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**Indigent Defense Services In the State of Nevada:
Findings & Recommendations**

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Executive Summary

In 1997, The Nevada Supreme Court Task Force for the Study of Racial and Economic Bias in the Justice System (Task Force) issued its final report highlighting several problems with the state's indigent defense system that contributed to racial and economic biases in both the quality and the delivery of justice. Task Force members successfully advocated for the creation of an implementation committee to work on institutionalizing their recommendations. The resulting Implementation Committee for the Elimination of Racial, Economic and Gender Bias in the Justice System ("Implementation Committee") was awarded technical assistance by the U.S. Department of Justice, Bureau of Justice Assistance and the American Bar Association, Bar Information Project to assist them gather data on and making recommendations for the improvement of indigent defense services. Technical assistance was provided by The Spangenberg Group (TSG), a nationally recognize criminal justice research and consulting firm, in the form of a statewide study of Nevada's indigent defense system.

In the following report, TSG details serious problems with the current provision of indigent defense services in Nevada. Chapter I is a brief introduction to the study. Chapter II provides an overview of indigent defense services throughout the state, with detailed discussions of services in Carson City, Clark, Nye, Washoe and White Pine counties. The main body of the report is a national perspective on indigent defense services. In this section, many specific problems are identified with Nevada's current provision of indigent defense services.

Those problems serve as the basis of the "Findings" and "Recommendations" section of the report (Chapters IV and V respectively). In Chapter IV, TSG draws the following conclusion:

- **Indigent Citizens Throughout the State of Nevada are Not Afforded Equal Justice Before the Courts.**

This conclusion is supported by the following nine findings:

- **The State Public Defender System is in Crisis;**
- **The Independence of the Defense Function is Jeopardized throughout the State;**
- **The Lack of State Oversight and Binding Indigent Defense Standards Raise Quality**

Concerns regarding Conflicts of Interest, Contracting for Services, Attorney Eligibility, Training, and Workload in Counties Across the State;

- **Criminal Justice Work Load Concerns Have Impacted Trial Rates throughout the State and May Contributed to an Erosion of Confidence in the System Because of Extremely High Plea Rates, Especially in Clark County;**
- **Throughout the State, Criminal Justice Workload Concerns Have Initiated Early Resolution Programs that Affect the Rights of Individuals;**
- **Nevada Lacks Comprehensive, Reliable Indigent Defense Data;**
- **The Indigent Defense Community Does Not Have a Unified Voice to Air Justice Concerns;**
- **Juvenile Justice Practices Adds to the Perception of Bias in the System;**
- **Anecdotal Information Suggests that Racial Bias Exists in the Criminal Justice System**

In addition to making a plea for an intermediary appellate court, TSG offers the following recommendations that must be considered if the serious problems highlighted in the findings section are to improve:

- **The State of Nevada Must Take a Leadership Role and Relieve More of the Counties' Burden in Providing Indigent Defense Services;**
- **The State of Nevada Should Establish, by Legislation or Court Rule, an Indigent Defense Commission to Oversee Services throughout the State and Promulgate Effective Minimum Standards;**
- **Make Better Use of Law School Resources;**
- **Formalize a Plan to Conduct Performance Evaluations of Indigent Defense Providers on a Regular Basis.**

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INTRODUCTION

Overview

The Nevada Supreme Court Task Force for the Study of Racial and Economic Bias in the Justice System (Task Force) was established by order of the Nevada Supreme Court on December 30, 1992. The Task Force was established in response to a citizens' grassroots movement to voice concerns regarding perceived inequalities in access to justice, following the acquittal of the Los Angeles police officers in the Rodney King case. The Task Force was mandated by the Court to examine the following areas of Nevada's justice system: quality and access to justice, juvenile issues, jury issues, pre-arraignment issues, law enforcement matters, sentencing decisions, relationship to counsel, and death penalty cases. After the appointment of its members in 1993, the Task Force worked the next two years on defining its mission, debating methodologies, hiring an executive director and getting formal approval of its budget.

In 1997, the Task Force issued its final report to the Supreme Court. The report highlighted several problems with the state's indigent defense system that contributed to racial and economic biases in both the quality and the delivery of justice. These problems include: inadequate financial support of public defender offices to ensure proper attorney, investigatory and support staff; lack of early contact with indigent defendants (within 24-48 hours following arrest); insufficient training of indigent defense attorneys; poor interpreter services; and a need to guarantee effective assistance of counsel at all stages of the criminal justice process, including post-conviction.¹

Though the original mandate of the Task Force was fulfilled with the completion of the report, Task Force members advocated for the creation of an implementation committee to work on institutionalizing their recommendations. Questions surrounding funding for the implementation committee prevented formal appointments from being named until early in 1998, at which time the

¹ The Task Force report makes the following recommendations: increasing funding of public defenders offices; increasing efforts to ensure "effective assistance of counsel"; working to demonstrate to the Court and legislature that indigent assistance of counsel is essential at all levels; establishing on call public defenders; encouraging public defenders to see clients within 48 hours; offering formal training of new public defenders; and setting up programs to allow for early detection of non- English speaking clients.

committee merged with the Nevada Supreme Court Gender Bias Task Force. The resulting Implementation Committee for the Elimination of Racial, Economic and Gender Bias in the Justice System (“Implementation Committee”) was expanded to 44 members to “attain diversity of experiences, backgrounds, fields of endeavor and discipline” during the fall of 1998.²

The U.S. Department of Justice, Bureau of Justice Assistance/American Bar Association, Bar Information Program State Commissions Project

In the early part of 1999, the Implementation Committee learned of a new joint project of the U.S. Department of Justice, Bureau of Justice Assistance and the American Bar Association, Bar Information Project. The joint project assists states that do not currently have statewide oversight of indigent defense services through gathering data on and making recommendations for the improvement of indigent defense services.

The Bar Information Program (BIP) was created in 1983 by the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (SCLAID), the ABA Criminal Justice and General Practice Sections, and its Young Lawyers Division. BIP was organized following a series of discussions within the ABA on the “crisis in indigent defense”-- namely, that indigent defense systems were so starved for resources that it was increasingly difficult to find lawyers willing to accept court appointments or join public defender staffs.

BIP’s initial purpose was to inform leaders of every state’s organized bar of the crisis in indigent defense. At its first meeting, the BIP Advisory Group committed to helping bar leaders secure higher fees for assigned counsel. Additional services became available in 1985, when BIP contracted with the then newly organized Spangenberg Group to provide on-site technical assistance to states interested in improving their indigent defense systems.

The Spangenberg Group (TSG) is a nationally recognized research and consulting firm specializing in improving justice programs. Created in July 1985 and located in West Newton, Massachusetts, TSG has conducted research and provided technical assistance to justice organizations

² Motion to Enlarge Membership of the Implementation Committee. Filed in the Supreme Court of the State of Nevada, September 28, 1998.

in every state in the nation.³

Over the years BIP has provided increasing levels of support for statewide task forces concerned with indigent defense issues. To date, BIP has worked with task forces and/or commissions in 20 states. But because BIP resources are limited, it has had to ration support—especially, on-site visits by TSG. In 1999, BIP was awarded a grant from the Bureau of Justice Assistance to increase its ability to work with states with no statewide oversight of indigent defense. The aim of the joint Bureau of Justice Assistance/Bar Information Program State Commissions Project is to assist state task forces in addressing such issues as: indigent defense system funding; standards for assigned counsel, public defenders and contract counsel; uniformity of data collection; and access to justice.

The Current Study of Indigent Defense in Nevada

The Implementation Committee requested and was awarded technical assistance through the DOJ/ABA States Commissions Project in the fall of 1999. On October 28, 1999, David Carroll, Senior Research Associate of TSG, attended a meeting of the Implementation Committee under the auspices of the DOJ/ABA States Commissions Project. In addition to the issues highlighted in the 1997 Task Force report, Implementation Committee members also raised serious concerns regarding: qualifications of attorneys, both public defenders and assigned counsel, accepting indigent defense cases; caseloads of indigent defense attorneys; and, quality of the defense afforded indigent defendants. During the October meeting, the Implementation Committee asked if TSG could conduct a review of indigent defense programs in four or five of Nevada's 17 counties and make findings and recommendations regarding how improvements to indigent defense services could best be implemented to help to reduce the racial, gender and economic biases noted in their

³ The president of The Spangenberg Group, Robert L. Spangenberg, has been conducting research and providing technical assistance on civil and criminal justice system-related topics for over 20 years. Mr. Spangenberg began his legal career as a trial attorney, handling civil and criminal cases in state and federal courts. Subsequently, he directed a neighborhood legal services program, the Boston Legal Assistance Project, for eight and a half years before joining Abt Associates as Deputy Director of its Law and Justice Division in Cambridge, Massachusetts. Widely regarded as a national expert on justice delivery systems to the poor, Mr. Spangenberg left Abt Associates to form his own research and consulting company in 1985. The Spangenberg Group's other staff consists of a small team of professionals who specialize in the study of legal services programs for the poor.

earlier report. The executive committee of the Implementation Committee worked with TSG personnel to choose the sample counties and review the study methodology.

Study Methodology

The sample counties were selected based upon detailed criteria including: population size, demographic diversity, geographic diversity, the percentage of minority population, poverty rates, crime rates, and type of indigent defense delivery system.⁴ TSG gathered on-site qualitative and quantitative indigent defense data from the two most populous counties, Clark County (Las Vegas) and Washoe County (Reno), as well as Nye and White Pine counties. In addition, TSG studied the indigent defense system in the independent jurisdiction of Carson City. Table 1-1 shows the demographic breakdown of all Nevada counties:

Table 1-1 County-by-County Demographics¹ (Sample Counties Highlighted)										
County	Population (1998)	Square Miles	Density	Race				Gender		Income Per Capita
				% White	% Black	% Hispanic	% Other	% Male	% Female	
Carson City	49,388	153	322.80	82.8%	1.6%	11.2%	4.4%	50.7%	49.3%	\$ 22,051.00
Churchill	23,125	4,913	4.71	82.0%	1.1%	8.4%	8.5%	50.1%	49.9%	\$ 17,031.00
Clark	1,145,244	8,084	141.67	68.7%	9.8%	16.4%	5.1%	50.3%	49.7%	\$ 21,441.00
Douglas	38,027	751	50.64	86.7%	0.4%	9.2%	3.7%	50.0%	50.0%	\$ 24,796.00
Elko	46,641	17,181	2.71	73.9%	0.6%	18.8%	6.7%	52.6%	47.4%	\$ 17,912.00
Esmeralda	1,140	3,570	0.32	81.1%	0.8%	12.1%	6.0%	55.0%	45.0%	\$ 17,339.00
Eureka	1,597	4,182	0.38	82.4%	0.8%	13.5%	3.3%	54.0%	46.0%	\$ 22,073.00
Humbolt	17,575	9,704	1.81	68.0%	0.6%	26.0%	5.4%	53.0%	47.0%	\$ 17,425.00
Lander	7,007	5,621	1.25	77.2%	0.1%	18.5%	4.2%	51.3%	48.7%	\$ 15,677.00
Lincoln	3,982	10,650	0.37	89.9%	1.5%	6.5%	2.1%	51.5%	48.5%	\$ 10,619.00
Lyon	29,833	2,024	14.74	84.6%	0.4%	11.1%	3.9%	50.7%	49.3%	\$ 14,382.00
Mineral	5,935	3,837	1.55	70.5%	6.7%	11.9%	10.9%	52.1%	47.9%	\$ 16,757.00

⁴ Indigent defense delivery systems are discussed in depth in Chapter II.

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Nye	28,596	18,064	1.58	83.8%	1.9%	10.3%	4.0%	53.4%	46.6%	\$	18,205.00
Pershing	4,870	6,031	0.81	72.5%	0.2%	21.7%	5.6%	51.0%	49.0%	\$	14,492.00

County	Population (1998)	Square Miles	Density	Race				Gender		Income Per Capita
				% White	% Black	% Hispanic	% Other	% Male	% Female	
Storey	3,075	262	11.74	89.3%	0.6%	6.5%	3.6%	49.4%	50.6%	\$ 21,445.00
Washoe	313,754	6,608	47.48	78.0%	2.3%	13.1%	6.6%	50.4%	49.6%	\$ 23,903.00
White Pine	10,654	8,905	1.20	80.4%	3.2%	13.3%	3.1%	55.9%	44.1%	\$ 15,358.00
State	1,730,443	110,540	15.65	72.2%	7.1%	15.3%	5.3%	50.5%	49.5%	\$ 21,485.09

Prior to the site visits, TSG asked the Implementation Committee for assistance in collecting background data from the sample counties' indigent defense programs. This quantitative assessment required the collection of indigent defense cost and expenditure information. This undertaking included compiling data from all funding sources (federal, state, local), with particular emphasis on funds for investigation, expert witnesses and other litigation expenses. All indigent defense expenditures were studied, whether found in the court's budget, the county commissioners' budget or elsewhere. TSG also collected caseload data relating to court appointments for each criminal court in the sample counties and determined how the county and the courts count cases and/or workloads, so that county-by-county comparisons could be made. TSG also analyzed the impact of caseload on the quality of defense services.⁵

In addition to this quantitative data collection in each sample county, the TSG site work had two qualitative components. First, members of the project team conducted court observations in the criminal courts of the sample counties, obtaining a firsthand view of how the system operates. Special emphasis was given to observations at first appearance and in arraignment courts. Second, the project team conducted substantial and in-depth interviews with: judges, court staff, court-appointed counsel, prosecutors, private lawyers, county policy makers, county financial officers, and local low-income and neighborhood groups concerned about the counties' criminal justice system.

⁵ The quantitative analysis was greatly enhanced through the cooperation of Mr. Lorne J. Malkiewich, Director of the Legislative Counsel Bureau in Carson City. The Spangenberg Group was able to expand our quantitative analysis of indigent defense services to include the other twelve counties not in our original sample. This allowed us to compare Nevada with other similar jurisdictions.

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Numerous follow-up phone calls were made to clarify information and to interview criminal justice personnel who were unavailable during the site visits. Mr. Carroll and Rangita de Silva, Research Associate, conducted the site visits during the spring of 2000. The Spangenberg Group would like to acknowledge the cooperation of the many criminal justice personnel who took the time to meet with us and discuss the issues set forth in this report. TSG also recognizes the work of Mr. Elgin Simpson, Executive Director of the Implementation Committee, for his help in arranging the site visits and collecting background materials.

Chapter II
INDIGENT DEFENSE IN NEVADA

Provision of Indigent Defense Services

Nationally, there are three primary models for providing representation to those accused of crimes and unable to afford counsel: assigned counsel, contract and public defender programs.

- The *assigned counsel model* involves the assignment of private attorneys to handle indigent defense cases on either a systematic or an ad hoc basis.
- The *contract model* involves a contract with an attorney, a group of attorneys, a bar association, or a private, non-profit organization that provides representation in some or all of the indigent cases in the jurisdiction.
- The *public defender model* involves a public or private non-profit organization with full or part-time staff attorneys and support personnel.

Using these three models for the appointment of counsel, states have developed a wide variety of indigent defense delivery systems, many of which employ some combination of these types.⁶ More than one half of the states have organized some form of a statewide indigent defense program. These statewide systems have varying degrees of responsibility and oversight, but they share the common element of providing some degree of uniformity to the delivery of indigent defense services statewide.⁷

In contrast to statewide systems, other states delegate the responsibility to organize and operate an indigent defense system to the individual county or a group of counties comprising a

⁶ For example, in some states with a statewide public defender system, private attorneys will be appointed in conflict cases or to alleviate burdensome caseloads. In other states, there may be contract counsel in one county, assigned counsel in a second county, and a public defender office in yet a third county.

⁷ A statewide agency may operate under the executive or judicial branch of government or as an independent public or private agency. Often, a governing body or commission is created to enact policy and select the state public defender or chief counsel of the agency. In some states, a state public defender is appointed by the Governor.

Some statewide systems incorporate a variety of local indigent defense delivery systems throughout the state, including public defender offices, assigned counsel and/or contract programs. Typically, public defenders serve metropolitan areas and private bar programs or contract programs serve the less populous regions. Private bar programs are also necessary in all public defender regions for the purpose of providing representation in conflict and caseload overload situations.

judicial circuit. The decision of what type of system to use may be made by the County Board, the local bar association, the local judges or a combination of these groups. Under such a system there is usually little or no programmatic oversight at the state level. There is no state board, commission, or administrator.

A third model uses a hybrid of local control with some state oversight. Such indigent defense systems generally leave the decision of what type of system to implement to local county commissions or judges, but make available state money through a reimbursement program to those counties that meet state-sanction indigent defense standards.

