

Utah Law Enforcement Planning Agency's Project on  
Criminal Justice Standards and Goals

## JUDICIAL SYSTEMS THE DEFENSE

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Approved by

Judicial Systems Task Force

Law Enforcement Planning Council

1974



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GOVERNOR

STATE OF UTAH  
OFFICE OF THE GOVERNOR  
SALT LAKE CITY

October 22, 1975

Dear Citizens:

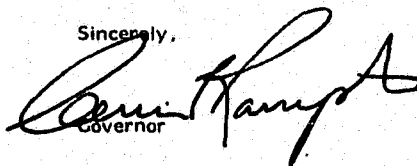
This pamphlet is one of a series of reports of the Utah Council on Criminal Justice Administration. The Council's five Task Forces: Police, Corrections, Judicial Systems, Community Crime Prevention, and Information Systems, were appointed on October 16, 1973 to formulate standards and goals for crime reduction and prevention at the state and local levels. Membership in the Task Forces was drawn from state and local government, industry, citizen groups, and the criminal justice profession.

- The recommendations and standards contained in these reports are based largely on the work of the National Advisory Commission on Criminal Justice Standards and Goals established on October 20, 1971 by the Law Enforcement Assistance Administration. The Task Forces have sought to expand their work and build upon it to develop a unique methodology to reduce crime in Utah.

With the completion of the Council's work and the submission of its reports, it is hoped that the standards and recommendations will influence the shape of our state's criminal justice system for many years to come. Although these standards are not mandatory upon anyone, they are recommendations for reshaping the criminal justice system.

I would like to extend sincere gratitude to the Task Force members, staff, and advisors who contributed something unknown before--a comprehensive, inter-related, long-range set of operating standards and recommendations for all aspects of criminal justice in Utah.

Sincerely,

  
Governor

THE DEFENSE

## TABLE OF CONTENTS

Introduction .....	1
Standard 2.1 Providing Public Defense .....	2
Standard 2.2 Criteria for Determining Indigency .....	3
Standard 2.3 Initial Contact with Client .....	8
Standard 2.4 Defense for Convicted Offenders .....	10
Standard 2.5 Compensation of Full-Time Public Defenders .....	12
Standard 2.6 Duties of Public Defenders .....	14
Standard 2.7 Selection of Public Defenders Staff .....	17
Standard 2.8 Public Defender Community Relations .....	18
Standard 2.9 Support Personnel and Facilities .....	20
Standard 2.10 Education of Public Defenders .....	23
Standard 2.11 Workload of Public Defenders .....	25

## INTRODUCTION

At an earlier time our system emphasized only the right to retain counsel, without a guarantee that counsel and auxiliary facilities would be provided to those unable to secure them. However, society has deliberately chosen the adversary system as the mechanism for trying criminal cases. Since this necessarily involves rules of procedure, rules of evidence and other complexities far beyond the grasp even of intelligent and educated laymen and beyond the ordinary experience of most lawyers, a high degree of skill in advocacy is demanded.

The concept of providing counsel to those in need of a lawyer in criminal proceedings and unable to retain one is not a novelty in American law. Our courts have undertaken to protect persons accused of crime and lacking legal representation since the earliest periods of our history. During the 19th century many states adopted statutes requiring that counsel be furnished to those without means in all or some specified class of criminal cases. The right to be provided counsel is so fundamental to the American idea of fairness in criminal procedure that in 1932 the supreme court recognized that this right is part of the due process of law which every state owes to its citizens. (Powell v. Alabama)

The fundamental premise of these standards is that representation by counsel is desirable in criminal cases, both from the viewpoint of the defendant and of society. The standards call for publicly financed representation for those that cannot afford it and even for those who would be financially burdened to a great extent by having to provide their own defense. The public defender should be adequate to this task and responsibilities in terms of facilities and personnel. Therefore, this report explores the questions of office space, library facilities, equipment, wages, hiring practices, workloads, and a number of other issues that spell a competent public defender's office.

