

IMPLEMENTATION OF
ARGERSINGER V. HAMILIN
A PRESCRIPTIVE
PROGRAM PACKAGE

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A Publication of

The National Center for State Courts
1660 Lincoln Street - Suite 200
Denver, Colorado 80203

Edward B. McConnell, Director
Arne L. Schoeller, Associate Director

Study Prepared by:

Nancy B. Elkind, Center Staff
Milo L. Colton, Center Staff
Francis L. Bremson, Consultant

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FOREWORD

In June 1972, the United States Supreme Court extended the right to free counsel to indigent defendants in any case in which the accused may be deprived of his liberty (Argersinger v. Hamlin, 407 U.S. 25). By extending the right to counsel to all misdemeanor and petty offense cases that carry a possible jail sentence, Argersinger imposed substantial new burdens on state and local courts and on other elements of the criminal justice system.

The purpose of this report is to serve as a guidebook for individuals and agencies responsible for developing and implementing defense services in response to Argersinger. In preparing this package, the major concern has been with the short-term needs of state and local governments. Thus, we have not attempted to develop definitive models of defense services, but rather to describe some of the available alternatives as they were observed by the project's study team, and to recommend what we believe are the most efficient and effective means of providing these services.

In addition to this Prescriptive Program Package, three other reports will be published separately as supplements. The first of these is a bibliography of relevant literature in the area of indigent defense services. A second supplement will discuss the legal issues related to the requirements of Argersinger. This supplement also includes an expanded treatment of the issues raised in Chapter VII of the Prescriptive Package. The third supplement describes the defense services systems of the nine states studied during the preparation of the report.

I. INTRODUCTION

In order to comply with the expanded requirements for indigent defense in Argersinger v. Hamlin, it has become necessary for many jurisdictions to develop or expand defense services, and this report is intended to assist agencies in this development process. Through a grant from the Law Enforcement Assistance Administration's National Institute of Law Enforcement and Criminal Justice, a study team from the National Center for State Courts examined the defense services in several jurisdictions. While the study was initially to examine nine states that provided for indigent defense in misdemeanor and petty offense cases prior to Argersinger, other areas of the country that had innovative programs were added to the original nine sites during the course of the study. Some of the types of defense services examined are discussed below.

1. Assigned Counsel Systems

The assigned counsel system is the most prevalent system used to provide defense for indigents accused of misdemeanors. Under this system, when a defendant in a criminal prosecution appears in court without counsel, the arraigning judge or magistrate determines if the defendant can afford a lawyer, and if not appoints one for him. Appointments are made on a case-by-case basis from a list of attorneys in private practice.¹

¹Silverstein, Lee, Defense of the Poor in Criminal Cases in American State Courts: A Field Study and Report, Volume I: National Report, American Bar Foundation, 1965, p. 15.

a. Decentralized Assigned Counsel Systems

In a decentralized system the judge in a particular jurisdiction designs and establishes local rules and procedures for the provision of counsel in his court, including the development of: (1) a list of attorneys in private practice who are eligible to represent indigents, (2) standards whereby one may waive his right to counsel, (3) standards for determining indigency, and (4) a fee schedule for compensating private counsel.

b. Centralized Assigned Counsel Systems

A centralized assigned counsel system serves more than one court, and may serve all the courts in a given municipality, county, or state. In addition, a central administrator for indigent defense supervises the system. The administrator develops (1) criteria whereby attorneys' names may be placed on a list to represent indigents, (2) procedures for assigning attorneys from the list to represent indigent cases, (3) fee schedules for various categories of crimes, trials, appeals, etc., (4) a budget to insure that adequate funding of the program is maintained, and (5) an information system to record the costs of the system, the number of individuals served, the types of crimes, and the disposition of cases. Some systems also provide seminars or other materials to assist attorneys on the list in providing adequate and competent defense services.

2. Defender Systems

There are two major differences between assigned counsel and defender systems. First, defender systems are staffed by attorneys who devote part or all of their time to providing indigent defense service. Second,

attorneys work on a fixed salary rather than on a case-by-case basis.²

Defender systems have a centralized organization, and generally serve all of the courts within a jurisdiction. Three basic forms of defender systems exist in the United States: public, private, and public-private defenders.³ Examples of these systems can be found existing singly or concurrently within a particular jurisdiction.

a. Public Defender Systems

Public defender systems are generally publicly funded and are designed to provide legal representation in the criminal area only. Selection of public defenders, organizational structure, the degree of operational autonomy, and level of defense services provided differ from system to system.

b. Private Defender Systems

Private defender systems are financed out of private contributions and gifts, and are usually organized as non-profit corporations. While private defenders may represent indigents in either civil or criminal causes, a majority tends to concentrate on civil matters.

c. Private-Public Defender Systems

Private-public defender organizations are financed through private donations as well as public tax revenues. The most numerous types, legal aid societies, often represent indigents in both civil and criminal matters.

²Ibid., p. 39.

³Ibid., pp. 39-40.

This report opens with a discussion of the types of information that are required to plan and implement systems for providing defense services, and identifies specific data items needed as well as the methods for collecting this data. Chapters III, IV, and V provide more detailed descriptions of alternative public defender and assigned counsel systems, as well as specific recommendations on how to design and implement such systems.

Wherever possible, the study team acquired information concerning innovative methods of providing defense services and these findings are detailed in Chapter VI. It should be noted that although every jurisdiction of necessity provides some sort of defense services, only a few of these systems can be viewed as innovative alternatives to public defender and assigned counsel systems. In areas where new approaches have been tried, the very uniqueness of the systems often makes it difficult to provide a meaningful comparative evaluation with more conventional forms of defense services at this time. Thus, in several instances defender systems are described but no evaluation is made. It is hoped that the expansion of defense services mandated by Argersinger will encourage jurisdictions to examine and develop more innovative programs to meet these increased needs.

Chapter VII focuses on the problems of determining indigency and eligibility of defendants for defense services. Although this issue was not discussed in the Argersinger decision, policies and practices in this area have an important impact on the way that defender systems operate. The final chapter focuses on the use of law students and legal paraprofessionals in the expansion of these services as suggested in the concurring opinion of Justice William J. Brennan, Jr.

II. INFORMATION REQUIREMENTS

The initial steps in the development or expansion of defense services are a determination of local needs for such services and the identification of available resources. Before decisions can be made about the basic types of indigent defense system to be used, or the administrative and operational structure, there must be a clear understanding of the current situation and unique problems of a jurisdiction. To make reliable determinations of needs and resources, it is necessary to gather information concerning factors such as: criminal caseloads in the courts; the prevalence of indigency; and the availability of attorneys. Some of the information will be available from records kept by the courts, police, prosecutors, and probation departments. Other data items, however, will not be readily available, and their collection will require considerable time and effort.

In general, the magnitude of the need for defense services will depend upon the criminal caseload in an area and the number of indigent defendants. The basic data items required for planning and implementing defense services are:

1. Total criminal caseload for each court to be served;
2. Caseload for each court by type of case to be handled; e.g., felony, misdemeanor, juvenile, mental illness, and appeals;
3. Percentage of each type of case that goes to trial, (a) before a judge, (b) before a jury;

4. Average length of trial for each type of case;
5. Annual percentage increase of each type of case;
6. Total number of defendants;
7. Defendants, by type of case;
8. Percentage of cases with two or more co-defendants;
9. Percentage of each type of case which could result in incarceration, requiring the availability of counsel;
10. Percentage of defendants who are indigent; and
11. Percentage indigent by type of case.

Total caseload figures should be available from each court, and should include all cases filed during a one year period. There is often some variation among jurisdictions as to the definition of a "case," which will affect the size of the caseload. In general, the best means for determining caseload is to count as one "case" all of the charges against a defendant (or co-defendants being tried together) arising from a single incident.

Once the total caseload for each court is determined, the next step is to break this figure down by type of case. Felonies, misdemeanors, juvenile matters, mental illness hearings, and cases on appeal should be separately identified to enable planners to estimate the number and types of attorneys required to represent indigent defendants. In cases involving several different charges, it will be necessary to determine the major charge in the case. In most courts it will not be difficult to determine the numbers of each type of case, as this type of information is usually maintained.

The percentage of cases that go to trial and the average length of trial may be more difficult to determine. If this information is not readily available in court, it may be kept by the prosecutor's office. In many jurisdictions, however, the prosecutor does not handle misdemeanors or minor infractions, and thus does not have information about trials in these cases. Where this information is not available, an estimate of the number and type of cases can be made by examining a sample of case files in each court. These files may also include the length of trial, but such information is often only available from the daily logs maintained by the clerk of court. In examining case files, it is recommended that the determination of the size of the sample be made according to the schedule used by the Institute for Judicial Administration in its annual calendar Status Study:

<u>Cases Tried During Year</u>	<u>Size of Sample</u>
10 or less	All cases during year
11 to 25	All cases or 17, whichever is less
26 to 50	26 cases or 65%, whichever is less
51 to 100	37 cases or 50%, whichever is less
101 to 250	50 cases or 36%, whichever is less
251 to 1000	65 cases or 26%, whichever is less
1001 or over	82 cases or 7%, whichever is less

An examination of case files will also permit the collection of data concerning the number of cases with multiple defendants. If the information is not already available, it should be possible to determine from court records the average number of cases including co-defendants. This figure is important for two reasons. First, when it is used in conjunction with the total caseload, it will enable planners to estimate the total number of defendants. Second, under certain circumstances many public defender systems will only represent one defendant in a case.

The percentage of cases which can result in incarceration of the defendant is a figure that is especially important in light of the decision of the U. S. Supreme Court in Argersinger v. Hamlin. In that decision the Court held that no defendant may subsequently be incarcerated unless he was advised of his right to be represented by counsel and to have counsel assigned if he is indigent. This information is difficult to obtain because the practice in most courts at this time appears to be that the judge makes a decision just prior to trial whether there is a possibility that a jail sentence will be imposed if the defendant is convicted. This decision is frequently made not simply on the basis of whether the statute provides for a jail sentence, but rather on the judge's feeling about whether he might incarcerate the defendant.

Another essential data item in planning defense services is the percentage of defendants who are indigent. This is often the most difficult figure to determine in Argersinger-type cases because prior to Argersinger there was no right to counsel for indigents at this level. Several approaches to collecting this information are possible. The first, and most convenient where available,

is to review records of cases since Argersinger, and to identify the number of defendants who have been declared indigent. Another approach is to work with the probation and/or pre-trial release program to determine the percentage of defendants in various income brackets. Since a low income is a primary determinant of indigency, it will often be possible to estimate the potential number of defendants requiring an assigned attorney.