Though Nevada has a State Public Defender, the indigent defense system in the state is more analogous to the second of these three models. State law requires counties whose population is 100,000 or more to create a county public defender office. Only Clark (Las Vegas) and Washoe (Reno) counties exceed this population requirement and both have established county public defender offices through ordinance by the boards of county commissioners.⁸ Each county's Chief Public Defender is appointed by, and serves at the pleasure of, the county commissioners. In these counties, a magistrate or district court may pay (with county funds) an attorney other than, or in addition to, the public defender to represent an indigent person at any stage of the proceedings or on appeal.⁹

In the remaining jurisdictions, counties have full discretion as to how to provide indigent defense services. Of the other counties with a population less than 100,000, only one, Elko County, has elected to establish a county public defender. Though less populated counties may establish a joint public defender office to service two or more counties, none have chosen to do so. Instead, the remaining jurisdictions either contract with local private attorneys or contract with the State Public Defender.

The State Public Defender office, funded by a combination of state and county monies, is overseen by the Department of Human Resources in the executive branch of state government.

⁸ NRS 260.010

⁹ NRS 260.060

Originally created to serve as a statewide rural public defender that produced cost-savings through economies of scale, the Office of the State Public Defender has seen the number of jurisdictions it originally served (15) reduced since its creation. The State Public Defender, appointed by the governor for a term of four years,¹⁰ now oversees indigent defense services in just seven jurisdictions: Carson City, Eureka, Humboldt, Lincoln, Pershing, Storey and White Pine counties. The remaining seven counties (Churchill, Douglass, Esmeralda, Lyon, Lander, Mineral and Nye) all contract with local attorneys who handle indigent defense cases in addition to their private practices. Table 2-1 shows the type of indigent defense system employed by each county.

Table 2-1 Indigent Defense Systems in Nevada					
<u>County</u>	<u>Population</u>	<u>Indigent Defense System</u>	<u>County</u>	<u>Population</u>	<u>Indigent Defense System</u>
Carson City	49,388	State Public Defender	Lincoln	3,982	State Public Defender
Churchill	23,125	Contract Defender	Lyon	29,833	Contract Defender
Clark	1,145,244	County Public Defender	Mineral	5,935	Contract Public Defender
Douglas	38,027	Contract Defender	Nye	28,596	Contract Defender
Elko	46,641	County Public Defender	Pershing	4,870	State Public Defender
Esmeralda	1,140	Contract Defender	Storey	3,075	State Public Defender
Eureka	1,597	State Public Defender	Washoe	313,754	County Public Defender
Humboldt	17,575	State Public Defender	White Pine	10,654	State Public Defender
Lander	7,007	Contract Defender			

Indigent Defense in the Sample Counties

Trial Representation

In Nevada, every defendant who is financially unable to obtain counsel and is accused of a gross misdemeanor¹¹ or felony is entitled to have counsel assigned to represent him/her at every stage of the proceedings from his/her initial appearance before a magistrate or the court through

¹⁰ NRS 180.2

¹¹ Every crime which may be punished by death or by imprisonment in a state prison is a felony. Every crime punishable by a fine of not more than \$1,000, or by imprisonment in a county jail for not more than six months is a misdemeanor. Every other crime is a gross misdemeanor.

appeal, unless he waives such an appointment.¹²

Washoe County

Over the years the Washoe County Public Defender's Office has expanded the scope of its work to include representation in cases other than strictly criminal matters. This includes: juvenile delinquency cases, involuntary commitment to the Nevada state hospital, parole violations, child support cases, termination of parental rights cases, temporary protection order violations, abuse and neglect cases, and other family court matters.¹³

The Washoe County Public Defender's Office is comprised of a staff of 26 attorneys, including five Chief Deputies. The attorneys work in teams of five, with a Chief Deputy Public Defender mentoring and supervising each team. Technically, the Washoe County Public Defender Office practices horizontal representation because any member of the team may handle a particular hearing for a client.¹⁴ The teams are augmented by five investigators, one of whom is also a certified polygrapher. There are three records clerks who, among other duties, prepare the daily calendar for the office's attorneys and ten legal secretaries. The office contracts with a Spanish-speaking interpreter.

Indigency determinations are made by Court Services, a division of the district court. When a person is charged with an offense or booked into the Washoe County Detention Center, he or she is interviewed by Court Services, which determines whether the accused is financially capable of retaining counsel or whether the Public Defender should be appointed. Court Services also determines whether defendants are viable candidates for release without posting bail.

As a general rule, everyone booked into the detention center is interviewed by a member of the public defender's Early Case Resolution team within 24-72 hours of being booked. This

¹² NRS 178.397

¹³ Prior to 1995, the Washoe County Public Defender also contracted with the Sparks and Reno municipal courts to handle representation in city misdemeanor cases. The practice was terminated because of workload considerations. The cities now contract with private attorneys for these cases.

¹⁴ An individual attorney who handles all facets of a case for a client from initial assignment through disposition is said to practice "vertical" representation. "Horizontal" representation is defined as any practice in which the continuity of counsel is not maintained. It is generally believed that clients are better served through vertical representation.

interview often occurs a week to ten days before the office is formally appointed to the case.

Clark County

The Clark County Public Defender Office is staffed by 70 attorneys, including the Chief Public Defender and the Assistant Public Defender. As in Washoe County, attorneys work in different teams headed by a team chief. The teams consist of units for sexual assault crimes, drug court, municipal court, capital murder and the juvenile unit, as well as seven teams that handle other cases for justice and district courts. By county ordinance, the Office is mandated to handle mental health commitments. The Office contracts with an attorney who specializes in mental health commitments to handle this work. The Clark County Public Defender's investigations unit has 14 investigators on staff and is equipped with all of the latest technological tools, including digital cameras and crime scene recreation software. When hiring, the Office gives preference to investigators who can function as interpreters as well. The Office's team of 33 support staff includes office managers, legal secretaries, and record clerks.

As in the Washoe County Public Defender Office, the Clark County Public Defender has a separate budget line item for experts. Attorneys have the discretion to expend up to a certain dollar limit, but any request for services over that limit must be formally approved by the Chief or Assistant Chief Defender. In practice, attorneys told us that requests for experts are always approved in both urban offices.

Carson City and White Pine County

The State Public Defender's office is staffed by 12 attorneys including the Chief Public Defender. The staff is divided over three offices situated in Carson City, Ely, and Winnemucca. The office has five secretaries and just two investigators for all of the seven jurisdictions served by the State Public Defender. The investigators share their time between the three offices but, due to the heavy workload, investigate mainly homicides and other serious felony cases. In all other cases, attorneys must conduct their own investigations. The client intake function is performed in Carson City by the Carson City Intake Officer, who does not follow formalized standards. In White Pine County, the Justices of the Peace and the Municipal Court Judge personally screen clients using the

affidavit of financial condition.

Nye County

Nye County operates on a contract system. The primary contract is handled by a private attorney who handles cases in both Pahrump and Tonopah. This attorney also has the contract to represent indigent defendants in Esmeralda County. There is no provision for support and/or investigative services in the contract and thus these services must be retained by the private attorney. Other experts must be petitioned for from the court.

Conflict Counsel

Conflict of interest cases are handled differently throughout the state. In Nye County, the county has entered into two separate contracts with private attorneys to handle conflict cases. In Carson City, conflict cases for the State Public Defender are handled by four private attorneys who have contracted directly with Carson City. Two District Court Judges sit on the selection process of the panel of attorneys. Each attorney receives a yearly flat fee of \$36,000. In the other six counties served by the State Public Defender the courts appoint conflict counsel on an “as needed” basis.

In Washoe County, the Public Defender contracts out conflict cases to a private attorney who maintains an association with approximately fifteen lawyers. Under terms of the contract, the Washoe County Public Defender pays the private attorney \$750,000 per year. Funds for expert services in conflict of interest cases are inclusive in that figure, though additional funds can be negotiated under a separate budget. Approximately 1,000 cases are contracted out each year. A conflict attorney earns a flat fee of approximately \$500 per case, averaging out to approximately \$2,000 per month¹⁵.

Clark County has an extensive conflict of interest system befitting a large urban county. The Office of the Special Public Defender is an eight attorney office that exclusively handles death penalty cases, serious felony and murder cases. In addition, the court administers 27 individual

¹⁵ In addition to attorney and expert witness fees, a portion of the \$750,000 contract is spent on administration of the conflict system and attorney fees and expenses in extraordinary cases.

contracts at a flat fee of \$2,700 per month. Finally, court-appointed attorneys are appointed in instances in which another attorney is needed in multiple defendant cases or in murder cases which cannot be handled by either public defender organization.

Appellate Representation

For the most part, attorneys in the Washoe and Clark County Public Defender offices and the contract attorneys in Nye County handle their own direct appeals. This is the accepted practice commonly followed throughout the state. The Clark County Public Defender Office has a two-person appellate unit to handle some of the appeals and to assist other attorneys in their office. The State Public Defender maintains an appellate division consisting of two attorneys who handle appeals from the jurisdictions they serve.

Appellate defenders operate under the rules of a fast-track system. The Fast Track Criminal Appeal Program under Nevada Rules of Appellate Procedure Rule 3C was adopted by the Nevada Supreme Court effective September 1, 1996. Considered as a way to address the growing backlog, the fast track system handles more than eighty percent of newly filed criminal appeals. Using the fast track, the Nevada Supreme Court disposes of approximately 450 cases a month. The fast track system takes the Court an average of 112 days to dispose of an appeal instead of the two or three years generally taken. The fast track system screens out less difficult criminal appeals for streamlined review and disposition, shortens the time that attorneys have to file briefs at the Supreme Court, and uses a computer generated transcript that can be prepared much faster than certified transcripts.

Fast track appeals are becoming an increasingly large portion of newly filed criminal appeals at the court. Approximately 85% of fast track cases are resolved through an order dismissing the appeal. The rest are resolved through orders of remand or opinion.¹⁶ Fast track appeals are screened by the Supreme Court based upon condensed briefs, transcripts and records. Based on the screening,

¹⁶ Fast Track Criminal appeals the First Year in Review. Nevada Lawyer, November 1997.

appeals will be summarily disposed of, scheduled for a fast track conference, or ordered to a full briefing calendar. During a fast track conference, attorneys appear before one justice or judicial officer to present arguments regarding whether the appeal should be summarily disposed or fully briefed. After the conference, the presiding justice or judicial officer will recommend a disposition of the case to the entire Supreme Court or recommend that the case be fully briefed. This decision will be made solely upon review of the rough draft transcripts, fast track statement and fast track response.¹⁷

Attorneys in Clark and Washoe counties felt they were generally appointed to state post-conviction proceedings when appropriate.¹⁸ At the time of the site work, the State Public Defender was beginning to receive more post-conviction appointments, pursuant to NRS 180.060. This trend caused some concern that the division would not be able to handle the workload if appointments to post-conviction cases became a common occurrence. In the rural counties, judges do not regularly appoint counsel in post-conviction cases.

Juvenile Justice System

Juvenile proceedings differ from adult proceedings in several ways. As their special nomenclature suggests, juvenile court proceedings are noncriminal proceedings. Although juveniles may be charged with the same types of crimes (such as rape, murder, armed robbery, etc.), the possible penalties for involvement in a crime are quite different. When a child is first brought before the court, a judge releases the juvenile to a parent or other responsible adult, places the child in a temporary shelter house or detains the child at a juvenile center. Proceedings are generally overseen by district court magistrates. In rural counties, the Justice of the Peace often acts as the presiding magistrate, even though Justices of the Peace do not have to be members of the bar.

Historically, Nevada's juvenile justice system has had many rehabilitative sentencing

¹⁷ See Rule 3C(j)

¹⁸ Pursuant to NRS 180.060, in cases of post-conviction proceedings and appeals arising in counties in which the office of public defender has been created...where the matter is to be presented to the supreme court, the state public defender shall prepare and present the case and the public defender of the county shall assist and cooperate with the state public defender.

options, such as juvenile probation and county run halfway houses. In 1999, the State of Nevada entered into a contract with Rite of Passage, a private, not-for-profit organization, to provide additional placement opportunities for juvenile offenders.¹⁹

In contrast, the adult system retains no other option apart from imprisonment for children tried and convicted as adults for certain offenses. NRS 62.040 exempts from juvenile jurisdiction any child charged with murder or attempted murder, sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim. NRS 194.010 mandates that no child under age eight is capable of committing a crime.

In 1995, Nevada's 68th Legislative Session made sweeping changes to Nevada's juvenile justice system, by eliminating the juvenile judges' discretion and giving the prosecution a greater role in deciding whether to charge the juvenile as an adult. Prior to this legislation, when a juvenile committed a crime, the juvenile judge reviewed the prosecutor's request for adult treatment of the child and balanced the best interests of the child against the need to protect society. The legislature took away from the court that discretionary decision-making. Under the revised law, the prosecutor files charges against juveniles charged with certain crimes in adult court. The statute allows a return to juvenile jurisdiction under "exceptional circumstances."²⁰ If the adult court grants the reverse waiver on its own determination, the child will be sent back to the juvenile system. The burden is on the child to provide the adult court with redeeming circumstances that will allow the him/her back to the juvenile system. A child certified for one offense will also be tried as an adult for any other arising out of the same facts, regardless of its nature.²¹

¹⁹ The Rite of Passage incorporates the following activities: Nevada Bureau of Drug and Alcohol certified level two treatment intervention program; access to a psychologist, nurse practitioner and addiction counselor; intake diagnostic testing; Northern Nevada Interscholastic Athletic Association 3-A division membership; parent module training, on site and in their region; staff secure, 2- hour awake/night staffing; Toast Masters International, computer corps and working with families for affordable living; community service programs: include teaching physically handicapped children to cross country ski; a two year program with three levels, including a boot camp, educational instruction and a reintroduction to the community; vocational training.

²⁰ Nev. Rev. Stat. Ann. Sec. 62.080 reads: If a child has been certified for criminal proceedings as an adult...and his case has been transferred out of the juvenile court, original jurisdiction of his person for that case rests with the court to which the case has been transferred and the child may petition for transfer back to the juvenile court only upon a showing of exceptional circumstances. Also see, e.g., Robert E v. Justice Court of Reno, 664 P.2d 957 (Nev. 1983).

²¹ NRS. 62.080

Certification of juveniles to the adult system now takes place at age 14, a drop from age 16.²² Before the legislative changes, juveniles at age 16 were automatically certified to the adult system for crimes of murder or attempted murder. The legislature expanded this presumptive certification to include any offenses by juveniles which involve the use of a deadly weapon and/or any crime of sexual assault.²³ Under the new law all juvenile proceedings are to be open to the public unless specifically closed by the judicial officer,²⁴ a decision left to the sole discretion of the presiding judge. If the proceedings are open to the public, names of juvenile offenders may be published and broadcast.

Chapter 62 of the Nevada Revised Statutes was further revised to allow courts to impose sanctions on parents of a child under the age of 17 including both fines and penalties. The Court can order the parent, guardian or custodian of the child to pay all or part of the cost of the proceedings, including, but not limited to, attorney's fees, any costs incurred by the court and any costs incurred in the investigation of an act committed by the child and the taking into custody of the child.²⁵

The public defender offices in Washoe and Clark counties have special teams of attorneys who handle juvenile matters exclusively. In the State Public Defender System and in the rural sample counties, juvenile representation is provided by attorneys who also handle adult cases. In interviews across the state, public defender attorneys spoke about how the new laws further complicates the provision of juvenile indigent defense services.

Indigent Defense Caseloads & Data Reporting

Under NRS 180.080, the State Public Defender is required to submit a report to the Legislative Counsel Bureau containing: the number of cases pending in each participating county at

²² NRS 62.020

²³ The definition of a deadly weapon has been expanded to include anything used with the intent to cause deadly harm to a person, i.e., a slingshot, boots, skateboard.

²⁴ NRS 62.193

²⁵ NRS 62.211(1)(g)

the close of the fiscal year; the number of cases closed the previous year; the total number of criminal defendants represented by case type (felony, gross misdemeanor, misdemeanor, probation revocation, etc.) and by age group (adult or juvenile); and the total number of working hours spent for each county. NRS 260.075 requires non-participating counties to submit similar reports to the Legislative Counsel Bureau as well.

Data reporting is perhaps the greatest hurdle TSG encountered in this study. The legislative commission was able to provide us with *public defender* caseload data, as reported to them, for the counties in the State Public Defender system, as well as for Clark, Washoe and Elko counties. The Legislative Counsel Bureau did not have annual caseload reports for the State's other jurisdictions, nor, with the exception of Washoe County, did it have caseload information regarding conflict cases. Additionally, the requirement of tracking "hours-per-case-type" was found to be frequently ignored by those counties that did report.