## 2.1 PROVIDING PUBLIC DEFENSE

### STANDARD

1. Establishment of State Public Defender Office. -- A statewide, state-financed defender office should be established to provide representation for indigent individuals throughout the state. The state should be divided into several regions with an office in each region which would provide representation to indigent individuals charged with violations of the statutes of the State of Utah within that region. A region may consist of more than one county if that is necessary to create a caseload of sufficient size to justify a full-time public defender.

The office of public defender must be as independent and insulated from political and governmental influences as any private counsel who has undertaken the defense of a fee-paying client. To insure compliance with this objective, the State of Utah should contract with an independent, non-profit corporation which is under the laws of the State of Utah for the express purpose of providing representation in indigent cases on a statewide basis. The business of that corporation shall be governed by a board of directors which reflects an equitable representation of all geographic areas within the state, as well as other appropriate interests.

2. Selection and Responsibilities of the State Public Defender, Regional Directors, and Staffs. -- The board of directors shall appoint a state defender, regional defenders, as well as their staffs. The articles of incorporation or bylaws of the corporation must specify a procedure for public notification of any employment opening method of application, and a basis of selecting new employees to insure a fair opportunity to all interested applicants for employment and the selection of qualified personnel.

The state defender shall have the responsibility, under the direction of the board of directors, of administering the business of the corporation.

Among other duties, he will be responsible for obtaining the necessary financing from the state and seeing that it is equitably distributed among the regions, and will coordinate efforts of the regional offices in providing high-quality representation on a uniform basis throughout the state. The regional defender shall administer the business of his office within the region and be responsible for the performance of his staff.

Any defender should be subject to disciplinary or removal procedures for permanent physical or mental disability seriously interfering with the performance of his duties, willful misconduct in office, willful or persistent failure to perform his duties, or conduct prejudicial to the administration of justice. Power to discipline the public defender should be placed with the board of directors of the corporation.

### UTAH STATUS AND COMMENTS

a) Utah Law: Utah has no statewide association of defenders. There are locally-financed public defender offices in Ogden, Salt Lake City, and in San Juan County. The other counties hire private attorneys on a case-by-case basis.

### METHOD OF IMPLEMENTATION

Legislative action for budget; creation of office of public defender as outlined in the standard; enabling legislation for state obligation, contractual arrangements, provisions for operation, bylaws of organization, etc.

## 2.2 CRITERIA FOR DETERMINING INDIGENCY

### STANDARD

The test for determining ability to pay should be a flexible one that considers factors such as availability of private counsel; amount of income; bank account; ownership of a home, a car, or other tangible or

intangible property; the number of dependents; and the cost of subsistence for the defendant and those to whom he owes a legal duty of support.

Counsel should not be denied to any person merely because his friends and relatives have resources adequate to retain counsel or because he has posted, or is capable of posting, bond.

#### NATURE OF THE STANDARD

The question of financing public defender programs is always a difficult problem. Competent legal personnel are not only expensive, but the cost of maintaining an adequate working office skyrockets the cost. One way to lessen this burden is to provide a system of contributions by those partaking of the services. Surprisingly, such a system is practically non-existent in most jurisdictions. In these jurisdictions you either get the service free, or you do not qualify for the service at all.

The defendant must contribute only to the point where his contribution would not cause "substantial hardship." Anyone who must pay for legal services will be somewhat financially burdened. The key factor is that no one should be denied the most competent legal help because of his inability to raise the necessary funds. This standard seeks to meet that goal but to also provide for the defendants deferring part of the cost: that cost which he can, within reason, afford.

#### UTAH STATUS AND COMMENTS

a) Utah Law: In Utah, the policy is either to provide public defense at no charge or to deny the service altogether. Contribution by the defendant is not part of the system.

A defendant qualifies for public defense if he is classified as indigent. In Salt Lake County there is a computation table that is employed to determine eligibility. It takes into account the number of dependents and yearly salary plus assets of the defendant.

b) Where Utah Differs: Utah does not have a contribution system, but does take into account some of the criteria for indigency mentioned in the standard. The following is a newspaper article addressing public defense service in Utah:

"In a quiet manner, and with very little ceremony, the Utah State Bar has sponsored a bold new method of providing greater access to needed legal services. The program, known as the Utah Prepaid Legal Services Plan, was introduced by the State Bar during the fourth quarter of 1973.

