

NCJRS

JUL 11 1979

ACQUISITIONS

PUBLIC DEFENDER OFFICE EVALUATION

BAY COUNTY, MICHIGAN

July, 1978

Consultant Team

Theodore A. Gottfried

John W. Kessler

NCDM Consultant/Director

John F. X. Irving

NCDM Staff Attorney

John Shortall

NATIONAL CENTER FOR DEFENSE MANAGEMENT  
The National Legal Aid and Defender Association  
2100 M Street, Northwest, Suite 601  
Washington, D. C. 20037  
(202) 452-0620

Law Enforcement Assistance Administration Grant #77-DF-99-005

This Report was prepared by the  
National Center for Defense Management.

A project of the  
National Legal Aid and Defender Association,  
pursuant to a grant from the  
Law Enforcement Assistance Administration  
of the  
United States Department of Justice.

Organizations undertaking such projects  
under Federal Government sponsorship  
are encouraged to express their own judgement freely.

Therefore,  
points of view or opinions stated in this report  
do not necessarily represent the official position of the  
Department of Justice.

The grantee is solely responsible for  
the factual accuracy  
of all material presented in this publication.

TABLE OF CONTENTS

Foreword . . . . . ii

I. INTRODUCTION  
Method of Evaluation and Statement of Work. . . . . 1

II. SUMMARY OF RECOMMENDATIONS. . . . . 3

III. BAY COUNTY, MICHIGAN. . . . . 4

IV. THE MICHIGAN COURT SYSTEMS. . . . . 5

V. BAY COUNTY PROSECUTING ATTORNEY . . . . . 6

VI. HISTORY OF THE DEFENDER OFFICE. . . . . 7

VII. DEFENDER OFFICE PERSONNEL . . . . . 8

VIII. OFFICE AND FACILITIES . . . . . 9

IX. CASELOAD. . . . . 10

X. QUALITY AND SCOPE OF SERVICES . . . . . 14

XI. TRAINING & ORIENTATION. . . . . 16

XII. INTERNAL OFFICE MANAGEMENT. . . . . 17

XIII. FINANCING AND BUDGET. . . . . 18  
Salaries and Personnel. . . . . 19

XIV. CONCLUSION. . . . . 21

Appendix A  
April 21, 1978 letter Stating Study Goals

Appendix B  
Statement of Work

Exhibit A  
Citizens Advisory Board Report  
Issued through Bay County Bar Association

Exhibit B  
Model Case Data Form

Exhibit C  
Bay County Prosecutor's  
Budget Request

Exhibit D  
Bay County Public Defender's  
Budget Request

## FOREWORD

The National Center for Defense Management was founded in 1974 through a grant to National Legal Aid and Defender Association from the Law Enforcement Assistance Administration. The primary objective of the Center is to improve the efficiency and professional quality of defense delivery systems through the provision of technical assistance to organizations, communities, states or other agencies responsible for providing criminal defense services to the indigent accused.

The activities of the Center involve the planning, development and organization of new criminal defense delivery systems, at both the state and local level, the evaluation of existing defender and assigned counsel systems, the provision of management assistance to defender offices, the development of management training programs and the publication of monographs and other materials concerning the provision of high quality, cost-effective defense services.

This project is in furtherance of these goals.

I

INTRODUCTION

On April 21, 1978, William J. Caprathe, Chief Assistant Public Defender in Bay County, Michigan wrote to the National Center for Defense Management (the Center) and requested that an evaluation of the scope of operations and the staffing patterns of his office. Several problems had developed in that office which motivated the request:

1. Caseloads of the staff attorneys had increased to such an extent that the office was sending one of every five cases over to the private bar;
2. The Prosecutor's Office obtained a 60 percent increase in its professional staff in the past two and one half years; the Defender Office went from three to four attorneys - a 33.3 percent increase in the past five years;
3. In order to hire the additional attorney the agency's only investigator had to be released; and
4. Recent specialization within the Prosecutor's staff further intensified the pressures on the Defender staff;
5. A new Circuit Court Judgeship has been authorized; and
6. The heavy workload assigned to the limited staff preclude any intensive in-house evaluation of this relatively new defender service.

Accordingly, the Center was asked to do a study of the Office and the goal was clearly identified:

"A national organization such as yours could provide us with the needed scope to improve our delivery system with the object of providing proper representation and at the same time making the best use of the taxpayer's (sic) money."

The letter stating the study goals appears as Appendix A.

Approval for the study was obtained from the Adjudication Division, Office of Criminal Justice Programs Law Enforcement Assistance Administration (LEAA), United States Department of Justice which is the funding source for the Center's activities. The Center then prepared a Statement of Work setting out both the objectives of the study and the Tasks to be performed (see Appendix B). It recruited two highly qualified consultants to serve as the evaluation team:

Theodore A. Gottfried,  
State Appellate Defender of Illinois, and

John W. Kessler,  
Chief Public Defender of Dayton, Ohio.

Statistical data on the various aspects of the Defender's work were gathered during the planning stages and later, when the evaluation team visited Bay County. The team visited Bay County on July 10th and 11th, 1978. The evaluators interviewed all members of the defender's office, judges, prosecutors, and court personnel. In addition, the team also observed ongoing court operations and the performance of defender attorneys and reviewed case files. Prior to the site visit, the interviewers had the advantage of reading substantial materials including reports concerning the defender caseload, defender budget and a description of the defender office. This Report then, is a result of a distillation of the available data reports and interviews, as well as the observations of the team of evaluators. It expresses the members considered opinion based upon their knowledge and collective experience in the field of defender services, reinforced with suggestions and comments made by the Center.