The Spangenberg Group attempted to gather caseload data directly from each county to further clarify indigent defense services in Nevada. Many of the smaller counties do not have a formal data collection system in place and could only estimate their caseload. This did not surprise us. Nationwide, indigent defense data collection systems are behind the technology curve. Outside of the Clark County Public Defender office, indigent defense data collection and reporting in the sample counties is behind even this low standard. The Clark County Public Defender currently uses a FoxPro-based database to collect and report caseload information and is currently developing a state of the art, web-based, fully integrated case-tracking system. Washoe County is in the process of extending its Case-in-Point family court system to its criminal defense unit. It now relies on a combination of manual reporting and simple spreadsheet tracking. The State Public Defender system has a strictly manual case-tracking system, while the counties relying on contract defenders often had to estimate caseload figures.

Table 2-3 indicates county-by-county indigent defense caseloads. Because of the lack of uniformity in data reporting and collection, these numbers should be viewed with some caution.

Table 2-3

Indigent Defense Criminal Caseloads in Nevada, 1999			
<u>County</u>	<u>Population</u>	<u>Caseload</u>	<u>Cases Per Capita</u>
Carson City	49,388	1,779	0.04
Churchill	23,125	312	0.01
Clark	1,145,244	37,704	0.03
Douglas	38,027	500	0.01
Elko	46,641	703	0.02
Esmeralda	1,140	28	0.04
Eureka	1,597	32	0.02
Humbolt	17,575	486	0.03
Lander	7,007	90	0.01
Lincoln	3,982	54	0.01
Lyon	29,833	687	0.02
Mineral	5,935	267	0.04
Nye	28,596	838	0.03
Pershing	4,870	199	0.04
Storey	3,075	61	0.02
Washoe	313,754	6,391	0.02
White Pine	_____	<u>161</u>	<u>0.02</u>
Statewide	1,730,443	50,292	0.03

Indigent Defense Expenditures

The responsibility for funding public defender services in Nevada is primarily a county obligation. The state only partially contributes money toward the cost of providing indigent defense services in those counties that opt to contract with the State Public Defender. Thus, no state money is expended in the majority of Nevada counties. Of the seven counties that the State Public Defender

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serves, the state pays approximately 44% of the cost of running the state system in their jurisdiction. The remaining 56% is the responsibility of each of the seven counties.²⁶ Additionally, each of these counties is responsible for the costs of indigent defense in cases where the State Public Defender has a conflict of interest and cannot handle the case. This means that the actual percentage of all indigent defense costs paid by the state in these counties is somewhat less than 44%, depending on the number of conflict cases. In fiscal year 1999, \$23,472,428 was expended on indigent defense services in Nevada, of which only \$541,885 was state money (or 2.31% of the total expenditure for indigent defense costs statewide).

Table 2-2 Indigent Defense Expenditures in Nevada, 1999					
County	Population	Total Expenditure	State Expenditure	% State	% County
Carson City	49,388	\$783,990	\$260,104	33.18%	66.82%
Churchill	23,125	\$150,000	\$0	0.00%	100.00%
Clark	1,145,244	\$15,678,378	\$0	0.00%	100.00%
Douglas	38,027	\$330,000	\$0	0.00%	100.00%
Elko	46,641	\$593,490	\$0	0.00%	100.00%
Esmeralda	1,140	\$33,275	\$0	0.00%	100.00%
Eureka	1,597	\$36,062	\$13,547	37.57%	62.43%
Humbolt	17,575	\$223,307	\$97,540	43.68%	56.32%
Lander	7,007	\$63,841	\$0	0.00%	100.00%
Lincoln	3,982	\$48,986	\$18,966	38.72%	61.28%
Lyon	29,833	\$275,625	\$0	0.00%	100.00%
Mineral	5,935	\$45,600	\$0	0.00%	100.00%
Nye	28,596	\$390,294	\$0	0.00%	100.00%
Pershing	4,870	\$154,452	\$56,898	36.84%	63.16%
Storey	3,075	\$25,490	\$8,128	31.89%	68.11%

²⁶ There is no statutory formula establishing a set funding scheme. The State Public Defender estimates costs for each participating county based on workload and office location considerations each year. Counties are billed for the services of the State Public Defender system based on these estimations.

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Washoe		\$4,432,857	\$0	0.00%	100.00%
White Pine	313,754	\$206,781	\$86,702	41.93%	58.07%
	<u>10,654</u>				
Statewide	1,730,443	\$23,472,428	\$541,885	2.31%	97.69%

Chapter III
**NEVADA INDIGENT DEFENSE SERVICES:
A NATIONAL PERSPECTIVE**

Indigent Defense Funding

The right to assignment of counsel is based on the Sixth Amendment, the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, or as an enforcement measure of the Fifth Amendment of the U.S. Constitution.²⁷ Recognizing indigent defense services as a constitutionally guaranteed responsibility, 22 of the 50 states (44%) place the total responsibility for funding indigent defense systems at the trial level with the state government.²⁸ In Alabama, a combination of state funding and court filing fees account for all indigent expenditures, bringing the percentage of states where counties pay no costs for indigent defense to 46% (23 of 50). Another nine states fund at least half of trial level indigent defense costs through state funding.²⁹ Nevada is thus in the minority of states which provide less than half of the indigent defense expenditure at the trial level (18 of 50, or 36%).

²⁷ This right has been interpreted by the U.S. Supreme Court to apply to following types of cases: Death Penalty: *Powell v. Alabama*, 287 U.S. 45, 53 S. Ct. 55, 77 L.Ed. 2d 158 (1932); Felony Trials: *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963); Direct Appeals: *Douglas v. California*, 372 U.S. 353 83 S. Ct. 814, 9 L.Ed. 2d 811 (1963); Custodial Interrogation: *Miranda v. Arizona*, 384 U.S. 436 86 S.Ct. 1428, 18 L.Ed. 527 (1967); Juvenile Proceedings Resulting in Confinement: *In Re Gault*, 387 U.S. 1 (1967); Line ups: *U.S. v. Wade*, 388 U.S. 218 263, 87 S.Ct. 1951, 18 L.Ed. 2d 387 (1970); Critical Stages of Preliminary Hearings: *Coleman v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970); Misdemeanor and Petty Offense Cases Involving Imprisonment: *Argersinger v. Hamlin*, 407 U.S. 25 92 S.Ct.2006, 32 L.Ed. 2d 530 (1972); Parole and Probation Revocation proceedings: *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). Even though there is no federal constitutional right to counsel in state post conviction proceedings, ABA standards requires appointment of counsel in collateral proceedings.

²⁸ Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin.

²⁹ Florida, Kansas, Kentucky, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, and Wyoming.

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Making comparisons among various indigent defense systems is an imperfect science, due to a wide number of variables.³⁰ The unique demographics of Nevada make this task even harder. The population of Nevada alone makes it analogous to small states with fewer counties (and, therefore, courts) to serve. Yet, the state's sheer geographic size also makes it more comparable to larger states that have specific problems associated with providing public defender services to an expansive jurisdiction. Further complicating the comparison, 84% of Nevada's population live in either Clark or Washoe counties. Thus, the indigent defense systems in the state have characteristics that can be compared to both small, densely-populated Eastern states and large, more sparsely populated, rural mid-Western and Western states. The scope of this report did not allow us to try to collect data from every state, however, Table 3-1 (below) details the extent of the responsibility for indigent defense services that 43 states have assumed, including the amount of state dollars per capita spent to ensure that indigent defendants are provided the constitutionally protected right to counsel.

Table 3-1 Cost-Per-Capita Comparison for States³¹								
State	Population (1999)	State Expenditure	County Expenditure	Total Expenditure (or Budget for 2001)	Fiscal Year	Indigent Defense Cost-Per- Capita	State %	State Expenditure-Per- Capita
Oregon	3,316,154	\$76,556,738	\$0	\$76,556,738	2000	\$23.09	100 %	\$23.09
Alaska ³²	619,500	\$9,500,000	\$0	\$9,500,000	2001	\$15.33	100 %	\$15.33

³⁰ Among the most important variables to consider in state-by-state indigent defense comparisons are the following: whether the system is funded entirely with state funds, entirely with county funds, or a mixture of both; whether the system is organized at the county, regional, or state level; whether or not the state has the death penalty; whether the system has a centralized organization responsible for statewide data collection, oversight, and/or policy making; the types and percentages of cases handled by various providers in the state; the rate of pay for court-appointed counsel in the state; the population of the state; the availability of complete, up-to-date and reliable data; geographic proximity; state poverty rates; and crime rates.

³¹ It is difficult to get accurate indigent defense figures on the total *state and county* expenditures in every state. Not all states have a central organization or repository collecting indigent defense data. Thus, obtaining expenditure data would entail calling local indigent defense programs or court clerks in every county in some states. Therefore, Table 3-1 only has state expenditures for 43 states. Data could not be obtained from: AZ, CA, MI, MS, NY, TX, and WA.

³² Alaska's state expenditure figure does not include monies budgeted for the Office of Public Advocacy. The Office of Public Advocacy handles criminal conflict of interest cases, domestic violence, termination of parental right and juvenile dependency cases. The state indigent defense cost-per-capita is therefore substantially higher than what is depicted in Table 1.

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Table 3-1 Cost-Per-Capita Comparison for States								
State	Population (1999)	State Expenditure	County Expenditure	Total Expenditure (or Budget for 2001)	Fiscal Year	Indigent Defense Cost-Per- Capita	State %	State Expenditure-Per- Capita
New Mexico	1,739,844	\$26,606,000	\$0	\$26,606,000	2001	\$15.29	100 %	\$15.29
West Virginia	1,806,928	\$27,498,806	\$0	\$27,498,806	2001	\$15.22	100 %	\$15.22
Massachusetts	6,175,169	\$90,848,761	\$0	\$90,848,761	2000	\$14.71	100 %	\$14.71
Wisconsin	5,250,446	\$66,000,000	\$0	\$66,000,000	2001	\$12.57	100 %	\$12.57
Vermont	593,740	\$6,906,675	\$0	\$6,906,675	2000	\$11.63	100 %	\$11.63
New Hampshire	1,201,134	\$13,019,891	\$0	\$13,019,891	2001	\$10.84	100 %	\$10.84
Minnesota	4,775,508	\$50,000,000	\$0	\$50,000,000	2000	\$10.47	100 %	\$10.47
Iowa	2,869,413	\$29,373,684	\$0	\$29,373,684	1998	\$10.24	100 %	\$10.24
Maryland	5,171,634	\$49,500,000	\$0	\$49,500,000	2001	\$9.57	100 %	\$9.57
Delaware	753,538	\$7,169,400	\$0	\$7,169,400	2000	\$9.51	100 %	\$9.51
Colorado	4,056,133	\$37,980,369	\$0	\$37,980,369	2001	\$9.36	100 %	\$9.36
Connecticut	3,282,031	\$29,985,492	\$0	\$29,985,492	2000	\$9.14	100 %	\$9.14
Virginia	6,872,912	\$61,900,000	\$0	\$61,900,000	2001	\$9.00	100 %	\$9.00
New Jersey	8,143,412	\$70,460,000	\$0	\$70,460,000	2000	\$8.65	100 %	\$8.65
Florida	15,111,244	\$141,797,462	\$35,000,000	\$176,797,462	2000	\$11.70	80.2 %	\$9.38
North Carolina	7,650,789	\$62,680,384	\$0	\$62,680,384	1999	\$8.19	100 %	\$8.19
Maine	1,253,040	\$9,563,326	\$0	\$9,563,326	2001	\$7.63	100 %	\$7.63
Montana	839,422	\$6,228,378	N/A	N/A	1999	N/A	N/A	\$7.42
Wyoming	470,242	\$3,250,000	N/A	N/A	2001	N/A	N/A	\$7.16

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Table 3-1 Cost-Per-Capita Comparison for States								
State	Population (1999)	State Expenditure	County Expenditure	Total Expenditure (or Budget for 2001)	Fiscal Year	Indigent Defense Cost-Per- Capita	State %	State Expenditure-Per- Capita
Alabama ³³	4,369,862	\$29,886,452	\$0	\$29,886,452	2000	\$6.84	100 %	\$6.84
Kentucky	3,960,825	\$25,845,330	\$2,987,000	\$28,832,330	2000	\$7.28	89.6 %	\$6.53
Hawaii	1,185,497	\$6,917,000	\$0	\$6,917,000	1999	\$5.83	100 %	\$5.83
Rhode Island	990,819	\$5,753,818	\$0	\$5,753,818	2000	\$5.81	100 %	\$5.81
Kansas	2,654,052	\$14,438,502	\$3,859,625	\$18,298,127	2000	\$6.89	78.9 %	\$5.44
Missouri	5,468,338	\$28,202,699	\$0	\$28,202,699	1999	\$5.16	89.6 %	\$5.16
Arkansas	2,551,373	\$12,333,561	\$0	\$12,333,561	2001	\$4.83	100%	\$4.83
Tennessee	5,483,535	\$30,597,541	\$4,788,783	\$35,386,324	2000	\$6.45	86.5%	\$5.58
Ohio	11,256,654	\$26,382,690	\$29,362,262	\$55,744,952	2000	\$4.95	47.3%	\$2.34
Oklahoma	3,358,044	\$15,917,390	\$6,026,526	\$21,943,916	2000	\$6.53	72.5%	\$4.74
North Dakota	633,666	\$1,704,742	\$0	\$1,704,742	2001	\$2.69	100 %	\$2.69
S. Carolina ³⁴	3,885,736	\$16,609,790	\$6,488,363	\$23,098,152	2000	\$5.94	71.9%	\$4.27
Indiana	5,942,901	\$11,815,529	N/A	N/A	2001	N/A	N/A	\$1.98
Louisiana	4,372,035	\$7,500,000	\$37,017,000	\$44,517,000	2000	\$10.18	16.9%	\$1.72
Illinois ³⁵	11,697,336	\$12,916,154	N/A	N/A	2000	N/A	N/A	\$1.10

³³ Last year, Alabama raised the rates it pays to court-appointed counsel for the first time in two decades, increasing the rates and lifting some fee caps in two increments. In 1999, the rates rose from \$20/hour out-of-court and \$40/hour in-court, to \$30 and \$50 respectively. A second raise, on October 1, 2000, raised the rates to \$40/hour out-of-court and \$60/hour in-court. At the same time a Alabama Supreme Court decision authorized court appointed counsel to charge overhead costs in addition to hourly fees (*May v. State*, Ala 672 So 2nd 1310). All of this led to a dramatic increase in indigent defense spending (from \$18 million in 1998 to a projected \$34 million in FY 2001). Funding for indigent defense in Alabama comes from the Fair Trial Tax Fund, which consists of fees which are added to the filing fee in civil cases, and costs in criminal cases. The Fair Trial Tax Fund is designed to reimburse counties for all indigent representation. If revenues from the Fair Trial Tax Fund are insufficient to cover the counties' costs, the state provides funds to cover the deficit. Unfortunately, the Fair Trial Tax Fund has never produced the amount of revenue it was originally projected to generate. In FY 1999, the state had to supplement the Fair Trial Tax by \$12,228,000, or more than 58% of the total cost for indigent defense services in the state (\$21,015,005). The supplemental funding was expected to increase by more than 11% at the end of FY 2000 (up to \$13,600,000) due to the new court-appointed fee structure. Indigent defense funding for Alabama is projected to be approximately \$34 million in FY 2001, raising their cost-per-capita to \$7.78.

³⁴ South Carolina's county expenditures are estimated.

³⁵ Illinois' state expenditure is for the State Appellate Defender only. Illinois also funds a capital litigation trust fund to cover the costs of prosecution and indigent defense in capital cases. Capital costs are not included above.

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Table 3-1 Cost-Per-Capita Comparison for States								
State	Population (1999)	State Expenditure	County Expenditure	Total Expenditure (or Budget for 2001)	Fiscal Year	Indigent Defense Cost-Per- Capita	State %	State Expenditure-Per- Capita
Idaho	1,099,096	\$1,022,066	N/A	N/A	2001	N/A	N/A	\$0.93
Georgia	7,788,240	\$4,900,000	\$40,581,423	\$45,481,423	1999	\$5.84	10.8%	\$0.63
Nebraska	1,607,199	\$650,000	N/A	N/A	2000	N/A	N/A	\$0.40
Nevada	1,809,253	\$541,885	\$22,930,543	\$23,472,428	1999	\$12.97	2.3%	\$0.30
Pennsylvania	12,048,271	\$0	N/A	N/A	2000	N/A	N/A	\$0.00
South Dakota	715,392	\$0	N/A	N/A	2000	N/A	N/A	\$0.00
Utah	1,859,582	\$0	N/A	N/A	2000	N/A	N/A	\$0.00

Nevada ranks 40th of the 43 sample states for state indigent defense expenditure per capita. In fact, no other state in the sample that provides any money for indigent defense services has a lower state cost-per-capita figure. In every instance, the percentage of funds provided by the state for indigent defense at the trial level in these states is more than the 2.31% provided in Nevada. Moreover, nine of the 18 states that provide less than half of all indigent defense expenditures (50%) have statewide appellate programs. As mentioned above, in Nevada there is no statewide appellate program; appellate services are generally provided by the trial attorney.