Essentially, it is a consumer cooperative approach to legal services.

Recent American Bar Association figures indicate that perhaps as many as 70 per cent of all citizens do not have easy access to attorneys and the legal process. Affluent people can easily afford lawyer services; the indigent are supplied these services at no cost to them through city, county or other governmental agencies. But the working man, the family man, the man caught with unexpected problems, does not have the open and direct channel to an attorney's counsel.

As our society grows more complex, as the demand for consumer protection, estate planning and other legal needs has grown, so, too, has grown the strain on the present legal service delivery system. People on occasion are wronged with no recourse. Small legal matters may grow into costly problems."

#### LEGAL SERVICES

The Utah State Bar made a study of means of providing accessibility to lawyer services by a system that did not change the traditional

lawyer-client relationship, and that introduced people to the legal process in a professional and expedient manner.

The result was the Utah Prepaid Legal Services Plan which is now in operation. It provides a means by which members of a group can share costs of legal services. It is the first fully operative statewide Bar sponsored program in the United States.

The most important aspect of the plan is that enrolled members may go to any attorney of their choice, anywhere in Utah. Bar sponsorship also means that the Bar wrote the plan and structured its operation to meet the needs of that portion of the public which is not now being adequately served.

La Var Stark, Ogden attorney and President of the Utah State Bar comments:

*"The Utah Prepaid Legal Services Plan is another state bar program designed to be responsive to the needs of the public. We are watching its progress closely and hope to be able to expand its application soon."*

#### NON-PROFIT TRUST

Money received from group members is held in a non-profit trust and administered by the user group.

Prepaid legal services is now being offered to credit unions in the state through the Utah Credit Union League. Also a non-profit organization, the league is offering the plan on a voluntary basis to individual credit unions. Other potential user groups also are being contacted.

Fred S. Rico, managing director of the league, whose share-holders represent more than one-quarter of the state's population, endorsed

the program by saying: *"Introducing a way to provide easy access to legal services was a logical extension of our other consumer-oriented services. Few people realized how helpful this program can be. For example, in assisting families with budgeting and money management problems, it is comforting to know we can recommend this service, knowing it is reasonably priced and certainly consumer oriented."*

#### PRAISES PLAN

*"We are indeed fortunate to have a bar association in Utah that has been farsighted enough to anticipate this need and do something positive."*

There is no schedule of suggested charges for certain services. The plan is designed to do nothing more than help the group to pay in advance for legal services. In some cases the plan will not pay for all legal costs incurred. Lawyer selection and the services required will determine to what degree the plan will be of use.

Usage statistics from pilot projects in this field indicate that the existence of a prepaid plan usually means people will use an attorney for a wide range of advisory and counseling services, not just in a courtroom situation.

#### PREVENTIVE LAW

The key here is preventive law. It is designed to take care of legal situations before they grow to complex problems. Consultation with any Utah attorney provides easy and professional access to legal advice--something that most Americans have simply done without.

Tremendous activity is expected during 1974 in this new field. Recently enacted federal legislation amending the Taft-Hartley Act,

to allow legal services as an employer-shared benefit under collective bargaining, will do much to introduce the public to this benefit.

There is a need for this type of program. And where there is a need, the service will be provided. The Utah State Bar has done its job in providing the most consumer-oriented legal service program available. It is hoped that the existence of the plan will reduce many of the barriers that presently stand between individuals and easy access to an attorney.

### **METHOD OF IMPLEMENTATION**

There are two possible methods. If the current system remains in operation, then voluntary compliance is the method. If the state adopts a statewide public defense system, then legislative action on this standard should be included in their action on the statewide creation of defense services.

