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REGIONAL DEFENDER PILOT PROGRAM
STATE OF KENTUCKY
A FEASIBILITY STUDY

August, 1978

For Defense Management

A Program of the
Adjudication Division
Office of Criminal Justice Programs
U.S. Department of Justice



A Project of the
National Legal Aid
and
Defender Association
2100 M Street
Washington, D.C.
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FOREWORD

The National Center for Defense Management was established in 1974 by a grant from the Law Enforcement Assistance Administration (LEAA) to the National Legal Aid and Defender Association (NLADA). 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 include the planning, development and organization of new criminal defense delivery systems; at both the state and local levels; 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 useful to counsel for indigent defendants.

This Report is in furtherance of these objectives and activities.

PREFACE

At the request of the National Center for Defense Management (the Center), Professor Shelvin Singer, Chicago-Kent Law School, visited the offices of the State Defender of Kentucky in Frankfort, Kentucky in the Spring of 1978 for the purpose of precisely defining a range of services requested from NCDM by that office. There he discussed with Jack E. Farley (State Defender), William Holt (financial analyst), and William Ayers, the specific nature of their request. Professor Singer is recognized as a national expert in the field of indigent defense services. The State Defender Agency, known as the Office For Public Advocacy, is principally engaged in appellate and post-conviction work (taking cases after conviction from the various counties). The defender agency also is the conduit for state financing of local defender and assigned counsel systems and conducts statewide training programs for defenders and lawyers on assigned counsel panels. Occasionally, state defender personnel will also participate as trial counsel in particularly serious cases.

The state defender staff in Frankfort consists of approximately 86 persons and 21 of them are attorneys. The defender also has three regional offices staffed by one attorney in each office.

For the fiscal year beginning July 1, 1978, the state defender agency's budget is 2.8 million dollars. Of that 1.5 million will go to the counties for trial level criminal defense for people who cannot retain counsel.

The present state defender legislation contemplates that the counties will provide substantial additional financing for county defender services. However this has happened only in Jefferson County (Louisville) and Fayette County (Lexington).

Assigned counsel panels are the predominant method of providing defense services. A few counties do have a part-time defender and three counties have full-time defenders.

Effective January 1, 1978, the Kentucky court system underwent substantial, drastic reorganization. The various local trial courts which were often presided over by non-lawyer judges were abolished. Now the trial level is the District Court with jurisdiction over misdemeanor, juvenile, and felony probable cause hearings.

In felony matters, after indictment, the Circuit Court takes trial jurisdiction. All felonies must be charged by indictment; a matter may be charged by indictment without a probable cause hearing; so occasionally the District Court will not become involved in a felony case.

As of July 1, 1976, an intermediate appellate court consisting of 14 judges was added to the system. The appellate court is centralized in Frankfort but sits in panels of three judges in various parts of the state.

Remaining is the seven member State Supreme Court. All appeals where the imposed sentence is 20 years of incarceration or more, or death, go directly from the trial court to the Supreme Court. All other cases are appealed to the Appellate Court. The Supreme Court, however, may exercise discretionary authority to review appellate decisions upon request of one of the parties.

A number of problems has been identified in the last several years by the State Defender. These include questions regarding the adequacy of local trial counsel in some instances and questions on the adequacy of providing counsel in all cases where counsel is required.

The State Defender has taken steps to improve the system. Among such steps is a new project funded with federal Law Enforcement Assistance Administration funds (LEAA) to provide for appellate level work by local attorneys under state defender supervision where the sentence imposed is nine years or less.

As a result of this involvement by local attorneys, it is hoped that the level of consciousness of local attorneys will be raised; that the research and review will act as a training mechanism and the central office caseload will be reduced, freeing staff attorneys so they can spend more time in the counties for supervision and administrative purposes. However, one of the significant results of the new court system is a dramatic increase in assigned counsel cases. The State Defender believes that this is the result of the replacement of non-lawyer judges by lawyer judges who feel a duty to provide counsel in cases where the lay judges ignored the counsel question. This has heightened the need for a more closely integrated, supervised, state system.