A closer look at the relationship between states and counties with regard to indigent defense funding can help put Nevada's system in context. Table 3-2 (below) indicates how other states that fund less than fifty percent of all indigent defense costs take responsibility for providing defender services to the poor:

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Table 3-2

State Responsibility for Indigent Defense Services in the 18 States that Do Not Provide at Least 50% of the Indigent Defense Expenditure	
Arizona	In 1999, the Arizona legislature passed SB 1013, which provides \$5 million over the next two years in state assistance to county attorneys, county public defenders, legal defenders, contract indigent defense counsel and Justice and the Superior Courts for the processing of criminal cases. The Arizona Criminal Justice Commission administers and allocates monies to each county from the state aid to county attorneys fund and the state aid to indigent defense fund. The Arizona Supreme Court administers the state aid to the courts fund and the criminal case processing and enforcement improvement fund. To supplement appropriations for the initiative, an additional seven percent are levied on every fine or penalty imposed and collected by the court in both criminal offenses and civil penalty cases. Furthermore, five percent of any monies collected by the Supreme Court, the Court of Appeals or the Superior Court for the payment of filing fees, including clerk fees, diversion fees, fines, penalties, surcharge, sanctions, probation fees and forfeitures, will also be remitted to the state treasurer who will allocate the monies toward the initiative.
California	The Office of State Public Defender handles direct appeals in capital cases. California Habeas Resource Center was created in 1997 to handle state and federal habeas corpus proceedings for capital defendants. The Center also evaluates and recruits private counsel to handle capital cases, and will assist those who receive appointments. The California Appellate Project, created by the State Bar of California in 1983 as a non-profit entity to recruit, evaluate, train and assist counsel appointed by the California Supreme Court in direct appeal and state post-conviction capital cases, serves as a resource center for private counsel handling capital cases.
Georgia	The Georgia Indigent Defense Council (GIDC) uses state money to reimburse those counties that comply with GIDC indigent defense standards. State money accounts for approximately 9.68% of all indigent defense costs. ³⁶ The state-funded Multi-County Public Defender monitors every death penalty case in Georgia, from trial through direct appeal, provides consultation to any public defender or private attorney working on a death penalty case, and acts as lead counsel in a number of death penalty cases.
Idaho	The State Appellate Defender handles all criminal appeals in the state, as well as state post-conviction proceedings in capital cases. The Capital Crimes Defense Fund allows counties to voluntarily contribute to and draw from a fund to help defray the costs of criminal defense in cases where the penalty of death is a legal possibility. Only those counties which contribute to the Capital Crimes Defense Fund are able to use the services of the State Appellate Public Defender.
Illinois	The state funds the Office of State Appellate Defender, which has five regional offices throughout the state and handles all direct appeals, except for approximately 65% of the direct appeals filed in Cook County (Chicago). These cases are handled by the county-funded Cook County Public Defender. The state also funds a capital litigation trust fund to assist counties in the prosecution and defense of capital cases. The fund absorbs the cost for investigators, experts, forensic witnesses and mitigation witnesses required by public defenders and assigned counsel handling capital cases across the state. Under the legislation creating the fund, private counsel appointed to represent an indigent client charged with a capital crime are paid at a rate not to exceed \$125/hour with no cap.

³⁶ The Spangenberg Group. "Comparative Analysis of Indigent Defense Expenditures and Caseloads in States with Mixed State & County Funding." Prepared on behalf of the American Bar Association, Bar Information Program. (1998)

Table 3-2

State Responsibility for Indigent Defense Services in the 18 States that Do Not Provide at Least 50% of the Indigent Defense Expenditure	
Indiana	The State Public Defender of Indiana is a state-wide, state-funded entity that represents indigent defendants in direct appeals and state post-conviction proceedings. The Indiana Public Defender Commission (IPDC) helps defray the cost of providing indigent defense services in capital cases among those counties which meet the Indiana Supreme Court's standards in Criminal Rule 24. In 1995, the IPDC received additional state funds and issued standards for non-capital cases. Counties that enforce commission standards are reimbursed by the IPDC for 40% of the cost of representing indigent defendants in non-capital felony cases and 50% of the cost of attorney's fees, as well as expert, investigative and support services, in capital cases. State funds also support the Indiana Public Defender Council, a state agency that produces training manuals, publications, a monthly newsletter and provides information in an electronic format to indigent defense practitioners. State money accounts for approximately 34.77% of all indigent defense costs. ³⁷
Louisiana	The Louisiana Indigent Defense Assistance Board (LIDAB) uses state funds to help defray the costs for indigent defense services shoulder by local parishes. Through its District Assistance Fund, available to Louisiana parishes which comply with LIDAB qualification and performance guidelines, the LIDAB provides monies toward trial-level representation, and through its Expert Witness/Testing Fund, LIDAB makes monies available for experts and investigators. The LIDAB also oversees selection and compensation of counsel in conflict and overload situations. Finally, the LIDAB contracts with a number of private attorneys to provide back-up and consultation to attorneys handling capital cases, and recently established a statewide appellate project. The statewide appellate project is now handling 95% of all direct appeal cases in the state's 41 districts. State money accounts for approximately 32.61% of all indigent defense costs. ³⁸
Michigan	The state provides funds for representation in direct appeal and state post-conviction proceedings. The State Appellate Defender Organization, which functions as a public defender office, handles approximately one-third of the cases; the balance are handled by assigned counsel, though the state-funded Michigan Assigned Counsel System.
Mississippi	Legislative action in Mississippi resulted in several major changes to that state's indigent defense system effective July 1, 2000, including creation of two new offices responsible for capital defense. The new Mississippi Office of Capital Defense Counsel will represent indigent defendants in capital trial and direct appeal proceedings. The director of the office will have discretion to appoint outside counsel to provide representation to defendants with whom the office has a conflict of interest and to handle cases the office cannot properly handle due to its caseload level. Funds for such counsel, and any experts or investigators they require, will come from the newly created Capital Defense Counsel Special Fund. The Mississippi Office of Capital Post-Conviction Counsel will represent indigent inmates under sentence of death in post-conviction proceedings in Mississippi. The office may continue to represent said individuals in federal habeas corpus proceedings if the office is appointed to do so by a federal court. The fees and expenses for counsel appointed in the event of co-defendants or case overload is to be paid from a newly-created Special Capital Post-Conviction Counsel Fund.
Montana	A state-funded appellate public defender was created in 1992 office handles appeal cases. Counties provide all funds for trial-level representation and receive reimbursement for 85-100% of their district court (primarily felony case) indigent defense expenditures from a fund administered by the state supreme court.
Nebraska	In 1995, the Nebraska legislature created and funded the Nebraska Commission on Public Advocacy, which provides legal services and resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony case divisions. For the most part, the Commission handles cases which are outside of Omaha and Lincoln where there is no public defender. The Commission is structured to help those small rural counties that would have difficulty financing the defense in a capital case.
Nevada	The State of Nevada contributes to the cost of indigent defense services in those counties that contract with the State Public Defender. Currently, 2.31% of all indigent defense costs are absorbed by the state.
New York	The state provides limited monies to counties through its Aid to Indigent Defense Fund.
Pennsylvania	The State of Pennsylvania assumes no responsibility for indigent defense services.
South Dakota	The State of South Dakota assumes no responsibility for indigent defense services.

³⁷ *Ibid.*

³⁸ *Ibid.*

Table 3-2 State Responsibility for Indigent Defense Services in the 18 States that Do Not Provide at Least 50% of the Indigent Defense Expenditure	
Texas	In 1995, the Texas legislature appropriated limited funds to partially compensate attorneys handling capital state post-conviction proceedings, and to pay for support services.
Utah	During the 1997 legislative session, Utah’s legislators created a Capital Indigent Defense Fund (the Fund) to assist counties facing the high costs of defending individuals charged with a capital crime. Participating counties may tap into the Fund to reimburse attorneys handling capital cases. The Fund did not become active until January 1, 1999, because it needed \$250,000 in start-up funds, which were provided by the counties which elected to participate in this financial assistance plan. Counties which choose to take part in the Capital Indigent Defense Fund are assessed an annual contribution dependent upon population and property valuation. Currently, 20 of Utah’s 29 counties have joined. If a defendant in any of these 20 counties is charged with a capital crime, the judge or a county official may notify the Capital Indigent Defense Fund Board (the Board), which oversees the Fund. The Board has pre-contracted with capital defense-qualified attorneys in Utah, and will contact one of them regarding the upcoming case.
Washington	In appellate cases, the state-funded Office of Public Defense contracts with private firms and attorneys in each of the state’s three appellate divisions to provide representation in non-capital appeals. In death penalty cases, a private attorney is appointed by the Supreme Court and compensated by the Office of Public Defense.

Leaving counties responsible for administering and funding the majority of their criminal justice systems, and in particular indigent defense services, causes us serious concern. Nationally, counties with less sources of revenue may have to dedicate a far greater portion of their limited budget to defender services than would counties in better economic standing. For instance, crime rates tend to increase when there is a high level of unemployment. Thus, at a time when tax-revenues may be down due to depressed real estate prices and people leaving the community, the criminal justice system is expected to increase its workload. A county’s revenue base may also be strained during economic downturns because of the need for increased social services, such as indigent medical costs. In addition, counties also must provide the citizenry with other important services, such as public education. With such competing services, and because indigent defense services is a constitutional mandate that must be provided, a county may find it necessary to provide a lower quality of indigent defense services than other counties in the state. Thus, the economic disparity among counties in a state can threaten the notion that defendants are afforded equal justice before the courts of the state.

The Effect of County Funding on the State Public Defender System

The particular juxtaposition of White Pine and Clark counties serves to highlight this point. White Pine County is a community that has relied heavily on mining as its economic base. Unfortunately, the closing of the mine in 1999 further jeopardized the local criminal justice system. As stated, crime rates tend to increase when there is a high level of unemployment. Thus, the criminal justice system is expected to increase its workload at a time when the county can least afford the additional fiscal strain. At the time of our visit, White Pine had virtually depleted its rainy day funds and caused some policy-makers to consider alternatives to the current method of delivering indigent defense services.³⁹

One would think that any assistance offered by the state would be enough of an incentive to have rural counties join the state public defender system. This is not the case. Some rural counties that have left the state system are able to pay for indigent defense services for less than the portion they would have had to pay under the state public defender. Part of this is due to overhead concerns, such as office space. More importantly, the state public defender system uses state cars and pays for mileage to travel between the often far outlying jurisdictions expected to be served by the county. As such, travel costs alone can make the difference between staying with the state system or contracting with local attorneys. In Nye County for instance, the primary contract does not make any allowance for travel costs on the part of the public defender, who must shuttle between Pahrump and Tonopah (a considerable distance that takes between 3-4 hours to drive).

Another factor affecting the choice to leave the state system is the salary levels of the state public defender. New public defenders are started at \$53,000, well above the national average.⁴⁰ The high salaries are, in part, an incentive to get young attorneys to move to the rural counties. On

³⁹ The Spangenberg Group believes that the adjudicative component of the criminal justice system is dependent on all three functions (defense, prosecution, and judicial) being funded appropriately. If any one of the three should be underfunded, it puts the rest of the system at risk. Toward this end, TSG feels it is appropriate to mention that the disparities noted above extend to the district attorney's office in White Pine County. The lack of resources, support staff, technology and space under which district attorney is functioning presents similar challenges to this component of White Pine's criminal justice system.

⁴⁰ The average beginning salary for a new attorney in other states are as follows: CO (\$39,576); CT (\$43,932); KS (\$31,187); KY (\$23,388); MA (\$31,500); MO (\$27,504); NM (\$34,620); OK (\$31,187); RI (\$43,296); TN (\$28,416); VT (\$31,000); and WY (\$37,908).

the other hand, attorneys who already live in the rural county may be willing to accept less to be the primary contract public defender -- especially because contracts in Nevada do not preclude attorneys from retaining private clients in addition to representing a county's poor population.

Aside from trying to attract young attorneys to practice in the rural counties, the relatively high beginning salary level in the state public defender system is also a result of the particular economic realities of Nevada. Though the state public defender salaries are high from a national perspective, they pale in comparison to the salaries of district attorneys and public defenders in Clark County.⁴¹ To be clear, TSG supports public defenders being paid well and applauds the fact that Clark County pays public defenders on par with district attorneys. Yet, because Clark County can support this high level of pay, salaries in the rest of the state have been driven upwards. The poorer counties simply cannot keep up.

Nye County is a good example. Nye County's decision to leave the state public defender system had less to do with travel costs (though there was a savings) and more to do with the fact that the state system could not retain lawyers. After state public defender attorneys had gained some experience, they inevitably left for the greener pastures of Clark County – higher salaries in either the public defender office, district attorney's office or in private practice. Attorneys leaving the state public defender system sometimes resigned with two to three weeks notice. And because the state public defender does not have the resources to fill vacancies quickly, the entire local court system experienced slow downs. To help prevent such debilitating slow downs, Nye County has opted to contract with a local attorney who is obligated to provide services, at least during the duration of the contract.⁴² The magnitude of this problem is most acute in White Pine County, where over the last ten years, no less than 18 attorneys have worked for the state public defender

⁴¹ The average salary for the eight Attorney I positions in the Clark County Public Defender Office is \$56,294. Though the starting salary is somewhat comparable to the State system, an attorney will increase their earning potential quicker in the Clark County system. For instance, 17 of the 43 attorneys classified as Attorney IV make \$121,124.64 per year. On top of this, Clark County offers longevity pay of 0.57% of one's salary for every year of service (effective for public defender attorneys after five years). Therefore, a level IV attorney with 15 years of service earns \$10,356 over and above her salary of \$121,124.64. By comparison the State Public Defender's salary is \$84,596.

⁴² At the time of this study, Nye County was reviewing its indigent defense contract and considering a new proposal to have the State Public Defender back in the county.

in that county. This is a phenomenal turnover rate, especially since that the office has had on staff just one to three attorneys at any given time during that period.

The more counties that withdraw from the state public defender system, the less resources there are to produce economies of scale. To retain lawyers, a larger portion of the state public defender budget must go to salaries and travel expenses. Consequently, the remaining pool of money for case-related expenses or normal office management decreases. In White Pine County, the head public defender uses his own personal computer because the technology that the state system can afford is extremely outdated. One secretary's computer was a hand-me-down from the justice courts. It is a constant struggle just to buy office supplies and employees often purchase necessities out of their own pockets. In our opinion, these state employees are subsidizing the state and county's obligation to provide adequate counsel. The few outdated computers were not linked to afford the attorneys any modern law practice conveniences, like a state public defender supported brief or motion bank.

The State Public Defender's challenges are not limited to inadequate technology. This problem is compounded by the fact that state public defenders must conduct their own investigations in most cases, as opposed to the Washoe and Clark County public defender investigative teams.

The disparity is again seen in the attempt to get experts or treatment for clients in rural counties. As stated above, requests for experts in Washoe and Clark are generally approved out of the public defender budget. In fact, not one interviewee in Washoe County could think of one case in which a request for an expert was denied. Similarly, we were told several stories where the Clark County Public Defender authorized travel expenses for attorneys to talk to witnesses or family members out-of-state. The Special Public Defender in Clark County reports that he did not use all of his expert witness budget in FY 2000 despite the fact that the office handles only serious cases (generally requiring more experts). Washoe and Clark counties are further aided in their requests for experts because national experts often desire to visit Las Vegas and Reno, and in fact, will sometimes reduce their rates for the opportunity to travel to the internationally recognized entertainment capitals. By contrast, defenders in White Pine County find it extremely difficult to

retain any experts willing to travel seven hours (three and a half hours each way from Las Vegas) to testify or examine a defendant or evidence. The added travel deters some experts and, more importantly, adds to the cost of representation in those regions of the state that can least afford to pay top dollar.