## SUMMARY OF RECOMMENDATIONS

1. The Public Defender Office should be enlarged to include two additional attorneys, one secretary, and one investigator. This will permit the office to reduce caseloads of staff attorneys to meet national standards.
2. The present paralegal position should be continued.
3. The Public Defender library should be expanded to include U. S. Supreme Court and Federal Court cases.
4. The office should change its present data collection system to include more detailed information on the nature and disposition of each case.
5. The Chief Public Defender should spend more time on administrative matters and establish an administrative procedure which can meet the present demands of the office. Some time should be assigned to community relations and to public education of the public defender's role. (The Advisory Committee can be indispensable in achieving public educational goals.)
6. The office should explore instituting ongoing law student programs to provide additional assistance to Public Defender attorneys.
7. The office should institute regular meetings of attorneys to discuss cases they are handling and new developments of the law and other in-house training programs.
8. The office budget should also be expanded to provide funds to allow staff attorneys to attend continuing legal education seminars in criminal law. The budget should, in addition, contain adequate funds for polygraph tests, expert witnesses and other investigatory expenses.
9. Salaries should be improved to approximate more closely the salaries paid in the County Prosecutor's Office.
10. A comprehensive policy manual should be developed and distributed to all public defender employees.

### III

#### BAY COUNTY, MICHIGAN

Bay County is located in the northeastern part of Michigan bordering on Saginaw Bay. Of the 120,000 residents, 116,281 are white; 735 are Black, and 2,287 are Mexican. In 1977, unemployment averaged 8.1 percent and some 16.6 percent of the population have been living at or below the poverty level.

A major shipbuilding company closed its doors that year and yet, manufacturing employs about one-third of the labor force. The major industry is agriculture and 62 percent of the 447 square miles are crop fields. Bay County is known as the "Sugar Beet Capitol of the World."

Low income people can obtain help with noncriminal legal problems from Legal Services of Eastern Michigan. The Public Defender provides representation for the indigents accused of felonies and misdemeanors. The County has a modern Law Enforcement Center containing a new jail.



#### IV

#### THE MICHIGAN COURT SYSTEMS

The Michigan Court System is broken down into Circuit, District, and Municipal Courts. In Michigan there are a total of 50 Circuits and 98 Districts, and an additional 24 Municipal courts. Both criminal and civil matters are handled in the Circuit, District, and Municipal courts.

The Bay County Public Defender appears in the 74th Judicial District Court which has jurisdiction in criminal misdemeanors, felony arraignments, and preliminary examinations. The District Court also has jurisdiction over civil cases with a maximum of \$10,000 in controversy, and traffic cases. The Defender also provides representation in the Circuit Court which has felony jurisdiction.

The Bay County Office does not handle juvenile cases or any appeals.

## BAY COUNTY PROSECUTING ATTORNEY

The Prosecuting Attorney is a constitutional office of the County and is elected every four years. The Prosecuting Attorney has the responsibility to prosecute all felonies and misdemeanors in all courts of the county. The Prosecutor conducts investigations and institutes grand jury proceedings.

VI

HISTORY OF THE DEFENDER OFFICE

In 1972, the Michigan State Planning Agency for LEAA awarded a grant to Bay County to establish a defender office. Prior to 1972, indigent defendants in Bay County were represented by court appointed counsel and the County was concerned with the growing cost of the appointed counsel system.

The Chief Public Defender was hired on January 2, 1973. The staff consisted of three lawyers, one investigator, and two secretaries. After 1975, the LEAA funds terminated and the office became fully funded by Bay County.

The Chief Defender is hired by the County Board of Commissioners on recommendation of an Advisory Committee consisting of attorneys and county officials. Assistant defenders are also hired by the Board on recommendation of the Chief Defender and the Advisory Committee.

The present staff and personnel information follow.

## VII

## DEFENDER OFFICE PERSONNEL

Support Staff

	<u>Title</u>	<u>Length of Service</u>	<u>Annual Salary</u>
Patricia Ackley	Clerk Typist	1 year	\$7,800
Debra A. Schoettke	Legal Stenographer	4 1/2 years	\$11,500
Bonnie Meyer	Legal Stenographer	5 1/2 years	\$11,500
William Kerr	Paralegal	1 month	\$10,000

Attorney Staff

James G. Orford	Public Defender	5 3/4 years	\$28,702
William J. Caprathe	Chief Assistant PD	3 years	\$25,147
Charles R. Wellman	Assistant Defender	3 years	\$21,661
Peter J. Hollenbeck	Assistant Defender	14 months	\$19,981

## VIII

### OFFICE AND FACILITIES

The defender office is located across from the county building on the second floor of a building occupied by other county offices. During the site visit, the office was adequately furnished and equipped with the necessary typewriters, duplicating equipment and office supplies.

Although the law library was kept current, it lacked any U. S. Supreme Court collection and had no Federal Reporter. The evaluators feel that the addition of these books is necessary to any defender law library since criminal law is a rapidly changing field and defender attorneys must be apprised of any change which may effect their client's cases.

IX  
CASELOAD

The defender's office handles misdemeanors and felonies and appears in District Court and Circuit Court when appointed by a judge. The caseload for the past three years has increased and the number of felonies has dramatically increased as the following figures indicate:

	<u>1975</u>	<u>1976</u>	<u>1977</u>
Felonies	322	391	631
Misdemeanors	636	626	436
<b>TOTAL</b>	<u>958</u>	<u>1,017</u>	<u>1,067</u>

While an increase of more than 100 cases would normally have an impact on any small office, the dramatic change in the nature of the caseload has had a more pronounced effect on this office. Felonies have almost doubled since 1975 and this has strained the resources. Additionally, the limited discovery which is available locally means more time is spent in preparation of each case. The Prosecutor's policy is that police reports may not be copied by the defender's office but one of his assistants will read the reports to the defender attorneys. This practice is clumsy and unnecessary and results in delays costly both to defendants and to the taxpayer who underwrites both these public offices. The prosecutor's office has instituted a Career Criminal Program within its staff in order to be better prepared on designated cases. These prosecutors appear in a case even before defenders are appointed.

