 1958 with the firm of Smith, Axtell and Howell; appointed Third Assistant State Attorney for Duval County in November 1959, and resigned as First Assistant State Attorney in June 1963; appointed First Assistant Public Defender in July 1963; served as General Counsel for the Florida State Board of Health from 1965 to 1967; appointed Public Defender in August 1968; engaged in the private practice of law with Gene Durrance under the firm name of Durrance and Frost from 1960 to September 1969; elected Public Defender for the Fourth Judicial Circuit of Florida in November 1968, and became full-time Public Defender October 1, 1969; re-elected

Public Defender for the Fourth Judicial Circuit of Florida in November of 1972; appointed to serve as a member of the Region III Planning Council of the Governor's Council on Criminal Justice by the Honorable Reubin O'D. Askew in May 1971 and re-appointed by the Governor in December 1972 to serve as a member of the Jacksonville Metropolitan Criminal Justice Planning Council.

CIVIL, FRATERNAL, PROFESSIONAL OR OTHER CLUB AFFILIATIONS:

Kappa Alpha Order; Jacksonville Alumni Chapter of Kappa Alpha Order (Past President 1964); Phi Delta Phi Legal Fraternity (Past President 1957-58); Jacksonville Bar Association (current Chairman of the Criminal Law Section); Florida Bar Association (current member of the Executive Council of the Trial Lawyers Section and Vice-Chairman of the Criminal Law Committee); National Legal Aid and Defender Association (member of the Board of Directors, the Executive Committee, and Vice-Chairman of the Defender Committee); Florida State Public Defender Association (Secretary 1965-66; Treasurer 1966-67; Vice-President 1969-70; President-Elect 1970-71; and President 1971-72); Florida Council on Crime and Delinquency; University of Florida Alumni Club of Jacksonville (Past President 1965-66); Florida Alumni Association (District Vice-President 1966-68); Jacksonville Jaycees (Legal Counsel 1964-66); Cystic Fibrosis (Board of Directors 1965-68); 32nd Degree Mason; Shriner (member of Director's Staff); Rotarian (Arlington Club)

RESUME

PATRICK J. HUGHES, JR.
Office of the State Appellate Defender
407 South Dearborn Street
Suite 505
Chicago, Illinois 60614
312-793-5472

Patrick J. Hughes is a former assistant United States Attorney in Chicago, Illinois, (1963-1967) and former Director of Defender Services for the National Legal Aid and Defender Association (1967-1970) in which capacity he also served as staff attorney for defender matters to the ABA Standing Committee on Legal Aid and Indigent Defendants. While at NLADA, his work included consultation and advice to jurisdictions interested in establishing organized defender systems and field visits to such jurisdictions as well as evaluations of established defender programs. He has participated in evaluations of defender offices in Columbia, South Carolina, Houston, Texas, Detroit, Michigan, Philadelphia and Pittsburgh, Pennsylvania, San Francisco, California and Boston, Massachusetts. Mr. Hughes was also a member of the team which conducted a statewide survey of indigent defense in the state of New Mexico and has just concluded a statewide survey of the defense of the indigent in the state of Illinois. He is presently employed by the Office of the State Appellate Defender where his duties included directing a post-conviction prison program comprised of six attorneys.

RESUME

Arthur B. LaFrance
Professor of Law
University of Maine
Portland, Maine

EDUCATION:

Dartmouth College, 1956 - 1960

Yale Law School, 1960 - 1963

LEGAL PRACTICE:

1963-1965: Associated with McNees, Wallace & Nurick, Harrisburg, Pa.

1965-1966: Associated with Gager, Henry & Narkis, Waterbury, Conn.

1966-1969: Associated with New Haven Legal Assistance Association, Inc., New Haven, Conn. Employment involved trial and appellate work, of a principally criminal nature, but encompassing as well the full range of cases and issues posed in poverty law, with additional administrative and training functions within the organization.
Trial experience ranged from disorderly conduct to murder. Appellate experience involved several appearances before the highest courts of Connecticut, Pennsylvania and the United States, as well as the Courts of Appeal for the Second and Third Circuits. Counsel for appellants in Boddie v. Connecticut.