If indigency standards are to be flexible and are to depend upon the circumstances in each case, a comparison of the average legal fee charged for a specific type of case with the ability of individuals to pay that fee can be used to determine the percentage of indigent defendants. For example, defendants with annual incomes of \$5,000 may be able to afford defense attorneys to represent them in certain minor misdemeanor cases, but not in felony cases. If both the specific charge, and the individual's financial situation are considered in determining indigency, it is necessary to correlate three data items: the number of each type of case; the defendant's income; and the average legal fee for different types of services.

A final method for estimating the percentage of defendants who will require court-appointed counsel is to assess data collected by other systems. Jurisdictions with similar population characteristics and criminal caseloads will probably also have similar defense services requirements. Thus, an examination of statistics from comparable jurisdictions may often be useful to planners. The National Legal Aid and Defender Association recently completed a National Defender Survey, and its report includes selected data about defense services in each of the 3,110 counties in the United States. The information includes

criminal caseloads, indigency rates by type of case, expenditures on indigent defense, size of defender staffs, scope of representation, and the source of funds for reimbursing assigned counsel.

The information requirements discussed above will enable planners to make a fairly accurate determination of the local need for defense services. Once the extent of such need is determined, the next step is to identify the manpower and funding resources available in a jurisdiction to provide defense services. The basic data required to determine the persons available to staff a defender program and what the system cost would include:

1. Total number of practicing attorneys available to represent indigent defendants (this figure excludes public officials);
2. Number of attorneys who have a predominantly criminal practice;
3. Average local attorney fees for different services;
4. Current salary scale in prosecutor's and public defender's offices;
5. Local salary ranges for clerical employees;
6. Local salary ranges for investigative employees;
7. Number of second and third year law students in the area;
8. Number of law students eligible to serve under local student practice rule;
9. Types of clinical legal programs available, and number of law students involved in each;
10. Funding sources available.

Most of this information may be obtained from the U. S. Bureau of Labor Statistics, the State Department of Labor, the state and local bar associations, and local law schools.

The information requirements discussed in this section are a prerequisite to the efficient design and development for providing indigent defense services that best fit the needs and resources available within a jurisdiction. For example, in an area that has several law schools, it would probably be advantageous both for providing defense services and for law student training to develop a program in which the students could participate in the defense of indigent defendants. The actual structure and operations of defense services will vary from one location to another. In the following chapters, some of the possible variations are described, and the methods for implementing them are discussed.

III. DEVELOPING AND IMPLEMENTING A PUBLIC DEFENDER SYSTEM

A fundamental variation among public defender systems is the level of government at which administrative and fiscal control is established. In most states separate public defender systems are established at the county level; only a few have statewide systems. Of the nine states studied in preparing this report, only Colorado and New Jersey have statewide public defender systems, and the latter only handles juvenile and indictable cases. Pennsylvania requires, and New York and California permit, the establishment of county-level public defender offices. The degree to which these county systems are controlled by the state varies, but in all cases the bulk or all of the funds for providing defense services come from the counties.

During the course of this research, the study team found several counties that appeared to have outstanding public defender systems. Because of the limited scope of this project, it was impossible to make definitive evaluations of the systems studied; however, based upon such factors as level of funding, job specifications, individual attorney caseloads, and ancillary services, it was possible to make tentative judgments about the quality of the defender systems. Despite the fact that there are many excellent county-level public defender systems, a major problem with this structure is that unequal distribution

* Both New York and California have arrangements whereby the counties can receive some money from the state under certain conditions, but state funds generally account for only a small portion of defender budgets.

of financial and legal resources within a state will often produce severe inequities in defense services on the local level.

Based upon our study, a statewide public defender agency is highly recommended as a model in structuring a public defender system. There are many possible variations within such a statewide system. Counties and the state can divide the financial responsibilities for defense services, with substantial administrative autonomy at the county level, and establish a state-level office to establish major policy. Such a system would bring some consistency into a state's defender system, and yet would still permit some variation at the county level. Such a structure could include a central appellate section for the entire state, and utilize the skills of specialized public defenders as necessary.

A statewide system may also have more administrative and fiscal control at the state level, as is the case in both New Jersey and Colorado. In both states the public defender office is funded almost exclusively by the state government, and offices are established on a regional, not county, basis. This type of system may well offer efficiencies and be able to ensure a more consistent level of operations, and quality of counsel. It should be noted, however, that our research was not conclusive concerning the level of autonomy that a local public defender should have from the statewide system. Decisions concerning the structuring of a statewide system should be based upon financial and manpower resources available both at the state and local levels, as well as the theoretical advantages of heavily centralized structure.

Statewide systems often have more substantial funding than county systems, and so can offer a wider range of services to indigent clients. However, the problem of delivery of defense services by a statewide system is complicated in Argersinger-type cases since there is less time to provide counsel than in felony cases. The majority of lesser offense cases are disposed of at the initial appearance, and thus counsel will be needed at this point. While in urban areas a defender can be assigned to handle only arraignments, in rural areas the statewide system may need to retain local counsel to handle Argersinger-type cases.

In addition to the question of state/local structuring, there are several other variations in public defender systems that should concern planners. One of these is whether attorneys in the defender office should be full-time or part-time employees. The standards for defense services of both the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals suggest that public defenders be full-time employees whenever possible, and in most urban defender systems, this is the case. In more rural areas, however, where the criminal caseload tends to be light, it may not be practical to have a full-time defender staff.

If a jurisdiction finds it necessary to permit public defenders to continue part-time private practice, this decision should be based on caseload experience as well as on the financial resources of the funding agency. In some areas even though there are enough criminal cases to occupy a defender full-time, private practice is permitted as a way to supplement an inadequate salary. Under these circumstances, the attorney's caseload often becomes too heavy

to be handled adequately, resulting in a lower quality of defense services. Therefore, any decision to permit public defenders to maintain part-time private practices should consider both current and potential indigent caseload and should keep in mind the potential drawbacks of this type of arrangement. If part-time defender work is to be permitted, this area should be carefully delimited as follows:

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;
3. The attorney must devote a specified percentage of his time to public defender work, such percentage being dependent upon salary.

During the course of this study, two relatively large public defender systems were examined that permitted part-time attorneys: Albany County, New York, and Allegheny County (Pittsburgh), Pennsylvania. In Albany there are 11 part-time attorneys who devote approximately 15 hours each week to public defender work, and receive \$7,800 annually. Projected on the basis of a 40 hour week, this rate is equal to a full-time annual salary of \$20,500. In Allegheny County, the 17 part-time public defenders work approximately 25 hours per week on indigent defense and receive between \$7,000 and \$15,000 per year. Again, on the basis of a 40 hour week, these salaries are the equivalent of an annual rate of between \$11,700 and \$25,000. According to a survey published in the ABA's Legal Economic News, the median annual salary of all members of the American Bar Association in 1971 was \$30,139; thus, the salaries in

both Albany and Allegheny Counties appear to be lower than other legal salaries throughout the country.

In a defender system where full-time attorneys are used, the salary scale should be high enough to attract and retain highly qualified lawyers, and should be competitive with private law firms and other government agencies. The salaries for staff attorneys in public defender offices should be commensurate with those of the prosecutor's staff. The chart below illustrates the salary ranges and progressions for staff attorneys in three public defender systems examined during this study.

Location	Title	Monthly Salary	Length of time Required to Qualify for Promotion
Colorado	Intern I	\$ 884.00	6 months
	Intern II	975.00	1 year
	Public Def. I	1,185.00	1 year
	Public Def. II	1,440.00	1 year
	Public Def. III*	1,667.00	
Alameda County, California	Attorney	1,030.00	1 year
	Attorney	1,340.00	Discretionary
	Attorney	1,700.00	

*This position includes some administrative responsibilities.

Location	Title	Monthly Salary	Length of time Required to Qualify for Promotion
Santa Clara County, Calif.	Attorney 1	994.00	1 year
	Attorney 2	1,365.00	2 years
	Attorney 3	1,581.00	2 years
	Attorney 4	1,830.00	

Many public defender systems use their less-experienced attorneys to handle misdemeanor and petty offense cases. Since these less experienced attorneys are at the lower end of the salary scale, it is less expensive to provide defense services in compliance with the Argersinger decision by establishing a misdemeanor division which serves as the starting point and training area for new staff lawyers. In terms of the quality of defense, however, it is desirable to vary the assignment of attorneys so that every defense area will have some experienced staff on hand. In Santa Clara County, for example, all of the attorneys rotate every 6 months to one year. New attorneys begin with traffic and misdemeanor cases, and after a period of 15 months are able to try serious felonies. Once an attorney reaches that point, he remains there for 6 to 12 months, and is then rotated back to traffic and misdemeanor cases. This system ensures that at all times new attorneys are working with attorneys who have at least two years of trial experience.

Another area in which public defender systems may vary is the method by which the chief public defender is selected. Several alternatives are available, including appointment by the judiciary, general election, and nomination by an independent board with appointment by the governor. The National Advisory Commission on Criminal Justice Standards and Goals recommends that appointments be made by a jurisdiction's judicial nominating commission. Of the methods of appointment examined during this study, those involving an independent board or commission appear to be best in that they enable a public defender to maintain a desirable level of independence from political pressures. A selection board should be appointed by the governor in a state system or by the county executive in a county system, and should include representatives of the judiciary, the legal community, and the community-at-large.

Responsibility for selecting staff attorneys should rest primarily with the chief public defender. There are a few public defender systems in which the staff attorneys are under the civil service (e.g., Alameda County). Our research was not conclusive on this point, but this possibility should be considered. In any case, selection and advancement should be based on merit.

If a public defender system is to establish and maintain a high level of services, orientation and in-service training programs are essential for both legal and non-legal staff. The National Advisory Commission recommended that attorneys "participate in comprehensive national, local, and

office training programs designed to impart basic and extended skills in criminal defense."¹ Four types of programs are currently available, and the number of such programs is increasing rapidly. The first type consists of training and orientation programs within county public defender systems. Funds for these programs are included in the block grants awarded by the federal Law Enforcement Assistance Administration (LEAA) to the State's Planning Agency. Examples of this type of program are found in Cook County, Illinois, and Santa Clara County, California.

Some states hold annual or semi-annual training seminars sponsored by the state public defender system or the public defender association. These are also funded through the LEAA. The California Public Defender Association conducts both a basic and advanced seminar for attorneys working for the state's public defender offices. In Illinois, the Defender Association sponsors a training seminar, publishes a manual for use by public defenders, and issues a monthly digest of relevant criminal cases. Programs run by state organizations are not necessarily restricted to public defenders, but are sometimes open to private defense attorneys.

