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OFFICE OF THE DEFENDER GENERAL

Thirteenth Annual Report

Fiscal Year 1988



February, 1989

Cover: "The Trial of George Jacobs", for witchcraft, at Salem, Massachusetts, 1692,
by T. H. Matteson.

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The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.

John Cournos, "A Modern Plutarch" (1928)

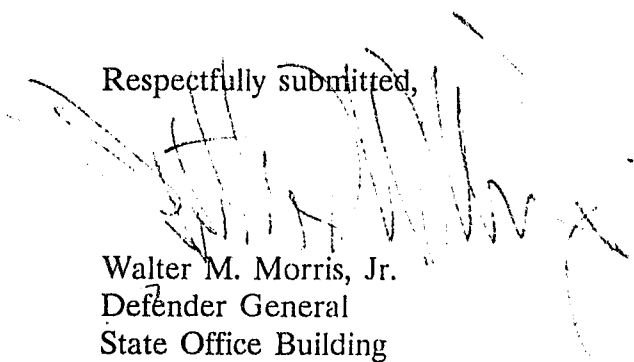
There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.

Justice Hugo Black, Griffin v. Illinois, 351
U.S. 12, 19, 100 L.Ed. 891, 899 (1956)

OFFICE OF THE DEFENDER GENERAL**Thirteenth Annual Report**

Pursuant to Vermont Statutes Annotated, Title 13 §5256, I herewith present the Thirteenth Annual Report of the Office of the Defender General. 1988 marked the twenty-fifth anniversary of the United States Supreme Court's landmark decision in Gideon v. Wainwright, 372 U.S. 335 (1963) establishing the right to counsel for the poor in serious criminal cases. Vermont's criminal justice system has come a long way since the day that Clarence Earl Gideon wrote his petition from a jail cell asking that his constitutional right to the help of a lawyer be honored by the court. Over the years, literally hundreds of people have served to assure that the promise of the Gideon case is observed for the poor in Vermont's criminal courts. I offer my sincere thanks to all of the women and men who have served in Vermont's public defense community, including especially assigned counsel contractors and ad hoc assigned counsel, who have coupled their beliefs with the courageous act of standing with their clients in our criminal and juvenile courts. My thanks also extend to the citizens of Vermont, for their continuing support of a strong public defense system, an integral part of an adversary system under which the rights of all are preserved.

Respectfully submitted,



Walter M. Morris, Jr.
Defender General
State Office Building
Montpelier, VT 05602

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ACQUISITIONS

February, 1989

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I. PURPOSE

The Office of the Defender General provides legal representation for indigent persons accused of a felony or a misdemeanor carrying a penalty of imprisonment, or a fine of more than \$1,000.00; youth who have been adjudicated delinquent; Children in Need of Care or Supervision (CHINS); persons in the custody of the Commissioner of Corrections who have a claim for relief; persons in extradition proceedings; persons filing habeas corpus petitions; persons filing appeals; and persons in parole hearings and other post-conviction relief hearings. Title 13 Vermont Statutes Annotated Sections 5232, 5233, 5253; Title 33 V.S.A. Sections 658 and 659; Vermont Supreme Court Administrative Order No. 4, Section 1.

II. STATUS OF PUBLIC DEFENDER SYSTEM

Vermont's commitment to provision of counsel for indigent defendants and children in abuse, neglect and delinquency cases continues to face significant and critical challenges. The fundamental problem is one of resources keeping pace with caseload demands. Based upon past fiscal years, current staffing, and caseload patterns, the following trends and factors have had, and will continue to have impact upon the public defense mission: a continuing pattern of caseload escalation; an increase in the number of homicide cases in which representation is handled by public defenders; continued increases in the reporting and prosecution of child abuse, neglect, delinquency and sexual assault cases; expanding post-conviction pressures within the Prisoners' Rights caseload; an expanded appellate caseload resulting from an upsurge in the number of trials conducted, and terms of imprisonment imposed; and increases in the costs of expert evaluation and witness fees. Court dockets continue to be strained, with increased public awareness and vigorous prosecution of certain categories of cases, such as sex, motor vehicle, and drug offenses, that were formerly less prevalent in the judicial system. For public defenders, the complexity and volume of caseloads sustained in FY 87 and FY 88 and continuing into FY 89 have pressed the constitutional and statutory obligations to provide effective assistance of counsel to the very limit.

During FY 88, Public Defenders and Assigned Counsel Contractors made unprecedented efforts to provide capable representation. The number of trials conducted was roughly double that of FY 87. However, to respond effectively to the volume of cases, the public defense system increased reliance upon caseload relief measures such as the hiring of temporary employees and assignment of cases to private counsel to provide representation for the poor in FY 88. Beginning in FY 89, the Defender General embarked upon a three-year program of rebuilding and reorganizing Vermont's public defense system. Three new public defender positions were authorized, and the assigned counsel contract system for conflict of interest cases was strengthened. In the next two fiscal years, continuing emphasis must be placed upon reorganization and resource enhancement to guarantee effective representation of indigent clients. Resource needs are especially great with respect to the conduct of appeals and prisoners' cases.

Without additional resources, expenditures for public defense mandated by the Constitution and statutes will continue to spill over into ad hoc assignment of private attorneys, at significantly greater costs. The greatest injustice would be the denial of counsel to those who qualify, and who have a constitutional right to counsel, for want of system resources, or an equivalent harm, a general erosion in the quality of representation provided to the poor. Consistent with the public defense mission, we do not intend to permit this to occur. However, the challenge is unavoidable, and new resources are necessary to do the job.

III. HISTORY

In 1972, the Vermont General Assembly created the Office of the Defender General, thereby establishing one of the nation's first state-wide public defense systems. This legislative initiative was entirely consistent with a long-standing Vermont tradition of providing counsel to indigent defendants in serious criminal cases. As early as 1872, the Vermont General Assembly took a preeminent lead in protecting the rights of defendants. Unlike most states, which have had the notion of public defense thrust upon them pursuant to the decisions of the federal judiciary, the Vermont Legislature created a state-supported system of assigning counsel from the private bar to represent indigent criminal defendants on an ad hoc basis.

Vermont's assigned counsel system of representation was far more developed than that of most other states. In those states that recognized the United States Constitution's Sixth Amendment requirement that accused persons be represented by counsel, there was essentially no means for compensation of assigned counsel. It was not considered the responsibility of the government to provide these services.

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

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

In 1971, Vermont's Judicial Council recommended to the Vermont General Assembly that a state-wide public defender system be established. Under the direction of then District Court Judge Hilton J. Dier, Jr. (who will retire in 1989 after having served as a Superior Court Judge since 1975), a pilot program was conducted in Addison County

during 1971-2. By comparing the assigned counsel system with public defense, the committee found that the overall cost per case was twenty-three percent less expensive when managed by the public defender.

Experts testified that a public defense system would result in a more effective criminal justice system. Consequently, the Legislature enacted a significant portion of the model Public Defender Act which became law on July 1, 1972. Title 13 V.S.A., Ch. 163. Vermont's initial Public Defender Act was drafted broadly enough to allow for the federally-mandated expansions of the right to counsel without substantial amendments to the law.

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

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

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

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

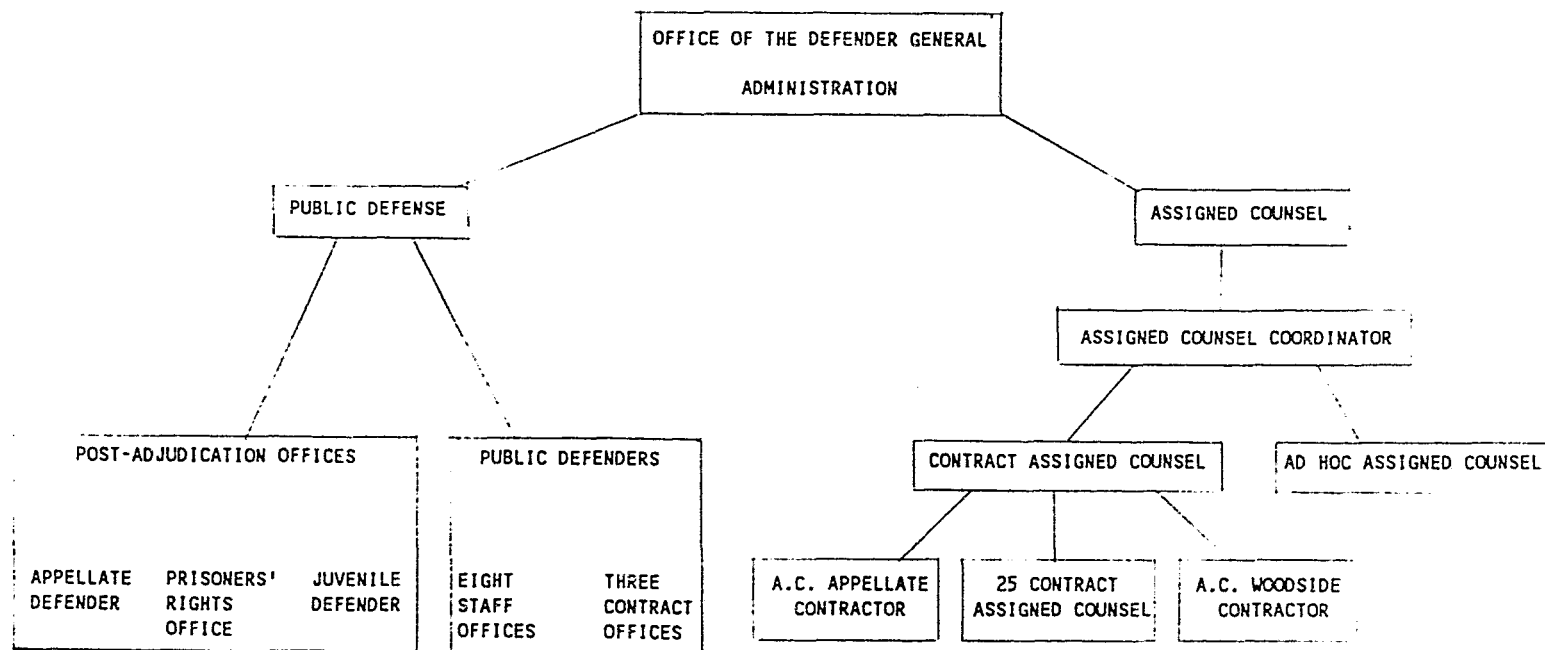
In 1981, Defender General Andrew Crane recommended a restructuring of the