While caseload standards are difficult to apply across the nation, the National Advisory Commission sets forth maximum numbers of cases which defenders should represent. It is recommended that defender attorneys should not handle more than 150 felonies per year and that a defender attorney should not handle more than 400 misdemeanors per year -- or any combination of the two which are the equivalent of 150 felonies.\*

The Sixth Amendment of the United States Constitution assures a right to effective counsel. Therefore, a dramatic increase in caseload without a corresponding increase in staff hampers the ability of a defender office to protect this right. An excessive caseload is costly. Attorneys burn out and leave; inadequate time for each case produces errors at the trial level and prods defendants to appeal. Many trials can be shortened or even avoided -- if counsel has time to prepare his defense.

---

\*National Advisory Commission on Criminal Justice Standards & Goals. The Defense Standard 13.12 Workload of Public Defenders: The caseload of a public defender office should not exceed the following:

Felonies per attorney per year: not more than 150;  
Misdemeanors (excluding traffic) per attorney per year: not more than 400;  
Juvenile court cases per attorney per year: not more than 200;  
Mental Health Act cases per attorney per year: not more than 200;  
Appeals per attorney per year: not more than 25.

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 at one proceeding. An appeal or other action for postjudgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.

The proposed revision of ABA Standard 5-4.3 - Providing Defense Services would prohibit counsel from accepting more cases than can be effectively handled. The Standard states:

"5-4.3 Workload

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

In response to the problem caseload, the Chief Defender has done three things:

1. He has taken time from his administrative duties to handle more cases himself;
2. He has hired a paralegal with CETA funds to assist in preparing cases;
3. He has instituted a program of withdrawing from every Fifth appointment.

These, however, are short term solutions to a continuing problem. A new circuit judgeship which has been authorized, will mean that defender attorneys must be prepared sooner on felony cases.



Beginning in January of 1978, the Bay County Public Defender Office began referring every fifth felony case out of the office to private counsel for appointment by the court. This was done by preparing an entry of appointment form for approval by the court. The body of these entry of appointment forms state:

"That because of the current workload of the Public Defender Office, there is no attorney available to handle this case, and in order to assure the defendant due process of law and equal protection, a separate attorney would be needed."

In the pre-evaluation profile submitted to the evaluation team, it was reported that the cost of assigned counsel was approximately three times greater than the cost of the Defender Office handling a case. Given this information, it is hard to understand why no move has been made by the County Board to expand the staff of the Defender Office. This is especially true in light of a report issued through the Bay County Bar Association wherein the justification for a new circuit judge has been detailed. This report was successfully used to increase the judicial manpower in the county, and could easily be similarly used to justify an increase in staff in the Public Defender's Office (See Exhibit A).

The evaluators believe additional personnel are needed to meet the present caseload of the office. It is recommended that the office seek two additional attorneys, one full-time investigator, and one secretary. Additionally, it is recommended that the office continue the employment of the paralegal position to assist in interviewing clients and doing legal research.

This additional staff will allow the defender attorneys to be prepared earlier, and will allow the Chief Defender to devote more time to administrative matters and eliminate the present program of withdrawing from every fifth case.

## QUALITY AND SCOPE OF SERVICES

The Bay County Public Defender Office provides representation in felony and misdemeanor cases. The Public Defender Office does not appear in a case until it is appointed by the court. In the District Court, the Defender is appointed at arraignment which is held at 11a.m. the next court day following the arrest.

The evaluators found the attorney staff of the Public Defender's Office to be hard-working and dedicated to providing the best representation possible for their clients. The judges interviewed felt that the Public Defender attorneys provided representation which was on a par with or better than that provided by private counsel. This view was shared by the prosecutor and the chief probation officer. The judges felt, however, that the attorneys in the defender office were burdened with an excessive caseload.

The attorneys make use of limited discovery with which they are provided but are sorely in need of investigative services. The fact that the defender office comes into a case some time after the arrest makes investigation more difficult. Although the paralegal now on staff has helped in this area, the office should take steps to hire a full-time professional investigator. In many public defender offices investigators are people with prior police training.

It is suggested that the office employ someone who is:

- (1) a trained investigator;
- (2) familiar with the Bay County area; and
- (3) has the enthusiasm to be an effective defense investigator.

The office does not now use volunteer law students on a regular basis. While law students are not a substitute for attorneys, other defender offices have devised programs to use students to interview clients and do research which have helped ease caseload pressures. Such a program should be considered by the Bay County Public Defender's Office.

## XI

### TRAINING AND ORIENTATION

The office has no formal training or orientation program. A new attorney learns from conversations with other attorneys, by a tour of the courts and county offices, and by experience. The office has no policy manual and employees must learn office policy and regulations by asking co-workers. It is suggested that a policy manual be developed and given to each employee. An orientation program should be initiated to acquaint new employees with the history and policies of the office.

Regular meetings of attorneys should be held to discuss recent changes in law and review cases they are presently handling. Sufficient funds should be available to allow attorneys to attend criminal law seminars presented by continuing legal education organizations and bar associations.

Training in the use of investigators will be essential when an investigator is hired.