Accordingly, the State Defender has sought additional LEAA funding and anticipates a \$250,000 (approximately) grant effective October 1, 1978. In rethinking the use he will make of that money, the State Defender has modified his plan as expressed in the NCDM Prospectus of January 5, 1978. Rather than attempting to more closely integrate the entire state, the State Defender will now take a more cautious approach and only structure the Southeastern part of

Kentucky (consisting of approximately 26 counties) into five regions with full-time attorney and support personnel staffs to provide representation for the entire region (each office servicing several surrounding counties). At the present time, the indigency rate in that area for criminal cases is approximately 90% for felonies and misdemeanors combined. There are part-time defenders in three of the counties and a full-time defender in one county. The remaining counties are served by assigned counsel panels. The existing defenders will be invited to join the defender agency but it is anticipated that they would choose to remain in private practice except, perhaps, for the full-time defender. The assigned counsel panels would continue to serve in conflict cases. Each of the defender regional offices is to function under the direct supervision of the State Defender (unlike the present county defender and assigned counsel panels).

The Southeastern region was selected for this experiment because it is an area of extraordinary poverty. The counties are in need of and eager for outside assistance and as a result more state involvement would be welcomed. Closer supervision of county defense services by the state defender would encounter resistance if attempted in other parts of the state. However, if this project is successful, it could be used to convince the remainder of the state that state supervision is desirable and the present project would serve as the prototype for organizing the entire state.

As a result of this plan modification, the State Defender of Kentucky requested assistance from the Center.

STATEMENT OF WORK

Following the visit and report of Professor Singer, the Center engaged Arthur J. Tarnow, Esq. as a consultant for this Pilot Program. Mr. Tarnow now practices law in the City of Detroit. He had previously been Foundation State Appellate Defender and prior to that experience was Chief Deputy Defender for the Legal Aid and Defender Association in Detroit.

The consultant visited with the Public Defender and with members of his staff on June 20th and familiarized himself with the region to be served and all available statistical information.

The specific technical assistance requested had three dimensions:

1. Provide assistance in determining the location of the regional offices and defining the area to be serviced by each office.
2. Review the proposed staffing patterns for the regional offices and recommend any appropriate revisions.
3. Analyze the resource requirements for such a regional program and provide cost information detailing the funding in addition to the anticipated \$250,000 LEAA grant that will be required to set up and operate this regional system annually.

THE STATEWIDE PUBLIC DEFENDER OFFICE

In October, 1972, Kentucky established a statewide public defender program. The system is coordinated through a central office in Frankfort, the State Capital. This office oversees administration of the entire statewide program as well as the handling of all appeals. Each county in the state has the option, under the statute, of choosing what type of criminal defense system they wish to have. The options include:

1. Assigned Counsel;
2. Non-profit organization;
3. Full-time Public Defender.

The State Public Defender may reject any of these plans and appoint a Public Defender hired directly by the Central office. Most counties, as indicated in the Preface, utilize the assigned counsel system; a few have a part-time defender and three counties have the benefit of full-time defender services.

The Office of Public Advocacy (OPA), as the statewide defender services is called, has recently confronted a crisis. Because of rising caseloads and a lack of adequate funds, it is becoming increasingly difficult to furnish the quantity and quality of defense services needed in each of the communities of Kentucky. With only four months of experience with the new District Court system the number of persons who are being appointed counsel is increasing by leaps and bounds, apparently because the district judges being lawyers are particularly concerned about observing the constitutional principles requiring the appointment of counsel for indigent persons.

More and more trial courts are finding that local public defenders are refusing to accept cases or resigning from their positions because (1) private practice has become so lucrative, or (2) the fees available for public defender cases are not sufficient to meet their requirements. The local courts are either having to fend for themselves by finding defenders in adjoining counties or calling on the central office of the public defender to provide services. Since there are only two lawyers in the central office currently available to try cases at the local level, an impossible burden has been put on them. The growing caseload must be dealt with.

Many of the problems and complaints come from an area of Southeastern Kentucky comprising some twenty-six counties included in the Kentucky River, Big Sandy, and Cumberland Valley Area Development Districts along with five adjoining counties. In this area the problem of caseloads and a lack of local public defenders has become particularly acute. Experience indicates that the Office for Public Advocacy desperately needs the capability to provide additional direct defender services in the local communities and this need is particularly great in these localities.

At a meeting of the Courts Advisory Committee of the Kentucky Crime Commission on April 7, 1978, in response to a request from the Office of Public Advocacy (OPA), the Courts Committee voted to allocate the sum of \$250,000 (from a total allocation to the Courts Committee of \$1,500,000 for the 1979 criminal justice plan) to the OPA. The state defender proposed to set up a system of five regional defender offices in the Kentucky River, Big Sandy, and

Cumberland Valley Area Development Districts. A grant application for the Crime Commission 's September meeting is being prepared. The Action Plan for 1979 will not be approved until June and grants pursuant to this plan will not be received until the September meeting. At present, allocations to the subject twenty-six counties are the approximate sum of \$186,000 for local defender services. With the additional \$250,000 grant money plus some \$27,000 in matching funds from the Department of Justice, the Defender hopes to fund a reasonably adequate program.