A third type of training that is available to attorneys working with indigent defendants is provided by the National Legal Aid and Defender Association. The NLADA has worked with approximately twelve states in setting up programs for public defenders and assigned private counsel.

¹ National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, D.C.: Government Printing Office, 1973), p. 284.

The Association either assists in the development of the program, or will actually conduct training seminars for attorneys.

The National College of Criminal Defense Lawyers and Public Defenders began training attorneys in 1973. The College was founded by the NLADA, the American Bar Association, and the National Association of Criminal Defense Lawyers with a grant of approximately \$250,000 from the LEAA. Each of these organizations has four representatives on the College's Board of Regents. At this time, the College is temporarily located at the Bates College of Law in Houston, Texas, where the first three-week training session was conducted in the summer of 1973. In addition to this summer program, three regional seminars are planned, with each session training approximately 100-125 lawyers. The LEAA grant that established the National College specified that at least 50 percent of each class should consist of public defenders, with the remaining 50 percent private attorneys who are involved with indigent defense.

An important aspect of internal organization of a public defender system that affects the overall quality of defense services is the method by which cases are processed within a system. Currently a great deal of controversy exists over the question of whether a case should be assigned to an individual attorney from the beginning until disposition, or handled by a different attorney at each stage of the criminal case process. Although ideally one attorney should be assigned to handle each case through to its conclusion, this may not always be possible in large systems with extremely heavy caseloads. There is substantial consensus, however, that from the

standpoint of continuity of counsel, familiarity with a case, and client satisfaction, continuing representation by one attorney is the best possible arrangement. In a large jurisdiction one arrangement might be to have a team of attorneys assigned to the courtroom where arraignments are held; if a case is not disposed of at arraignment, the case should then be assigned to a trial attorney who would then have continuing responsibility for the case until its disposition. In cases where post-conviction relief is sought, an attorney from the appellate division could be assigned as appeals often require specialized expertise beyond trial practice. In smaller jurisdictions with lighter caseloads, one attorney can be assigned to each case.

The National Advisory Commission on Criminal Justice Standards and Goals also recommended that public defender misdemeanor caseload should not exceed 400 cases per attorney per year.² In the course of this study it was impossible to make a determination based on hard data as to the caseload of misdemeanor cases to be carried by a public defender. The consensus, however, is that misdemeanor caseloads presently range from 300 to 1,000 per year. In planning a defender caseload of Argersinger-type cases, factors that can be considered are the number of cases in the system, the number that go to trial, the average length of trials for each type of case, and observations on the quality of defense derived from actual operation.

It must always be kept in mind that the ultimate success or failure of a public defender system depends to a large extent upon the level of

²Ibid., p. 276.

funding for its operations. In developing a budget for a public defender system, possible funding sources must also be considered. In most public defender systems the level of government at which administrative control is placed is also the source of operating funds. Both the Colorado and New Jersey public defender's offices are funded by the state, while in California and New York the county governments are primarily responsible for funding. In a very few cases examined, there are also municipal public defender agencies funded by the local government. This is the situation in several municipalities in New Jersey, where indigent defense in non-felony cases is provided through a locally appointed and funded public defender.

A mix of state and county funds can also be used to support public defender systems. In Florida, for example, defense services are provided in regions defined by the judicial circuits and both state and county funds are used for indigent defense in misdemeanor cases. In New York State, state law requires the state to pay for defense services in cases arising in state institutions. Thus in rural counties where state prisons or hospitals are located, the state reimburses these counties for handling indigent inmates. California, on the other hand, does not have such a provision, thus placing a burden on several small county public defender systems where state institutions are located. In jurisdictions where the county is the primary source of funds for defense services, provisions should be made for state reimbursement for indigent defense in cases arising out of state institutions as well as in cases initiated in one county and moved to another as a result of a change of venue.

The federal government has some funds available to support programs in indigent defense. Such funds are primarily available through the State Planning Agencies established pursuant to the Law Enforcement Assistance Act, and are generally given in the form of a grant for a specialized and innovative program within a defender office. Other federal programs, such as the Emergency Employment Act, administered by the Department of Labor, provide some funds that may be used for training staff members within a public defender office.

Some of the variations in structure and operations of public defender systems have been described. Decisions concerning the design and implementation of a defender system in a specific jurisdiction will depend upon local conditions as they are defined by the data items described in Chapter II.

IV. TWO PUBLIC DEFENDER SYSTEMS

In this chapter, two public defender systems are designed to meet the needs and resources of a hypothetical rural county and a small urban state. It should be noted that while the figures presented on the four data sheets in the chapter are not actual data from any jurisdiction, they do illustrate representative situations.

a. A County Public Defender System

In the first example, a rural county of 65,000 people has decided to create a public defender office to represent indigent defendants throughout the county. There is a single-judge Superior Court in the county seat, which has criminal jurisdiction in all felony cases that are bound over from lower courts, or which are filed on an indictment. Felony preliminary hearings, misdemeanor and juvenile cases, and other special proceedings are heard in nine municipal courts throughout the county. Only the municipal court in the county seat has a full-time judge.

The decision to create a public defender system was reached after a committee appointed by the County Board of Supervisors studied the problems related to the provision of indigent defense services in the county, assisted by basic data collected by the committee. The information shown in the data sheets at the end of this section enabled the planning committee to make informed recommendations as to the administrative and operational structure of the system, as well as to develop a tentative budget.

Based on the data for this locality, a public defender office could be designed as follows:

1. The administrative unit for the Public Defender Office will be in the county. Therefore, the office will have jurisdiction for all types of cases involving indigent defendants within the county, and will receive county funds.
2. To ensure administrative accountability and to provide adequate supervision, the Public Defender will serve full-time and will not be permitted to maintain a private practice.
3. The Public Defender must be a member of the State Bar, and have a minimum of two years trial experience, with considerable criminal practice.
4. The salary range for the Public Defender will be the same as that of the District Attorney; that is, between \$15,000 and \$20,000.
5. The non-legal staff of the Public Defender Office will consist of one full-time secretary who will receive a salary of \$6,500, and one full-time investigator who will receive a salary of \$8,000. Staff size is based on an estimated annual caseload of 1,127 (see data sheet).
6. The Public Defender will participate in statewide orientation and training programs, if they exist, and in similar programs offered by nearby counties.
7. The Public Defender will be appointed for a three-year term by the County Executive, upon the recommendation of a committee selected by the County Board of Supervisors; such committee to include one judge,

one representative of the county bar association, one member of the Board of Supervisors, and two representatives of the community.

8. A budget for the Public Defender Office will be prepared annually by that office, and funds will be appropriated by the County Board of Supervisors.

9. The Public Defender will be responsible for providing counsel to all indigent defendants in the county, except in those cases involving two or more defendants; in such multiple defendant cases the Public Defender may represent only one defendant, with the remaining defendants having private attorneys assigned by the judge from a list provided by the county bar association.

10. Private assigned counsel will be paid by the Public Defender Office at the rate of \$15.00 per hour for out-of-court time and \$30.00 per hour for in-court time, up to \$1,000 per case. Fees in excess of \$1,000 must be approved by the court.

11. If sufficient personnel is available, indigency will be determined by a probation officer prior to court appearance. At the initial court appearance, the judge will determine whether the defendant has a right to be represented by counsel (i.e., if there is a possibility of incarceration). If the defendant is both indigent and eligible for counsel, the case will be given to the Public Defender Office. In order to expedite the disposition of Argersinger-type cases, the Public Defender should be present in court during sessions in which such cases are heard.

A tentative annual budget for the new Public Defender Office in the county is shown below.

<u>Item</u>	<u>Amount</u>	<u>Cumulative Total</u>
Salaries		
Attorney	\$15,000	
Investigator	8,000	
Secretary	<u>6,500</u>	\$29,500
Assigned Counsel	6,800	6,800
Expert Witness Fees	400	400
Office Rent and Utilities	3,000	3,000
Equipment: Typewriter	500	
Reproduction	<u>1,200</u>	1,700
Communications: Telephone	1,200	
Postage	<u>300</u>	1,500
Travel (mileage for public defender and investigator)	300	300
Books and Library	5,000	5,000
Memberships and Subscriptions	150	150
Insurance	500	<u>500</u>
TOTAL		\$48,850

General Data Sheet for County

Population	65,000
Attorneys Available	50
Attorneys with predominantly criminal practice	5
Attorney Fees	
Court Arraignment	\$75
Probation and/or Sentencing	100
Trial (per day)	200
Juvenile Hearing	150
Local Clerical Salaries	\$6,500
Number of second and third year law students in area	(25 in summer)
Number of students in clinical programs	- - -
Number of Judges	10

DATA SHEET FOR RURAL COUNTY DEFENDER SYSTEM

Data Item	Felony		Misdemeanor		Juvenile		Mental Ill.		Other*		Total No.
	No.	%	No.	%	No.	%	No.	%	No.	%	
Caseload	400	35	525	47	135	12	50	4	17	2	1127
Cases to trial	40	10	26	5	4	3	3	5	17	100	90
Average length of trial (days)	2	--	1/2	--	1/2	--	1/2	--	--	--	--
Annual increase	40	10	79	15	27	20	5	10	2	10	153
Defendants	460	35	603	46	165	13	50	4	20	2	1298
Cases with co-defendants	40	10	52	10	20	15	--	--	2	10	114
Jail sentences	56	14	47	9	14	10	--	--	--	--	319
Indigent defendants	200	50	110	40	41	30	25	50	9	50	385
Indigent defendants requiring private assigned counsel	18	9**	10	9**	5	12**	--	--	1	10**	34
Defendants assigned to Public Defender	182	52	100	29	36	10	25	7	8	2	351

*Special proceedings: These include probation violations, extraditions, petitions for writs of habeas corpus, other writs, and appeals, narcotics commitment proceedings, and miscellaneous matters.

**Percent of indigent defendants.

b. A Statewide Public Defender System

The second representative public defender system is in a small urban state where a legislative committee has recommended the creation of a public defender system that would be administered and funded at the state level.* The state's population is 1.1 million, with 60 percent of the population located in the capital. There are two judicial districts in the state, with a Superior Court in each which has criminal jurisdiction in felony cases that are bound over from lower courts, or that are filed on an indictment. In the judicial district where the capital is located, the Superior Court has 15 judges, 4 of whom are in the Criminal Division. The smaller district's Superior Court has 9 judges, with 3 in the Criminal Division.