## INTERNAL OFFICE MANAGEMENT

The first and overriding problem that was confronted in examining the Defender's Office procedures was the lack of management data and the lack of any formalized office policy. While in a four person office there is always a danger of becoming over-proceduralized, it is the feeling of the evaluators that this area has been sorely neglected. No internal data, for example, were available on the dispositions of cases. Therefore, no one knows who has won how many cases; the ratio of trials to pleas; the rate and length of incarceration, etc. Each attorney indicated that he had some idea that they had won more trials than they had lost, but they had no idea what the actual numbers were. Attached to this report (Exhibit B) is a suggested form that could be easily adapted by the office for use in calculating case data. It is also recommended that a time record be kept in each case. This data can be valuable in terms of workload management inside the office and in the education of the bench, the bar and the public of the work of the Defender. For budgetary purposes, such data are invaluable.

At present, the incoming cases are equally divided among the existing staff. If any specialization occurs in this office, of course, that method would have to be adjusted, and the fairest way to adjust is based on time spent by type of case.

The Chief Defender indicated he felt the need for an Office Manager. This was not seen as necessary by the evaluation team because the secretarial component in the office seemed extremely competent and able to handle administrative matters. They simply lack direction in what to do about it. One of the existing experienced secretaries could be designated as executive secretary, or as administrative assistant to the Chief Defender, and could handle internal office management and data collection, time records, etc., in a professional manner.

## XIII

## FINANCING AND BUDGET

The total operating budget for the Bay County Public Defender Office has not increased substantially in the last three years as the following figures make clear.

<u>Position</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Public Defender	\$25,878.61	\$27,866.00	\$28,702.00
Assistant Defender	19,948.56	21,014.00	21,661.00
Chief Assistant Defender	18,374.11	23,663.00	25,147.00
Assistant Defender		18,880.00	19,981.00
Legal Stenographer	8,823.33	9,165.00	9,440.00
Legal Stenographer	8,823.32	9,165.00	9,440.00
Office Supplies	1,465.00	1,500.00	1,000.00
Printing and Binding	104.00	150.00	100.00
Equipment Rental	2,518.00	3,938.00	3,500.00
Memberships and Subscriptions	555.00	1,350.00	1,300.00
Witnesses	1,024.00	1,800.00	1,200.00
Investigations	43.00	1,000.00	1,000.00
Telephone	2,480.00	2,600.00	2,600.00
Travel	355.00	400.00	400.00
Conference	2,581.00	300.00	300.00
Books	1,196.00	300.00	300.00
<u>TOTALS</u>	<u>\$119,402.00</u>	<u>\$123,507.00</u>	<u>\$126,676.00</u>

Salaries and Personnel

American Bar Association Standard 3.1 relating to providing defense services states:

"The defender and staff should be compensated at a rate commensurate with their experience and skill, sufficient to attract career personnel, and comparable to that provided for their counterparts in prosecutorial offices."

Defense Standard 13.7 of the Court's Standards of the National Advisory Commission on Criminal Justice Standards and Goals recommends that:

"The public defender should be compensated at a rate not less than that of the presiding judge of the trial court of general jurisdiction."

Standard 13.11 of the Court's Standards of the National Advisory Commission on Criminal Justice Standards and Goals recommends that:

"Salaries through the first five years of service for public defender staff attorneys should be comparable to that of attorney associates in local private law firms."

There are not currently significant disparities between prosecutor and defender salaries. The public defender has continued to attract and maintain a staff of highly qualified attorneys. Efforts should continue to see that a significant disparity does not develop between the offices and in fact, the existing gap should be narrowed.

The budget figures do not show an increase in personnel which corresponds to the increased caseload. The evaluators feel it would be in Bay County's interest to give the Public Defender's Office the additional personnel previously suggested to improve the functioning of the Public Defender's Office and save tax money.

From a cost standpoint this can easily be justified. It appears that there may be as many as 200 cases referred to private counsel for defense services through the Public Defender's Office in 1978 at an average cost of approximately \$400.00. This, of course, results in an expenditure for the County of approximately \$80,000. It is our feeling that the staff component recommended could easily be placed into effect with this amount of money and would provide all the additional defender service needed to Bay County for perhaps the next few years. The Bay City community appears to be growing, and a steadily increasing caseload can be anticipated. The present budget comparisons would indicate that the prosecutor has far outdistanced the Defender Office in terms of resources (See Exhibits C and D). An \$80,000 increase in the Defender's budget would not begin to approach the prosecutor's total budget, and, therefore, should not be viewed as an inordinate expenditure to improve the mandatory defense service in Bay County. Alternative funding sources were explored briefly with the existing Chief Defender, who indicated that while L.E.A.A. had been tapped for the start-up of the office, no repeat visit to the source had been made. Yet, the prosecutor's office has been successful in obtaining a career criminal grant from L.E.A.A. which caused the addition of two new attorneys and supporting staff members in that office.

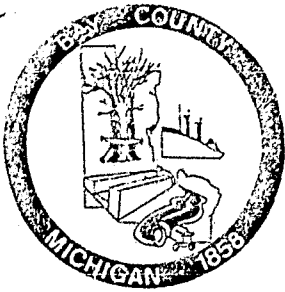


XIV  
CONCLUSION

The citizens of Bay County are fortunate in having a strong, highly motivated Defender office. Adoption of the Recommendations in this Report will assure its continued effectiveness and stability. Certainly, if we can judge a society by the way it deals with its unfortunate members, Bay County will want to provide the resources and support necessary to pass roster.