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

In upholding its impressive history of concern for the rights of the individual, Vermont has assumed the responsibility of its constitutional and statutory mandates. With the continuing caseload explosion, significant enhancement of resources for both the Public Defense and Assigned Counsel programs will continue to be necessary to enable the State to provide effective legal representation in criminal and juvenile cases to the needy in a cost-effective manner. The assigned counsel system will require special strengthening and reorganization focus during the next few years, to assure that this important component of public defense continues to serve indigent clients well.

IV. PROGRAM STRUCTURE

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



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

A. Public Defense

There are eleven public defense field offices located throughout the State. Eight of these offices are full-time staff offices: Bennington County (located in Bennington); Caledonia and Essex Counties (served from an office in St. Johnsbury); Chittenden County (located in Burlington); Franklin and Grand Isle Counties (served from an office in St. Albans); Lamoille County (located in Hyde Park); Orleans County (located in Newport); Rutland County (located in Rutland City); and Windham County (located in Brattleboro). In FY 89, three new attorney positions were added to upgrade two offices formerly staffed by solo attorneys (Newport and Hyde Park), and to respond to caseload demands in Burlington, location of the state's busiest criminal court.

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

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

Public Defense and post-adjudication offices are managed by the Office of the Defender General in Montpelier. The Deputy Defender General assists the Defender General in the general management of the program. The Defender General also relies upon an Accountant and Administrative Secretary to assist in the business management of both programs.

Legal services are also provided in public defense through three post-adjudication offices based in Montpelier. If the initial conflict of interest no longer exists after disposition of a case, those offices may, and do, serve assigned counsel clients in addition

to public defense clients.

1. Appellate Defender

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

Caseload pressures in the Appellate Defender's office have required the development of a system of priorities. The appeals of incarcerated individuals are handled immediately. During FY 1988, appellate caseload pressures became so great that several appeals had to be assigned to private counsel, in response to progress orders entered by the Supreme Court to advance pending cases. The number of pending appellate cases increased by 18% from FY 87 to FY 88; the number of pending appeals has increased during each of the first six months of FY 89, despite case disposition rates exceeding the Lawyer Equivalency Caseload (L.E.C.) recommended for each of the two appellate defenders.

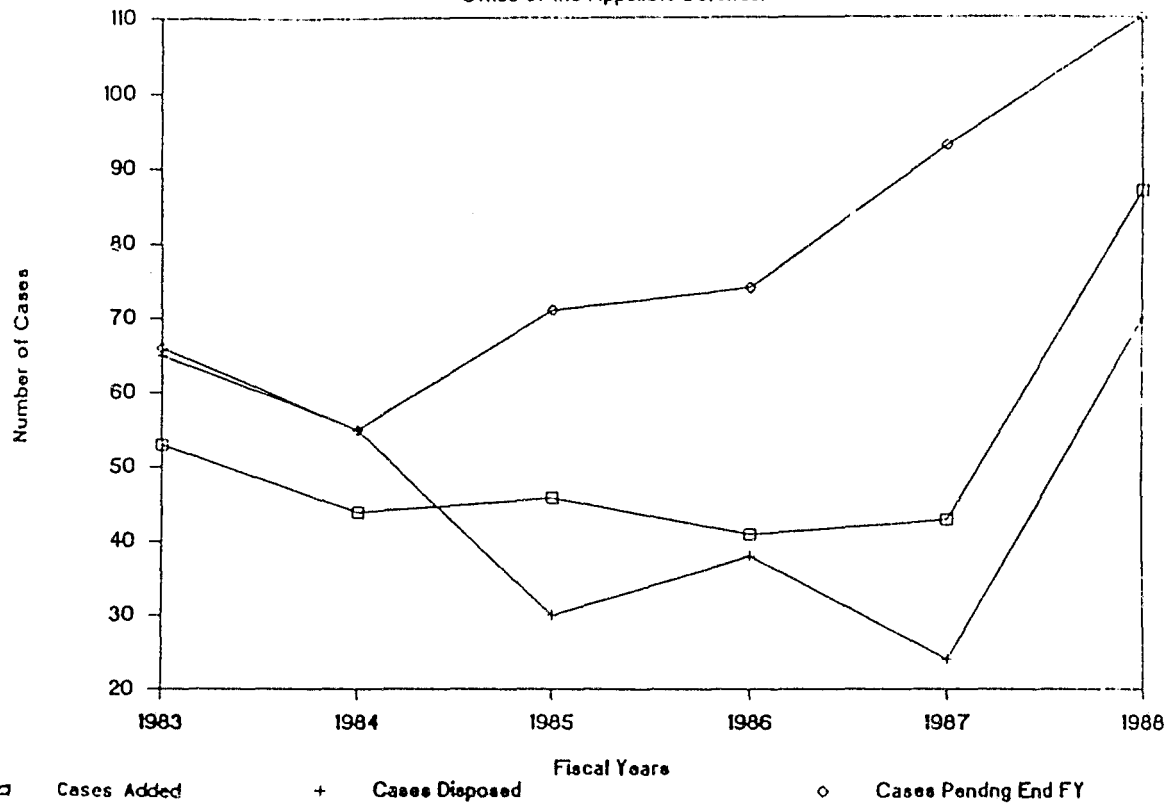
OFFICE OF THE APPELLATE DEFENDER

<u>Fiscal Year</u>	<u>Cases Added</u>	<u>Cases Disposed</u>	<u>No. Cases Pending End FY</u>
1983	53	65	66
1984	44	55	55
1985	46	30	71
1986	41	38	74
1987	43	24	93
1988	87	70	110

<u>First Half FY 1989</u>	<u>Cases Added</u>	<u>Cases Disposed</u>	<u>No. Cases Pending End Mth</u>
July	5	5	110
August	2	3	109
September	10	8	111
October	6	3	114
November	5	1	118
December	14	9	123