The six Municipal Courts in the state have jurisdiction in the criminal area over all misdemeanors and felony preliminary hearings. The largest Municipal Court is in the capital and has 12 judges; there is one 5-judge Municipal Court, three 2-judge Municipal Courts, and one single-judge Municipal Court. All of the 24 Municipal Court judges hear both civil and criminal cases.

The Juvenile Court for the state has two divisions that are located in the two Superior Court buildings. There are three Juvenile Court judges: two in the capital and one in the other judicial district.

* It should be noted again that the size and other relevant characteristics of this example have been kept low in order to simplify the example.

The legislative committee has said that the new Public Defender Office will have offices in each judicial district, and will serve the Municipal, Superior and Juvenile Courts in the state. Based on the data sheets shown at the end of this section, legislation has been proposed which includes the following items:

1. To maintain quality defense services and administrative control, the Chief Public Defender and all staff attorneys must be full-time employees, and are not permitted to have a private law practice.
2. The Chief Public Defender must be a member of the State Bar, with a minimum of three years trial experience, and experience in criminal practice.
3. The salary range for the Public Defender will be \$25,000-\$30,000, based on a similar scale for the Attorney General.
4. The staff of the Public Defender Office will consist of the following:

Administrative Division	
Chief Public Defender	\$25,000
Deputy Public Defender	23,000
Administrative Assistant	10,000
Community Liaison Officer	13,000
3 Secretaries @\$8,000 each	24,000
Accountant	15,000
Bookkeeper	9,000
Personnel Officer	14,000
Program Planning Specialist	15,000
Training Division	
Training Specialist	18,000
1 Secretary	8,000

Legal Division	
74 Trial Attorneys @ approx. \$17,000 each	1,258,000
25 Investigators @ approx. \$9,000 each	225,000
37 Secretaries @ approx. \$8,000 each	296,000
TOTAL SALARIES	1,953,000

The Chief Public Defender will have overall responsibility for the system, including budget development and future program development. The Deputy Public Defender will oversee the day-to-day operations of the office. The Administrative Assistant will work with both the Chief and Deputy Public Defender.

The Program Planning Specialist will be responsible for the development and implementation of experimental and innovative programs. This work will include the preparation of grant applications to state and local agencies for funds to support special programs.

The Community Liaison Officer will work with individuals and groups throughout the state to expand and improve the services provided by the Public Defender Office. The Training Specialist will be responsible for developing and administering the training programs for full-time staff (see 5, below) and the student intern program (see 6, below).

The size of the staff of the Legal Division is based on an estimated annual caseload of 23,446, as shown on the data sheet on page 37. The trial attorneys will be assigned to one of four divisions: Misdemeanor, Felony, Juvenile and Appeals. There will be 4 attorneys in the Appellate Division, all of whom will be located at the State Headquarters. The remain-

ing three divisions will have sections in each of the two public defender offices, and will be staffed as follows:

<u>Division</u>	<u>Defender Office 1</u>	<u>Defender Office 2</u>
Felony*	20 attys.	8 attys.
Misdemeanor	20 attys.	8 attys.
Juvenile	13 attys.	5 attys.

5. The Training Specialist will develop an orientation program for new attorneys that will focus on state statutory and case law, and on techniques for trying a criminal case. An on-going in-service training program will also be developed which will consist of a lecture series and discussion sessions.

6. The Training Specialist will also be responsible for working with the State's two law schools to develop a clinical legal program for second and third year students.

7. The Chief Public Defender will be appointed by the Governor, upon the recommendation of a Commission established for that purpose. The 9-member Commission will consist of a judge from each court, 3 members of the private bar, and 4 members selected from the community-at-large. The Public Defender will serve for a term of 4 years, and may be reappointed. The Public Defender will be responsible to the Commission, which will review his performance annually.

8. The Public Defender will have authority to set personnel and employment policies within the office.

* Attorneys in the Felony Division will also handle Mental Illness Hearings.

9. Funds for the Public Defender Office will be appropriated each fiscal year by the state government. An annual budget request will be submitted to the Governor 4 months prior to the start of the fiscal year.

10. Staff attorneys will carry a caseload of approximately 300 cases in the Juvenile and Felony Divisions and 400 cases in the Misdemeanor Division. (Those caseloads are based upon the recommendations of the NLADA.) If during a fiscal year individual attorney caseloads increase significantly beyond these levels, private assigned counsel will be used to handle the excess cases (see 11, below).

11. In some cases involving multiple defendants, and when public defender caseloads rise above the established limits, cases will be assigned to private attorneys from an alphabetic list provided by the State Bar Association. The judge will make such assignments, but the administration of the assigned counsel system will remain within the Public Defender Office. Private Assigned Counsel will be reimbursed on a sliding scale based upon services rendered to a client. The funds for compensating such counsel will come from the Public Defender's budget.

12. If a defendant requests an attorney, and if the judge states that there is a possibility of incarceration, a determination of indigency is made by the state's pre-trial release agency, if one exists, based upon the information collected during the ROR interview. If there is no pre-trial release agency, the determination of indigency will be approved by the court, based upon a recommendation from the Public Defender.

A tentative annual budget for the new Statewide Public Defender is shown below.

<u>Item</u>	<u>Amount</u>	<u>Total</u>
Salaries (see 4, above)	\$1,953,000	\$1,953,000
Assigned Counsel (approx. \$200/case)	260,000	260,000
Expert Witnesses and Lab Fees	19,500	19,500
Rent (2 offices, 10,000 sq. ft. each @\$5.00/square ft.)	100,000	100,000
Furniture*	25,000	25,000
Equipment: 40 typewriters* Reproduction	20,000 <u>4,000</u>	24,000
Communications: Telephone Postage	12,000 <u>1,000</u> 13,000	13,000
Travel (mileage for public defenders and investigators)	3,000	3,000
Books and Library	15,000	15,000
Memberships and Subscriptions	1,000	1,000
Insurance	2,000	<u>2,000</u>
TOTAL		\$2,415,500

* These are one-time expenses.

General Data Sheet for State

Population	1,100,000
Attorneys Available	2,500
Attorneys with predominantly criminal practice	50
Attorney Fees	
Court Arraignment	\$ 100
Probations and/or Sentencing	125
Trial (per day)	225
Juvenile hearing	175
Local Clerical Salaries	\$ 8,000
Number of second and third year law students in area	200
Number of students in clinical programs	100
Number of Judges	47

DATA SHEET FOR STATE DEFENDER SYSTEM

Data Item	Felony		Misdemeanor		Juvenile		Mental Ill.		Other*		Total No.
	No.	%	No.	%	No.	%	No.	%	No.	%	
Caseload	6,428	27	10,238	44	2,983	13	2,610	11	1,187	5	23,446
Cases to trial	386	6	307	3	119	4	157	6	--	--	969
Average length of trial (days)	1	--	1/4	--	1/2	--	1/2	--	1/2	--	--
Annual increase	450	7	921	9	328	11	130	5	59	5	1,888
Defendants	7,392	29	11,057	44	3,133	12	2,610	10	1,306	5	25,498
Cases with co-defendants	964	15	819	8	150	5	--	--	119	10	2,052
Jail sentences	836	13	1,024	10	209	7	--	--	--	--	2,069
Indigent defendants	4,370	30	6,348	44	1,879	13	1,514	10	499	3	14,610
Indigent defendants requiring private assigned counsel	192	4**	205	3**	89	5**	--	--	24	5**	510
Defendants assigned to Public Defender	4,178	65	6,143	60	1,790	60	1,514	58	475	40	14,100

*Special proceedings: These include probation violations, extraditions, petitions for writs of habeas corpus, other writs, and appeals, narcotics commitment proceedings, and miscellaneous matters.
 **Percent of indigent defendants.

V. DEVELOPING AND IMPLEMENTING AN ASSIGNED COUNSEL SYSTEM

Although there appears to be a trend toward the establishment of public defender systems, the method of assigning private counsel to indigent defendants is still prevalent throughout the country. There is wide variation in the systems used to assign private counsel. In some counties and municipalities, an indigent is assigned counsel at his first appearance before the justice of the peace or magistrate, while in other areas an indigent may not receive counsel until his formal arraignment in a district court. Some judges allow the maximum attorney fee to cover all out-of-pocket expenses, while others refuse to allow such fees.

The variations in types of assigned counsel systems may lead to inconsistencies in the quality and quantity of defense services provided to indigents. This is especially true in decentralized assigned counsel systems; that is, systems that are essentially administered by individual judges. There are three major problems that might arise in a decentralized system:

1. Since case assignments are made by the individual judge, there is a possibility of inefficient utilization of attorneys, assignments that overlap in different courts, and favoritism;
2. Without uniform guidelines and administration, there is a possibility of inconsistent fees, which could result in variations in the quality of representation;

3. There is generally no capability for collecting, maintaining and analyzing data concerning caseloads, available attorneys, types of cases handled, costs of assigned cases, and results of such cases.

These problems can be at least partially resolved through the establishment of a centralized assigned counsel system. The assignment of cases by a central office from a list of attorneys in the jurisdiction will reduce overlapping cases and ensure a more equitable distribution of cases. Similarly, the development of standard fees for assigned cases will decrease the possibility of inconsistencies in fees paid to different attorneys for essentially the same services. Finally, a central office would be able to gather the type of information needed to monitor and evaluate the system.

During the course of this study, several assigned counsel systems were studied. Based on this research, the following recommendations are made for designing and implementing an assigned counsel system.¹

1. To overcome some of the deficiencies inherent in decentralized assigned counsel systems, it is recommended that a centralized assigned counsel system be adopted in preference to a decentralized system.
2. A commission on centralized assigned counsel should be formed, and empowered to recruit and appoint a central administrator of the assigned counsel system. The commission would also be responsible for filing necessary reports with legislative bodies, coordinating continued and adequate funding of the system, and exercising general supervisory control over

¹These recommendations and the subsequent description of the operation are based largely on the "Resume of the Private Defender Program," San Mateo Private Defender Program, no date, 9 pages.

the entire system. The commission, however, would not have control over individual attorneys or individual cases, as that would be the responsibility of the program administrator.

3. Commission membership should include representatives of the practicing bar, the chief judge or administrative judge or officer of every court level served by the system (trial and appellate), a representative of the state administrative office of the courts, the dean of a law school (if one exists in the system's geographic boundaries), a member of the local judicial council (if one exists), as well as lay representatives from the community served.