He also plans to use a number of already available services. For example, two present staff investigators are located in the affected region. One full-time attorney and one full-time secretary are already located in Prestonsburg.

Based on caseload, geography, travel time, and other factors it is proposed to place regional offices in London, Hazard, and Prestonsburg which are now Area Development District headquarters; with an additional office in the northern part of the region, perhaps in Beattyville or Stanton, plus one more office in either Harlan or Pineville.

The fiscal year for the Law Enforcement Assistance Administration (LEAA) does not begin until October 1, 1978 and runs through September 30, 1979. Although the future of LEAA is not clear at this time, it is hoped that this agency or its successor would be able to provide funds for at least one continuation year. Therefore, this project could be funded in large part with federal funds until at least June 30, 1980 or perhaps even September 30th of that year.

CONSULTANT'S FINDINGS AND RECOMMENDATIONS

Statistics

There were 18,798 misdemeanors for the entire area for the last year reported. The majority of those cases would require assigned counsel. In addition there were 73 appeals from the District Court to Circuit Court. It would be fair to predict the involvement of counsel in more misdemeanor cases, which there will be under this program, and there will be many more such cases appealed to Circuit Court. A majority of those appeals will require as much or nearly as much work as the average appeal from Circuit Court.

There were 1,543 felony cases in the District Court. A number of these cases reach Circuit Court. That is, the felony cases in District Court are the preliminary portions of the felony cases that reach Circuit Court (phone conversation with Jim Woods). Therefore, the important figure is the Circuit Court felony figure. However, in terms of court time, it must be remembered that many Circuit Court felony cases commenced in District Court at proceedings requiring the presence of counsel.

The Circuit Court felony total was 777. This includes 221 commenced by means other than indictment.

Proposed Budget

The proposed budget for the twenty-six county area totaled \$582,215. This includes 16 attorneys and 19 support staff. Among the support staff were investigators, para-legals, stenographers and a clinical psychologist.

Five regional offices are to be established. The entire proposed budget is attached as Appendix C.

Analysis.

There are two definitions of acceptable caseloads. One is in terms of cases per attorney per year.* The other is in terms of open cases at a given time. There is not enough information for the latter approach.

The acceptable caseload adopted by the National Advisory Commission (NAC) are:

- A. Felony cases: 150 per attorney per year.
- B. Misdemeanors: not more than 400. Number is dropping as more trials.
- C. Appeals : 25 per attorney per year.

Using the NAC standards to determine the number of attorneys necessary to represent persons charged yields the following results:

Misdemeanors	(37,596)	=	94
Misdemeanor appeals	(146)	=	6
Felony	(1,554)	=	<u>10</u>
Total			<u>110</u>

The total for the categories using the most current figures would be 110. Note, there are at least 45 government attorneys prosecuting these cases. That figure includes assistant attorneys general and prosecutors, but does not include local prosecutors of misdemeanor cases, if they are not county prosecutors.

*The National Advisory Commission Report on Criminal Justice and Goals, Courts, Standard 13.12 (1973) (NAC).

Several other factors must be considered to fully understand the number of attorneys required:

First, the standard set by NAC did not consider the effect of travel time. Thus, the number of attorneys needed would be more, because of the travel time.

Second, the misdemeanor appeal number is predictably greater once the program starts. Therefore, more attorneys may be needed for the extra appeals.

Third, the number of felony cases listed in the district court is greater than the number than get to circuit court. This may be due to cases being dismissed or cases where other dispositions occur. These cases may have involved an attorney. Thus, it is clear more attorneys may be needed.

Fourth, the calculations set forth above presume that all of the cases require assigned counsel. This ignores the possibility that counsel might be retained. It further ignores the possibility that a person would waive their right to assigned counsel; something that happens all too regularly in misdemeanor cases.

Fifth, para-legals and other trained support staff may increase the productivity of an attorney.

Sixth, the figures do not include either mental commitments or juvenile cases.

To the extent these factors were not used, the conclusion as to the total number of attorneys required is flexible.

Conclusions.

It is clear the amount of money available for the project will not allow the hiring of 55 attorneys and the necessary support staff. Note, the current budget for 16 attorneys and 19 support staff has little excess. It has an appropriate ratio of support staff to attorneys. It also has little excess in overhead.

The question that must be addressed is whether or not more money may be made available. If not, then the question is: how is the caseload to be reduced to a manageable level?