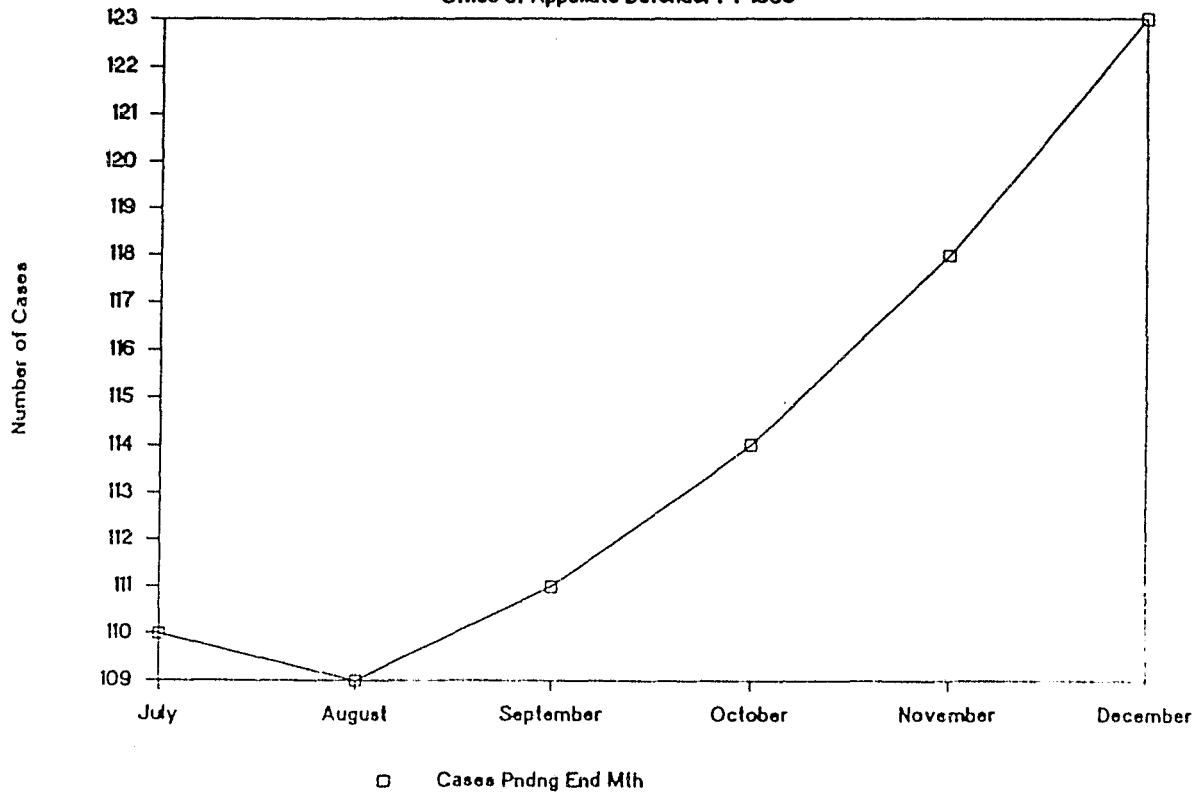
OFFICE OF THE DEFENDER GENERAL

Office of the Appellate Defender



OFFICE OF THE DEFENDER GENERAL

Office of Appellate Defender FY 1989



2. Prisoners' Rights Office

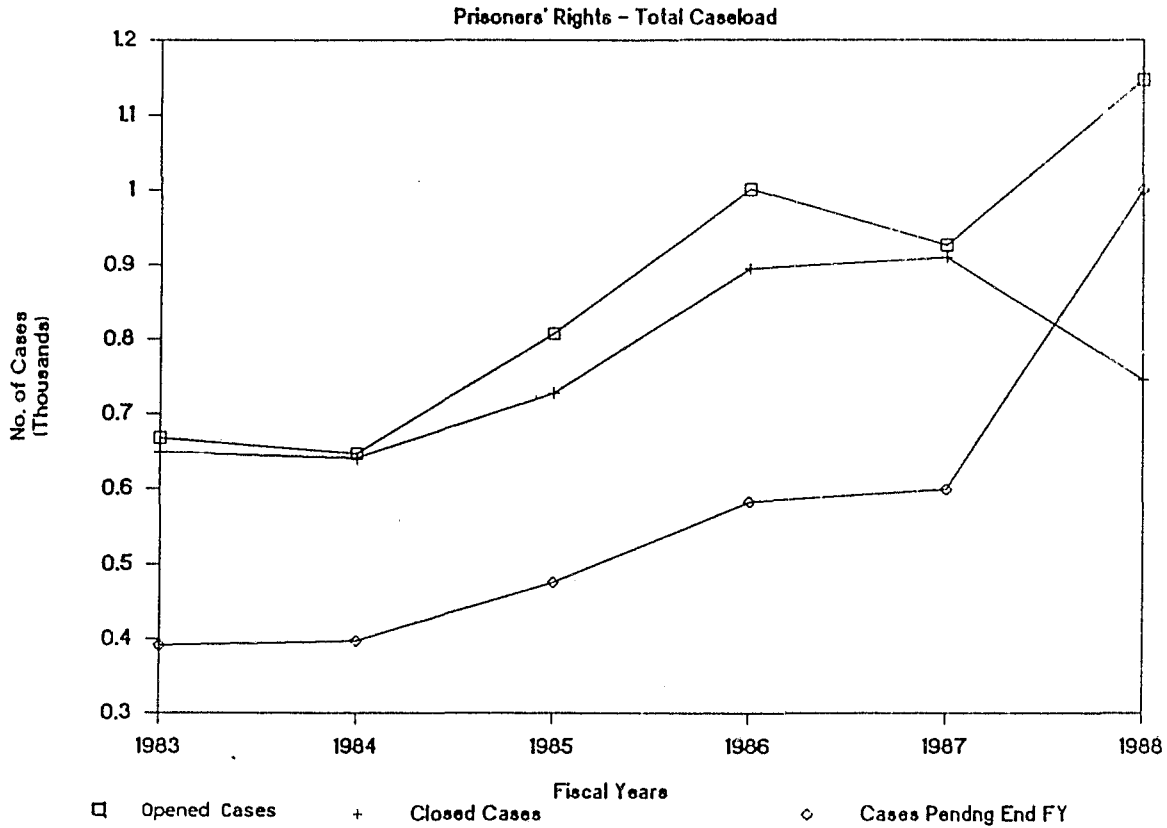
The Prisoners' Rights Office provides legal assistance to clients who are in the custody of the Commissioner of Corrections. 13 V.S.A. Section 5253 (a). This work includes post-conviction relief, habeas corpus petitions, and monitoring conditions of confinement and parole. These legal services are provided to persons who are confined in a correctional facility, and to those who are under probation and parole supervision. The Prisoners' Rights Office consists of two Attorneys, one Investigator and one Secretary.

The Prisoners' Rights Office has also been confronted with an expanding caseload, as more people are sent to prison, in conjunction with a pattern of increasing sentences. Vermont's jails have become seriously overcrowded. The result is that more prisoners are seeking redress with respect to conditions in the jails, and systemic challenges to jail conditions are necessitated. Special needs populations, such as youthful offenders, sex offenders, and offenders with mental illnesses or retardation require special programming and treatment to advance the societal goal of rehabilitation. Strong advocacy is needed to assist these "forgotten" people to become productive members of the community. In order to deal with the caseload stress, the Prisoners' Rights Office has given priority to representation of clients with "restriction of liberty" claims. During FY 88, caseload relief measures in the form of temporary employees and assignment of cases to private counsel were required to assist in provision of representation in priority cases to the prisoner population, as required by the constitutions and statutes.

PRISONERS' RIGHTS OFFICE

<u>Fiscal Year</u>	<u>Cases Opened</u>	<u>Cases Closed</u>	<u>No. Cases Pending End FY</u>
1983	668	649	391
1984	647	641	397
1985	807	728	476
1986	1,002	895	583
1987	927	910	600
1988	1,147	746	1,001

OFFICE OF THE DEFENDER GENERAL



Note: Total caseload includes post-conviction relief, corrections and civil cases.

3. Juvenile Defender

The Office of the Juvenile Defender represents children who are in state custody as a result of abuse, neglect, unmanageability or delinquency. Representation includes: administrative and dispositional review proceedings; outreach and representation of juveniles in restrictive and secure facilities (including Woodside and out-of-state institutions); representation of juveniles in CHINS, termination of parental rights, and delinquency proceedings; and technical assistance to public defenders representing juveniles in CHINS or delinquency proceedings. The office consisted of one Attorney and two Investigators until August, 1987 when a much-needed second Attorney was added.

During FY 1988, the Office of the Juvenile Defender participated in 731 Administrative Review hearings and 261 Dispositional Review hearings; and monitored the placement of 195 juveniles in the Woodside Facility. The office also represented children in out-of-state placement hearings, habeas corpus proceedings and at Eighteen-Month-Court Reviews to assure that the children's custody and permanency planning is in their best interests. As more and more abused and severely emotionally disturbed children come into state custody, the Juvenile Defender's Office has actively supported efforts to improve the juvenile court process and efforts to provide a coordinated system of treatment for those children.

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

B. Assigned Counsel

Assigned Counsel contracts were entered into with twenty-three law firms or individual attorneys in FY 1988. In an effort to reflect more equitable compensation based upon caseload, the Defender General reallocated the contract amounts for all counties based upon their FY 1987 caseload. Adequacy of compensation for assigned counsel contractors and ad hoc appointments continues to be of major concern. While efforts to improve contract firm compensation have been undertaken in FY 89, the rate for hourly compensation for ad hoc counsel has not been increased from \$25.00 since 1982. A significant indicator of the seriousness of the problem of lack of adequate compensation is that experienced and effective assigned counsel contractors are declining to renew their contracts in increasing numbers due to the low rate of compensation in relation to caseloads. In FY 89, there were eight experienced firms who would not renew their contracts, citing this problem.

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

The Assigned Counsel Contractors bring stability and savings to the budget. Beginning in FY 86, the Defender General established a "split" system of assigned counsel contracts in each county, to reduce the number of "second tier" conflicts requiring ad hoc assignment of counsel from the private bar. The objective is to assure that in each county, there are at least two contractors to take conflict cases (for FY 89, there are 25 law firms under contract throughout the state). This initiative has functioned very well as a cost containment measure within the assigned counsel program, notwithstanding systemic pressures resulting from the sheer volume of new cases, expansion of post-conviction relief caseloads, and dispositional reviews in juvenile cases.

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

By imposing the same strict set of expenditure guidelines that the public defenders adhere to, the Assigned Counsel Coordinator has attempted to control expenses. However, the appointments and associated expenses for counsel continue to be unpredictable. For example, homicides referred to contract counsel and ad hoc assignments from 1986 through 1988 because of conflicts of interest have resulted in significant budget problems. The objective has been to increase the number of homicides in which representation is provided by the core public defense program, but this is not always possible. Even the most experienced contract law firms require investigative and expert services in preparation of more complex cases, and these costs are a matter of on-going concern.

In addition, as caseload pressures in public defender offices continue to mount, the challenge has been to limit recourse to ad hoc assignments for caseload relief to those offices that cannot, consistent with ethical mandates, take on any more cases. In FY 88, caseload relief measures were employed in two offices, Burlington and Newport.

While the Assigned Counsel Contract and Ad Hoc appointment system has fulfilled its role well since 1982, increased caseload pressures make it necessary to reorganize and

strengthen this program incrementally over a period of at least three years, to cope with the demands of a rapidly-changing judicial system. In FY 89, the Defender General began a "specialty contract" demonstration under which conflict representation for juveniles at the Woodside facility is provided by a single law firm, to assist all contract firms in providing better representation of these children. Such contracts would also prove useful to improve quality of services and reduce costs in post-conviction prisoners cases, a specialized area of practice for which it is difficult to find qualified attorneys. Another initiative that must be considered for future years is the establishment of staff or contract "alternate defender" offices, which devote all of their practice to handling indigent conflict cases. For the more populous areas of the state, recourse to such offices appears inevitable.