4. An administrative office for indigent defense should be developed, headed by a full-time administrator serving at the pleasure of the commission. The administrator should be responsible for developing job specifications as to the level of skill and experience required of participating attorneys, and should develop procedures and requirements for placing attorneys' names on the list of indigent counsel, as well as developing procedures for assigning attorneys from the list to cases. The administrator should also develop refresher programs or seminars in new developments in the criminal areas to ensure that attorneys on the list keep current and are able to effectively represent indigent clients. The administrator should also develop a fee schedule for various categories of indigent defense services which should be submitted to the commission for approval.

5. The administrator should be paid a salary comparable to that for administrators of attorney general and district attorney offices serving the same general geographic area.

6. Generally an assigned counsel system administrator should be assisted by a full-time executive secretary and should have a permanent staff of one lawyer and one full-time secretary for every 6,000 criminal cases handled annually. The additional lawyer would devote his time to accepting cases from the court and counseling clients at the local jails. In addition, the administrator should have one investigator to handle questions by the court about the eligibility and indigency of defendants requesting counsel.

7. The administrator's office should be convenient to the most active courthouse in the area of responsibility.

8. An administrator should also establish procedures for referring defendants ineligible as indigents to private counsel.

Operation

The administration of the centralized assigned counsel system should rest with the administrator of indigent defense assisted by the advice of a standing committee of the commission established to oversee the program. The administrator should have flexibility to do any and all things necessary to assure the efficient and effective operation of the system.

Initial contact of a prospective client with the Administrator's Office of Indigent Defense may arise in the following ways:

1. Persons arrested and unable to afford their own attorney, but released on bail, or released on their own recognizance, may on their own accord apply to the Office of Indigent Defense for the appointment of an attorney to represent them;

2. Persons arrested and in custody, or relatives and friends of persons arrested and in custody, may contact the Office of Indigent Defense directly from the jail;

3. Any court throughout the geographic area served, whether a Municipal Court, Superior Court, Juvenile Court, or a court presiding over commitment proceedings for the mentally ill, may, upon determining that the appointment of an attorney to represent an indigent defendant is necessary, appoint the Administrator of the Office of Indigent Defense for appropriate referral.

Attorneys participating in centralized assigned counsel programs should be assigned regularly to arraignment calendars in all trial courts. Thus, if at any time on an arraignment the request for appointed counsel is made by a defendant, or the court determines that such an appointment is advisable, the attorney representing the Office of Indigent Defense can be designated as the appointee.

It should be a function of the Office of Indigent Defense, after initial referral or contact with the client, to undertake a determination of the financial resources of the defendant. If the person is found to be indigent and unable to afford private counsel, the Office of Indigent Defense should represent that individual. If, on the other hand, it appears that the individual has adequate financial resources to retain private counsel, an appropriate referral should be made either to a lawyers reference service of the local bar association or to a list of practicing attorneys.

After a determination that a case is one within the jurisdiction of that office, an Office of Indigent Defense should immediately select and assign an attorney to the case. The selection should be made from a panel of lawyers who have signed up with the Office of Indigent Defense and should take into account the expertise and prior experience of the lawyer in relation to the severity of the crime with which the defendant is charged and the complexity of the issues in a particular case.

Once assigned, an attorney should immediately contact his client and should undertake to represent that client to the conclusion of the case. The program administrator should do his best to see that indigent clients of appointed attorneys receive the same effort, skill and personal attention which the attorney gives private clients.

Appointed attorneys bill the Office of Indigent Defense for services in any case in which they have been appointed, in accordance with fee schedules established by the administrator and the commission established to oversee the program. Generally attorneys are limited to fees established by those rules and procedures, but a right to appeal to a special committee established for purposes of providing additional compensation should exist, if extraordinary circumstances warrant additional compensation. Such extraordinary fee appeals should be heard by an appropriate committee of the commission on indigent defense, whose determination is final.

Attorneys applying for participation in an assigned counsel program should be carefully screened, and new attorneys lacking experience should be required to complete a training and internship program prior to admission

to the panel. The nature, length and content of such training will depend upon the needs of the particular applicant and the resources of an assigned counsel program but the goal is to ensure that every member of an assigned system's participating panel of attorneys can provide effective and adequate defense services.

Offices of Indigent Defense should also provide programs of continuing education for participating attorneys, which may include periodic seminars on new developments in criminal and constitutional law, as well as juvenile court and mental health legislation and should distribute publications on new developments to the panel on a continuing basis.

Costs for investigative services, expert witnesses, lie detector tests, and similar procedures necessary for an effective defense should be paid by the Office of Indigent Defense. Funding for the Office of Indigent Defense should be the responsibility of the political divisions served by that office. The cost of the indigent defense program will depend on the fee schedule adopted for the Office of Indigent Defense. (See Appendix A for examples of fee schedules currently used in various jurisdictions.)

VI. DEVELOPING AND IMPLEMENTING ALTERNATIVE SYSTEMS FOR PROVIDING DEFENSE SERVICES

In addition to public defender and assigned counsel systems discussed in the preceding chapters, there are several alternative defense systems available. These include situations in which a public defender and assigned counsel system operate together with the assignment of cases being determined by type of case, jurisdiction, or a percentage of the caseload, as well as regional or other private defender systems that are unique responses to specific local needs for defense services, especially in the area of misdemeanors.

In this chapter several such alternative methods for providing defense services are described and methods for designing and implementing similar programs are discussed.

The Task Force on Courts of the National Advisory Commission on Criminal Justice Standards and Goals noted that coordinated public defender and assigned counsel systems are often preferable to either system alone:

Services of a full-time public defender organization, and a coordinated assigned counsel system involving substantial participation of the private bar, should be available in each jurisdiction to supply attorney services to indigents accused of crime. Cases should be divided between the public defender and assigned counsel in a manner that will encourage significant participation by the private bar in the criminal justice system.¹

¹National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, D.C.: Government Printing Office), p. 263.

A coordinated public defender and assigned counsel system similar to that recommended by the Commission has operated in the District of Columbia since 1970. The Public Defender Service (PDS) is permitted by statute to represent a maximum of 60 percent of all indigent defendants. At this time, however, the PDS takes approximately 25 to 30 percent of such cases with the private bar handling the rest. The overall system is administered by the PDS, but the actual assignment of cases is done by the clerk of each court served. In the Superior Court of the District of Columbia, the general jurisdiction court, the PDS determines the workload of its attorneys, and when an attorney has available time, his name is submitted to the clerk's office for assignment. All cases not assigned to the PDS are assigned to volunteer attorneys, or to one member of a panel of 16 private attorneys selected by the court each month to serve for one day in the Superior Court.

The Washington, D.C., "combination" system has two advantages over a pure public defender system: it keeps the private bar involved in the defense of indigent clients, and this involvement lowers the attorney caseload within the PDS. It should be noted, however, that this type of system is more expensive than most pure public defender systems, with the total cost of indigent defense in Washington being approximately \$5 million in 1972. This high cost figure can be attributed to the fact that private assigned counsel in Washington, who represent approximately 70 percent of all indigent dependents, are reimbursed at the rate of \$30.00 per hour for in-court time and \$20.00 per hour for out-of-court time up

to \$1,000 (reimbursement over \$1,000 is subject to the approval of the Chief Judge of the U.S. Court of Appeals). The assigned counsel aspects of such combination systems also are subject to the potential weaknesses of variability of quality and other factors mentioned in the critique of assigned counsel systems. Also, since private assigned counsel handle the majority of indigent cases in the District of Columbia, these fees result in relatively high costs for defense services as compared to pure public defender systems.

Another type of defense service that has been established in several jurisdictions is a private defender system that is operated by the local bar association. Two examples are San Mateo and San Diego Counties, in California. Both of these systems utilize some full-time attorneys, as well as assigned counsel, thus permitting members of the private bar to remain involved in indigent defense.

Since 1968, the San Mateo Bar Association has been under contract with the county to provide indigent defense services for which it is paid a total price based upon the number of cases handled (with the exception of juvenile cases for which one flat fee is paid). The Bar Association Defender Program maintains a small full-time staff that is responsible for some cases as well as supervisory functions, but most cases are assigned to private attorneys who have qualified to be included on the assignment list. The staff consists of three attorneys, three full-time secretaries, one part-time clerk, a full-time bookkeeper and a full-time investigator. Because of its limited size, the program's full-time staff does not provide clerical and investigative support to assigned counsel.

The San Mateo Defender Program handles all types of cases, including juvenile, misdemeanor, and felony. Cases are assigned by the staff to participating private attorneys according to the type of case, and the skill and prior experience of the attorney. Payment for assigned counsel services is based upon a fee schedule that specifies allowable fees for each type of appearance or other service provided by the lawyer to his client. These fees range from \$25.00 for an appearance at a pre-trial conference (if it is followed by a trial), to \$120.00 per day for the first five days of a trial.

In San Diego, a private defender program, Defenders, Inc., is sponsored by the County Bar Association. The program employs 25 full-time attorneys, 1 half-time and 2 full-time investigators, and 8 secretaries. It should be noted that the San Diego program operates with only one investigator for every ten attorneys, while the model defender systems outlined in Chapter III of this report recommended investigator/attorney ratios of one-to-one for a rural county system, and one-to-three for a statewide system in a heavily urbanized state. The San Diego central staff handles approximately one-third of the total felony caseload in the San Diego court, with the remaining two-thirds and all misdemeanor cases being handled by court-appointed attorneys. As in San Mateo County, assigned counsel in San Diego is compensated according to the type of service provided. For example, an attorney will receive \$25.00 for a court arraignment, \$35.00 for a probation and/or sentencing appearance, and \$150.00 for each full day of trial. The funding for Defenders, Inc., and the participating assigned counsel

is by the County, and the program is administered by the San Diego Bar Association.

A third alternative to public defender and assigned counsel systems is the regional defender system. Although such systems are relatively rare at this time, they appear to have considerable potential for improving the quality of defense services in rural areas.

In North Dakota a Regional Public Defender program serves a 10-county area. This program was organized in 1971 to serve Burleigh, Emmons, Grant, Kidder, McLean, Mercer, Morton, Oliver, Sheridan and Sioux counties, which have a total population of approximately 104,000. Two full-time staff attorneys handle felony cases, misdemeanors, juvenile cases, mental health hearings, and parole violation hearings. Seventy-five percent of the funding for the Regional Public Defender comes from federal LEAA funding, with the remaining 25 percent contributed by the 10 participating county governments according to population.

Florida has established regional defender offices in the state's 20 judicial circuits, several of which include multiple counties. Funding for these regional public defender offices comes primarily from the county governments, with some additional funds from the state government.

In an area where several counties do not have sufficient population and criminal caseload to justify the establishment of a full-time public defender in each county, a regional defender system may be the best means for providing indigent defense services, and can provide rural areas with a viable alternative to either part-time public defenders or assigned counsel

systems. One potential problem in such systems is the scheduling of cases in different county courts, and such systems require the full cooperation of all the participating courts to develop a calendaring method to minimize attorney appearance conflicts.