APPENDIX A

April 21, 1978 letter Stating Study Goals



# BAY COUNTY OFFICE OF PUBLIC DEFENDER

Room 205-206 County Building Annex I

Madison at Fifth Avenue

Bay City, Michigan 48706

Dial 517 895-8535

April 21, 1978

JAMES G. ORFORD  
PUBLIC DEFENDER

WILLIAM J. CAPRATHE  
CHIEF ASSISTANT PUBLIC DEFENDER

CHARLES R. WELLMAN  
ASSISTANT PUBLIC DEFENDER

PETER J. HOLLENBECK  
ASSISTANT PUBLIC DEFENDER

National Center for Defense Management  
Suite 601  
2100 M., Northwest  
Washington, D.C. 20037

APR 24 1978

Attention: John Shortall

Dear John:

Our organization feels that we are in need of your assistance. We would appreciate it if you would assist us in contacting our County Commission in making such a request.

We were organized approximately five years ago with three attorneys and an investigator. One and a half years later we replaced the investigator with an attorney. We then had four attorneys and no investigator. We still have four attorneys and have just this year added a paralegal pursuant to a one year CETA grant. Therefore, we still are a four attorney office. The Prosecuting Attorney's Office has increased its staff over the last 2½ years from five to eight criminal attorneys. Two of the prosecutor's increased staff have been assigned to a "career criminal" division. Their case loads are reduced and they spend more time on the cases. Our case loads have increased and at present are approximately, Attorney A 81 felonies and 14 misdemeanors; Attorney B, 100 felonies and 24 misdemeanors; Attorney C, 20 felonies and 41 misdemeanors; Attorney D, 93 felonies and 3 misdemeanors. We are sending out to the private bar all cases in which there is a conflict of interests. Because of overload, we are sending out one out of every five cases assigned to us and several of the director attorney's cases so that he can have some time to administrate.

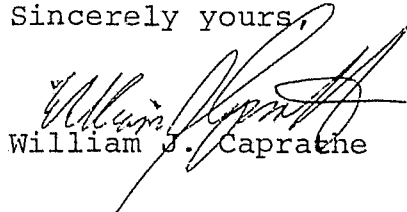
We have two full time secretaries and one Ceta secretary assistant. We have a paralegal, but no other support help. With the heavy case load, increase in staff

Mr. John Shortall  
National Center for Defense Mgmt.  
April 21, 1978  
Page Two

and specialization of the prosecutor's office, it has been difficult for us to devote sufficient time to evaluating and programing our current delivery system. We have a competent staff and efficient organization but we definitely need up dating and are not in a position through our present resources and time to accomplish this ourselves.

It is very difficult to set quotas in comparison with other defender offices due to the fact that other areas have different variables, for example, some prosecutors take longer than others, some court dockets and procedures vary from others, etc. A national organization such as yours could provide us with the needed scope to improve our delivery system with the object of providing proper representation and at the same time making the best use of the taxpayer's money. I look forward to hearing from you soon.

Sincerely yours,

  
William J. Caprahe

WJC:dr

APPENDIX B

Statement of Work

## STATEMENT OF WORK

### OBJECTIVES

The Center will assess the current caseload management practices of the Bay County Office of Public Defender and, if appropriate, propose remedial actions to correct any adverse effects of caseload volume and related matters upon the delivery of quality defense services.

### TASKS

1. The Center will recruit a consultant team with the requisite skills and experience to complete the assignment.
2. The consultant team members will familiarize themselves with a profile of the jurisdiction and the Bay County Office of Public Defender developed by the client and other background materials supplied by the Center in advance of the site visit.
3. The consultant team will visit the Public Defender's office for two days, observe operations, analyze procedures, and interview personnel. Team members may also meet with other key persons in the local criminal justice system.
4. The consultant team will collect and analyze data concerning caseload volume and characteristics, the method of case assignment and the workload of the public defender.
5. The consultant team will recommend, if necessary, alternative caseload management strategies to promote the delivery of quality representation by the Bay County Office of the Public Defender. In so doing, the team will be guided by the principal national standards pertaining to defense services promulgated by the National Advisory Commission on Criminal

Justice Standards and Goals, the American Bar Association, the National Legal Aid and Defender Association and the National Study Commission on Defense Services.

6. The Bay County Public Defender Office will provide such on-site assistance to the consultants as may be necessary to achieve their tasks in the limited time available. This assistance includes making statistics and other information available, arranging interviews and providing temporary office space and services.

7. A final report memorializing the findings and recommendations of the consultants and the Center will be sent to the Public Defender of Bay County by August 1, 1978 or as soon thereafter as may be possible.

June 10, 1978

EXHIBIT A

Citizens Advisory Board Report

Issued through Bay County Bar Association



## REPORT OF THE CITIZENS ADVISORY BOARD

## BAY COUNTY PROSECUTOR'S OFFICE CAREER OFFENDER PROGRAM

SUBCOMMITTEE REPORT ON THE NEED FOR A  
THIRD CIRCUIT JUDGE IN BAY COUNTY

ZIGMOND KOZICKI,  
Chairman  
JOHN HOFMEISTER,  
Court Relations  
Subcommittee Chairman  
PETER F. DAHM,  
Consultant  
BRIAN M. KENNEDY,  
Director  
EUGENE C. PENZIEN,  
Prosecutor

FINDING:

THE SUBCOMMITTEE DETERMINES THERE IS AN IMMEDIATE AND CRITICAL NEED IN BAY COUNTY FOR A THIRD CIRCUIT JUDGE.

The Subcommittee closely examined and considered the report of the State Court Administrative Office approved by the Michigan Supreme Court on October 18, 1977. This report compares the Eighteenth Judicial Circuit (Bay County) with similar circuit courts throughout the state. The report concluded that of all these counties, Bay County qualifies in all categories as significantly overburdened. Those categories are: case load, time from filing of civil action to trial, population per judge, time from filing of criminal action to trial. In each category the Bay County Circuit Court showed a significant and above average need for a third Circuit Judge. The Subcommittee adopts the language of the State Court Administrative Report which speaks as follows:

"There is an immediate need for an additional Circuit Judge in Bay County effective January 1 of 1979."