V. DEMAND FOR SERVICES

A. Public Defense Added Clients

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

During FY 1987, public defenders experienced a 14.7% increase in added clients over FY 1986 (compared to a 7.5% increase from FY 85 to FY 86). During FY 1988 the number of added clients assigned and the complexity of cases continued the general pattern of escalation. While the number of added clients assigned in FY 88 stabilized at 8,947, or 2% fewer than in FY 87, FY 88 added clients continued to exceed the cases of FY 1986 by 12%--reflecting the sustained excess caseloads of the entire justice system. In FY 88, public defenders were assigned to represent 8,947 clients facing 11,708 charges, ranging from motor vehicle offenses to murder. During the first half of FY 1989, the number of added clients exceeded those of the same period in FY 88 by 9%, marking a return to a pattern of rapid caseload escalation. The increase in added clients for public defenders is attributable in part to an increased percentage of the total criminal court caseload being assigned to public defenders. In FY 1985 40.8% of the total court charges were assigned to public defenders. In FY 1988 that percentage had climbed to 46.6%. When assigned counsel contractors are included, the public defense system was involved in 55% of the charges. The percentage of charges assigned to public defenders in specific courts ranges as high as 73.6% (Newport) and 68.6% (Barre and St. Johnsbury).

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

From FY 80 through FY 88, the number of public defense Added Clients increased 89%, while the number of public defenders available to represent them in district court increased only 43%. As a result of the growing number and complexity of cases, the public defense system has been chronically understaffed and despite the addition of three new attorney positions to the system in FY 89, in two offices, Chittenden and Windham, and in the Appellate and Prisoners' Rights Offices, the needs for additional staff are critical.

B. Public Defense Understaffing and Caseload Relief

Understaffing is the most serious problem the Defender General faces. The modest increase of seven trial lawyers from FY 80 through FY 88 had proven insufficient to meet the caseload demands experienced in this span of years. With approval of the Governor, the Defender General requested and obtained authorization for three new attorney positions in FY 89, a year of critical and incremental transition for Vermont's public defense system. While these positions have served to avoid a virtual breakdown of the system for providing counsel for the poor, the process of resources enhancement must continue. In FY 90, the Governor's budget includes provision for one additional attorney in the Appellate Defender's Office.

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

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

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

FISCAL YEAR	LEC	TRIAL ATTORNEYS	PERCENT UNDERSTAFFED
1980	18.8	16.8	10.6%
1981	20.6	17.6	14.6%
1982	22.4	19.0	15.2%
1983	25.7	20.0	22.2%
1984	24.9	22.0	11.6%
1985	27.4	23.0	16.1%
1986	29.8	23.0	22.8%
1987	33.7	24.0	28.2%
1988	33.4	24.0	28.1%

Through FY 1987 and FY 1988, it was clear that the expanding caseload had pressed public defenders' constitutional, statutory and ethical obligations to provide effective assistance of counsel to the very limit. Consequently, the Defender General developed and implemented a caseload relief policy (see Page 37) that provides for a range of relief measures, including assignment of certain public defense cases to private attorneys at a significantly greater cost. The caseload relief policy is implemented only where necessary to assure effective representation of indigent clients. Limited programs of caseload relief were implemented in two of the District Courts during FY 88. And, while staff resources added in FY 89 have brought some measure of stabilization to the field offices, continuing caseload relief will be necessary, unless additional resources are provided in the post-adjudication Prisoners' Rights and Appellate Defender Offices, and in two field offices (Chitterden and Windham) facing extraordinary caseload problems.

C. Case Weighting

In order to more accurately assess the workload and to measure the special burdens placed upon defense staff in homicide, sexual assault, and other serious cases, the Defender General will initiate a case weighting demonstration in FY 89 designed to yield information as to where attorney effort is being spent and in what proportions. Through case weighting, the Defender General will be able to better plan for resource allocation and client service, based upon assessment of the demands created by the particular blend of cases assigned to each public defense office. The case weighting information will supplement existing measures of added, pending, and disposed cases, which will continue to be utilized in program and resource planning.

VI. SPECIAL DEMANDS

A. Homicide

During FY 1988, public defenders and assigned counsel provided legal representation to twenty-six Vermonters charged with homicide crimes. These include active cases, cases on appeal, and cases in which post-conviction relief is sought. When combined with other increases in caseload, the burgeoning homicide caseload stretched resources to the limit.

During the early years of the Office of the Defender General, outside counsel were routinely hired to represent homicide defendants at substantial expense. The theory supporting this practice was that public defenders did not yet have the experience and expertise to provide adequate representation to homicide defendants. This situation has changed dramatically over the past several years with the advent of experienced staff public defenders and public defense contractors. There is now a cadre of experienced public defenders to represent homicide defendants. They also co-counsel with less-experienced public defenders, thus training them for future homicide cases. Due to case preparation expenses and the specialized nature of the work, the appearance of privately retained counsel in any homicide case in the state is increasingly rare.

During FY 1988, public defenders were assigned to provide representation in nine new homicide cases. The sustained number of homicide cases taxes the local public defender offices requiring a great deal of time for legal research, investigation and trial preparation. This places significant hardships on other attorneys, investigators and secretaries.

The number of pending assigned counsel homicide cases presented special financial problems once again in FY 1988, in that it is difficult to budget funds for the actual number of pending cases. (The FY 88 assigned counsel budget, and that for previous years, contained only a nominal sum for homicide defense, necessitating budget adjustment. Beginning in FY 89, a line item appropriation more closely approximating actual expenditures has been provided, but adequacy of funds remains a concern.)

In accordance with the Supreme Court's Administrative Order No. 4, the maximum payment to an assigned counsel contractor for homicide representation is \$5,000; for a law firm assigned ad hoc, \$10,000. Despite these rates, it is not realistic to assume that a homicide defense can be conducted without significant pro bono contribution on the part of the assigned attorneys. As a practical matter, assigned counsel perform hundreds of hours of work in homicide cases for minimal compensation.

B. Sexual Assault

Due largely to increased public awareness, there has been a staggering increase in the last five years in the prosecution of sex crimes in Vermont. There are no more

profound and serious cases routinely processed in the trial courts than charges of sexual assault and lewd and lascivious conduct. These cases require an exceptional amount of work from arraignment through sentencing. Post-sentencing, serious civil liberties issues must be addressed in the context of "compelled" treatment, and the inadequacy of present treatment resources for sex offenders in the state.

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

While there was a very slight decline in FY 88 in the total number of added L&L and sexual assault cases, the pattern of high volume sexual offense cases first set in FY 84 continues. In FY 1988, public defenders represented 75 persons charged with lewd and lascivious conduct, and 109 persons charged with sexual assault. In the assigned counsel program, representation was provided in 25 lewd and lascivious cases, and 31 sexual assault cases. As is true of homicides, it does not appear there will be any significant decrease in the number of sex crimes prosecuted in Vermont in the foreseeable future; during the first half of FY 89, the number of added sex crimes assigned to public defenders has continued unabated.

PUBLIC DEFENSE - SEX OFFENSES

FISCAL YEAR	L & L	SEXUAL ASSAULT	YEARLY TOTAL	CHANGE
1976	38	23	61	
1977	40	13	52	-14.8%
1978	63	23	86	65.4%
1979	24	38	62	-27.9%
1980	42	35	77	24.2%
1981	31	34	65	-15.6%
1982	32	32	64	-1.5%
1983	30	39	69	7.8%

1984	56	59	114	65.2%
1985	83	74	157	37.8%
1986	86	109	195	24.2%
1987	71	116	187	-4.1%
1988	75	109	184	-1.6%

C. Motor Vehicle Caseload

Motor vehicle misdemeanor charges accounted for 35.3% of the total public defender caseload in FY 88. Within the category of all motor vehicle offenses, DWI charges (1,423) accounted for 12% of all disposed public defense charges. The DLS charges (2,172) accounted for 18.4% of all disposed public defense charges. Combined, DWI and DLS charges absorbed more than 30% of all charges disposed of by public defenders during FY 1988. Of particular concern is the escalation of DLS charges from year to year, evidence that our current approaches to motor vehicle offenses and driver rehabilitation are in need of progressive revision.

PUBLIC DEFENSE - DWI AND DLS OFFENSES

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

D. Juvenile Caseload

Public defense disposed cases involving CHINS petitions increased 6.9% in FY 1988 over FY 1987 with 888 petitions reported, the greatest number since statistics were first maintained in FY 1976. Delinquency proceedings were also at a record number of 479.

JUVENILE CASELOAD

FISCAL YEAR	CHINS	DELINQUENCY	TOTAL	CHANGE
1976	311	244	555	---
1977	312	346	658	18.6%
1978	385	372	757	15.0%
1979	424	369	793	4.8%
1980	419	410	829	4.5%
1981	305	326	631	-23.9%
1982	421	381	802	27.1%
1983	708	428	1,136	41.6%
1984	612	315	927	-18.4%
1985	625	382	1,007	8.6%
1986	758	411	1,169	16.1%
1987	831	470	1,301	11.29%
1988	888	479	1,367	5.1%

Juvenile cases require the same quality of representation provided in other serious cases. There are many parties involved in these cases including: juvenile(s); parents and other adult parties; SRS; state's attorneys; and lawyers representing each of these parties. These cases can require several years of litigation. This is true of both the CHINS proceedings and delinquency matters. Although the Juvenile caseload represents 11.6% of the public defense caseload, the complexity of the legal, social and emotional aspects of these cases assumes a much larger proportion of the workload than statistics might indicate.