Another type of defense service that should be mentioned in a discussion of innovative programs is Judicare, although it was not among the systems examined during this study. A Judicare system is currently operating in civil cases in parts of Wisconsin. Under Judicare, low income persons receive a participation card, which may be presented to any attorney when the cardholder requires legal services. If requested services are covered by the program, the attorney handles the matter and bills the central Judicare office, based on a fee schedule which specifies maximum fee limits for an initial conference, and in-court and out-of-court time spent on the case. Although the Wisconsin Judicare program is only available in civil matters at this time, it represents an alternative method of providing counsel to indigents in criminal cases as well.

All of the programs discussed in this chapter represent a certain degree of innovative and flexible responses to local needs for indigent defense services. However, as was mentioned in the introduction to this report, such innovative efforts are few and those programs that do exist are so new as to preclude thorough and meaningful evaluation at this time. In developing a new defender capability, a jurisdiction should consider the possibility of experimenting with combinations or structures for defense services such as those programs described above. Rural areas, for example,

may well consider a regional or multi-county public defender system, or a medium-size city with a large number of private attorneys should consider a coordinated assigned counsel system in conjunction with the public defender system. The first step in custom-tailoring a defender system to fit the needs of a locality is to analyze the area's needs and resources as described in Chapter II. This type of analysis should enable planners to determine whether there are unique needs or resources in the jurisdiction that could be the basis for an innovative program. For example, a high occurrence of specified types of fairly complex crimes in an urban area or a very sparse private bar in rural areas would both suggest that some mix of salaried public defenders should be included in designing a program for either situation.

Once there is a clear understanding of the current needs and resources, a tentative outline for an innovative program can be developed. This plan should focus on fulfilling a specific need and utilizing specific resources in a jurisdiction. It should also include information on the operations, administration and finances of the proposed program, and should specify both procedures and a timetable for monitoring and evaluating program performance on a continuing basis.

Often, an experimental or innovative program can be initially implemented on a limited basis to supplement existing resources, and later expanded as it demonstrates its effectiveness. It is easier and less costly to monitor and evaluate a small program than one involving a large staff and heavy caseload. By starting with a limited program, it is easier to maintain control

over it, to identify and resolve problems that arise, and to modify organization or staffing in order to best meet local needs.

After an experimental program is established, it should be evaluated periodically in order to determine whether it is feasible to implement it on a larger scale and in other jurisdictions. This on-going evaluation should include a comparison with other defense services in the jurisdiction. For example, if a regional public defender is established to initially handle a small percentage of all criminal cases, the cost and effectiveness of this program should be compared with those of the assigned counsel or county-based public defender systems that continue to operate during the period of experimentation.

Periodic evaluation of innovative programs can also provide information useful to other jurisdictions in designing programs. The requirements of Argersinger for increased defense services should provide a healthy impetus for further innovation and experimentation in providing both effective and efficient defense services for indigents.

VII. DETERMINING INDIGENCY AND ELIGIBILITY

Policies and procedures established to determine whether a defendant is eligible for court-appointed counsel will have an impact on the structure and operations of such a system. If eligibility determinations are made by a public defender, procedures and guidelines will have to be established for making eligibility decisions. Moreover, the standards used to determine eligibility will affect the caseload of a public defender or assigned counsel system.

Eligibility for appointed counsel has two distinct aspects. The first is whether the offense with which a defendant is charged carries a possible jail sentence, the determinant set by the Supreme Court in Argersinger. This determination depends upon whether a jail sentence is possible under the statute and whether the judge feels a jail sentence is likely.

The second and much more complicated aspect of eligibility is the determination of whether a defendant is financially unable to retain private counsel. The extension of the right to counsel to indigents in misdemeanor and petty offense cases makes the determination of indigency more difficult than it had been prior to Argersinger. That is, the obvious inability of a defendant earning \$85 to \$100 per week to afford \$1,000 to \$4,000 for a felony defense is a relatively easy determination to make. The far more difficult issue is that same defendant's ability to afford \$100 to \$500 for a misdemeanor defense.

The difficulties inherent in determining indigency have resulted in standards that are either extremely vague or are so stringent as to exclude many defendants who may be unable to afford private counsel. The standard recommended by both the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals is that retaining an attorney should not result in "substantial hardship" to the defendant. This standard allows for large variations in the actual requirements developed by individual courts, and large variations were found in the jurisdictions examined during the course of this study. In some courts, if a defendant states orally that he is indigent, the court will appoint counsel; in other areas, if a defendant owns an automobile or television he is ineligible for appointed counsel.

In designing a public defender or assigned counsel system, the policies regarding the determination of indigency are probably the most difficult to set. There is almost no research available at this time to assist planners to design efficient and equitable procedures. However, in the course of this study, it was possible to identify certain problems and make several recommendations.

A major problem is determining the group or individual who should be given the responsibility for making individual determinations of indigency. In many jurisdictions the judge questions a defendant either orally or in writing as to his ability to retain counsel. This method results in an inefficient use of a judge's time and may often result in substantial inequities depending on the personal standards of individual judges. In other jurisdic-

tions, the public defender makes indigency determinations, and the possibility always exists that there may be a tendency to become more or less lenient depending upon the caseload of the defender office. Still another way to determine indigency is to have a probation department or pre-trial release agency make the determination based upon objective information collected during the pre-trial interview. This last method is probably the most efficient and fair, in that it tends to centralize the collection of data about a defendant, and enables the determination of indigency to be based on the best information available. Additionally, it enables counsel to be appointed at the first court appearance, and avoids problems of multiple initial appearances which are sometimes required where a judge determines indigency on an ad hoc basis and keeps sending a defendant back to see if he can raise the money for private counsel.

Another problem involves the identification of factors to be considered in making a determination of indigency. In general, a person's salary, number of dependents, liquid assets, and spouse's assets are the basic factors to be considered. Some systems also want to know if there are extenuating circumstances, such as unusually large medical expenses, and if the defendant owns property. The Public Defender Service of the District of Columbia has developed a formula for determining indigency which takes into account a defendant's net assets, net income, and a living allowance based upon number of dependents (see Appendix D). A recommendation as to eligibility for the services of PDS is based upon the outcome of this calculation compared with a basic schedule of attorney fees for different

services (e.g., \$1,500 for a capital case and \$400 for a misdemeanor). While this system may be criticized for being simplistic and inflexible, it does ensure some degree of equity in the assignment of counsel.

A third problem that must be resolved is whether, and how, a defendant who is partially or marginally indigent should be provided with counsel. The National Advisory Commission on Criminal Justice Standards and Goals recommended that "Defendants should be required to pay part of the cost of representation if they are able to do so."¹ In those defender systems that recognize that a defendant may be only partially indigent, there are generally two ways in which such cases are handled. The first is through a panel of private lawyers who agree to represent partially indigent defendants at lower fees, and the second is to require the defendants to pay part of the legal fees of the public defender.

Several counties in California have established marginal indigency panels through the local bar associations. When a defendant is ineligible for assistance from the public defender, he is referred to a panel, which in turn estimates the cost of representation for the defendant and then makes a determination as to what the defendant can afford. The defendant is then given the names of three or four private attorneys who will represent him at this reduced fee.

In the District of Columbia, if a defendant is found to be partially indigent, he is assessed a percentage of the total legal fee, and is required

¹National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, D.C.: Government Printing Office), p. 257.

to pay this amount to the Public Defender Service on a set payment schedule. Other defender systems have found this method of handling cases involving partially indigent defendants to be the most efficient and equitable.

At the present time it is impossible to provide uniform standards for determining indigency, since such standards must be based upon local factors such as income levels and standard attorney fees. However, several recommendations can be made:

1. The local planning committee in charge of indigent defense services should develop guidelines for determining financial indigency in consultation with the judiciary and the local bar to ensure some uniformity in these determinations.
2. The defendant should provide, in the form of an affidavit, information concerning his liquid assets, financial obligations, and dependents.
3. In determining eligibility the type of legal services required should be a major consideration. A fee scale for different legal services should be developed and used in conjunction with the defendant's financial information to determine eligibility.
4. Determination of both financial resources and eligibility for court-appointed counsel should be made by an interviewer from the probation department or a pre-trial release agency; if this is not possible the determination should be made by the public defender. If there are any questions concerning eligibility, the final decision should be made by a judge.
5. Defendants who are partially indigent should be required to pay for a percentage of the cost of representation.

VIII. UTILIZATION OF LAW STUDENTS AND PARAPROFESSIONALS

In his concurring opinion in Argersinger v. Hamlin, Mr. Justice Brennan observed that, "Law students as well as practicing attorneys may provide an important source of legal representation for the indigent"¹ and referred to the many programs currently operating in law schools through which law students are able to gain actual courtroom experience.

The Council on Legal Education for Professional Responsibility (CLEPR) recently surveyed law school clinical programs and found that 41 states and the District of Columbia have rules permitting some degree of law student practice within the state.² These rules vary in their requirements for student practice, the types of cases in which students may provide counsel, and the extent of supervision required. For example, in some states law students may appear in court only if they are accompanied by a supervising attorney. Many student practice rules now in effect are based upon the ABA Model Rule (see Appendix B). These rules provide a potential low-cost resource for indigent defense programs which can be used to supplement or assist regular staff, particularly in the area of representing defendants charged with less serious crimes.

¹32 L.Ed. 2d 540.

²Council on Legal Education for Professional Responsibility, Inc., Survey of Clinical Legal Education 1972-1973 (New York: CLEPR, 1973), pp. ii-iii.

The CLEPR survey found that of the 151 law schools surveyed, 117 were conducting 324 separate clinical programs, of which 155 were in the area of criminal law.³ As in the case of student practice rules, clinical legal programs vary both in their requirements and operation. In some programs participating students are assigned one case during a semester and are responsible for preparing all of the papers associated with it, as well as for actually representing the client in court. In other programs, the students are assigned to a defender office where they are given responsibility for a selected caseload, which they handle with assistance from a supervising attorney. While the first type of program has student training as its major goal, the second type may be more geared toward alleviating the heavy caseloads of full-time defenders.