It is recommended that either:

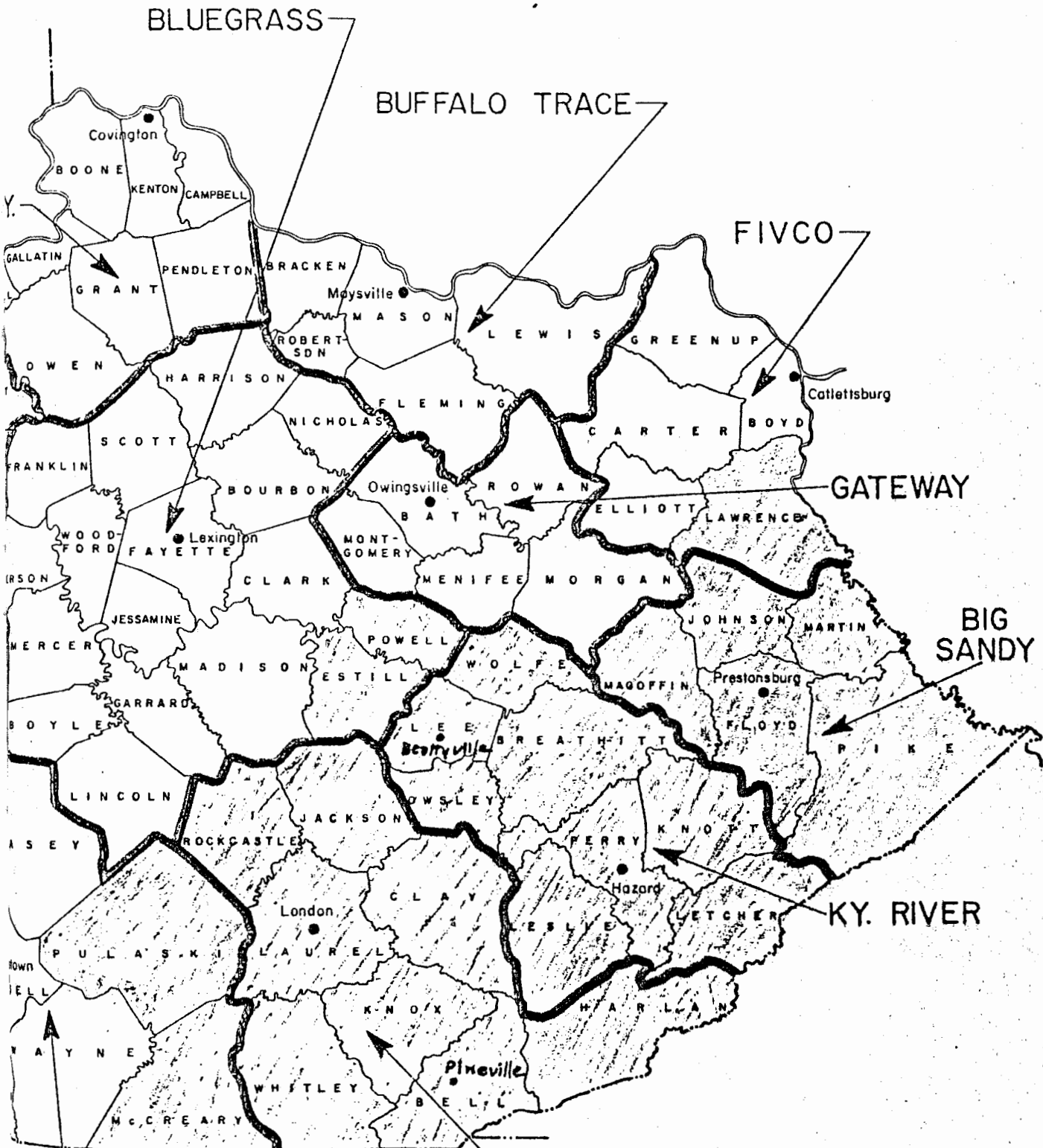
1. The project eliminate coverage in several counties, or
2. A determination be made on the basis of the nature of the misdemeanor charged to eliminate enough of the misdemeanor cases to make the number manageable.

These recommendations recognize that the project area chosen is rational, based on the geography, need, and administrative reality.

This report will not recommend which course of action is the best. There are too many geographical, political and philosophical considerations involved for an outsider to presume to make the choice.

APPENDIX A

REGIONAL MAP SHOWING THE 26 COUNTIES (SHADED) TO BE SERVED.