COURT CONGESTION DENIES THE PUBLIC THEIR DAY IN COURT

In supporting this recommendation, the Subcommittee has considered that at present citizens of Bay County who file a civil suit in the Circuit Court cannot expect to have their case tried for more than three years after the filing of their law suit. The Citizens Advisory Board believes that this amount of delay is unacceptable and is tantamount to denying to citizens of Bay County access to the courts to resolve legal disputes. The Subcommittee adopts the legal principle that "justice delayed is justice diminished."

### COURT CONGESTION CREATES A PUBLIC DANGER

Examination of the State Court Administrative Report reveals that on the average more than eight months elapse from the time of arrest to the time of trial in felony cases. The Citizens Advisory Board is convinced that this amount of delay before the trial of serious crimes is unacceptable. General Court Rule 1963, 789 requires that defendants who have been incarcerated pending trial for more than six months must be released if their case has not come to trial. This has resulted in serious felons being released prior to trial. The inability to try serious felons within six months has resulted in the release of armed robbers, panderers and habitual felons. The release of dangerous criminals into the community constitutes a clear and present danger to the safety of our community.

### COURT CONGESTION COSTS MONEY

The Citizens Advisory Board has also determined that the delay in trying major felons imposes a hidden cost on the taxpayers of Bay County. The Citizens Advisory Board learned from Sheriff Robert M. Wood, that the cost of housing one prisoner in the Bay County Jail for one day is approximately \$16.50. Thus, for each week that the trial of a prisoner is delayed because of Court congestion and the lack of an additional judge to try the case, the cost to citizens of Bay County is \$115.00. For each month that the prisoner's trial is delayed for this reason, the cost to the taxpayer is \$495.00. Accordingly, the Citizens Advisory Board has determined that the expense incurred in providing for a third Circuit Judge would be met at least in part by the third Circuit Judge's ability to process the cases of incarcerated defendants.

### THE CURRENT JUDGES ARE WORKING TO CAPACITY

The Citizens Advisory Board has determined that existing Circuit Court resources are presently being utilized beyond capacity. The present Circuit Judges, the Honorable John X. Theiller and the Honorable Leon R. Dardas have made a diligent effort to process the increasing workload of our Circuit Court. According to reports to the State Court Administrator prepared in the Office of the Bay County Clerk, for the six month period from July 1, 1977, to December 31, 1977, there were 25 Circuit Court trials held during 200 available trial days, or approximately one trial every eight days. A given trial may take anywhere from two days to two weeks, and since one trial in that period of time was a six-week trial of a criminal defendant on three counts of first degree

murder, and another a three-week trial of two criminal defendants on various forgery and uttering and publishing cases, this average is determined to be acceptable. Criminal and civil trials are not the only matters which occupy the Court's time. In the same six month period, 82 divorce and family relation cases were heard, approximately 30 probation violation hearings were conducted, almost 300 pre-trials were conducted, and more than 800 legal motions were decided. These figures reveal that our current Circuit Judges are asked to bear an extremely heavy load. Legal research and opinion writing make additional demands on the Judges' time.

Figures available from the office of Circuit Court Administrator James Reed show a dramatic increase in the number of criminal cases now being processed in our Circuit Courts. From 1972 to 1976, the number of criminal cases per year jumped from 214 to 700, more than a 300% increase in just five years. Yet the number of judgeships has remained the same. The result has been an increasing backlog of cases, and a lengthening of the time from arrest to trial.

#### COST OF AN ADDITIONAL CIRCUIT JUDGE:

The Citizens Advisory Board learned that the major proportion of the salary of the Circuit Judge is paid by the State of Michigan out of the State Treasury. According to County Administrator Francis Voisine, the initial cost of creating a third Circuit judgeship in Bay County would be approximately \$110,000.00 for the first year. This figure includes the cost of the county's portion of the judge's salary, salary and other benefits for a court reporter and legal secretary, as well as the cost of furniture and other equipment necessary for court personnel. The cost to the County taxpayers in the second year of the court's operation would be approximately \$51,000.00. Thus, the cost of a third Circuit judgeship to the citizens of Bay County would be only \$1.00 per person in the first year and approximately \$.50 per person in the following years. It is the determination of the Citizens Advisory Board that such an expense is minimal in order to guarantee the constitutional rights of Bay County citizens to judicial process, both in criminal and legal matters.

#### SUBSTANTIAL COMMUNITY SUPPORT EXISTS FOR THIRD CIRCUIT JUDGE

Representatives James Barcia and Louis Dodak, Senator Jerry Hart, Circuit Judges Leon R. Dardas and John X. Theiler and the Bay County Bar Association have announced their support for the recommendation to create a third Circuit judgeship in Bay County. In addition, numerous police,

business, and other civic organizations have formally announced support for the immediate creation of a third circuit judgeship. These organizations include:

Westside Businessmen's Association  
Eastern Michigan Tourist Association  
Hampton Business Association  
Pinconning Chamber of Commerce  
Bay County Firefighters  
Southend Businessmen's Association  
Bay County Board of Realtor's  
Michigan State Police - Bay City Post  
Bay County Sheriff's Department  
Bay City Police Department  
Essexville Department of Public Safety  
Columbus Area Business Association  
Bay City Chamber of Commerce  
Bay County Home Builders Association  
Euclid Business Association

The Citizens Advisory Board contacted other groups for their opinion on the subject. None expressed opposition.