Most of the defender systems examined in this study had some provisions for utilizing law students, and in almost all programs the students received school credit rather than a salary for the work performed.⁴

One of the largest legal intern programs is in New York City, where the Legal Aid Society has three separate programs providing a variety of services in criminal cases. The first program is for 30 legal interns who work part time during the second semester of their second year in law school and first semester of their third year, and then full time during the intervening summer. The second program consists of 15 summer interns who work for the Legal Aid Society, but are paid through a grant from LEAA through the District Attorney's office. Both of these programs are

³Ibid.

atypical in that the participating law students receive a salary. There is also a program at New York University for 35-40 students who receive law student credits for work in the New York City Criminal Court. In this program the students receive law school credit and are supervised in case preparation by a member of the faculty. The Legal Aid Society's coordinator of student programs estimated that between 80 and 85 percent of the students involved in law student programs applied for permanent positions at the Legal Aid Society after graduation.

A unique law student program has been developed in Hennepin County (Minneapolis), Minnesota, under the auspices of the State Public Defender and the University of Minnesota Law School. In this program, a Misdemeanor Public Defender Office has been set up in the county separate from the Felony Public Defender. The Misdemeanor Public Defender Office consists of four young attorneys, one investigator and one secretary, assisted by approximately 30 law students in the University's clinical law program, who are permitted to represent misdemeanor defendants under supervision of the full-time defenders and the clinical law professors. According to a recent law review article by the director of the Minneapolis program:

They (the law students) handle all Public Defender arraignments two days a week in Minneapolis Traffic and Criminal Misdemeanor Court under the direct supervision of a clinical professor. A weekly seminar prepares them academically for their field work. Thorough trial briefs are required of each student who is assigned a trial.⁴

⁴Robert E. Oliphant, "Reflections on the Lower Court System: The Development of a Unique Clinical Misdemeanor and a Public Defender Program," Minnesota Law Review 57:3, January 1973, p. 551.

One of the key factors in the success of this program is the close supervision given to each of the student participants. Two clinical professors, paid by the University, provide close in-court supervision. This arrangement reduces the time required of the full-time defenders to supervise law students and undoubtedly raises the quality of student representation provided to indigent clients.

Although clinical legal programs have good potential for training better trial lawyers and for supplementing the provision of counsel to indigent defendants in less serious crimes, there are several problems that should be recognized before such a component is incorporated in a public defender system. The first is that a successful program requires close supervision of the law students by a competent trial lawyer. This type of supervision requires both time and money, two resources that most defender systems are lacking. The best way to resolve this problem may be to have legal intern components of defender systems funded and administered under a cooperative arrangement between the law school and the defender office. By having one or more professors supervising the students, a clinical program should be able to make a significant contribution to the handling of cases, without significantly reducing the amount of time available for staff attorneys to spend on their caseloads.

Another limitation of clinical legal programs is that such programs generally only operate in localities where law schools are situated. Since there are relatively few law schools in the country, there are areas where students could also be used, but none are available. By negotiating with

the nearest law schools, it might be possible to utilize law student interns during the summer. Another possibility might be to have the students arrange their schedules to have one or two days free of classes each week so they can commute to a neighboring county to work in the defender office.

Two final points that should be mentioned in considering law student participation in the defense of indigents are the problems of adequacy of counsel and the reaction of defendants to being represented by a student. The first of these can probably be solved through adequate supervision by practicing attorneys. Moreover, advocates of law student participation believe that the enthusiasm and dedication of students far outweigh their inexperience in the actual practice of law. It should be noted, however, that in some intern programs there have been difficulties during exam periods and school vacations, when students are often unavailable to perform the work required.

Very little information exists regarding how clients react to student participation. Although it may be true that some defendants feel their cases are not being adequately handled when students participate, some defenders point out that many indigent clients feel this way about any legal services for which they do not pay a fee. However, to minimize any subsequent appeals involving allegations of incompetent counsel, clinical programs should provide adequate supervision at all times, and should demand professional behavior by participating students.

The preceding discussion focused on the use of law students as trial attorneys in less serious cases, but there are many other less controversial but highly useful roles that students can play in a defender system. In

some programs while law students are not permitted to try cases, they assist trial attorneys by interviewing clients both to determine indigency status and to record the facts in a case. Students may also perform legal research and case preparation and may often serve as liaison between a defendant and a busy defense attorney. By performing these tasks, law students can assist with some of the heavy burdens placed on defense lawyers. However, any program in which students undertake paralegal functions will require strong administration and careful coordination between lawyers and students to ensure success.

Based upon the research performed for this study, several recommendations can be made concerning the incorporation of clinical legal education programs within a public defender or assigned counsel system:

--A coordinator should be appointed within the defender office to work with students and the law school in developing and administering the program;

--The day-to-day supervision of the law students should be provided by faculty members of the law school;

--The students should be permitted to work on only a limited caseload at one time;

--Permission should be obtained from the defendant, in writing, to be represented by a law student.

Clinical legal education programs must be carefully planned and administered. If a defender system wishes to incorporate a law student program, information about existing programs can be obtained from CLEPR.

There are certain routine functions in a defender system that may be performed by non-law-student paraprofessionals. These individuals may assist trial attorneys by conducting initial interviews with clients, locating and referring clients to other programs, and undertaking investigations of the facts of a case. The actual extent to which paraprofessionals can be used to alleviate the burdens on defense attorneys has not yet been determined, and probably will not be until the specific roles they can fill are more clearly developed within the framework of applicable practice rules in each state.

A few jurisdictions have already developed paraprofessional programs. The Seattle-King County Defender Office has a Correctional Counseling Unit, where each client is offered the services of the unit, which provides various forms of counseling and assistance from the time the case is assigned through disposition. The paraprofessional counselors in this unit play an important role in developing community resources as alternatives to incarceration for the defendant, as well as in providing counseling to the defendant during the pre-trial procedures.

The participation of law students and paraprofessionals in the defender systems offers important potential for assisting in the implementation of Argersinger v. Hamlin that should not be overlooked. Law students and paraprofessionals can assist defense attorneys in work that is directly case-related and can also provide support services to clients. Further work needs to be done in specific jurisdictions to determine the outer limits of activities that may be both legally and adequately performed by non-lawyers and to determine the optimum number of such non-lawyers that should be included in an indigent defense program.

APPENDIX A
FEE SCHEDULES FOR PRIVATE ASSIGNED COUNSEL

The fee schedules set for private assigned counsel in 14 states and the District of Columbia are shown below. This list includes the nine states examined in this study, as well as other examples of representative fee schedules. In addition, the rather unique fee system used in San Diego County, California, is presented.

1. California: determined by each county.
2. Colorado: reasonable compensation for time and expenses as determined by the court.
3. Hawaii: Fee schedule varies with type of case, as follows:
 - a. felony case in which the penalty may equal or exceed imprisonment for more than 20 years: \$250 minimum, \$1,500 maximum
 - b. appeals to the Supreme Court: \$250 - \$1,500
 - c. other felony cases: \$50 - \$750
 - d. other cases: \$50 - \$300Exact fee is determined by the court.
4. Kansas: Compensation is set by a board of supervisors of the panel of eligible attorneys. The current schedule is \$15/hour for trial time; maximum of \$500 per case, except in felony cases where actual trial time, including preliminary hearing and district court trial exceeds 30 hours. Maximum in all cases is \$6,000, plus expenses. An indigent defendant is also allowed reasonable investigation expenses.
5. Kentucky: In a county with an assigned counsel system, attorneys are compensated at a rate no higher than \$30/hour for in-court time and \$20 for out-of-court time with a maximum of \$1000 for felony cases and \$500 in other cases. In counties with public defender system, the fee for an assigned attorney is determined by the court; however, no fee shall be in excess of \$500 per defendant.

6. Massachusetts: Basic fee of \$15/hour for in-court, \$10/hour for out-of-court time. Maximum fees of \$300 in misdemeanor cases; \$500 in felony cases; \$1,500 in capital cases. Court may award additional fees.
7. New Jersey: In most non-indictable cases involving an indigent defendant, a private attorney is assigned to provide counsel without compensation. When the Office of the Public Defender assigns a private attorney to a case, the following fee schedule is used:

PROCEEDINGS PRIOR TO TRIAL - (FEE ALL INCLUSIVE)

Municipal Court Appearance for individual defendant	\$ 10.00
Municipal Court Probable Cause Hearing for individual defendant	25.00
Attendance at Municipal Court on hourly basis for all indigent matters on court calendar	7.00/hr.
Attendance at lineup	10.00/hr.
Attendance at consultations with suspect during custodial interrogation	10.00/hr.

POST INDICTMENT

Pre-trial preparation; client, witness, prosecutor and probation interviews; research; preparation of motions, etc. (5 hr. maximum = \$75.00, except for good cause shown)	15.00/hr.
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POST INDICTMENT COURT APPEARANCES

(a) Bail Application where presence in Court is required	15.00
(b) Entry of Not Guilty Plea to Indictment	10.00
(c) Initial Entry of Guilty Plea and Sentence	50.00
(d) Retraction of Not Guilty, entry of Guilty to Indictment, Accusation or Downgrade and appearance at Sentencing	65.00
(e) Any other pre-trial motion not requiring testimony (allowed once only) but where court appearance is required	50.00
Pre-trial motion requiring testimony, i.e., Suppression, same allowance as for Trial Time	
Pre-trial conference where court appearance is required in accordance with R. 3:13-1	15.00

TRIAL

\$125.00/day (5-1/2 hours)
\$15.00 for Appearance at sentencing

MISCELLANEOUS

- | | |
|---|---------------------------------|
| (1) Where Grand Jury fails to indict following Counsel's appointment and services, maximum fee of \$50.00 is payable. | |
| (2) Motions subsequent to trial, such as a motion for a new trial | (allowed once only)
\$ 25.00 |
| (3) Hearing on violation of parole or probation, indictable offense only | 25.00 |
| (4) Extradition hearing | 25.00 |
| (5) Post-Conviction Relief -- Indictable offense only, preparation of brief, etc. | 10.00/hr.
(100.00 max.) |
| (6) Argument in trial court | 50.00 |
-

HOMICIDE CASES

Attorneys will be compensated for services rendered in homicide cases in accordance with above schedule of fees. Additionally, the maximum of 5 hours of pre-trial preparation will in most cases be waived and a maximum of 35 hours at \$15.00 per hour will be substituted. If, in the attorney's opinion, additional pre-trial preparation is necessary, he must first secure a written authorization from William P. Ries, Deputy Public Defender, Northern Zone, 1100 Raymond Boulevard, Newark, or Richard A. Walsh, Deputy Public Defender, Southern Zone, 10-12 North Stockton Street, Trenton. The Public Defender will not pay for more than 35 hours pre-trial preparation unless written authorization is secured in advance. All pre-trial preparation time over 35 hours will be paid at the rate of \$10 per hour and over 50 hours, at the rate of \$5.00 per hour.