APPENDIX B

REGIONAL MAP SHOWING THE LOCATIONS OF THE FIVE REGIONAL OFFICES.

APPENDIX C

PROPOSED BUDGET FOR EACH OF THE REGIONAL OFFICES.

PROPOSED BUDGET FOR REGIONAL OFFICES

	<u>BEATTYVILLE</u>	<u>LONDON</u>	<u>PINEVILLE</u>	<u>HAZARD</u>	<u>PRESTONBURG</u>
Asst. PD III	\$ 15,288	\$ 15,288	\$ 15,288	\$ 15,288	\$ 15,288
Asst. PD II	-	13,200	-	-	-
Asst. PD I	11,976	11,976	11,976	11,976	11,976
Asst. PD I	11,976	11,976	11,976	11,976	11,976
Prin. Clk. Steno.	7,344	7,344	7,344	7,344	7,344
Clerk/Steno	5,484	5,484	5,484	5,484	5,484
Paralegal	7,500	7,500	7,500	7,500	7,500
PD Invest. III	9,852	9,852	-	-	9,852
Clinical Psych. V	-	-	-	21,504	-
Fringe Benefits (15%)	<u>10,413</u>	<u>12,393</u>	<u>8,935</u>	<u>12,161</u>	<u>10,413</u>
<u>Total Salaried Personnel</u>	<u>\$ 79,833</u>	<u>\$ 95,013</u>	<u>\$ 68,503</u>	<u>\$ 93,233</u>	<u>\$ 79,833</u>
Local Counsel Panels	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
<u>Rent:</u>					
Rent: 5/yr x 1500 sq. ft.	7,500	-	7,500	7,500	7,500
Rent: 5/yr x 2000 sq. ft.	-	10,000	-	-	-
Travel	2,700	3,300	2,700	2,700	2,700
Telephone	600	750	600	600	600
Supplies	1,000	1,200	1,000	1,000	1,000
Postage	500	600	500	500	500
Word Processor (Rent)	6,000	6,000	6,000	6,000	6,000
<u>Purchase:</u>					
<u>Furniture & Equipment</u>					
Exec. Desk/Chair-\$500 ea.	2,000	2,500	2,000	2,000	2,000
Steno Desk/Chair-\$400 ea.	800	800	800	800	800
IBM Typewriter	650	650	650	650	650
Reception Area Furniture	300	300	300	300	300
Miscellaneous Equipment	300	300	300	300	300
Library	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>
<u>TOTAL BUDGET</u>	<u>\$112,183</u>	<u>\$131,413</u>	<u>\$100,853</u>	<u>\$125,583</u>	<u>\$112,183</u>

RECAPITULATION:

16 Attorneys .	=	\$416,415
19 Support Staff .		
Local Counsel Panels	=	\$ 25,000
Operating Expenses	=	\$ 95,050
Furniture & Library	=	<u>\$ 45,750</u>
<u>TOTAL PROPOSED BUDGET</u>		<u>\$582,215</u>

APPENDIX D

BUDGETARY AND DEMOGRAPHIC DATA FOR THE FIVE AREAS.

PROPOSED LOCATIONS FOR REGIONAL PUBLIC DEFENDER OFFICES

	<u>BEATTYVILLE</u>	<u>LONDON</u>	<u>PINEVILLE</u>	<u>HAZARD</u>	<u>PRESTONBURG</u>	<u>COMPOSITE</u>
Attorneys	3	4	3	3	3	16
<u>Support Staff</u>	4	4	3	4	4	19
<u>Caseloads</u>						
FY 1976 - 1977	350	439	576	747	385	2,497
FY 1977 - 1978	385	1,161	1,651	989	549	4,735
<u>Grants to Counties</u>						
FY 1977	\$23,320	\$53,800	\$51,218	\$43,240	\$38,460	\$210,038
FY 1978	\$21,340	\$48,800	\$38,500	\$40,060	\$34,700	\$183,400
<u>Population</u>	47,740	130,099	92,146	89,421	145,033	504,439*
<u>Percentage Below Poverty Level</u>						
	48%	46%	45%	55%	43%	47%
<u>Population per Square Mile</u>	34	47	76	46	60	52
<u>Regional PD Office Proposed Budget</u>						
	\$112,183	\$131,413	\$100,853	\$125,583	\$112,183	\$582,215
<u>Total Arrests for 1976</u>	4,888	12,259	8,533	9,643	13,395	48,718**
<u>Index Crime Arrests</u>	222	992	713	650	1,053	3,630***

*15% of state population.

**20% of state total arrests.

***13% of state index crime arrests.