#### NOW IS THE TIME TO ACT

The Citizens Advisory Board has determined that the need for action on the third circuit judgeship is immediate. The State Constitution and State law require that a primary election be held to determine candidates for the judgeship. If we are to have a third Circuit Judge in January of 1979, nominating petitions for the judgeship must be filed by June 1, 1978. Legislation providing for a third Circuit Judge in Bay County has been stuck in the Judiciary Committee of both the Michigan Senate and the Michigan House. Unless legislation is soon passed, Bay County will be without a third Circuit Judge until 1981. A joint House and Senate Judiciary Committee meeting will be held in Lansing on April 12, 1978. The Citizens Advisory Board urges the legislature to act expeditiously on the matter.

#### CONCLUSION AND RECOMMENDATION:

In view of the demonstrated need for a third Circuit Judgeship in Bay County, the Citizens Advisory Board of the Bay County Prosecutor's Office strongly recommends the creation of a third Circuit judgeship for Bay County, Michigan, to take effect January 1, 1979.

EXHIBIT B

Model Case Data Form













Exhibit B

FINAL CASE REPORT

Client's Name: \_\_\_\_\_ Office File No.: \_\_\_\_\_

Atty. Name: \_\_\_\_\_ Date/Time: \_\_\_\_\_

TYPE OF CASE

M(ST.) TR(ST.) PC(ST.) OTHER  
M(ORD.) TR(ORD.) PC(ORD.)  
FELONY

JURISDICTION

DIST. CT. (1 - 2 - 3)  
DMC, VMC, KMC, MMC, OMC,  
CPC, JC, DR, PR, CA, SC

DISPOSITION

DATE: \_\_\_\_\_ JUDGE: \_\_\_\_\_

CASE NO. or COUNT NO. (with description)	PLEA (Indicate GAC or reduced with description)	TRIAL (Indicate Bench or Jury plus finding; e.g., GAC, GL, NG)	DISMISSED (Indicate reason)
1.			
2.			
3.			
4.			

SENTENCE

A. Date Imposed: \_\_\_\_\_ Name of Judge: \_\_\_\_\_

B. Jail Time; Length \_\_\_\_\_ Location \_\_\_\_\_

Suspensions \_\_\_\_\_

C. Fines; Amount \_\_\_\_\_ Date to be Paid \_\_\_\_\_

Suspensions \_\_\_\_\_

D. Other (Describe) \_\_\_\_\_

POST CONVICTION ACTION NEEDED

Rock Probation \_\_\_\_\_ Appeal \_\_\_\_\_ Sentence Modified \_\_\_\_\_  
Suspended Sentence \_\_\_\_\_ Other \_\_\_\_\_

REMARKS

EXHIBIT C

Bay County Prosecutor's

Budget Request

1978

EXHIBIT C

Submitted by: Prosecutor's Office  
 Date: \_\_\_\_\_

Departmental Request  
 Personnel Worksheet  
 1978

Fund 101  
 Department Activity # 229

Acct. No.	Class Title-Position	Current Employee Name or	Last Appointee	Pay Grade & Step	Inc. Anniv. Date	1976		Current Year 1977		1978	
						Actual Amount	Amount	Requested	Recommended Amount	Approved Amount	
		2		3	4	5	6	7	8		
03	Prosecutor	Eugene Penzien		M	1-1-69	33,244.90	34,242.25	44,945	37,960.00		37,960.00
03	Chief Assistant Prosecutor	George B. Mullison		M15	1-2-69	28,564.48	29,459.07	30,651	29,459.00		29,459.00
03	Fourth Assistant Prosecutor	Nancy Goodale		P9	10-27-75	18,374.22	18,953.01	19,325	19,905.00		19,905.00
03	Second Assistant Prosecutor	Karen Tighe		P10	11-4-74	22,973.07	23,803.31	21,297	21,950.00		21,950.00
03	Fourth Assistant Prosecutor	Lawrence Ramer		P10	8-1-75	18,374.22	18,953.01	21,410	22,052.00		22,052.00
03	Second Assistant Prosecutor	Vacant		P9			24,520.57	18,742	19,370.00		19,370.00
		John Whitehouse*		P10			23,803.00	24,790	25,334.00		25,334.00
04	Legal Steno	Susan Glaza		11	1-19-70	10,621.14	9,484.80		10,819.00		10,819.00
4	Legal Steno	Elizabeth Kiepert (Russell)		11	1-11-71	9,595.81	9,484.80		9,776.00		9,776.00
4	Legal Steno	Carolyn McAboy		11	1-20-69	11,126.75	9,484.80		10,819.00		10,819.00
4	Legal Steno	Sandra Paige		11	1-22-73	9,411.52	9,484.80		9,776.00		9,776.00
4	Legal Steno	Peggy Buechler		11			9,484.80		9,776.00		9,776.00
04	Legal Steno	Linda Snelling		11			9,484.80		9,776.00		9,776.00
04	Clerk Typist II	Marilyn Hood*					8,361.60		8,613.00		8,613.00
Subtotals						*****	*****	*****	*****	*****	*****
						\$162,286.11	\$239,004.93		245,385.00		245,385.00
Plus increments, cost of living and longevity									2,076.00		2,076.00
Plus temporary help									16,938.00		16,938.00
Plus overtime											
TOTALS						*****	*****	*****	*****	*****	*****
						\$126,286.11	\$239,004.93		\$264,399.00		\$264,399.00