Assigned counsel play a critical role in juvenile cases, by assuring that the system deals rationally with the competing interests of children, who must be protected from abuse and neglect, and preservation of the family unit where possible, an interest which must be accorded great value in our society. In FY 88, 37.6% of the assigned counsel caseload was comprised of juvenile cases.

VII. COSTS/CLIENT CONTRIBUTION FOR PUBLIC DEFENSE SERVICES

As former Defenders General have indicated, the public defense and assigned counsel programs always have operated beyond the capacity of their resources. This is so because program appropriations have always followed major trends and demands of the justice system, often by several years. The Office of the Defender General is unique among state departments which have the ability to reduce either the number of clients served or the quality of service rendered in the event of unmitigated economic hardship. The United States and Vermont Constitutions and the Vermont statutes require that vigorous and effective public defense services be made available to eligible defendants. The "product" of the programs cannot simply be reconfigured to provide more for less,

despite rigid cost containment efforts.

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

In FY 88, at the urging of the Defender General, the Legislature approved a comprehensive revision of the state's system for seeking client contributions to the costs of public defense. Under the new system, the process of "recoupment" (post-case recovery of fees) was abandoned. As is the case in most other jurisdictions, the recoupment system had proven to be ineffective, time-consuming when pursued, and unjust in application. Beginning in FY 89, a new system under which a modest contribution (a minimum of \$25 to \$50) made by clients having an ability to pay is implemented, with the payment being made at arraignment or as soon as possible thereafter.

Procedural safeguards are provided to assure that persons constitutionally entitled to assignment of counsel are not deprived of counsel for inability to contribute to costs. Contributions may not be sought from clients having incomes below the poverty guidelines, or receiving public assistance, since this would be violative of constitutional and statutory guarantees.

The contribution requirement may not result in a criminal sanction; rather, it is treated as a civil obligation established by the acceptance of state-provided assistance.

No system of public defense client payment will result in generation of significant revenues. This is the experience not only in Vermont, but in all other jurisdictions dealing with the question. However, it is anticipated that the newly implemented system will provide a more just and effective approach to an issue of long-standing concern.

VIII. CONCLUDING REMARKS

1988 marks the twenty-fifth anniversary of the landmark decision of the United States Supreme Court in Gideon v. Wainwright, 372 U.S. 335 (1963), recognizing the constitutional right to counsel for the poor in serious criminal cases. The principles first established in Gideon, and expanded in later right to counsel cases, are alive and well in our criminal courts today. As Mr. Justice Black stated in the Gideon case, "the right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel". Despite the commitment of the citizens of our state to a strong adversary system in which the quality of a person's defense does not depend upon financial circumstances, the right to effective assistance of counsel is subject to constant challenges and pressures. During the next few years, constant re-examination, reorganization, and improvement of Vermont's public defense system will be necessary to enable us to provide capable representation for all who are entitled to counsel.

In the quest for an orderly and "safe" society, the preservation of our sacred constitutional liberties becomes ever more difficult. As legislators and citizens consider making "war" on drugs, drunk driving, and other offenses, we must consider the grave risk to the civil liberties of all people presented by enactments that would erode our rights to privacy, free speech, freedom from unreasonable searches and seizures, and our rights to due process and a fair trial. The inadequacy of our present criminal justice system resources, and the availability of treatment and rehabilitation alternatives other than jail must be considered in any rational approach to the problem of crime in our society. We must look to the experiences of sister states whose justice systems have broken down as a result of over-demands and inadequate funding, and learn to avoid the mistakes of others.

As the public defense system serves its individual, indigent clients, it serves the interests of all Vermonters, by assuring that a strong adversary system is maintained with strict observance of the constitutional liberties of all. With the support of the Governor, the Legislature, and the public, Vermont's public defenders and assigned counsel will continue to make this vital contribution to the state's criminal justice system.

PUBLIC DEFENSE FY 1988: STATE-WIDE

CASES ADDED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	No.	%	No.	%	No.	%	No.	%	No.
Charges	1646	14.1	7248	61.9	1419	12.1	1395	11.9	11,708
Clients	1289	14.4	5384	60.2	1275	14.2	999	11.2	8,947

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	No.	%	No.	%	No.	%	No.	%	No.
Charges	1570	13.3	7368	62.3	1367	11.6	1518	12.8	11,823
Clients	1266	16.5	4147	54.1	1203	15.7	1052	13.7	7,668

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty	14	50.0	46	54.1
Not Guilty	12	42.9	25	29.4
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	0	0.0	2	2.4
Hung Jury	1	3.6	2	2.4
Mistrial	0	0.0	1	1.2
Court Dismissal	1	3.6	9	10.6
TOTAL	28	100.0	85	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty as Charged (Plea)	456	41.3	3414	58.1
Guilty Reduced Charge	17	1.5	694	11.8
Guilty Fel. Reduced to Misd.	247	22.4	0	0.0
Transfer to Juv. Court	24	2.2	63	1.1
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	160	14.5	908	15.4
Insufficient Evidence	63	5.7	261	4.4
Diversion	42	3.8	171	2.9
Other	41	3.7	190	3.2
Dismissed by Court	55	5.0	177	3.0
TOTAL	1105	100.0	5878	100.0

CONVICTIONS

	Felonies		F. Reduced to M.		Misdemeanors	
	No.	%	No.	%	No.	%
Incarceration	304	62.4	93	37.6	1631	39.2
Probation	124	25.5	118	47.8	709	17.1
Deferred Sentence	49	10.1	5	2.0	48	1.2
Fine Only	10	2.0	31	12.6	1767	42.5
TOTAL	487	100.0	247	100.0	4155	100.0

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:	No.	%	Felonies-Fraud	No.	%
Arson	13		Embezzlement	24	
Assault & Robbery	24		Extortion	0	
Larceny from Person	5		False Personation	5	
TOTAL	42	0.4	False Token	113	
			Forgery	36	
Felonies-Serious Crimes Against Persons:			Perjury	0	
Aggravated Assault	56		Uttering Forged Instr.	104	
Kidnapping	23		Welfare Fraud	31	
Lewd & Lascivious	75		TOTAL	313	2.6
Manslaughter	3				
Murder	5		Felonies-Drug Related:		
Sexual Assault	109		Fraud to Procure	9	
TOTAL	271	2.3	Dispensing	41	
			Possession with Intent to Sell	62	
			TOTAL	112	1.0
Felonies-Serious Crimes Against Property:					
Burglary	360		Felonies-Motor Vehicle:		
Grand Larceny	127		DWI-Death/Injury Result.	13	
Receiving Stolen Property	58		TOTAL	13	0.1
Retail Theft	73				
Unlawful Mischief	19		Felonies-Other:		
Unlawful Trespass	76		Escape	36	
TOTAL	713	6.0	Habitual Offender	3	
			Impede Police Officer	22	
			Miscellaneous	45	
			TOTAL	106	0.9

MISDEMEANORS

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	206		Fraud to Procure Drugs	2	
False Statement	67		Possession Marijuana	173	
Welfare Fraud	<u>5</u>		Possession Pills	<u>32</u>	
TOTAL	278	2.4	TOTAL	207	1.8
Misdemeanors-Disorderly And Endangering Crimes:			Misdemeanors-Property:		
Annoying Telephone Calls	24		Petit Larceny	297	
Disorderly Conduct	413		Receiving Stolen Property	103	
False Alarm	9		Retail Theft	276	
Noise in Night	6		Theft of Services	43	
Reckless Endangering	43		Unlawful Mischief	317	
Simple Assault	596		Unlawful Trespass	<u>243</u>	
Simple Assault-Police	<u>70</u>		TOTAL	1279	10.8
TOTAL	1161	9.8	Misdemeanors-Miscel.:	266	2.2

Misdemeanor Motor Vehicle Offenses

	No.	%
Careless & Negligent	185	
Driving to Endanger	35	
Driving W/ License Suspended	2172	
Driving While Intoxicated	1410	
Elude Police Officer	117	
Fail to Report Accident	0	
Leaving Scene Accident	138	
Operating W/O Owner's Consent	<u>120</u>	
TOTAL	4177	35.3

OTHER

Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	78		Children in Need of Care & Supervision	888	
Extradition	104		Juvenile Delinquents	<u>479</u>	
Habeas Corpus	3		TOTAL	1367	11.6
Mental Commitment	0				
Post-Conviction Relief	3				
Violation of Probation	1169				
Sentence Reconsideration	39				
Other	<u>122</u>				
TOTAL	1518	12.8			

Charges Partially Handled: 1843

ASSIGNED COUNSEL FY 1988: STATE-WIDE
(INCLUDES CONTRACTORS & AD HOC ASSIGNMENTS)

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u> No.
	No.	%	No.	%	No.	%	No.	%	
Charges	630	23.0	862	31.4	1031	37.6	221	8.0	2744
Clients	468	24.0	501	25.7	830	42.6	151	7.7	1950

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty	7	41.2	3	37.5
Not Guilty	8	47.1	4	50.0
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	0	0.0	0	0.0
Hung Jury	0	0.0	1	12.5
Mistrial	0	0.0	0	0.0
Court Dismissal	2	11.8	0	0.0
TOTAL	17	100.0	8	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty as Charged (Plea)	278	50.3	382	48.3
Guilty Reduced Charge	11	2.0	51	6.4
Guilty Fel. Reduced to Misd.	61	11.0	0	0.0
Transfer to Juv. Court	20	3.6	16	2.0
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	93	16.8	208	26.3
Insufficient Evidence	32	5.8	46	5.8
Diversion	4	0.7	24	3.0
Other	16	2.9	35	4.4
Dismissed by Court	38	6.9	29	3.7
TOTAL	553	100.0	791	100.0