9. New York: Fee set at \$15/hour for in-court and \$10/hour for out-of-court time (a proposal to double these is currently being considered). In capital cases, there is a \$1,500 maximum for one attorney, and a \$2,000 limit for two or more attorneys (these fees are the same for appeals in capital cases). For trials and appeals of non-capital felony cases, the maximum fee is \$500. Reimbursement for expenses is also allowed. In extraordinary circumstances these limits may be exceeded, with the approval of the court.
10. North Dakota: Reasonable rate to be determined by the court.

11. Pennsylvania: In non-capital indictable cases, the fees are \$25/hour for in-court time and \$15/hour for out-of-court time. If the charge is one or more felonies, the maximum is \$800 per case; in misdemeanor, post-conviction, and juvenile proceedings the maximum is \$500.
12. Washington: Statute specifies that compensation in felony cases will be at a reasonable rate for services and expenses.
13. West Virginia: Maximum fee of \$100 in misdemeanor cases and \$200 in felony cases.
14. Wyoming: For misdemeanor cases the fee is set between \$15 and \$100; for felony cases the fee is between \$25 and \$250; and for capital cases the fee is between \$50 and \$500.
15. District of Columbia: Fee based on \$30/hour for in-court and \$20/hour for out-of-court time, up to \$1,000. Reimbursement over \$1,000 is subject to the approval of the Chief Judge of the Court.
16. San Diego County, California:

CRIMINAL PROCEEDINGS:

Court arraignment	\$ 25.00
Probation and/or sentencing	35.00
Continuance, if necessary for proper defense of defendant. (Check with court clerk.)	15.00
Change of Plea	35.00
Motions - per appearance (Other than 995 and 1538.5)	25.00
Revocation or modification of probation	35.00
Present Sanity (Arrestment in court after certification from Municipal Court.)	25.00
Penal Code 995	50.00
Penal Code 1538.5 alone, or combined with S995	100.00

TRIALS:

Full day or more than 1/2 day	150.00
If first day of trial is 1/2 day or less	100.00
Each subsequent 1/2 day or less	100.00

JUVENILE PROCEEDINGS:

Detention hearing	35.00
Regular hearing	75.00

ALLEGED NARCOTIC DRUG ADDICTS:

Court arraignment after certification from Municipal Court	25.00
Hospital hearing	50.00
Court trial not more than 1/2 day	100.00
Court trial if more than 1/2 day	150.00

MENTALLY ABNORMAL/DISORDERED SEX OFFENDER:

Court arraignment after certification from Municipal Court	25.00
Hospital hearing	50.00
Trial not more than 1/2 day	100.00
Trial more than 1/2 day	150.00

MENTALLY ILL PERSONS: (Includes inebriates, dipsomaniacs, etc.)

Hospital hearing	50.00
Trial not more than 1/2 day	100.00
Trial more than 1/2 day	150.00

APPENDIX B

ABA MODEL STUDENT PRACTICE RULE

I. Purpose.

The bench and the bar are responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted.

II. Activities.

A. An eligible law student may appear in any court or before any administrative tribunal in this State on behalf of any indigent person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

1. Any civil matter. In such cases the supervising lawyer is not required to be personally present in court.
2. Any criminal matter in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer is not required to be personally present in court.
3. Any criminal matter in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer must be personally present throughout the proceedings.

B. An eligible law student may also appear in any criminal matter on behalf of the State with the written approval of the prosecuting attorney or his authorized representative and of the supervising lawyer.

C. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

III. Requirements and Limitations.

In order to make an appearance pursuant to this rule, the law student must:

- A. Be duly enrolled in this State in a law school approved by the American Bar Association.
- B. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis.
- C. Be certified by the dean of his law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.
- D. Be introduced to the court in which he is appearing by an attorney admitted to practice in that court.
- E. Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the State from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

IV. Certification.

The certification of a student by the law school dean:

- A. Shall be filed with the Clerk of this Court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification shall continue in effect until the date he is admitted to the bar.
- B. May be withdrawn by the dean at any time by mailing a notice to that effect to the Clerk of this Court. It is not necessary that the notice state the cause for withdrawal.
- C. May be terminated by this Court at any time without notice or hearing and without any showing of cause.

V. Other Activities.

- A. In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this Court, but outside the personal presence of that lawyer, including:
1. Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.
 2. Preparation of briefs, abstracts and other documents to be filed in appellate courts of this State, but such documents must be signed by the supervising lawyer.
 3. Except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the Court on behalf of such a client must be signed by the attorney of record.
 4. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.
- B. An eligible law student may participate in oral argument in appellate courts, but only in the presence of the supervising lawyer.

VI. Supervision.

The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

- A. Be a lawyer whose service as a supervising an eligible law program is approved by the dean of the law school in which the law student is enrolled.
- B. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.
- C. Assist the student in his preparation to the extent the supervising lawyer considers it necessary.

VII. Miscellaneous.

Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that he might lawfully do prior to the adoption of this rule.

Date adopted: 1969

Last amendment: Unchanged

APPENDIX C

Uniform Law Commissioners Model Defense of Needy Persons Act
National Conference of Commissioners on Uniform State Laws 1966

Eligibility (Right to Counsel)

a needy person who is being detained by a law enforcement officer, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime;

A "serious crime" includes:

- (i) a felony
- (ii) a misdemeanor or offense any penalty for which includes the possibility of confinement (for six months or more) or a fine of (\$500) or more. . .

Indigency Standards (Definition of Indigency)

"Needy person" means a person who at the time his need is determined is unable, without undue hardship, to provide for the full payment of an attorney and all other necessary expense of representation.

Guidelines for Determining Indigency

(a) The determination of whether a person covered by section 2 is a needy person shall be deferred until his first appearance in court or in a suit for payment or reimbursement under section 1, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each proceeding, whether he is a needy person.

(b) In determining whether a person is a needy person and in determining the extent of his inability to pay, the court concerned may consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail does not necessarily prevent him from being a needy person. In each case, the person, subject to the penalties for perjury, shall certify in writing or by other record such material factors relating to his ability to pay as the court prescribes.

(c) To the extent that a person covered by section 2 is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court may order him to provide for their payment.

Obligation of Defendant to Repay State for Services Rendered

(a) The (county) attorney may, on behalf of the (county), recover payment or reimbursement, as the case may be, from each person who has received legal assistance or another benefit under this Act:

- (1) to which he was not entitled;
- (2) with respect to which he was not a needy person when he received it; or
- (3) with respect to which he has failed to make the certification required by section 4(b);

and for which he refuses to pay or reimburse. Suite must be brought within 6 years after the date on which the aid was received.

(b) The (county) attorney, on behalf of the (county), may recover payment or reimbursement, as the case may be, from each person, other than a person covered by subsection (a), who has received legal assistance under this Act and who, on the date on which suit is brought, is financially able to pay or reimburse the county for it according to the standards of ability to pay applicable under sections 1(3), 2(a), and 4(b), but refuses to do so. Suit must be brought within 3 years after the date on which the benefit was received.

APPENDIX D
ELIGIBILITY QUESTIONNAIRE

1. NAME: _____ DATE: _____
2. ADDRESS: _____
(Street) (City & State)
3. CHARGE: _____ 4. AGE: _____
5. MARITAL STATUS: Single: _____ Married: _____ Separated: _____
6. DEPENDENTS: Spouse: _____ Children: _____ Others: _____
7. EMPLOYMENT: Employed: _____ Unemployed: _____
Take Home Pay: Monthly: \$ _____ Weekly: \$ _____

SPOUSE: Employed: _____ Unemployed: _____
Take Home Pay: Monthly: \$ _____ Weekly: \$ _____

8. OTHER INCOME (including spouse): Amount: \$ _____ Source: _____
9. CASH ON HAND OR IN BANK (including spouse): \$ _____
10. PROPERTY (including spouse): _____

I, the undersigned defendant, being duly sworn, depose and say that the facts contained herein are true.

Defendant: _____ Interviewer: _____
Notary Public

(TO BE COMPLETED ONLY IF DEFENDANT IS UNDER 21 AND SINGLE)

11. Defendant lives with and/or is supported by parents or guardian:
Yes _____ No _____
12. PARENTS OR GUARDIAN: Name and Relationship _____
13. DEPENDENTS: Spouse: _____ Children: _____ Others: _____

14. EMPLOYMENT: Employed: _____ Unemployed: _____
Take Home Pay: Monthly: \$ _____ Weekly: \$ _____

SPOUSE: Employed: _____ Unemployed: _____
Take Home Pay: Monthly: \$ _____ Weekly: \$ _____

15. OTHER INCOME (including spouse): Amount: \$ _____ Source: _____
16. CASH ON HAND OR IN BANK (including spouse): \$ _____
17. PROPERTY (including spouse): _____

I, the undersigned parent or guardian, being duly sworn, depose and say that the facts contained herein are true.

Parent or Guardian: _____ Interviewer: _____
Notary Public

(TO BE COMPLETED WHERE NET INCOME AND ASSETS
EXCEED MINIMUM LIVING ALLOWANCE)

RENT: _____ MORTGAGE: _____ OTHER DEBTS: _____

Total Monthly Payments: _____

RECOMMENDATION: _____ Eligible, no contribution
_____ Eligible, contribution \$ _____
_____ Ineligible

DISTRICT OF COLUMBIA
ELIGIBILITY INTERVIEW WORKSHEET

Defendant: _____

KEY

- A = net assets
- B = net income (weekly take-home pay)
- C = total assets/income
- D = living allowance (Table I below)
- E = available funds

$$\frac{A}{\quad} + \frac{B}{\quad} = \frac{C}{\quad} \quad \frac{C}{\quad} - \frac{D}{\quad} = \frac{E}{\quad}$$

TABLE I. Minimum Living Allowance (D) (per week)

Individual									
Individual with 1 dependent				=	\$	52			
Individual with 2 dependents				=		77			
"	3	"		=		121			
"	4	"		=		143			
"	5	"		=		165			
"	6	"		=		187			
"	7	"		=		209			
"	8	"		=		231			
"	9	"		=		253			
"	10	"		=		275			

TABLE II. Attorney Allowances

Appellate Matter					
Capital Case	=	\$	1,500		
Non-Capital Felony Case	=		1,000		
Misdemeanor	=		400		
Family Division Proceedings	=		400		
Discretionary Appointment	=		250		

RECOMMENDATION:

- _____ Eligible
- _____ Eligible with contribution order
 one payment \$ _____ multi-payment \$ _____
- _____ Eligible with further inquiry necessary
- _____ Ineligible

END