Both Washoe County and Clark County have drug courts that attempt to divert low-level drug offenders into treatment centers instead of clogging the court dockets and correction facilities with these cases. Additionally, public defender attorneys and support staff often perform social service functions to secure their clients bed placements in drug and alcohol programs when appropriate. In contrast, in an area like White Pine or Nye County, there are few social services available. The judges we spoke with in these counties believe that an extremely high number of criminal cases in their region are drug and alcohol related. Without treatment, there is often a high rate of recidivism among these types of offenders. Additionally, treatment is also made a condition of probation in many instances. But, with a lack of services, indigent defendants in rural areas of the state must travel considerable distances to meet the requirements of probation. Being indigent, many of these people find it a hardship to find transportation. It is reported to us that parole and probation officers as a rule revoke probation when a treatment is missed. Such practices bring a proportionally greater number of defendants back into the courts than would be expected in the urban centers, further depleting public defenders' budgets and increasing workload.

Indigent Defense Standards and Guidelines

In the past ten years, the adoption of standards and guidelines has been one of the most notable developments in the delivery of indigent defense services. Standards and guidelines pertaining to attorney eligibility, caseloads, conflict of interest, indigency screening, attorney performance and administration of indigent defense systems have been adopted by: state and local legislation; state supreme court rule; national, state and local public defender organizations, indigent defense commissions and other entities.

At the national level, the clear leader in this effort has been the American Bar Association (ABA). In 1993 the ABA published the third edition of its criminal justice standards relating to the provision of indigent defense services which for the first time addresses issues unique to the contract model of providing indigent defense services.⁴³ The ABA has also taken the lead in promulgating standards which address the processing of death penalty,⁴⁴ juvenile delinquency⁴⁵ and juvenile abuse and neglect cases.⁴⁶ Another national leader in promulgating well thought-out, thorough standards has been the National Legal Aid and Defender Association (NLADA), which has published guidelines for awarding contracts to contract defenders,⁴⁷ standards for the` administration of assigned counsel systems⁴⁸ and, most recently, a comprehensive set of performance standards that set out minimum requirements of practice for lawyers representing indigent defendants.⁴⁹

⁴³ Standards 5-3.1 through 5.3.2 of the *ABA Standards for Criminal Justice, Chapter 5: Providing Defense Services*, 3rd Edition (1992) specifically address the use of contracts for service, contracting parties and procedures, and the elements of the contract for services.

⁴⁴ *American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (February 1989).

⁴⁵ Robert B. Shepherd, Jr., Editor, *Juvenile Justice Standards Annotated: A Balanced Approach*, Institute of Judicial Administration/American Bar Association (1996).

⁴⁶ American Bar Association, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996).

⁴⁷ National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services* (1984).

⁴⁸ National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989).

⁴⁹ National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995).

National standards and guidelines serve a number of important purposes. While neither the ABA's nor the NLADA's standards are binding on state or local programs, they do serve as a measure to judge the extent to which an individual state provides quality indigent defense services. In some of the categories of standards we consider essential to quality defender services, Nevada has established some guidelines. Our intent is not to list every instance in which Nevada counties fall short of the national guidelines, but instead to highlight the fact that in every category of standard listed below we found one or more Nevada counties that do not comply with the national or local guidelines.

Conflict of Interest Standards

Attorneys' responsibilities to their clients in Nevada are set forth in Nevada Supreme Court Rules 157-162. Nevada's conflict of interest policy mirrors national standards established by the *ABA Standards for Criminal Justice, Chapter 4* and the *ABA Model Rules of Professional Conduct*. Supreme Court Rule 157 sets out the general rules on conflicts of interest:

1. A lawyer shall not represent a client if the representation of that client will be directly adverse to the another client, unless:
 - (a) The lawyer reasonably believe the representation will not adversely affect the relationship with the other client; and
 - (b) Each client consents, preferably in writing after consultation.
2. A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
 - (a) The lawyer reasonably believes the representation will not be adversely affected; and
 - (b) The client consents, preferably in writing, after consultation.

When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Though there are no national conflict of interest standards that require a *per se* withdrawal on the part of counsel, all of the counties we visited had very poor conflict checking procedures. The worst was the State Public Defender's office. Conflict cases are tracked through reliance on institutional memory and a card index which records the last 10 years of cases. A manual system is not a thorough way to check potential conflicts with all defendants, victims, witnesses and/or other family members. Though Clark County is developing a case-tracking system that will be equipped with extensive conflict checking capacities, both Clark and Washoe counties currently rely on unsophisticated spreadsheet or case-tracking programs that can only check for co-defendants and former clients.

The inefficiencies of conflict checking systems significantly adds to the counties' overall indigent defense costs. When a conflict is not discovered until some time after the attorney has been appointed, all work conducted prior to the withdrawal will be wasted, as new counsel will have to begin from scratch. Additionally, continuances and delays may affect court dockets and costs.

It is also important to mention that the manner in which conflict of interest cases are handled throughout the state raises additional concerns. In the rural counties, the quality and competency of conflict counsel were generally seen to be on par with the primary defender. In the larger urban areas this was not the case. Outside of the Office of the Special Public Defender in Clark County, which received general praise, many judges in both Washoe and Clark County thought there was a noticeable difference in the quality of defense between the primary defender and the conflict defender.

Contracting Standards

Both the American Bar Association and the National Legal Aid and Defenders Association have promulgated standards for contract indigent defense systems.⁵⁰ Both organizations oppose the

⁵⁰ For a further discussion on contracting issues see: The Spangenberg Group, *Contracting for Indigent Defense Services: a Special Report*, prepared on behalf of the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2000. Much of the discussion of national contracting standards first appeared in this publication. The American Bar Association standards discussed in this section relate to *Standards for Criminal Justice: Providing Defense Services*, Chapter 5, Washington, DC, 1990; the National Legal Aid and Defender Association standards can be found in *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Washington, DC, 1984.

awarding of public defense contracts on the basis of cost alone, or through competitive bidding without reference to quality of representation. In order to achieve constitutionally effective representation, the ABA and NLADA promote awarding of public defense contracts based on qualitative criteria such as attorney caseload maximums, staffing ratios, criminal law practice expertise, training, supervision and compensation guidelines.

The ABA standards and the NLADA guidelines contain the following common standards for contracting:

- Contracts should ensure quality of representation (ABA Standards 5-3.1; NLADA Guideline III-8). One recommended way of ensuring quality of representation is to refuse to award a contract primarily on the basis of cost (ABA Standard 5-3.1; NLADA Guideline IV-3).
- The professional independence of all indigent defense delivery systems, including contractor systems, should be maintained by creating an independent organization such as a board of trustees or policy board to administer and award contracts (ABA Standard 5-3.2(b); NLADA Guideline III-1).
- Contracts should not contain provisions that create conflicts of interests between the contractor and clients (ABA Standard 5-3.2(c); NLADA Guideline III-13). Among the potential conflicts addressed are forcing contractors to choose either paying for investigation, expert, transcription, and other services by not including them in the contract; failing to ensure that the contract mechanism for addressing conflict cases does not act as a financial disincentive for withdrawing; and inducing an attorney to waive a client's right for reasons not related to the client's best interests (ABA Standard 5-3.3(b)(vii)(x); NLADA Guideline III-13).
- Contracts should include allowable workloads for individual attorneys and measures to address excessive workload (ABA Standard 5-3.3(b)(v); NLADA Guidelines III-6 and III-12).
- Contracts should include provisions for supervision, evaluation, training, and professional development (ABA Standard 5-3.3(b)(xi); NLADA Guidelines III-6 and III-7.)

The flat-fee contract between the Washoe County Public Defender and the contract attorney ignores the majority of these standards. To begin with, there is not a sufficient independence between the Washoe County Public Defender and the contractor. Specifically, the contract states that the contractor shall accept all cases so designated, “without limitations.” Because there is a financial incentive to declare a conflict in as many cases as possible to the conflict attorneys, a perception may arise that defendants are conflicted to the contract attorney for financial rather than ethical reasons. TSG found no evidence that this is indeed happening in Washoe County. The contract language also fails to set workloads for individual attorneys working under contract and to establish measures to address instances of excessive workload.

The more egregious concern is the requirement that contracts should not contain provisions that create conflicts of interests between the contractor and clients, especially conflicts in which the contractor chooses between either paying for investigation, expert, transcription, and other services for the client or looking after his own best interests. The structure of the Washoe County contract, in which a conflict attorney earns a flat fee amount averaging out to approximately \$500 per case or \$2,000 per month, by its very nature contains a disincentive to spend sufficient time on the case or to bring a case to trial. That \$500 cost per case figure is inclusive of all types of cases (including serious felonies), attorney overhead and support staff. Additionally, that fee must cover the costs of direct appeals and providing legal services for probation revocation proceedings which arise after termination of the agreement if probation was granted to a client of a contract attorney while performing services pursuant to the agreement.

The difference in drafting a contract with guarantees against excessive caseload measures and eliminating financial incentives to plea cases early is demonstrated in the Nye County conflict contract. For any quarter in which the total amount of time expended by the conflict attorney in fulfilling his obligations under the provisions of the agreement exceeds 160 hours, the attorney is additionally compensated at a rate of \$75 per hour. A second provision guarantees the attorney (who operates mainly in Pahrump) additional compensation for any cases above and beyond the expected

number within a quarter that occur in Tonopah or Gabbs. For these cases, the attorney is paid at an additional travel rate of \$90 per trip.

Unfortunately, the primary contract for indigent defense services in Nye County does not offer such incentives. All travel costs, including those related to appeals before the Nevada Supreme Court in Carson City are included in the flat-fee contract. Likewise, the contract contains no provisions for training and professional development as recommended by the national standards.

Attorney Eligibility Standards

In 1989, the American Bar Association formally adopted what is widely considered to be the national standard for the performance of defense attorneys in capital cases. *American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* details the ABA's policy setting out the minimal threshold of resources and performance measures needed to guarantee effective assistance of counsel. Guideline 5.1 addresses the experience and background required by defense counsel to make him or her eligible to handle death-related cases. Under the ABA's guideline, the lead counsel should have at least five years litigation experience in the field of criminal defense and have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases (tried to completion), as well as prior experience as lead counsel or co-counsel in at least one case in which the death penalty was sought. Additionally, the attorney should have been lead counsel in at least three cases in which the charge was murder or aggravated murder. Alternatively, of the nine jury trials, at least one must have been a murder or aggravated murder trial and an additional five must have been felony jury trials. Within the past year prior to appointment, the lead attorney should also have attended and successfully completed a training/education program on defense advocacy in cases in which the penalty is death.

The ABA death penalty standards also require a co-counsel in all death penalty cases who has also received the required death penalty training within the prior year. Co-counsel should have prior experience as lead counsel or co-counsel in no fewer than three jury trials of serious and complex cases, at least two of which the defendant was charged with murder or aggravated murder or one of

which was a murder trial and another was a serious felony jury trial.

Nevada Supreme Court Rule 250 governs the appointment of defense counsel in cases in which the death penalty is sought or may be sought or has been imposed. Originally created with more stringent requirements, Rule 250 was amended in January 2000. Though Nevada now requires two attorneys be appointed for trial-level death penalty representation, the new eligibility qualification falls below what was formerly required by the Nevada Supreme Court, a standard that was already less stringent than the ABA guideline. Under its earlier incarnation, Rule 250 required a defense attorney to have acted as counsel in no less than seven felony trials, two of which involved violent crimes, including one murder case. The attorney also had to have acted as co-counsel in a prior death case and have practiced law for a minimum of three years.

The amended rule reduces an attorney's required felony trial experience from seven trials to five trials, one of which must have been a murder trial. The requirements that counsel have practiced law for at least three years and have acted as co-counsel in a prior death eligible case remain as originally conceived. No experience or minimum qualifications are required to serve as co-counsel on a death penalty case, and no requirements exist for death penalty attorneys to have attended death specific continuing legal education courses (CLE) within the recent past. The amended Rule 250 also allows district courts to hold a hearing to assess an attorney's competence, and appoint the attorney, even if he or she does not satisfy the minimum requirements.

Though the Court should be commended for establishing minimal experience requirements for attorneys seeking appointments to death eligible cases, no corresponding standard or rule exists for the appointment of counsel in non-capital cases. In its *Standards for the Administration of Assigned Counsel Systems*, the National Legal Aid and Defender Association recommends that jurisdictions should adopt criteria reflecting the experience and training required for assignment to indigent defense cases of different levels of seriousness.⁵¹ The commentary to the rule notes that bar membership in good standing and proof of adequate malpractice insurance, while necessary

⁵¹ NLADA, *Standards for the Administration of Assigned Counsel Systems*, Guideline 4.1.1, 1989.

qualifications, should not alone qualify an attorney for any type of case.

Several states have established comprehensive qualification requirements for all case-types, most notably Indiana and Ohio, which may serve as good models for Nevada. In felony or aggravated felony cases (1st, 2nd, 3rd degree), the Ohio Public Defender Commission requires that the attorney have served as trial counsel in two cases (including one jury trial) within this category, or; served as trial counsel in four jury trials, at least one of which involved a case in this category, or; trial counsel in any two criminal trials and co-counsel in at least one criminal jury trial or trial counsel or co-counsel in two jury trials. Similarly, the Indiana Public Defender Commission's standard for appointment in Class C or D felonies requires attorneys be experienced and active trial practitioners with at least one year of criminal litigation experience, or; have prior experience as lead or co-counsel in at least three criminal jury trials which were tried to completion. To highlight the importance of trial experience, Indiana standards state that to be eligible to serve on lead counsel in other criminal cases (less serious felonies and misdemeanors), an attorney shall have prior experience as lead or co-counsel in at least one case of the same class or higher which was tried to completion.

Again, Nevada has no such requirements for attorneys handling non-capital cases. Consequently, attorneys with varying, and sometimes minimal, experience handling cases that would not meet the Ohio or Indiana thresholds if adopted in state. As one example, the Clark County Public Defender explained that he assigns some serious cases to less experienced attorneys as a way to train them and give them trial exposure. The need to do so was justified in part by the low trial rate (to be discussed later) in Clark County, one consequence of which is not offering young attorneys trial exposure at less serious felony and misdemeanor cases. Rule 250 works to assure that competent counsel will be appointed in death eligible cases, but defendants facing serious felony charges also merit qualified attorneys that have experience in jury trials and have expertise in, for instance, DNA-related matters. In our experience, attorney eligibility standards protect the rights of the accused to receive competent and experienced attorneys, regardless of the level of charges he or she is facing.

Training Standards

Throughout our site visits, we were particularly interested to learn about the amount of training and continuing education that is offered to defense attorneys throughout the state. ABA Standard 5-5.1 states that a jurisdiction's legal representation plan for a jurisdiction should provide for the effective training, professional development and continuing education of all counsel and staff involved in providing defense services. The standard goes on to recommend that continuing education programs be available, and public funds should be provided to enable all counsel and staff to attend such programs. We were surprised at the absence of a coordinated statewide effort to provide criminal defense training on a regular basis. At the time of our visit, the Clark County Public Defender Office and the Washoe County Public Defender Office had only just recently hired a full-time trainer to present seminars to staff on current issues related to indigent defense. Though the other defender organizations described mentoring programs and supervision of young attorneys, there is no formal training and no one could point to a regular schedule of train and education.

We should note that in each of the offices we visited, support staff expressed a strong desire for regular training on computer software programs and/or legal research. The Spangenberg Group firmly believes that support staff personnel are a necessary part of any strong defender office and should be included in professional development plans.

Indigent Defense Caseload Standards

The American Bar Association has taken a leadership role in developing a set of standards and goals related to indigent defense caseload standards. These are found in the ABA's *Standards Relating to the Administration of Criminal Justice*. Standard 4-1.3(e) of Chapter 4 deals with the ethical considerations of the defense lawyer. It states:

Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional

obligations...⁵²

While these statements, guidelines, and standards are extremely important, they do not provide specific guidance as to what constitutes an excessive workload or what lawyers should do when they have reached the workload limit. More specific detail can be found by examining the work of the National Advisory Commission on Criminal Justice Standards and Goals.

The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC), which published its standards in 1973. In that report, Standard 13.12 on Courts states:

The caseload of a public defender attorney 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; and appeals per attorney per year: not more than 25.⁵³

Commentary to Standard 5-5.3 of the ABA Standards references the public defender caseload standards developed by NAC, noting they "have proven resilient over time, and provide a rough measure of caseloads."⁵⁴

The State of Nevada has not adopted any binding workload standards for indigent defense providers. The lack of a comprehensive standard and statewide oversight of indigent defense workload raises serious concerns regarding the quality of defender services provided to indigent

⁵²American Bar Association Standards for Criminal Justice Prosecution Function and Defense Function, Standard 4-1.3 Delays; Punctuality; Workload, p. 126 (1993) .

⁵³National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts (Washington, D.C., 1973), p. 186. Some public defender systems have been able to reach these standards: AZ [*State of Arizona v. Joe U. Smith*, 681 P. 2nd 1374 (1984)]; MA [Committee for Public Counsel Services. "Manual for Counsel Assigned through the Committee for Public Counsel Services: Policies and Procedures." (June 1995)]; and VT [Office of the Defender General. "Policy of the Defender General Concerning Excessive Workloads for Public Defenders." (October 1987)] just to name a few.