CONVICTIONS

	<u>Felonies</u>		<u>F. Reduced to M.</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Incarceration	198	67.4	25	41.0	225	51.6
Probation	55	18.7	30	49.2	103	23.6
Deferred Sentence	39	13.3	0	0.0	10	2.3
Fine Only	2	0.7	6	9.8	98	22.5
TOTAL	294	100.0	61	100.0	436	100.0

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes	No.	%	Felonies-Fraud	No.	%
Against Persons/Property:					
Arson	9		Embezzlement	3	
Assault & Robbery	16		Extortion	2	
Larceny from Person	2		False Personation	3	
TOTAL	27	1.0	False Token	11	
			Forgery	8	
Felonies-Serious Crimes			Perjury	1	
Against Persons:			Uttering Forged Instr.	21	
Aggravated Assault	36		Welfare Fraud	3	
Kidnapping	6		TOTAL	52	1.9
Lewd & Lascivious	25				
Manslaughter	0		Felonies-Drug Related:		
Murder	5		Fraud to Procure	2	
Sexual Assault	31		Dispensing	20	
TOTAL	103	3.8	Possession with Intent		
			to Sell	16	
			TOTAL	38	1.4
Felonies-Serious Crimes					
Against Property:			Felonies-Motor Vehicle:		
Burglary	232		DWI-Death/Injury Result.	0	
Grand Larceny	47		TOTAL	0	0.0
Receiving Stolen Property	35				
Retail Theft	15		Felonies-Other:		
Unlawful Mischief	5		Escape	14	
Unlawful Trespass	21		Habitual Offender	1	
TOTAL	355	12.9	Impede Police Officer	5	
			Miscellaneous	35	
			TOTAL	55	2.0

MISDEMEANORS

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	17		Fraud to Procure Drugs	0	
False Statement	9		Possession Marijuana	20	
Welfare Fraud	<u>0</u>		Possession Pills	<u>3</u>	
TOTAL	26	1.0	TOTAL	23	0.8

Misdemeanors-Disorderly
And Endangering Crimes:

Annoying Telephone Calls	10	
Disorderly Conduct	83	
False Alarm	2	
Noise in Night	1	
Reckless Endangering	10	
Simple Assault	139	
Simple Assault-Police	<u>9</u>	
TOTAL	254	9.3

Misdemeanors-Property:

Petit Larceny	88	
Receiving Stolen Property	40	
Retail Theft	28	
Theft of Services	4	
Unlawful Mischief	65	
Unlawful Trespass	<u>19</u>	
TOTAL	244	8.9

Misdemeanors-Miscel.: 38 1.4

Misdemeanor Motor Vehicle Offenses

	No.	%
Careless & Negligent	11	
Driving to Endanger	6	
Driving W/ License Suspended	139	
Driving While Intoxicated	76	
Elude Police Officer	13	
Fail to Report Accident	0	
Leaving Scene Accident	10	
Operating W/O Owner's Consent	<u>22</u>	
TOTAL	277	10.1

OTHER

Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	9		Children in Need of Care & Supervision	827	
Extradition	6		Juvenile Delinquents	<u>204</u>	
Habeas Corpus	10		TOTAL	1031	37.6
Mental Commitment	0				
Post-Conviction Relief	21				
Violation of Probation	120				
Sentence Reconsideration	16				
Other	<u>39</u>				
TOTAL	221	8.0			

Charges Partially Handled: 124

AD HOC ASSIGNED COUNSEL FY 1988: STATE-WIDE

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		Total No.
	No.	%	No.	%	No.	%	No.	%	
Charges	151	20.2	203	27.2	340	45.5	53	7.1	747
Clients	104	20.4	110	21.6	256	50.3	39	7.7	509

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty	4	50.0	0	0.0
Not Guilty	3	37.5	2	100.0
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	0	0.0	0	0.0
Hung Jury	0	0.0	0	0.0
Mistrial	0	0.0	0	0.0
Court Dismissal	1	12.5	0	0.0
TOTAL	8	100.0	2	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty as Charged (Plea)	62	46.3	88	46.8
Guilty Reduced Charge	2	1.5	16	8.5
Guilty Fel. Reduced to Misd.	11	8.2	0	0.0
Transfer to Juv. Court	1	0.8	0	0.0
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	31	23.1	52	27.7
Insufficient Evidence	9	6.7	10	5.3
Diversion	0	0.0	2	1.1
Other	6	4.5	11	5.8
Dismissed by Court	12	9.0	9	4.8
TOTAL	134	100.0	188	100.0

CONVICTIONS

	Felonies		F. Reduced to M.		Misdemeanors	
	No.	%	No.	%	No.	%
Incarceration	53	77.9	7	63.6	57	54.8
Probation	10	14.7	4	36.4	25	24.0
Deferred Sentence	4	5.9	0	0.0	2	1.9
Fine Only	1	1.5	0	0.0	20	19.2
TOTAL	68	100.0	11	100.0	104	100.0

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:		Felonies-Fraud	
No.	%	No.	%
Arson	1	Embezzlement	0
Assault & Robbery	5	Extortion	0
Larceny from Person	1	False Personation	0
TOTAL	7 0.9	False Token	1
		Forgery	0
		Perjury	1
Felonies-Serious Crimes Against Persons:		Uttering Forged Instr.	3
Aggravated Assault	7	Welfare Fraud	0
Kidnapping	1	TOTAL	5 0.7
Lewd & Lascivious	8		
Manslaughter	0	Felonies-Drug Related:	
Murder	2	Fraud to Procure	0
Sexual Assault	10	Dispensing	4
TOTAL	28 3.8	Possession with Intent to Sell	2
		TOTAL	6 0.8
Felonies-Serious Crimes Against Property:		Felonies-Motor Vehicle:	
Burglary	59	DWI-Death/Injury Result.	0
Grand Larceny	11	TOTAL	0 0.0
Receiving Stolen Property	10		
Retail Theft	1	Felonies-Other:	
Unlawful Mischief	1	Escape	1
Unlawful Trespass	5	Habitual Offender	1
TOTAL	87 11.6	Impede Police Officer	0
		Miscellaneous	16
		TOTAL	18 2.4

MISDEMEANORS

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	10		Fraud to Procure Drugs	0	
False Statement	3		Possession Marijuana	4	
Welfare Fraud	<u>0</u>		Possession Pills	<u>0</u>	
TOTAL	13	1.7	TOTAL	4	0.5
Misdemeanors-Disorderly And Endangering Crimes:			Misdemeanors-Property:		
Annoying Telephone Calls	1		Petit Larceny	33	
Disorderly Conduct	7		Receiving Stolen Property	12	
False Alarm	0		Retail Theft	3	
Noise in Night	0		Theft of Services	0	
Reckless Endangering	2		Unlawful Mischief	11	
Simple Assault	32		Unlawful Trespass	<u>4</u>	
Simple Assault-Police	<u>0</u>		TOTAL	63	8.4
TOTAL	42	5.6	Misdemeanors-Miscel.:	10	1.3

Misdemeanor Motor Vehicle Offenses

	No.	%
Careless & Negligent	4	
Driving to Endanger	1	
Driving W/ License Suspended	35	
Driving While Intoxicated	18	
Elude Police Officer	2	
Fail to Report Accident	0	
Leaving Scene Accident	5	
Operating W/O Owner's Consent	<u>6</u>	
TOTAL	71	9.5