### **2.3 INITIAL CONTACT WITH CLIENT**

#### **STANDARD**

**The first client contact and initial interview by the public defender, his attorney staff, or appointed counsel should be governed by the following:**

**1. The accused, or a relative, close friend, or other responsible person acting for him, may request representation at any stage of any criminal proceedings. Procedures should exist whereby the accused is informed of this right and of the method of exercising it. Upon such request, the public defender or appointed counsel may contact the interviewee.**

**2. If, at the initial appearance, no request for publicly provided defense services has been made, and it appears to the judicial officer that the accused has not made an informal waiver of counsel and is eligible for public representation, an order should be entered by the judicial officer referring the case to the public defender, or to appointed counsel. The public defender or appointed counsel should contact the accused as soon as possible following entry of such an order.**

**3. Where, pursuant to court order or a request by or on behalf of an accused, a publicly provided attorney interviews an accused and it appears that the accused is financially ineligible for public defender services, the attorney should help the accused obtain competent private counsel in accordance with established bar procedures and should continue to render all necessary public defender services until private counsel assumes responsibility for full representation of the accused.**

### **NATURE OF THE STANDARD**

This standard outlines three methods by which defender legal services can be obtained. The first is thorough personal initiative by the relatives or friends of a jailed suspect. This initial contact would, in most cases, take place soon after arrest, but the relative could act at any time during the proceeding to secure the services of the legal defender.

The second method is judicial initiative. The court would direct, after determining the need, that a public defender be appointed to serve on the case. This initiative would not take place until the arraignment period which represents the first contact the court has with the accused.

The third method is by the public defender himself directing the accused toward legal counsel from the private sector. This would occur after the public defender has determined that the defendant is financially ineligible for public defender services.

## UTAH STATUS AND COMMENTS

a) Utah Law: In Salt Lake county, publicly-provided defense can be obtained only through a directive by the court upon a showing of need. In Weber County, the procedure is a little more casual because the case load is not that great. Therefore, services may be provided upon direction of the court or personal solicitation. Of course, there still must be a showing of need.

b) Where Utah Differs: Utah complies with the standard in all respects except that in Salt Lake County personal solicitation of the service is not permitted. The public defender acts only upon the direction of the court. The public defender's office has informed LEPA that as many as 20 telephone calls are received each day inquiring into the procedure which must be followed to secure legal help.

## METHOD OF IMPLEMENTATION

This should become part of the enabling legislation necessary in Standard 2.1.

## 2.4 DEFENSE FOR CONVICTED OFFENDERS

### STANDARD

**Counsel should be available at the penitentiary to advise any inmate desiring to appeal or collaterally attack his conviction. An attorney also should be provided to represent an indigent parolee at any parole revocation hearing and an indigent probationer at any proceeding affecting his probationary status.**

### NATURE OF THE STANDARD

This standard recommends that the services of the public defender should be extended into the post conviction remedy areas. Services

are needed for Writs of Habeas Corpus, parole hearings, parole revocation hearings. It is recommended that to facilitate this standard, depending upon the situation of each individual state, it might become necessary to establish an office of the public defender at the state prison. Not only would such an officer be available for representation on these post conviction collateral matters, but could also be utilized to provide other legal services that a prisoner, unable to move about freely, might find necessary. It is a feature of our present system that prisoners are left to their own devices in redressing either an improper conviction which sent them to prison or in defending themselves before parole boards. The Commission believes that if the spirit of publicly provided defense is to be effective, it must extend even after conviction to matters arising out of that conviction and to all the legal needs of the prisoner.

## UTAH STATUS AND COMMENTS

a) Utah Law: The state provides money to the Salt Lake City Public Defender to bring Writs of Habeas Corpus and defend on parole revocation hearings. Such services are provided for prisoners upon a showing again of need. There is no attorney in residence at the penitentiary to advise prisoners, though it should be observed that some prisoners have proven themselves more skilled in bringing these collateral matters than any defense attorney. If the court finds merit in the prisoner's writ or finds an acute need for counsel at a parole revocation hearing, the judge or board of pardons may appoint a member of the private bar to provide legal counsel to the prisoner. Providing counsel in such circumstances is discretionary the presence of counsel is not a right for such purposes.

b) Where Utah Differs: Utah does provide counsel, upon a showing of need and merit, to prisoners who wish to attack their conviction collaterally. There is no resident attorney at the prison.



## METHOD OF IMPLEMENTATION

Voluntary compliance.