⁵⁴American Bar Association Standards for Criminal Justice Providing Defense Services, Third Edition, p. 72.

citizens in many jurisdictions throughout the state. Most noticeably, the Washoe Public Defender office shows signs of stress associated with work overload. The caseload statistics in Table 2-3 do not include the family court responsibilities of the Washoe Public Defender. When those cases are factored in and attorneys who do not carry a full caseload are factored out, the average public defender in Reno handles approximately 400 cases per year. This is the NAC maximum for misdemeanors alone, despite the fact that the Washoe case mix includes misdemeanors, felonies and juvenile cases.

Trial Rates

One effect of excessive caseloads can be a drastic reduction of trials within a jurisdiction. Obviously, the court could not function if every case were to go to trial, yet low trial rates have been shown to have serious deleterious effects on the professionalization of defender offices. For one, low trial rates limit the professional growth of defenders, who over time lose the opportunity to develop the skills and experience needed to take a case to trial. The failure to proceed to trial produces a spiral affect whereby attorneys who have not taken a case to trial for some time may lose confidence in their ability to do so. As such, the more time that passes since one's last trial, the more likely that an attorney will push to have a case settled before trial. Subsequently, the quality of representation a state/county affords indigent defendants may be ineffective.

How does the indigent defense systems in Nevada measure up in regard to trial rates nationally? Unfortunately the lack of accurate indigent defense data throughout the state makes this task difficult. Because Clark County Public Defender Office currently has the most accurate data reporting system in the state of all the indigent defense providers, TSG conducted an in depth study of trial rates in the county.

Approximately 4-7% of all indigent defense cases go to trial in large urban jurisdictions.⁵⁵ In Clark County, that number has steadily been declining over the past several years and is now

⁵⁵ A U.S. Department of Justice, Bureau of Justice Statistics special report, *Defense Counsel in Criminal Cases (November 2000)*, states that the average trial rates in the nation's 75 largest counties in 1996 was 5.6%.

below a single percentage point (less than 0.6%).

Table 3-3 (See pages 44-46) analyzes the Clark County Public Defender data for fiscal years 1996 through 1999 as reported to the Legislative Council. The trial rate reported above (less than 0.6%) is the *adult* trial rate, or the sum of the number of adult felony, gross misdemeanor and misdemeanor trials divided by sum of the number of dispositions for the same categories of charges. The total number of trials were calculated to be the number of dispositions reported under the following categories: “Convicted as Charged,” “Convicted of a Lesser Offense,” and “Acquitted.” The total number of adult trials for FY1999 was 156. Total dispositions were 28,898. Thus, in FY 1999, the adult trial rate was 0.54% (156 divided by 28,898). From FY1996 to FY 1999, the adult trial rate has remained consistently below the 0.6% mark.⁵⁶

⁵⁶ It is important to note that the actual number of trials may be slightly higher. Trials resulting in mistrials, hung juries, split verdicts, dismissal after the start of trial, pleas after the start of trials, etc., are recorded on the Legislative Council statistics as “Other” dispositions. This category also includes: “withdrawals for conflict of interest,” “financial rejects,” and “retained private counsel.” Without a way to break down this “other” category, it was assumed that the number of trials under the “other” category would not be statistically significant. Our analysis of the Clark County database (to be discussed shortly) shows are assumption to be correct.

Table 3-3

Analysis of Clark County Public Defender Statistics, FY 1996-1999

Based on Legislative Council Statistics

	1996	1997	1998	1999	%Increase (1996-'99)
Felony Assignments	9,600	10,413	11,177	11,381	18.55%
Felony Dispositions	9,438	9,816	10,095	10,662	12.97%
Pled Guilty (As Charged)	347	298	374	358	3.17%
Pled Guilty to Lesser Offense	5,595	5,910	6,129	6,469	15.62%
Dismissed (Pre-Trial)	1,707	1,457	1,643	1,413	-17.22%
Convicted (As Charged)	28	44	25	22	-21.43%
Convicted (Lesser Offense)	7	5	9	7	0.00%
Acquitted	10	6	5	4	-60.00%
Other	1,744	2,096	1,910	2,389	36.98%
Gross Misdemeanor Assignments	923	1,067	1,027	788	-14.63%
Gross Misdemeanor Dispositions	911	988	889	808	-11.31%
Pled Guilty (As Charged)	39	47	41	44	12.82%
Pled Guilty to Lesser Offense	624	691	603	579	-7.21%
Dismissed (Pre-Trial)	184	146	186	114	-38.04%
Convicted (As Charged)	1	-	1	1	0.00%
Convicted (Lesser Offense)	1	-	1	-	-100.00%
Acquitted	1	1	1	-	-100.00%
Other	61	103	56	70	14.75%
Misdemeanor Assignments	15,723	21,668	1,850	19,067	21.27%

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Misdemeanor Dispositions				17,428	16.29%
	14,987	20,888	17,673		
Pled Guilty (As Charged)	13,333			14,777	10.83%
		19,116	15,408		
Pled Guilty to Lesser Offense	376				7.71%
		299	204	405	
Dismissed (Pre-Trial)	516			1,261	144.38%
		725	1,036		
Convicted (As Charged)	45				91.11%
		64	63	86	
Convicted (Lesser Offense)	3		-	-	-100.00%
		1			
Acquitted	32				12.50%
		24	29	36	
Other	682				26.54%
		659	933	863	

Table 3-3

Analysis of Clark County Public Defender Statistics, FY 1996-1999

Based on Legislative Council Statistics

	1996	1997	1998	1999	%Increase (1996-'99)
Juvenile Assignments	3,991	4,188	4,087	3,790	-5.04%
Juvenile Dispositions	3,945	4,222	4,003	3,773	-4.36%
Pled Guilty (As Charged)	1,220	1,324	1,320	1,218	-0.16%
Pled Guilty to Lesser Offense	400	409	424	420	5.00%
Dismissed (Pre-Trial)	1,622	1,705	1,629	1,594	-1.73%
Convicted (As Charged)	117	90	76	51	-56.41%
Convicted (Lesser Offense)	18	5	7	5	-72.22%
Acquitted	46	26	29	32	-30.43%
Other	522	663	518	453	-13.22%
Supreme Court Appeals	81	62	158	121	49.38%
Relief Granted	5	6	5	3	-40.00%
Relief Denied	66	52	127	107	62.12%
Other Disposition	10	4	26	11	10.00%
District Court Appeals	22	16	7	-	-100.00%
Relief Granted	2	2	1	-	-100.00%
Relief Denied	17	11	3	11	-35.29%
Other Disposition	3	3	3	2	-33.33%
Post-Conviction/Habeas Appeals	525	543	515	586	11.62%
Relief Granted	247	234	223	250	1.21%
Relief Denied	131	132	114	148	12.98%

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Other Disposition	147				27.89%
		177	178	188	
Parole Revocation					61.52%
Remained in effect	356	529	631	575	98.68%
Revoked	76	157	170	151	36.11%
Other	180	295	356	245	79.00%
	100	77	105	179	
Probation Revocation				2,064	74.77%
Remained in effect	1,181	1,686	1,795		83.12%
Revoked	237	306	223	434	63.34%
Other	401	575	675	655	79.56%
	543	805	897	975	
Total Assignments				38,372	18.42%
	32,402	40,172	21,247		
Total Dispositions				36,017	14.54%
	31,446	38,750	35,766		

Table 3-3

Analysis of Clark County Public Defender Statistics, FY 1996-1999

Based on Legislative Council Statistics

	1996	1997	1998	1999	%Increase (1996-'99)
Felony Trial Rate	0.48%	0.56%	0.39%	0.31%	
Trials	45				-26.67%
Dispositions	9,438	55	39	33	12.97%
		9,816	10,095		
Gross Misdemeanor Trial Rate	0.33%	0.10%	0.34%	0.12%	
Trials	3				-66.67%
Dispositions	911	1	3	1	-11.31%
		988	889	808	
Misdemeanor Trial Rate	0.53%	0.43%	0.52%	0.70%	
Trials	80	89	92	122	52.50%
Dispositions	14,987	20,888	17,673	17,428	16.29%
Adult Trial Rate	0.51%	0.46%	0.47%	0.54%	
Trials	128	145	134	156	21.88%
Dispositions	25,336	31,692	28,657	28,898	14.06%
Juvenile Trial Rate	4.59%	2.87%	2.80%	2.33%	
Trials	181	121	112	88	-51.38%
Dispositions	3,945	4,222	4,003	3,773	-4.36%
Combined Trial Rate	1.06%	0.74%	0.75%	0.75%	
Trials	309	266	246	244	-21.04%
Dispositions	29,281	35,914	32,660	32,671	11.58%
Combined Trial Rate (Excluding Msdr)	1.60%	1.18%	1.03%	0.80%	
Trials	229	177	154	122	-46.72%
Dispositions	14,294	15,026	14,987	15,243	6.64%

How should this data be interpreted? In many jurisdictions across the country, police and

prosecutors have specifically targeted quality of life offenses with the belief that a zero tolerance for low-level infractions would decrease serious crime overtime. Such offenses are generally resolved very early on in the adjudicative process. As such, a high number of misdemeanor assignments could dramatically reduce an indigent defense provider's adult trial rate. But this is not the case in Clark County. Instead, the number of misdemeanor trials each year has kept pace with the increase in misdemeanor assignments and dispositions. The number of adult misdemeanor trials has increased from 80 to 122 between FY1996 and FY 1999 (an increase of 52.50%). This has resulted in an increase in the misdemeanor trial rate, from 0.53% to 0.70%.

Thus, a reduction in the number of adult felony and gross misdemeanor trials (generally more complicated and therefore not as likely to be settled without a trial as would misdemeanors) has kept the overall adult trial rate under the 0.6% level from FY 1996 to FY1999. The adult felony trial rate has *decreased* over this same period, from 0.48% to 0.31%. During a period when felony assignments increased 18.55% (from 9,600 in FY1996 to 11,381 in FY1999), felony trials decreased from 45 in FY1996 to just 33 in FY1999 (a decrease of 26.67%). Similarly, the gross misdemeanor trial rate has fallen from 0.33% (3 trials out of 911 dispositions) to just 0.12% in FY 1999 (1 trial in 808 dispositions).

Though the Clark County juvenile trial rate is the highest of any offender category (2.33% in FY1999), it too has experienced a significant decrease over time. In FY 1996, 181 trials out of 3,945 dispositions accounted for a juvenile trial rate of 4.59%. Though juvenile assignments have decreased slightly since FY1996 (from 3,991 to 3,790 in FY1999, or -5.04%), trials for juvenile cases have been reduced by 51.38% (from 181 to 88).

Thus, the Clark County Public Defender Office's combined trial rate (felony, gross misdemeanor, misdemeanor, and juvenile) has decreased from a high of 1.06% in FY1996 to 0.75% in FY1999. More significantly, the combined trial rate, excluding misdemeanor cases, has decreased significantly. A 9.96% increase in the total number of combined felony, gross misdemeanor, and juvenile assignments (from 14,514 in FY1996 to 15,959 in FY1999) was

countered with a 46.72% decrease in the combined number of trials for the same categories (from 229 to 122). Over this period of time, the combined trial rate, excluding misdemeanors, decreased from 1.60% to 0.80%.

Because of the serious implications low trial rates may have on the development of young attorneys and the quality of representation afforded to defendants, TSG attempted to confirm these statistics with the Clark County Public Defender's own database. The additional statistical analysis serve to confirm that the trend of less and less cases going to trial has been occurring for some time. Table 3-4 (see pages 51-53) shows the data recorded on the Clark County Public Defender Office's database from 1993 to 1999. Several caveats must be stated regarding the analysis of the statistics from the Clark County Public Defender database. First, the case statistics from the data from the Clark County Public Defender Office represents *calendar* year information. Because the data reported to the Legislative Council is *fiscal* year information, there will naturally be inconsistencies when comparing the two sets of data. More importantly, the Clark County Public Defender database does not track misdemeanor cases for the municipal courts. Because of this, the assignment and disposition numbers reported to the Legislative Council are higher, substantially higher for misdemeanor cases, than on the Clark County Public Defender database. Ultimately, in the desire for objectivity, TSG did not try to make any adjustments for the discrepancy in misdemeanor assignments. Rather, a straight statistical analysis was done based on the numbers as reported on the database.

Table 3-4

Clark County Public Defender Statistics, 1993-1999

(Based on Office Database)

	1993	1994	1995	1996	1997	1998	1999	%Increase (1993-'00)
Felony Assignments	2,241	3,916	4,967	8,776	6,785	10,443	10,538	370.24%
Felony Dispositions	1,196	2,714	3,468	5,394	6,657	9,360	9,818	720.90%
<i>No Trial</i> After	0	1	1	11	19	10	12	
Before	21	23	129	1,092	1,094	1,365	1,193	
Dismissed	4	8	31	204	224	268	208	
Other	60	741	828	969	1,041	1,119	1,514	
Pled to Charge	164	195	217	321	296	374	357	
Pled to Reduce	920	1,692	2,209	2,730	3,939	6,126	6,467	
<i>Trial</i> Dismissed After Start	0	0	0	1	0	0	0	
Guilty	13	32	27	41	22	59	38	
Guilty/Hung Jury	0	1	1	0	0	0	0	
Guilty/Dismissed	0	0	1	0	0	0	0	
Guilty/Bench Trial	0	1	0	0	0	2	0	
Guilty/Reduced Chrg	1	5	5	6	1	8	6	
Hung Jury	0	1	1	1	2	1	1	
Mistrial	2	3	2	0	1	3	0	
Not Guilty	2	3	4	8	6	5	4	
Not Guilty/Hung trial	1	0	0	0	0	0	0	
Not Guilty/Insanity	0	1	0	0	0	0	1	
Plea After Trial Started	1	2	1	1	0	0	0	
Plea to Reduced Chrg	2	1	3	2	6	5	6	
Split Verdict	5	4	8	7	6	15	11	
Gross Msdr Assignments	76	167	248	801	420	1,026	774	918.42%
Gross Msdr Dispositions	12	49	89	209	415	888	794	6516.67%
<i>No Trial</i> After	0	0	0	3	1	3	0	
Before	1	5	11	102	117	168	101	
Dismissed (Pre-Trial)	0	2	2	9	15	15	13	
Other	1			44	41	55		

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P/C	1	25	28	18	33	41	55	
R/C	9	8	19	31	204	603	44	
		8	29				579	
<i>Trial</i> Dismissed After Start	0	0	0	0	0	0	0	
Guilty	0	1	0	1	1	1	2	
Guilty/Hung Jury	0	0	0	0	0	0	0	
Guilty/Dismissed	0	0	0	0	0	0	0	
Guilty/Bench Trial	0	0	0	0	0	0	0	
Guilty/Reduced Charge	0	0	0	0	0	1	0	
Hung Jury	0	0	0	0	0	0	0	
Mistrial	0	0	0	0	1	0	0	
Not Guilty	0	0	0	1	1	1	0	
Not Guilty/Hung trial	0	0	0	0	0	0	0	
Not Guilty/Insanity	0	0	0	0	0	0	0	
Plea After the Start	0	0	0	0	0	0	0	
Plea to Reduced Chrg	0	0	0	0	1	0	0	
Split Verdict	0	0	0	0	0	0	0	
Misdemeanor Assignments	1,149			1,484	1,523	2,915	3,602	213.49%
		1,249	1,318					
Misdemeanor Dispositions	978	981	1102	1318	1291	1794	2696	175.66%
<i>No Trial</i> After	0	0	0	0	0	0	0	
Before	0	0	0	0	0	0	0	
Dismissed (Pre-Trial)	220	184	206	262	281	556	830	
Other	60	49	65	77	79	160	237	
No Contest	7	1	12	40	25	56	112	
Pled to Charge	524	540	581	633	605	776	1048	
Pled to Reduce Charge	159	198	225	287	279	188	377	
<i>Trial</i> Dismissed After Start	0	0	0	0	0	0	0	
Guilty	5	6	10	11	19	46	71	
Guilty/Hung Jury	0	0	0	0	0	0	0	
Guilty/Dismissed	0	0	0	0	0	0	0	
Guilty/Bench Trial	0	0	0	0	0	0	0	
Guilty/Reduced Charge	0	0	0	2	0	0	0	
Hung Jury	0	0	0	0	0	0	0	
Mistrial	0	0	0	0	0	0	0	
Not Guilty	3	3	3	6	3	12	21	
Not Guilty/Hung trial	0	0	0	0	0	0	0	
Not Guilty/Insanity	0	0	0	0	0	0	0	
Plea After the Start	0	0	0	0	0	0	0	
Plea to Reduced Chrg	0	0	0	0	0	0	0	
Split Verdict	0	0	0	0	0	0	0	
Juvenile Assignments	568			3,936	4,099	4,108	3,952	595.77%