OTHER

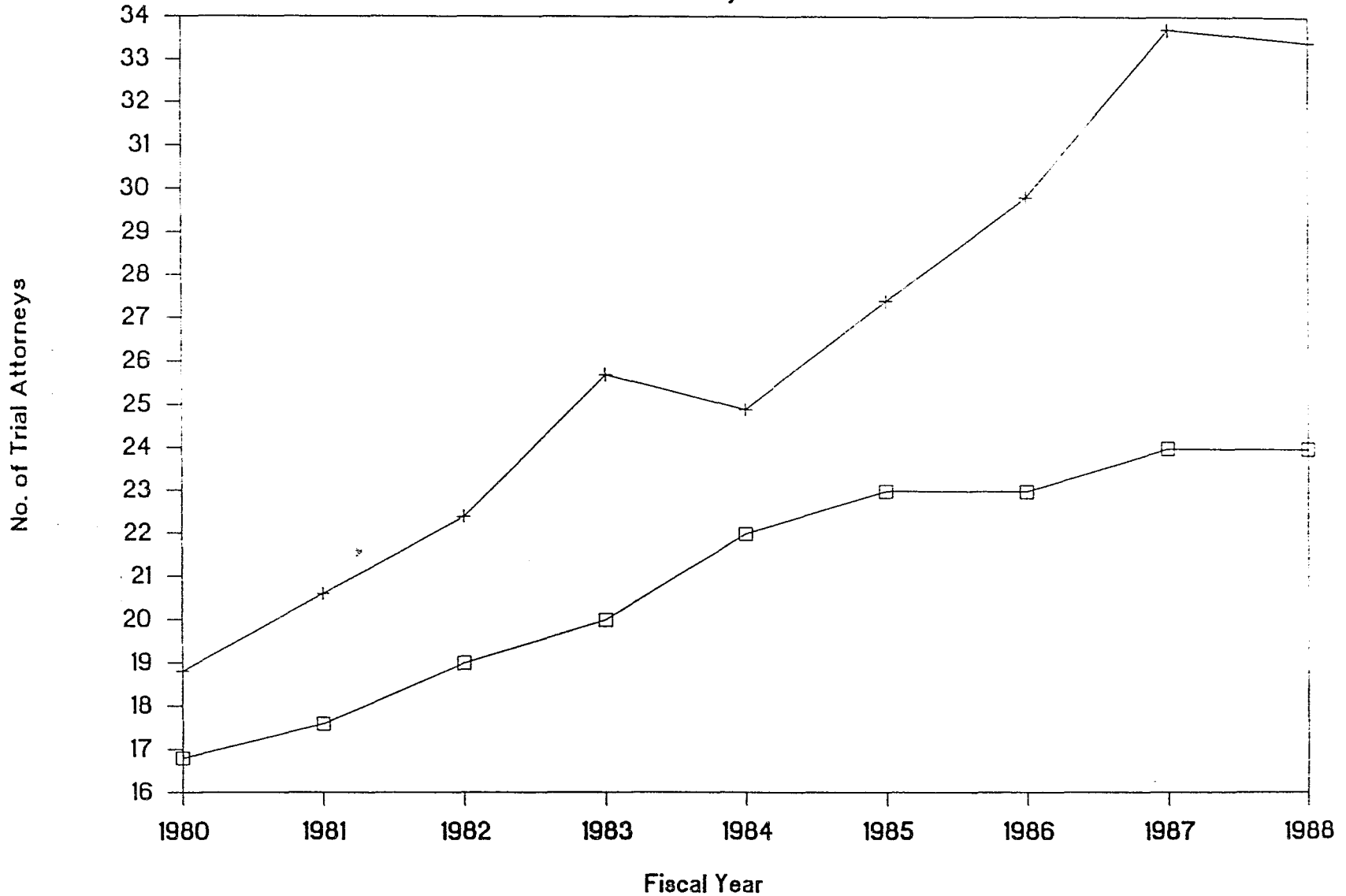
Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	2		Children in Need of Care & Supervision	275	
Extradition	3		Juvenile Delinquents	<u>65</u>	
Habeas Corpus	1		TOTAL	340	45.5
Mental Commitment	0				
Post-Conviction Relief	9				
Violation of Probation	19				
Sentence Reconsideration	6				
Other	<u>13</u>				
TOTAL	53	7.1			

Charges Partially Handled: 22

Office of the Defender General

Graph A

Trial Attorney Needs



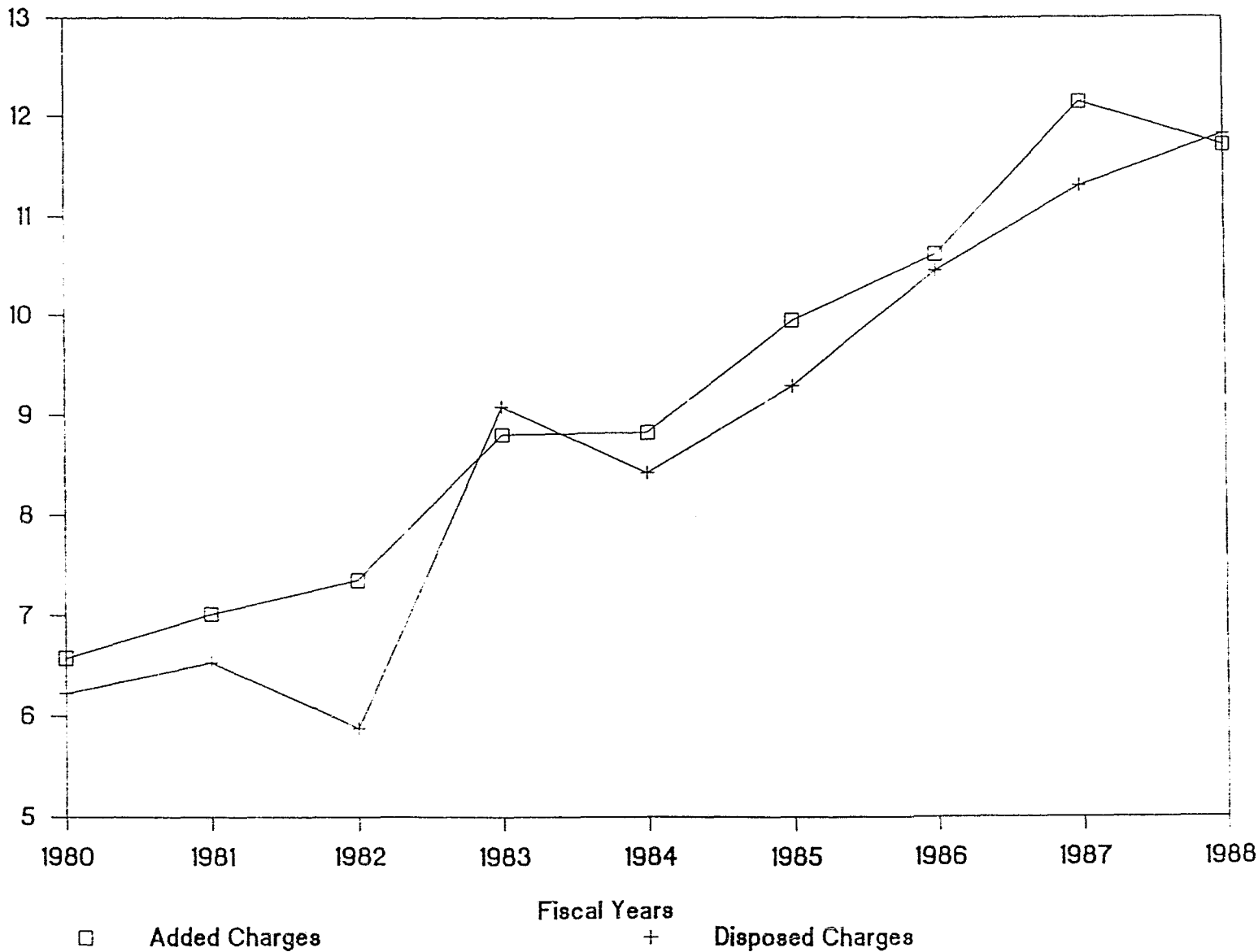
Actual Atty's + LEC Guideline*
 *Based upon Lawyer Equivalency Caseload standards, which dictate that public defender caseload should not exceed 150 felonies, 400 misdemeanor and 200 juvenile cases per year.