TEACHING EXPERIENCE:

1962-1963: Yale Law School, moot court advisor; Legal research instructor;
1967-1968: Connecticut Bar Association criminal law lecturer;
1969 to 1973: Arizona State University, College of Law, poverty law, juvenile justice, constitutional law, criminal clinical seminar, poverty law clinical seminar, criminal procedure;
1972-1973: Boston University, School of Law (visiting), criminal law, welfare and welfare litigation, Supreme Court litigation;
1973-: University of Maine, School of Law, constitutional law, criminal law and procedure and poverty law.

LEGAL WRITINGS: Numerous briefs before state and federal courts and several substantial (20 to 100 page) reports to government agencies.

Teaching materials prepared for Juvenile Courts (1300 pages) and Welfare and Welfare Litigation (1200 pages);

Discovery of Work-product: A Critique, Dick L. Rev., 1964 (30 pp.);
Commentary/Forms for Connecticut Criminal Practice, Connecticut Bar Association, 1967-1968;
Book review, Law and Poverty, L. and Soc. Order, 1970 (10 pp.);
Clinical Education: "To Turn Ideals Into Effective Vision",So. Calif. L. Rev. 1971 (40 pp.);
Constitutional Law Reform for the Poor, Duke Law Journal, 1971 (52 pp.);
Federal Litigation For the Poor, L. and Soc. Order, 1972 (128 pp.);
Federal Habeas Corpus and State Prisoners, A.B.A.J. 1972 (4 pp.);
The Law of the Poor West Publ. 1973 (with others, 550 pages);
Public Defense Systems In Criminal Cases Notre Dame Lawyer, 1974 (70 pp.);

CONSULTING: 1968-1971: Consultant for O.E.O. legal services; the Reginald Heber Smith Fellowship Program.
1971-1974: Consultant for National Legal Services Training Program in curriculum, materials and training in federal jurisdiction and procedure for legal services attorneys.
1973: Consultant for Center on Criminal Justice, Boston University, Argersinger Project.
1974: Project Director, American Bar Association Criminal Standards Comparability Study for the Maine Judicial Council; National Legal Aid and Defender Association, evaluating public defender offices.

UNIVERSITY ACTIVITIES: Arizona: Secretary, American Association of University Professors; Faculty Senator from the College of Law; Delegate, American Association of Law Schools; member, various committees.

Committee assignments included evaluation of clinical programs; drafting student code of conduct; AAUP observer for academic freedom proceedings; AALS delegate and panel chairman (1972-1973) on Legal Services to the Poor.

CIVIC ACTIVITIES: Arizona: Member, various bar associations, civil liberties organizations, board of directors, Maricopa County Legal Aid Society (Pheonix area).

Maine: Pine Tree Legal Assistance Association, Board of Directors and Executive Committee; Governor's Task Force on Corrections; Membership Chairman, National Legal Aid and Defender Association; Precinct Chairman and Executive Committee member, Portland Democratic Party.

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THE AMERICAN UNIVERSITY

CHECK REQUISITION

FROM: Institute for Studies in Justice and Social Behavior

TO: Accounting Office

NAME OF PAYEE: c/o Jeanne McDonald
National Legal Aid and Defender Assoc/ DATE: 12/9/74

SOCIAL SECURITY #: ------- AMOUNT: 2240.43

ADDRESS OF PAYEE: 1155 E. 60th Street, Chicago, Illinois 60637
Number Street City State Zip

PURPOSE*

technical assistance to various T/A studies
Lake County, Indiana (111) - 2 days consulting @ $135.00 = $270.00
New Orleans (97) 1 days consulting @ $135.00
Ohio Study (140) 4 days consulting @ $135/day= $540.00
1 day consulting @ $115/day
Vermont (125/139) 2 days consulting @ $135/day = $270.00
Lake County, Ind. (110) travel = $48.27
Skagit County (94) - travel = $344.66--consulting = 4.5 days @ $115/day = $517.50

ACCOUNT NUMBER: 10180.210.4912 = $392.93
10180.100.4912 = $1847.50

Signature

* When the request for payment involves supporting data or additional information, please attach it to the Check Requisition.

END