### 2.5 COMPENSATION AND SERVICE OF PUBLIC DEFENDERS

#### STANDARD

**The office of public defender should be a full-time occupation and have no private practice. The public defender and his staff should be compensated at a rate comparable to the prosecutor and his staff.**

#### NATURE OF THE STANDARD

The Committee recommends that, as in the standards dealing with the prosecution, the public defender should be full time. If the case load in the present systems does not justify a full-time public defender, then the jurisdictional boundaries should be redrawn. It is also recommended that the measure of adequate compensation for the services of the public defender should be not less than the salary paid the judges under which he must practice. As has been noted in past standards, even the salaries paid the judges of general jurisdiction may prove inadequate. Thus, an adjustment should, and probably would, take place across the board.

The Commission is concerned with parity of salary scales because they wish to attract the best and most competent personnel into these positions. The job is only attractive to a potential employee if he can make a living. But in a realistic sense, if a man can make considerably more in private practice than with the public defender, he will choose private practice. Therefore, though it would be difficult to match the incomes generated in private practice, the Commission recommends that funds be provided to close the gap.

Upon close examination, statistics reveal that the private attorney does not make a great deal of money in criminal work. The lucrative private practices are in other fields. Therefore, the salary that the Commission wants to match in the private sector is the salary made by the criminal attorney.

#### UTAH STATUS AND COMMENTS

In Salt Lake City there are ten attorneys with the public defender. Their salaries range between \$10,800 and \$18,000 per year. In the third district court the bench is salaried at \$27,500.

The workload is at least full time. In 1973, the defender's office handled 1,400 felony defenses between the six attorneys assigned to felony work.

There are only three public defender's offices on a county basis. The standard recommends that the salary be on a parity with the judicial bench. Utah does not meet this standard.

There are ten attorneys with the Salt Lake Public Defender. Their salaries range between \$10,800 and \$18,000. It should be kept in mind that they pay no overhead. All office, secretary, and library facilities are provided.

There is no survey of earned salaries in the private sector attributable to criminal work in the Salt Lake area. A private straw survey conducted by our research analyst indicates that there is a group of attorneys that have a very profitable criminal practice. It would be estimated that \$20,000 plus office expenses is close to the average earnings for criminal attorneys in the Salt Lake area.

The Salt Lake Public Defender's Office attracts a great many young lawyers who have excellent credentials. They work in the defender's

office to gain experience and to obtain exposure to all types of criminal work. The salaries are not extravagant, but in comparison with public officials and criminal lawyers in the area, the salary is respectable.

#### **METHOD OF IMPLEMENTATION**

Legislative action to achieve the full intent of the standard.

#### **2.6 DUTIES OF PUBLIC DEFENDERS**

##### **STANDARD**

Policy should be established for supervision over a defender office by the board of directors. It should be the responsibility of the public defender to insure that the duties of the office are discharged with diligence and competence.

The public defender should seek to maintain his office and its functions free from political pressures that may interfere with his ability to provide effective defense services. He should assume a role of leadership in the general community, interpreting his function to the public and seeking to hold and maintain their support of and respect for this function.

The relationship between the law enforcement component of the criminal justice system and the public defender should be characterized by professionalism, mutual respect, and integrity. It should not be characterized by demonstrations of negative personal feelings on one hand or excessive familiarity on the other. Specifically, the following guidelines should be followed:

1. The relations between public defender attorneys and prosecuting attorneys should be on the same high level of professionalism that is

expected between responsible members of the bar in other situations.

2. The public defender should avoid the appearance of impropriety by avoiding excessive and unnecessary camaraderie in and around the courthouse and in his relations with law enforcement officials, remaining at all times aware of his image as seen by his client community.

3. The public defender should be prepared to take positive action, when invited to do so, to assist the police and other law enforcement components in understanding and developing their proper roles in the criminal justice system, and to assist them in developing their own professionalism. In the course of this educational process, he should assist in resolving possible areas of misunderstanding.