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		2,457	4,094					
Juvenile Dispositions	453	2123	4079	3873	4119	4014	3910	763.13%
Guilty	24	79	156	119	92	77	54	
Guilty (Lesser Offense)	0	2	10	10	5	7	5	
Acquitted	9	45	69	46	27	29	33	
Other	420	1997	3844	3,698	3,995	3,901	3,818	
Parole/Probation Rev. Assgn.	840	845	940	2,014	1,290	2,271	2,497	197.26%
Parole/Probation Rev. Dispo	822	811	847	1239	1972	2205	2441	196.96%
Denied	201	203	214	231	335	317	436	
Granted	279	337	387	586	773	865	887	
Other	342	271	246	422	864	1,023	1,118	
Total Assignments	4,960	8,710	11,651	17,083	14,204	20,856	21,460	332.66%
Total Dispositions	3,518	6,740	9,648	12,114	14,515	18,412	19,779	462.22%

Felony Trial Rate	2.26%	1.99%	1.53%	1.24%	0.66%	1.05%	0.68%	
Trials	27	54	53	67	44	98	67	148.15%
Dispositions	1,196			5,394	6,657	9,360	9,818	720.90%
		2,714	3,468					
Gross Msdr Trial Rate	0.00%	2.04%	0.00%	0.96%	0.96%	0.34%	0.25%	
Trials	0	1	0	2	4	3	2	0.00%
Dispositions	12			209	415	888	794	6516.67%
		49	89					
Misdemeanor Trial Rate	0.82%	0.92%	1.18%	1.44%	1.70%	3.23%	3.41%	
Trials	8	9		19	22	58		1050.00%
Dispositions	978		13	1,318	1,291	1,794	92	175.66%
		981	1,102				2,696	
Adult Trial Rate	1.60%	1.71%	1.42%	1.27%	0.84%	1.32%	1.21%	
Trials	35			88	70	159	161	360.00%
Dispositions	2,186	64	66	6,921	8,363	12,042	13,308	508.78%
		3,744	4,659					
Trial Rate (Excluding Msdr)	2.24%	1.99%	1.49%	1.23%	0.68%	0.99%	0.65%	
Trials	27			69	48	101		155.56%
Dispositions	1,208	55	53	5,603	7,072	10,248	69	778.48%
		2,763	3,557				10,612	

Appellate Rate	2.61%	1.66%	1.35%	1.17%	0.73%	1.25%	0.90%	
Appeals	57	62	63	81	61	151	120	110.53%

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Trial-level Dispositions	2,186	3,744	4,659	6,921	8,363	12,042	13,308	508.78%
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During this second statistical analysis, TSG was able to break out the disposition codes for all cases reported on the database. As such, no assumptions had to be made regarding how to account for cases reported as “Other” to the Legislative Council. For this reason, the number of trials for adult felony cases is slightly higher than reported to the legislature.

In 1994, the adult trial rate for felony, gross misdemeanor, and misdemeanor cases handled by the Clark County Public Defender peaked at 1.71% (35 trials out of 2,186 dispositions). Since then, the trial rate has declined to 1.21% (161 trials out of 13,308 dispositions). Though the adult trial rate as recorded on the database is higher than that reported to the Legislative Council, the declining trend mirrors the earlier analysis. (See Chart A and B, pages 54-55).

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Additionally, the adult trial rate is clearly being affected by the increasing trial rate in Justice Court misdemeanor cases since 1993. As reported in the database, the misdemeanor trial rate has steadily increased from 0.82% in 1993 (8 trials out of 978 dispositions) to 3.41% (92 trials out of 2,696 dispositions). In our opinion, the lack of Municipal Court misdemeanor disposition data is responsible for inflating the actual trial rate. TSG believes that if the Municipal Court data was added in, the *actual* trial rate may be closer to the number of trials as reported on the Clark County Public Defender Database to the number of dispositions reported to the Legislative Council.

Still, even with this best possible scenario, the Clark County Public Defender Office's adult trial rate is below national averages. Most importantly, even as reported on the database, the felony trial rate has steadily declined from a high of 2.26% in 1993 (27 trials out of 1,196 dispositions) to 0.68% in 1999 (67 trials out of 9,818 dispositions).

It is clear that Clark County has a low trial rate by whatever standard is used. The important question is why is this happening? Negotiation calls for special skills and is not something to be critiqued per se. In fact, some of the judges we interviewed place a great value on a public defenders' capacity to avoid trial, a time-consuming and expensive endeavor which may not always work to a defendant's advantage. Some judges feel that district attorneys do not think it is worthwhile to go to trial on low profile cases and prefer to concentrate on taking high visibility cases to trial. The low trial rate in Clark County was also justified on the following grounds:

- A population explosion in Clark County has made it impossible for assistant district attorneys to take many cases to trial. Therefore it is in the district attorney's best interest to settle as many cases as possible by offering attractive deals to the public defenders.
- The population growth has fostered a dynamic in which a large, urban defender system has been created in what was a relatively small town in the not too distant past. Older attorneys recounted the days when a member of the bar knew the vast majority of other attorneys. Therefore, the familiarity of attorney relationships often seen only in small towns between prosecutors and defenders has been historically transposed on the burgeoning county. Such relationships traditionally have promoted settlements as opposed to going to trial.
- The low trial rate was also attributed to an insufficient number of judges in the Criminal division. Judges too were seen to favor settlement over trial since they, too, carry heavy caseloads.

- Diversion courts have helped reduce the number of trials.

Despite these justifications, some judges, community activists and public defenders revealed a conflicting opinion that the defenders in the Clark County Public Defender Office give in too easily to the prosecutors and, thus, actually hurt their clients interests. The scope of our study did not allow us to investigate the outcomes of every plea settlement agreed to in the county, and thus we cannot form a conclusive opinion of the two positions. Whether the reason for the low trial rate is due to an inadequate number of criminal courts, or the practices of the district attorney or some other reason is important for Clark County policy-makers to determine because the issue of low trial rates is resulting in a contentious atmosphere that could erode the public faith that the criminal justice system can provide fair and equitable justice .

Because of the data problems discussed above, TSG cannot state unequivocally that the low trial rates are indeed having a deleterious affect on the attorneys within the Clark County Public Defender Office and their clients. What we can offer is that the Clark County Public Defenders own database, from 1995 to 2000, the nine Team Chiefs have represented indigent defendants in 62 trials, or approximately 1 trial per team chief per year. Additionally, more than half of these trials were in misdemeanor cases (34 misdemeanor trials or 54.84%).

Early Case Resolution Programs

Throughout the country, increasing criminal justice workloads on the part of judges, prosecutors and defense counsel have given rise to a series of innovative programs that seek to resolve cases earlier and/or to divert defendants into counseling instead of the court system. Many programs, including drug courts, domestic violence courts, and family courts have met with varied success, depending upon local practices and customs. Successful early resolution programs have been able to strike a balance between achieving financial savings by reducing the number of people processed through the courts and housed in jails, and protecting the rights of defendants.

In Nevada, two programs and institutional practices give us pause as to whether that balance is tilted too far in favor of financial concerns, endangering the rights of defendants.

Washoe County's Early Case Resolution Program (ECR)

Several judges and public defenders interviewed are of the opinion that the early case resolution programs initiated in the more populous regions of the state may provide expeditious justice at the expense of quality. The Early Case Resolution Program (ECR) in Washoe County caused us the most concern. Through ECR, the county points to a \$905,186 savings in FY 1999 from 1,681 defendants who pled guilty through the ECR program, and therefore do not take up jail beds pre-trial. Despite this laudable savings, even those interviewees who felt that ECR served a needed purpose felt that there was an unacceptable danger against the indigent clients' best interests.

The Washoe County District Attorney Office has discretion over which cases are set for the early resolution program. A plea bargain is offered to the public defender's attorney overseeing the ECR program. If the defendant is in-custody, the public defender's early case resolution team meets with the defendant to discuss the plea and the facts of the case as presented by the district attorney. If the defendant agrees to the conditions of the plea, the preliminary hearing is waived and the case is pled at arraignment. Out-of-custody defendants are generally met by the public defender at the first appearance to discuss the plea offer. Intended to be a way to eliminate many non-serious cases from the court dockets, we were told that several serious felonies have been sent to ECR.

The most troubling aspect of ECR's operation is that discovery rules in Washoe County are such that public defenders do not always have the state's discovery in the client's file before discussing the plea with him or her, and sometimes, we were told, only have a statement of probable cause. There is concern in our mind that deals that are not necessarily favorable to the defendant may be taken without a full review of the facts. No public defender should have to discuss a plea arrangement without a full discovery of the facts. We believe that one of the most notable effects of the ECR program is that the Washoe County Public Defender Office takes only approximately

30 cases to trial each year. Faced with a public defender who advises acceptance of the plea, defendants may determine that pleading to the crime will offer them the least punitive alternative, whether or not they are guilty of the crime as charged. Critics of the program contend that this is especially true since an agreement to a plea may result in the defendant being released on his or her own recognizance from jail as soon as he or she accepts the conditions of the plea agreement. Defendants who are offered a quick way of getting out of custody may accept pleas without much forethought to the implications the decision will have down the road. Of particular concern to some we interviewed are defendants with substance abuse problems who may accept early plea agreements simply to get released.

Video-Arraignments in Clark County

Clark County has instituted a video-arraignment program that raised concerns that individual rights are being compromised in the desire to resolve cases expeditiously. Video-arraignments have rapidly gained acceptance in jurisdictions across the country because of the tremendous cost-savings and increased safety of not transporting detainees from jail to courtrooms. The Spangenberg Group supports these efforts so long as the rights of defendants are not abridged in the process. A TSG representative was given the opportunity to observe a Clark County video-arraignment calendar. We were pleased that the Clark County Public Defender's Office insists on the defense attorneys being present with the defendant at the jail. Unfortunately, plea bargains and facts of the cases were discussed over non-secure video lines and within earshot of all present in the holding cell. There was no private space for the defense attorney to discuss cases with clients out of earshot from other detainees, and there was not sufficient time for attorney-client conferences between the point when defendants were brought to the video-room and the start of court.

On the day of our visit, one female defendant was grouped with approximately 18-20 males, and had to discuss the facts of her case (which was on a sexually-related matter) in the presence of all in the room. Clearly, she was not sufficiently advised of the conditions of the plea agreement she accepted because after pleading guilty to the charge, the judge asked her if she had anything to say. She asked if she was going to be released on her own recognizance. The judge informed her

that she had just pleaded guilty to a crime requiring jail time. The defendant stated that she did not understand what she was doing and that she was not guilty. The judge advised her to consult again with her attorney – after which she again came forward and pleaded guilty. Though a single instance should not become the basis for policy changes, this example raises concerns in our mind that the desire and need to resolve cases early in Clark County is adversely affecting the rights of individuals.

The Fast Track Criminal Appeal Program in Nevada

Nevada ranks 38th out of the fifty states in population size. Only West Virginia has a larger population and no intermediate appellate court. The two states closest in population size to Nevada, New Mexico and Nebraska, both have intermediate appellate courts. Three states with smaller populations, Idaho, Hawaii and Arkansas, have intermediate appellate courts. Even though the Nevada Supreme Court’s fast track appeal system is meant to respond effectively to the huge backlog of cases, the lack of an intermediary appellate court has brought with it its own set of problems.

In other states, similar fast track appeal systems have been abandoned based on what was considered to be an erosion of due process guarantees offered to the defendant. In *Bundy v. Wilson*,⁵⁷ the First Circuit Court of Appeals reviewed New Hampshire’s expedited criminal appeals program and articulated the basic demands of due process in an appellate review system. The New Hampshire system allowed the New Hampshire Supreme Court to decline appellate review based solely upon information contained in the notice of appeal. The *Bundy* court concluded that a notice of appeal that required only a description of the case, the statutory basis of the appeal, the issues to be appealed, and the authority relevant to those issues did not provide a “record of sufficient completeness” to permit the proper consideration of appellant’s claims. Accordingly, the court ruled that New Hampshire’s system “violated appellant’s due process rights, because the decision to decline an appeal was made without giving the appellant a transcript or an opportunity to persuade the court to accept their appeals.” The court also stated that criminal appellants under the New Hampshire

⁵⁷ 815 F.2d 125, 128-30 (1st Cir.1987).

system were not given an opportunity to provide an adequate opportunity to present their claims fairly within the adversary system.

In Illinois, in *Green v. Washington*,⁵⁸ Federal District Judge Milton Shadur ruled that while delays caused by the under-funding of the Appellate Defender's office created federal constitutional violations, attempting to fast track some cases presented an unacceptable ethical dilemma because it forces defense counsel to favor one client over another and creates a clear conflict of interest.

Apart from the ethical problem, *Green v. Washington* decided that "fast tracking" cases did not result in a net increase in the number of cases filed, but merely meant that some cases were filed earlier, and others later, than would have normally been the case.

It was further held in *Green* that fast tracking those cases that have "clearly winnable issues" poses the same conflict of interest problems as fast tracking short sentence cases. In addition, the court stated that short of reviewing the entire record and beginning work on a case, it is impossible to determine in advance whether it has a clearly winnable issue.

Judge Shadur agreed with the expert testimony of Robert Spangenberg, who stated during his testimony: "I would seriously consider fast tracking if I thought it would not injure my clients." The Florida Supreme Court has also ruled that fast-tracking of short sentence cases poses an unacceptable conflict of interest.⁵⁹

Perhaps just as important to the issue at hand is the deleterious affect the fast track appeal system has had on the number of direct appeals pursued on behalf of indigent clients. Our interviews suggest that the pursuit of issues on direct appeal is not considered paramount to the vigorous defense of a client. Part of this is due to flat fee contracts that, in effect, give monetary disincentives to taking a case to its fullest pursuit. Yet, we were also told by several attorneys that the fast-track

⁵⁸ 917 F. Supp. 1238 (1996).

⁵⁹ *In re Order on Prosecution of Criminal appeals by the Tenth Judicial Circuit Public Defender*, 561 So.2d 1130, 1135, 1138 (Fla. 1990) (per curiam).

requirements themselves (short time restrictions, no full briefing) has created a situation where a full exploration of the issues is extremely difficult to ever present to the bench. As such, indigent clients who may have valid appellate issues can be discouraged from pursuing them by well-meaning defense attorneys who see the direct appeal as a futile resolve. Some judges and justices suggest that attorneys may be using the fast-track system as an excuse for not pursuing valid claims on appeal. Anecdotal evidence aside, what can be factually sustained is that the number of direct appeals pursued in Nevada is low. Table 3-5 below shows the number of appeals to Nevada District and Supreme Courts (excluding habeas corpus petitions and post-conviction relief petitions) as reported to the Legislative Counsel Bureau by the counties with public defender offices. We estimate that statewide, approximately 0.85% of all felony, gross misdemeanor, juvenile and misdemeanor cases are pursued on direct appeal.

Table 3-5			
Indigent Defense Appellate Caseloads in Nevada Counties with Public Defender Programs			
<u>County</u>	<u>Non-Habeas/PCR Appeals</u>	<u>Trial-Level Cases</u>	<u>Appeals Per Trial-Level Case</u>
Clark County PD	121	32,671	0.37%
Elko County PD	36	589	6.11%
Washoe County PD	99	5,606	1.77%
State Public Defender	45	2,379	1.89%

Certainly part of the reason for the low appellate rate is directly related to the low number of trials. The appellate rates were calculated by dividing the total number of direct appeals (non-habeas or state-post-conviction claims) into the total number of trial level dispositions in a given year. Though direct appeals tried in a given year do not necessarily reflect that the trial for that case occurred in the same year, on average, this calculation evens out as cases are carried over from year to year. The Clark County Public Defender Office only had 121 non-habeas/state post-conviction appeals in FY 1999, resulting in an appellate rate of 0.37% (121 appeals out of 32,671 dispositions). Accordingly, the appellate rate, as reported to the Legislative Council, has remained consistently

below a single percentage point from FY 1996 to FY 1999. (See Table 3-6).