Office of the Defender General

Public Defender Caseload FY 1980-1988

ANNUAL REPORT OF THE OFFICE OF THE DEFENDER GENERAL

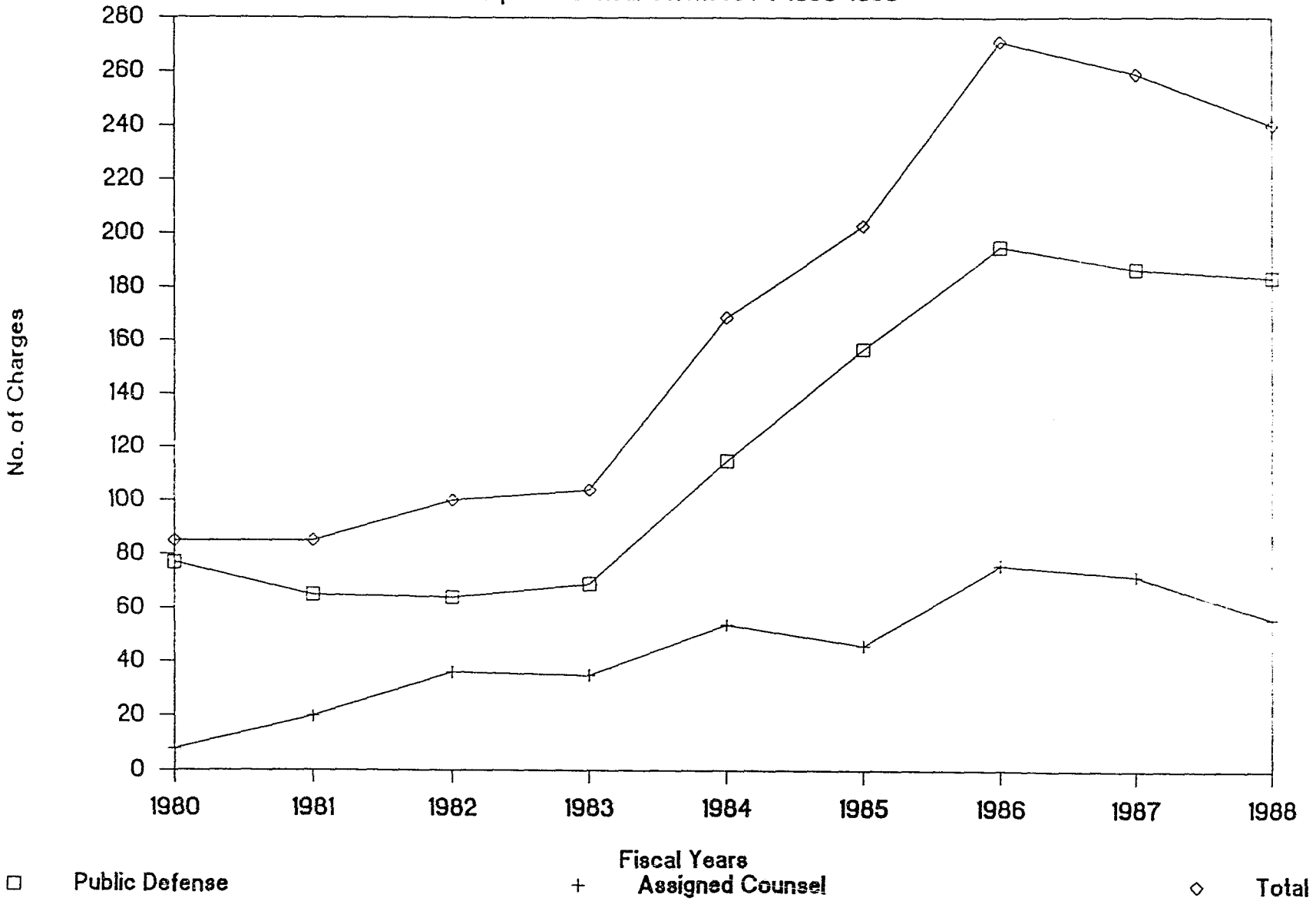
33



Office of the Defender General

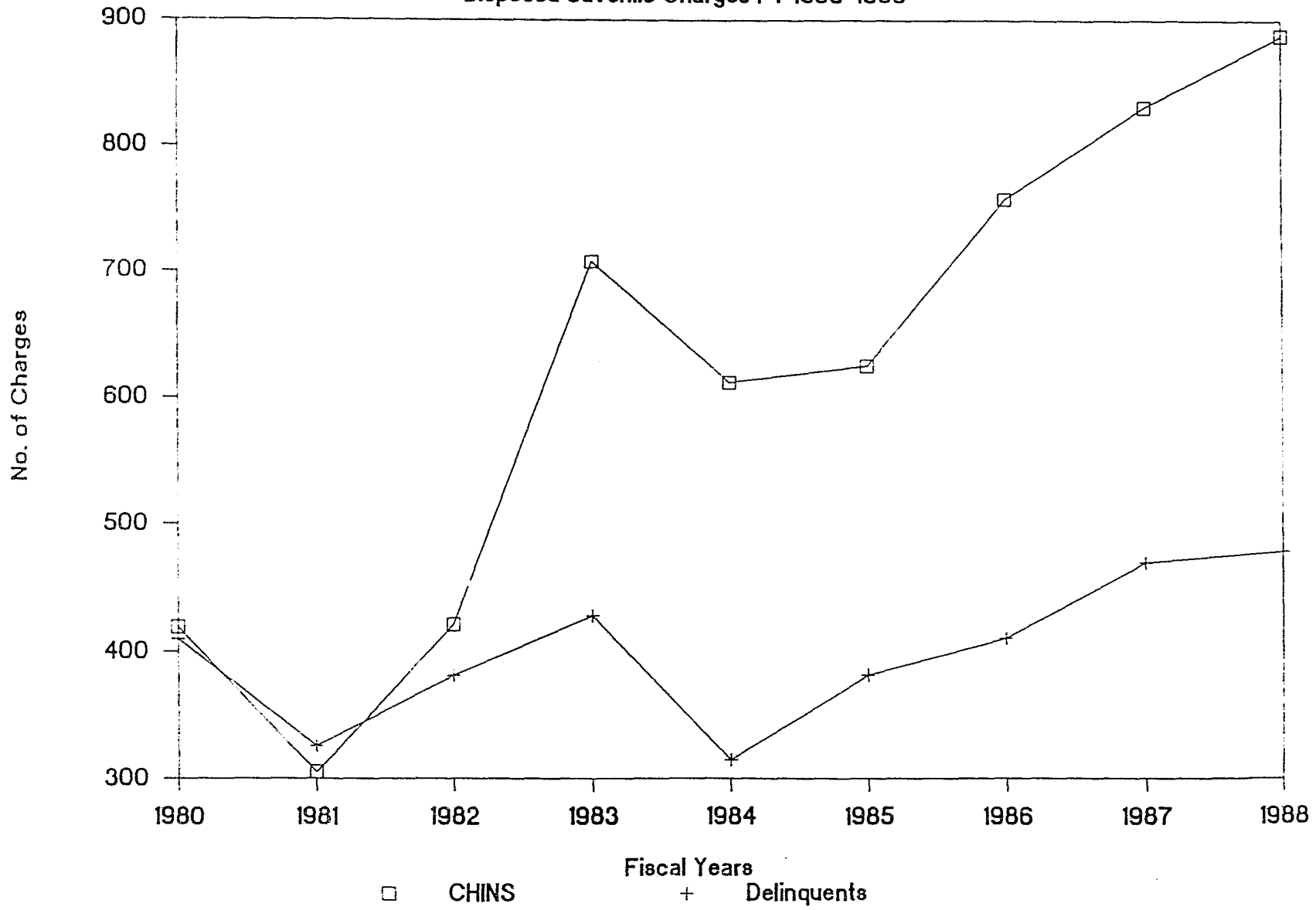
Disposed Sexual Offenses FY 1980-1988

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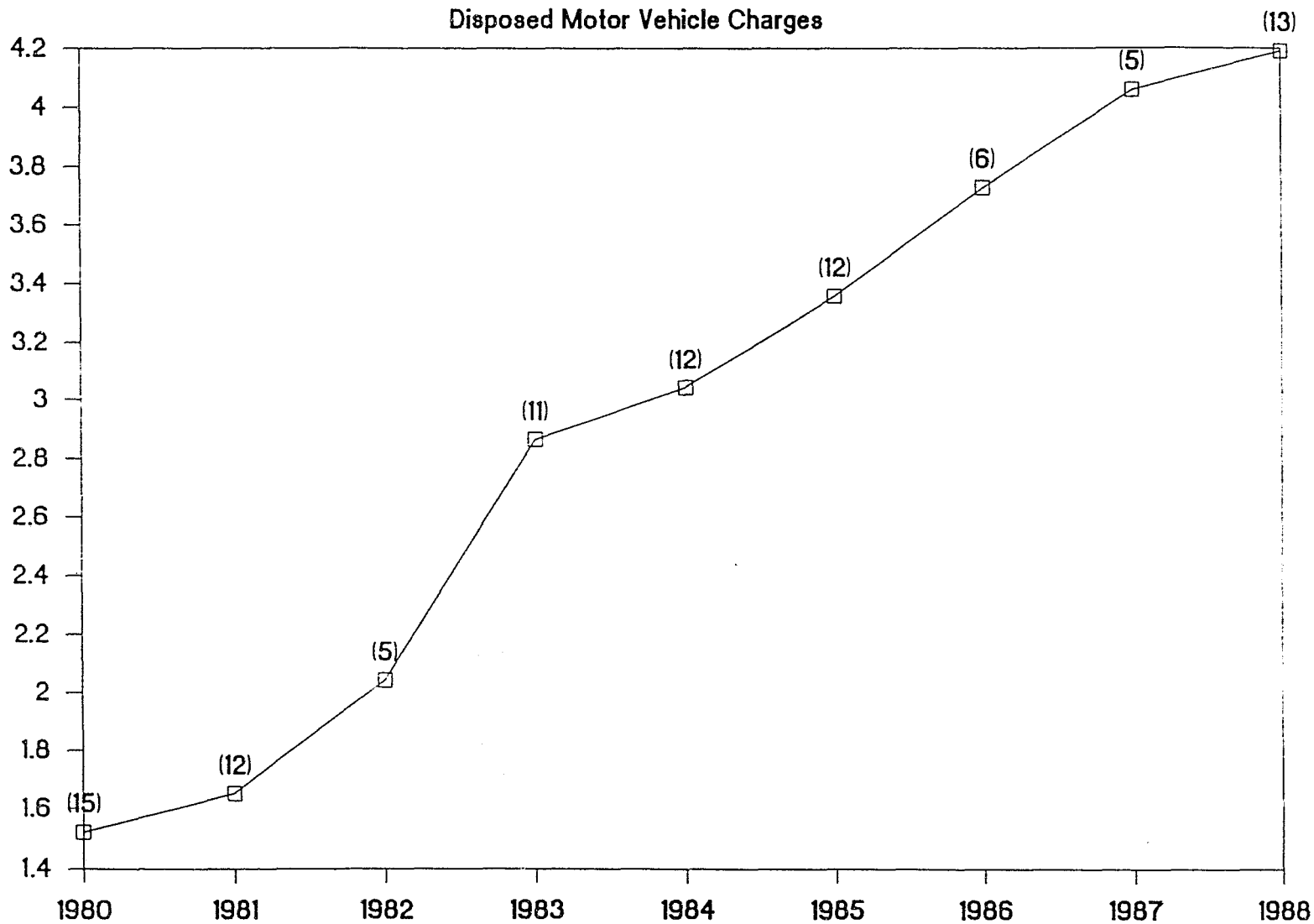
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Disposed Juvenile Charges FY 1980-1988



Office of the Defender General

Disposed Motor Vehicle Charges



□ Felony & Misdemeanor

Number in parenthesis is count of felonies

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

Purpose

Policy of the Defender General Concerning Excessive Workloads of Public Defenders

Introduction

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

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

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

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

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

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

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

Discussion

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

The caseload of a public defender should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; ...and appeals per attorney per year: not more than 25.

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

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

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

Policy:

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

10/13/87

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

Procedure:

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

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

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

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

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

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

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

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