4. He should maintain a close professional relationship with his fellow members of the legal community and organized bar, keeping in mind at all times that this group offers the most potential for support of his office in the community. Specifically:

a. He should be aware of their potential concern that he will pre-empt the field of criminal law, accepting as clients all accused persons without regard to their ability or willingness to retain private counsel. He should avoid both the appearance and the fact of competing with the private bar.

b. He should, while in no way compromising his representation of his own clients, remain sensitive to the calendaring problems that beset civil cases as a result of criminal case overloads, and cooperate in resolving these.

c. He should maintain the bar's faith in the defender system by affording vigorous and effective representation to his own clients.

## NATURE OF THE STANDARD

This standard is designed to set the tone outlining the public defender's functions, aside from defense work, within the office, within the profession, and in the community.

The public defender should be the administrator of the public defender's office. He should work to insure that the duties of the office are discharged, thereby maintaining an efficient, responsive, and productive office.

The Commission is concerned that political pressure in the public defender's office be eliminated. Their concern stems from the conclusion that such pressure undermines not only the efficiency of the office but degrades the respect that the public defender must command.

The public defender should be active in the community not only to demonstrate that his office is a needed part of the criminal justice system but also to make himself aware of the needs of the community.

There should be a professional liaison between the office of the prosecutor and the public defender. Such relationships are beneficial to the efficient working of the criminal justice system and aid in the just disposition of cases. The public defender should work with police and law enforcement personnel toward the mutual goal.

The public defender should also maintain relationships with the entire legal community. Such activity is beneficial not only for community and public relations but alerts the profession to the needs of the public defender.

## UTAH STATUS AND COMMENTS

a) Utah Law: The factors outlined in the standard have not been measured nor examined to any extent in Utah. Hopefully, the goals outlined in the standard are Utah's public defenders' goals.

b) Where Utah Differs: Not applicable.

## METHOD OF IMPLEMENTATION

Voluntary compliance by public defenders.

### 2.7 SELECTION OF PUBLIC DEFENDERS STAFF

## STANDARD

**Hiring, retention, and promotion policies regarding the public defender staff attorneys should be based upon demonstrated legal ability..**

## NATURE OF THE STANDARD

This standard recommends that in terms of hiring, retention, and promotion, members of the public defender's staff should not be subject to the same restrictions as would be found in having them on a civil service status.

This approach permits much greater latitude in hiring and promotion based on merit, and therefore, enhances the professional status of the office. It also gives the public defender a freer hand in choosing and retaining the type of staff he feels best serves the needs of the office.

## UTAH STATUS AND COMMENTS

a) Utah Law: All hiring, retention, and promotion policies in both the Salt Lake and Weber offices are the purview of the board of directors. The public defender and his assistants are not civil service employees for purposes of these considerations because the public defender's office is a public corporation.

b) Where Utah Differs: The standard is concerned with keeping the office of the public defender flexible in order that the best men and women may be attracted and retained. Because the defender's offices in Utah are corporations and the board of directors is able to make final decisions on hiring and retention, merit is the main factor; and, therefore, the spirit of the standard has been met.

## METHOD OF IMPLEMENTATION

Legislative creation of office, followed by action of state personnel department.

## 2.8 PUBLIC DEFENDER COMMUNITY RELATIONS

### STANDARD

**The public defender should be sensitive to all of the problems of his client community. He should be particularly sensitive to the difficulty often experienced by the members of that community in understanding his role. In response:**

**1. He should seek, by all possible and ethical means, to interpret the process of plea negotiation and the public defender's role in it to the client community.**

**2. He should, where possible, seek office locations that will not cause the public defender's office to be excessively identified with the judicial**

**and law enforcement components of the criminal justice system, and should make every effort to have an office or offices within the neighborhoods from which clients predominantly come.**

**3. He should be available to schools and organizations to educate members of the community as to their rights and duties related to criminal justice.**

### NATURE OF THE STANDARD

In most large urbanized areas in America, the public defender's typical client in a criminal case will be under 25 years of age. He (or she) also will bear a fairly high statistical likelihood of being black or of Spanish-American descent. The public defender's client communities will consist largely of some of the most alienated sectors of American society. Members of these communities often will have learned to mistrust virtually all agencies of government and the establishment (including the organized bar) and to put little faith in promises of equality, justice, or fair play. Public defenders often are the objects of a particularly large share of this mistrust. The reasons for this are not difficult to identify. Assembly line justice has been common in America and public defenders have played their part in it.