Yellow Copy - Finance  
 Pink Copy - Department

Exhibit C

Submitted by: Prosecuting Attorney  
 Date: \_\_\_\_\_

Activity or Department Request  
 Services, Supplies, Materials  
 1978

Fund 101  
 Department Activity# 229

Expenditure Code No.	Account Description	Actual Expenditures			Estimated Expenditures Balance of Current Year	Total Columns 4 and 5	1977 Budget	1978		
		Prior Year 1976	Current Year 1977-First Six Months	% of Appr.				Proposed by Department	Recommended by Budget Office	Appropriation by County Board
1	2	3	4		5	6	7	8	9	10
727	Office supplies	3,351.00	999.81	28.6			3,500.00	4,560.00	4,500.00	4,500.00
729	Postage							1,025.00	1,000.00	1,000.00
728	Printing & binding	706.00	290.68	24.2			1,200.00	600.00	600.00	600.00
733	Equipment rental-- Copy machine	3,394.00	1,819.15	60.6			3,000.00	4,000.00	4,000.00	4,000.00
820	Memberships & Subscriptions	1,493.00	1,523.25	27.7			5,700.00	6,360.00	6,300.00	6,300.00
826	Witnesses	21,436.00	12,766.11	60.8			21,000.00	24,000.00	24,000.00	24,000.00
828	Investigations	525.00	115.00	11.5			1,000.00	1,000.00	500.00	500.00
829	Filing and Service fees	15.00	174.00				150.00	300.00	300.00	300.00
850	Telephone	4,532.00	2,160.04	35.7			6,050.00	7,136.00	7,100.00	7,100.00
860	Travel	857.00	323.00	35.9			900.00	1,900.00	1,400.00	1,400.00
861	Conference	327.00	729.56	56.1			1,300.00	2,100.00	1,900.00	1,900.00
863	Extradition	4,823.00	5,935.80	84.8			7,000.00	10,000.00	9,000.00	9,000.00
864	Car lease	1,545.00	776.45	49.8			1,560.00			
946	Mag. Card II Typewriter		1,625.98	49.8			3,264.00	3,234.00	3,234.00	3,234.00
979	Books	3,822.00	1,161.68				650.00	350.00	350.00	350.00
982	Equipment							1,948.00		
TOTALS		<u>\$43,204.00</u>	<u>\$30,400.51</u>				<u>\$56,274.00</u>	<u>\$68,513.00</u>	<u>\$64,184.00</u>	<u>\$64,184.00</u>

ollow copy - Finance  
 ink copy - Department

EXHIBIT D

Bay County Public Defender's

Budget Request

1978

Exhibit D

Submitted by: Public Defender  
 Date: \_\_\_\_\_

Departmental Request  
 Personnel Worksheet  
 1978

Fund 101  
 Department Activity # 231

Acct. No.	Class Title-Position	Current Employee Name or 2	Last Appointee	Pay Grade & Step 3	Inc. Anniv. Date 4	1976	Current Year 1977		1978	
						Actual Amount 5	Amount 6 Requested		Recommended Amount 7	Approved Amount 8
703	Public Defender	James Orford		M - 15	1/2/73	25,878.61	27,866.00	29,000	28,702.00	28,702.00
	Ass't Defender	Charles Wellman		p - 9	8/1/75	19,948.56	21,014.00	23,000	21,661.00	21,661.00
	Chief Ass't	William Caprathe		P - 10	8/1/75	18374.22	23,663.00	27,522	25,147.00	25,147.00
	Ass't Defender	Peter Hollenbeck		P - 9	6/1/77		18,880.00	21,670	19,981.00	19,981.00
704	Legal Stenographer	Bonnie Meyer		11	1/2/73	8823.33	9,165.00		9,440.00	9,440.00
	Legal Stenographer	Debra Reid		11	1/8/74	8823.32	9,165.00		9,440.00	9,440.00
		Pat Achley CETA								
Subtotals						106,691.00	109,753.00		114,371.00	114,371.00
Plus increments, cost of living and longevity						390.00	416.00		605.00	605.00
Plus temporary help										
Plus overtime										
TOTALS						<u>\$107,081.00</u>	<u>\$110,169.00</u>		<u>\$114,976.00</u>	<u>\$114,976.00</u>

Yellow Copy - - Finance  
 Pink Copy - - Department



Submitted by: Public Defender  
 Date: \_\_\_\_\_

Activity or Department Request  
 Services, Supplies, Materials  
 1978

Fund 101  
 Department Activity# 231

Expenditure Code No.	Account Description	Actual Expenditures			Estimated Expenditures Balance of Current Year	Total Columns 4 and 5	1977 Budget	1978		
		Prior Year 1976	Current Year 1977-First Six Months	% of Appr.				Proposed by Department	Recommended by Budget Office	Appropriation by County Board
1	2	3	4		5	6	7	8	9	10
727	Office supplies	1,465.00	38.42	2.6			1,500.00	1,500.00	1,000.00	1,000.00
728	Printing & binding	104.00	11.50	7.7			150.00	150.00	100.00	100.00
733	Equipment rental	2,518.00	860.35	21.8			3,938.00	3,938.00	3,500.00	3,500.00
820	Memberships and Subscriptions	555.00	374.54	27.7			1,350.00	1,350.00	1,300.00	1,300.00
826	Witnesses	1,024.00	299.60	16.6			1,800.00	1,800.00	1,200.00	1,200.00
828	Investigations	43.00	85.80	8.6			1,000.00	1,000.00	1,000.00	1,000.00
850	Telephone	2,480.00	1,085.66	41.8			2,600.00	2,600.00	2,600.00	2,600.00
860	Travel	355.00	219.45	54.9			400.00	400.00	400.00	400.00
861	Conference	2,581.00	125.00	41.7			300.00	300.00	300.00	300.00
979	Books	1,196.00	94.65	31.5			300.00	300.00	300.00	300.00

\*\*\*\*\*  
 TOTALS \$12,321.00 \$3,194.97 \$13,338.00 \$13,338.00 \$11,700.00 \$11,700.00  
 - / 1 -

Yellow copy - Finance  
 Pink copy - Department

**END**