Furthermore, since the public defender spends most of his time on the losing side of litigation, satisfied clients tend to be relatively infrequent. In addition, the role of the criminal defense advocate is as perplexing to an unschooled accused and his family as it is to many more affluent and educated citizens. How can an educated, well-nourished lawyer who says that he himself is against illegality (including perjury) and crime generally want to help an indigent young burglar? If he is drawing a government salary, one potential answer is obvious: he is being paid to sabotage his client.

A recent study of a large west coast public defender's office is identified several areas of which all public defenders should be aware

in seeking to alleviate deep-seated antagonisms on the part of minority groups toward the defender office. Stated in terms of potential pitfalls, a public defender should, in seeking to enhance relationships with the client community:

1. Be aware that plea negotiation, helpful as it may be to the defense, also may lead to suspicion on the part of the client community that they are being sold out.
2. Be continually sensitive to and aware of the duties and purposes of one's office.
3. Maintain physical closeness of the office to localities from which clients predominantly come.

#### UTAH STATUS AND COMMENTS

a) Utah Law: Both of Utah's public defender offices are acting in accord with this standard.

b) Where Utah Differs: Not applicable.

#### METHOD OF IMPLEMENTATION

None needed.

### 2.9 SUPPORT PERSONNEL AND FACILITIES

#### STANDARD

Public defender offices should have adequate supportive services, including secretarial, investigative and social work assistance.

The budget of a public defender of operational expenses other than the costs of personnel should be substantially equivalent to, and

certainly not less than, that provided for other components of the justice system with whom the public defender must interact, such as the courts, prosecution, the private bar, and the police. The budget should include:

1. Sufficient funds to provide quarters, facilities, copying equipment, and communications comparable to those available to private counsel handling a comparable law practice.
2. Funds for the services of experts and specialists, such as psychiatrists, forensic pathologists, and other scientific experts in all cases in which they may be assistance to the defense.
3. Sufficient funds or means of transportation to permit the office personnel to fulfill their travel needs in preparing cases for trial and in attending court.

Each defender lawyer should have his own office that will assure absolute privacy for consultation with clients.

The defender office should have access to a library containing at least the following basic materials: the annotated laws of the state, the state code of criminal procedure, municipal codes, the United States code annotated, the state appellate reports, the U.S. Supreme Court reports, federal courts of appeal and district court reports, citators governing all reports and statutes in the library, digests for state and federal cases, a legal reference work digesting state law, a form book of approved jury charges, legal treatises on evidence and criminal law, criminal law and U.S. Supreme Court case reporters published weekly, loose-leaf services related to criminal law, and, if available, an index to the state appellate brief bank. In smaller offices a secretary who has substantial experience with legal work should be assigned as librarian, under the direction of one of the senior lawyers. In large offices a staff attorney should be responsible for the library.

## NATURE OF THE STANDARD

It is uneconomical for attorneys to carry out supporting functions. This standard calls for adequate supporting services and facilities in those areas essential to adequate performance of the defense function.

Regional defender offices may be necessary to implement this standard in some areas. This involves some disadvantages. Travel costs would be increased, and a defense attorney handling a particular case might lack some of the familiarity with the community that a local defender would have. But regional offices also would enable the development of a supporting organization that would have readily available the supporting resources that the Commission believes are essential to providing adequate defense services. On balance, the advantages of regionalization, where necessary to implement this standard, outweigh the disadvantages.

In offices of a significant size, an administrative assistant should be provided. This individual, who need not be an attorney, would be in charge of maintaining case records, compiling office statistics, calendaring appearances, and similar matters.

The recommendation concerning social work assistance recognizes that a major part of the defense function is the preparation of information for sentencing. Performance of this function requires the availability of professional services of those skilled in social investigation techniques and analysis.

Separate office space not only is essential to effective communication between attorney and client, but it also is a valuable means of bolstering the confidence of the client in his attorney.

## UTAH STATUS AND COMMENTS

a) Utah Law: Both of the Utah public defender's offices are adequately staffed and supported.

## METHOD OF IMPLEMENTATION

Legislative action to bring statutes in harmony with the standard.

### 2.10 EDUCATION OF PUBLIC DEFENDERS

## STANDARD

**The training of public defenders should be systematic and comprehensive. Defenders should receive training at least equal to that received by the prosecutor. An intensive entry-level training program should be established at state and national levels to assure that all attorneys, prior to representing the indigent accused, have the basic defense skills necessary to provide effective representation.**

**Every defender office should establish its own orientation program for new staff attorneys.**

**In-service training and continuing legal education programs should be established on a systematic basis for public defenders and their staff attorneys.**

## NATURE OF THE STANDARD

The traditional view that any licensed lawyer is capable of handling any type of case has eroded rapidly in the face of increased specialization within the legal profession. A well-informed client goes to a tax specialist when confronted by the Internal Revenue Service and to a personal-injury defense specialist when sued on the basis of

an accident. Nowhere, however, is the need for a specialized talent more compelling than in the defense of the criminally accused. The high value placed upon personal liberty in a free society demands the most skilled practitioner to defend that liberty in the adversary process. That skill, acquired through the fusion of experience, ability, and education, must necessarily be at the defense lawyer's instant command.

In the Virginia Supreme Court of Appeals, over 40 percent of the criminal appeals were affirmed without consideration of constitutional issues because of the failure of counsel to make proper objections at trial. Such deficiencies in representation not only work injustice upon indigent defendants but also clog the criminal justice system with attempts at collateral relief.

Law school does not usually provide basic defense skills. The standard recommends a two-to-four week seminar to deal with constitutional law, trial skills, and criminal investigation and appellate advocacy. An orientation program at the local level of a week's duration is also needed to familiarize the new defender with local jail and court procedures.

#### UTAH STATUS AND COMMENTS

a) Utah Law: The Weber County public defender's office has an intensive basic and in-service training program covering such areas as criminal procedure, rules and problems of evidence, ethics, and penology.

The Salt Lake public defender's office has an extensive on-the-job training program. After hiring a lawyer with criminal trial experience, the new member of the office observes several trials and then takes part in a trial under close supervision. This training program is continued until the new lawyer is capable of handling defense responsibilities.

#### METHOD OF IMPLEMENTATION

LEPA and other agencies should offer sufficient training to make a substantial contribution to the expertise of the staff lawyers in the public defender's offices.

#### 2.11 WORKLOAD OF PUBLIC DEFENDERS

##### STANDARD

The caseload of the public defender office should not exceed the number which each defender can reasonably handle, nor should it exceed a level that would produce poor representation. For purposes of this standard, the term case means a single charge or set of charges concerning a defendant [or other client] in one court in one proceeding. An appeal or other action for postjudgment review is a separate case.

##### METHOD OF IMPLEMENTATION

Voluntary compliance.

**JUDICIAL SYSTEMS  
TASK FORCE**

Judge Bryant H. Croft  
Third Judicial District Court

Jay V. Barney  
Attorney at Law

Richard Peary  
Utah Court Administrator

Mrs. Lloyd Bliss  
Citizen Representative

Paul & Peters, Chief Agent  
Adult Probation & Parole

Hans Chamberlain  
Iron Co. Attorney

Reid Russell, Director  
Technical Assistance Bureau of SWAP

Judge Geraldine Christensen  
Justice of the Peace

Professor Kline Strong  
College of Law, Univ. of Utah

Father John Hedderman  
Citizen Representative

Chief Judge Thornley K. Swan,  
Second Judicial District Court

John Hill, Director  
Salt Lake Legal Defender Assoc. Ogden Municipal Court

Judge Stanton Taylor

Judge Paul C. Keller  
Fifth District Juvenile Court

David L. Wilkinson  
Asst. Attorney General

Chief Leroy Jacobsen  
Ogden City Police Dept.

David S. Young  
Director, Statewide Association  
of Prosecutors.

Franklin Johnson  
Attorney at Law

**END**