Table 3-6
Analysis of Clark County Public Defender Statistics, FY 1996-1999
Based on Legislative Council Statistics

	1996	1997	1998	1999	%Increase (1996-'99)
Appellate Rate (Non Habeas/PCR)	0.35%	0.22%	0.51%	0.37%	
Appeals (Non Habeas/PCR)	103				17.48%
		78	165	121	
Trial-level Dispositions	29,281			32,671	11.58%
		35,914	32,660		

Again, TSG turned to the Clark County Public Defender database to confirm these numbers. The database does not distinguish between cases appealed to the Supreme Court or the District Court. Similarly, TSG was not able to distinguish between direct appeal, habeas corpus or state post-conviction appeals. Moreover, juvenile proceedings are not analogous to adult criminal proceedings. Thus, the disposition codes on the Clark County Public Defender database for juvenile appellate cases (guilty, guilty of lesser offense, acquitted, and other) do not clearly indicate whether juvenile cases were settled prior to a verdict rendered by a judge. Thus, in addition to the two caveats mentioned in the analysis of the trial rates (the discrepancy between calendar and fiscal year reporting; the undercounting of misdemeanor cases on the database), these further caveats should result in a higher appellate rate for the office than earlier reported.

TSG has again conducted this analysis based strictly on the data as reported. Interestingly, the number of appeals reported to the Legislative Council are fairly close to those as reported on the database. Still, the 1999 database appellate rate was still under a single percentage point (0.90%, or 120 appeals for every 13,308 dispositions). Most importantly, the Clark County Public Defender database shows a fairly constant decline in the appellate rate since 1993 (down from 2.61% in 1993 to 0.90% in 1999). (See Chart C, page 64).

*Indigent Defense Services In the State of Nevada:
Findings & Recommendations*
December 13, 2000

Chapter IV

Findings

Introduction

The balance of this report consists of findings and recommendations. No study is ever complete, totally comprehensive, or quantitatively unassailable. This is true in Nevada for several reasons. First, indigent defense statistical data in Nevada is incomplete, at best. Second, the disparity between indigent defense systems from county to county in the state is great due to a number of factors, including: the economic realities of counties; the degree to which the local indigent defense provider is empowered to effect change on policy issues; the type of indigent defense system employed; difficulties associated with the geographic size and isolation of many counties; and the degree to which technology is employed to promote efficiencies. The indigent defense issues uncovered in one county inevitably vary from those found in other counties. This is true not only when comparing rural counties to urban counties, but even when comparing Washoe County to Clark County, or Nye County with White Pine County.

Broader Social Issues Affecting Our Findings & Recommendations

It is not possible to study an indigent defense system in isolation. In every study, broader issues impacting the quality of defender services are encountered. Oftentimes, the policies of another component of the criminal justice system have a significant impact on how services are provided to the poor. This is certainly true in Nevada. The limited resources of this project did not allow us to study every other criminal justice agency in depth. In this report, TSG suggests areas requiring further study by the Implementation Committee.⁶⁰

⁶⁰ For instance, parole and probation officers were widely criticized by defense attorneys throughout the state as overly harsh on defendants. We were told that parole and probation officers, as law enforcement agents in Nevada, see it as their duty to assist police and district attorneys and not to assist felons or misdemeanants transition into becoming responsible citizens. Since many judges follow the parole and probation officers' recommendations at revocation hearings, bias on the part of the parole and probation agents could threaten the integrity of the whole criminal

Our ability to study Nevada's indigent defense systems was further complicated by serious issues of racial, gender, economic and other prejudices that speak to much greater societal problems. When prudent, we raised these issues in private interviews to gauge the level of mistrust between disaffected community members and the people charged with dispensing justice. It is an understatement to say that the discussion of such deep-rooted issues often provoked intense personal reactions on all sides of the issue. Obviously, these deep-rooted problems cannot be resolved within the scope of the current mandate. Hopefully, these findings and recommendations will help renew a spirit of cooperation to resolve problems on a statewide basis.

Our findings are based upon our many interviews during our on-site visits, our court observations, and the all of the quantitative data and other supporting documents provided by numerous agency officials throughout the state. In our opinion, all of the findings below support the following conclusion: *indigent citizens throughout the state of Nevada are not afforded equal justice before the courts.*

FINDING #1: The State Public Defender System is in Crisis

The fact that Nevada requires counties to shoulder the major portion of indigent defense funding, when coupled with the economic disparity among counties in Nevada, threatens the notion that indigent defendants are afforded equal justice before the courts of the state. Rural counties are forced to choose between completely funding their indigent defense system, generally through low-bid contracts, or to buy the services of an underfunded State Public Defender system. Either choice can result in providing inadequate services.

Moreover, The State Public Defender's adverse working conditions have led to a "bunker mentality" among its employees. The attorneys we interviewed are constantly fearful that their jobs will soon be gone because of the erosion of the state system. For instance, if one more county were to leave the system, there may not be enough work to sustain two appellate positions. Some of this

justice system.

institutional mentality is generated by the State Public Defender himself. Oftentimes, the public defender world promotes the best attorney into the position of management, regardless of whether he or she has strong administrative abilities, simply because there is no other room for promotion or to reward exceptional courtroom talents. We believe this to be the case in the Nevada State Public Defender system. Over and over, we heard about both the talents of the State Public Defender as a lawyer, and his inability to move the program forward. Though we believe that the failings of the state system are not due to the actions or inactions of a single individual, we believe that the current State Public Defender has not been able to effectively advocate for the state system.

All of these problems add up to a *crisis* in the rural counties. Defendants facing possession or assault charges, for example, will receive very different levels of representation in rural as opposed to urban counties in Nevada; this despite the efforts of some very committed attorneys in the rural areas. Without immediate attention, it is our opinion that counties will continue to leave the state public defender system and further undermine the integrity of representation afforded to the rural poor.

FINDING #2: The Independence of the Defense Function is Jeopardized throughout the State

The ultimate objective of this research is to ensure that the adversarial system of criminal justice fairly and efficiently enforces the law, without being skewed to disadvantage the poor. Our entire society benefits when a defendant who cannot afford a lawyer is provided counsel who assures adequate participation in the adversarial system. Not only does this safeguard our collective ideal of equal justice, it also ensures that both the verdict and any sentence are just, final and respected. To maintain the public's trust and ensure effective representation, a state's objective in providing counsel should be to assure that quality legal representation is afforded to all persons eligible for counsel,⁶¹ including guaranteeing the integrity of the attorney/client relationship. As such,

⁶¹ The American Bar Association. *ABA Standards for Criminal Justice: Providing Defense Services (Third Edition)*. Standard 5-1.1. 1992.

a state's obligation to indigent defendants should be to ensure that any plan to provide public defense services protects the attorney/client relationship by ensuring that indigent defense lawyers remain "free from political influence....to the same extent as are lawyers in private practice."⁶² Throughout the state the independence of the defense function is jeopardized, as indicated below.

State Public Defender

The growing disparity between indigent defense services in rural and urban counties is further exacerbated by the State Public Defender's placement in the state government hierarchy. The State Public Defender is overseen by the Department of Human Resources in the executive branch. This means that a State Public Defender committed to securing adequate resources for the organization must compete for scarce funds twice: first among other Human Resource departments, and second, as part of the Human Resource budget among other departments of the executive branch. Unlike other Human Resource departments, indigent defense is a constitutional requirement. Moreover, unlike other government agencies, an indigent defense organization does not control its own workload and *must* provide representation to every client to whom it is appointed. As such, independence is critical to insulate the public defender organization against government budget authorities who may want to cap expenditures without understanding the constitutional implications. As such, the person in charge of the State Public Defender Office is put in a tenuous position whenever he needs to advocate for the program.

Furthermore, The State Public Defender position itself, being an appointed official serving at the will of the Governor, further exacerbates the risk that the State Public Defender will not pursue necessary resources and technology when needed. The appointment process, at best, gives the appearance that the State Public Defender's independence is compromised. At worse, it may force a State Public Defender to weigh his or her personal job-security against the need to fight for more resources.

Together, the State Public Defender appointment and budgeting process has fostered an

⁶² Ibid. Standard 5-1.3.

institutional philosophy of “not rocking the boat” in the current management of the State Public Defender office.

Clark County

The conflict contracts in Clark County raises more concerns of sufficient independence of the defense function. As stated earlier, the court administers 27 individual contracts at a flat fee of \$2,700 per month, or three attorneys for each District Court judge. A potential conflict of interest may arise if a contract defender has to make decisions in his or her clients’ best interest that may not meet the expectations of a judge who potentially will have final say over whether or not the attorney’s contract is renewed.

Standard 5-1.3 of the ABA’s *Standards for Criminal Justice: Providing Defense Services (Third Edition)* specifically cautions against this aspect of Clark County’s indigent defense system: “The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned counsel and contract-for-service programs.” Recognizing this issue, many states have followed ABA Standard 5-1.3(b), which states, “an effective means of securing professional independence for defender organizations is to place responsibility for governance in a board of trustees.” An independent commission serves to insulate indigent defense providers from unwarranted interference from either the judicial, legislative or executive branches.

FINDING #3: The Lack of State Oversight and Binding Indigent Defense Standards Raise Quality Concerns regarding Conflicts of Interest, Contracting for Services, Attorney Eligibility, Training, and Workload in Counties Across the State

Though the national standards referenced throughout this report are non-binding, many states have adopted them, or similar ones, through legislation, county-ordinance or court-rule. Using ABA and NLADA guidelines, many of the indigent defense systems throughout the state do not measure up. Since these standards are seen as effective to ensure minimal thresholds of quality

representation, it is our opinion that Nevada is not providing an adequate level of effectiveness.

FINDING #4: Criminal Justice Work Load Concerns Have Impacted Trial Rates throughout the State and May Contribute to an Erosion of Confidence in the System Because of Extremely High Plea Rates, Especially in Clark County

Trial rates of indigent defense providers are low throughout the state. TSG was able to go into detail on the Clark County trial rates simply because there was some decent data in the county. It should not be construed that Clark County is the only county where this is an issue. Still, Clark County has an extremely low trial rate that should be address because it may very well have begun to erode public confidence in the system.

FINDING #5: Throughout the State, Criminal Justice Workload Concerns Have Initiated Early Resolution Programs that Affect the Rights of Individuals

Whether it be the Early Case Resolution Program in Washoe County or the Fast Track Appellate System, criminal justice policy-makers are tipping the balance between cost-effectiveness and providing adequate services too far toward processing people through the system throughout the state. Criminal justice workload concerns must be met with adequate staffing levels for all three components of the criminal justice system.

FINDING #6: Nevada Lacks Comprehensive, Reliable Indigent Defense Data

As stated throughout this report, there is no central repository for indigent defense data in Nevada. Without uniform data, policymakers are left to make critical funding decisions on the anecdotal testimony of defense providers, district attorneys, judges and other criminal justice representatives. Of equal importance, the general public's perceptions of the criminal justice system, and indigent defense in specific, cannot be fully explored without verifiable data.

Statutory requirements, which are not currently met by many counties, provide a very good starting point. NRS 180.080 requires the State Public Defender to submit a report to the Legislative Council containing: the number of cases that are pending in each participating county; the number of cases closed the previous year; the total number of criminal defendants represented by case type (felony, gross misdemeanor, misdemeanor, probation revocation, etc.) and by age group (adult or juvenile); and the total number of working hours spent for each county. And NRS 260.075 requires non-participating counties to submit similar reports to the Legislative Council as well. County-by-county indigent defense information is currently only being partially collected. No information on conflict defender cases is being collected from the few counties that adhere to the statutes, and only the State Public Defender and the Elko County Public Defender provide the required information on the collective number of hours spent on each case type. We cannot speak to the time-keeping policies of the Elko County Defender, but it is our belief that the lack of a comprehensive case-tracking system in the State Public Defender puts the accuracy of their hours per case-type in question.

Though TSG was able to collect the most basic of indigent defense cost and caseload figures, there is a host of other valuable data we would have liked to review, including: average length of case from arrest to disposition by case-type; number of attorney and support hours per case-type; indigency rates; case dispositions by race and gender; individual attorney trial rates; and, expert costs by case-type, just to name a few.

FINDING #7: The Indigent Defense Community Does Not Have a Unified Voice to Air Justice Concerns

For a wide variety of reasons, a strong, unified voice on indigent defense concerns does not exist in Nevada. It may be that the public defender community is unaware of the existence of a judicial or legislative committee or task force that is considering a particular criminal justice policy. It may be that the organizers of policy discussions do not invite the correct representatives or mistakenly assume that the person they have invited has authority to speak on behalf of the other

agencies. Whatever the reason, no statewide association exists to represent and advocate for the defender perspective on criminal justice matters.

The absence of such a unified voice is, in part, a major factor in the erosion of the State Public Defender system. Effective advocacy for the organization, including advocating for additional state resources, may have addressed the primary concerns of a number of counties that have opted out of the program. Though the public defender in Clark or Washoe county sometimes testifies at legislative hearings, their opinions do not necessarily always represent the views and concerns of the rest of the state. The absence of a unified voice allows new legislation to be passed without the full understanding of how that legislation may impact indigent defense costs and workloads. As such, defenders may find themselves ill-equipped to deal with rising caseloads related to new criminal codes because proper funding was not budgeted. A defender voice at the criminal justice decision-making table can educate the public and inform policy-makers such that any policy decisions are made with a fuller understanding of their impact on the court process.

FINDING #8: Juvenile Justice Practices Adds to the Perception of Bias in the System

One district court judge overseeing juvenile justice viewed the system as one primarily meant to wean the young and vulnerable away from a life of future crime and to turn them into a law abiding, productive citizenry. The judge was very concerned that in the pursuit of this ideal, the court should not have to be hamstrung by budgetary restrictions imposed by the Child and Family Services Department of the State of Nevada. Additionally, since prosecutorial waiver decisions, unlike the judicial waiver decisions, are made outside the adversarial process, the prosecutor's discretion is exercised without the benefit of either a judicial record or appellate review. Unlike the case of judicial waiver, no hearing takes place to determine whether the interests of the juvenile and society will best be served by criminal prosecution. Thus, the scope of a prosecutor's discretion makes her an inappropriate party to make the waiver decision. It is also not procedurally fair because it does not provide for a hearing or written findings from which a juvenile can appeal. Most significantly,

it can also cause the perception of bias and discrimination.

Another shortcoming in Nevada's juvenile justice system was the trend whereby juveniles are allowed to waive their right to counsel too easily. The majority of children end up not having counsel most often because parents do not realize the magnitude of a juvenile criminal record.

FINDING #9: Anecdotal Information Suggests that Racial Bias Exists in the Criminal Justice System

The Spangenberg Group met with many individuals that expressed concerns about racial bias in the delivery of justice throughout Nevada. Because we were charged with conducting a study on indigent defense, we were not able to investigate every claim of bias raised in private interviews. At the same time, The Spangenberg Group takes seriously the charges of racial prejudices in the justice system. As such, we feel compelled to raise the most common concerns regarding racial bias we heard and offer a national perspective on them. Because our report is specifically on the systemic structure of indigent defense in Nevada, we have included our perspectives on racial bias as an appendix to this report. (See Appendix A)

Chapter V
Recommendations

RECOMMENDATION #1: The State of Nevada Must Take a Leadership Role and Relieve More of the Counties' Burden in Providing Indigent Defense Services

Because indigent defense is a constitutional requirement, we believe the state of Nevada must begin to play a bigger role in the funding and oversight of the system. A major finding of this report is the fact that the Statewide Public Defender Program is in crisis, due mainly to the lack of resources. The ineffectiveness of the state system has caused more and more rural counties to assume total responsibility for providing indigent defense services spawning the problems uniquely associated with

low-bid contracting. We feel compelled to restate that the disparate indigent defense funding between the counties results in disparate levels of justice to the citizens of Nevada. Below are some state funding models to be considered:

- Reimburse up to 100% of indigent defense costs to all counties that comply with state sanctioned indigent defense standards;
- Institute a statewide appellate defender and/or a statewide capital defender program to relieve all counties of the burden of funding these types of cases;
- Require all counties with a population of 100,000 or less to use the State Public Defender System. In exchange for loss of local control, the state could fund 100% of the services.

The Spangenberg Group, under the current grant from the U.S. Department of Justice, American Bar Association, Bar Information Program is available to work with the Implementation Committee or other interested parties in defining a new role for state government and indigent defense services. In our opinion, the reimbursement model offers the most realistic chance of reform in the state. Appendix B details other states ability to improve defense services through this model.

RECOMMENDATION #2: The State of Nevada Should Establish, by Legislation or Court Rule, an Indigent Defense Commission to Oversee Services throughout the State and Promulgate Effective Minimum Standards

Indigent defense in Nevada suffers from a lack of any centralized authority to provide coordinated planning, oversight or management of the defense function. The effectiveness of indigent defense systems can be substantially improved by vesting responsibility for indigent defense services in a state level commission. Such commissions are often broad-based, and include former judges, legislators, and former prosecutors in addition to experienced public defense lawyers. Whether the commission is created by the legislature or the courts, or is part of the Judicial or Executive branches, makes little difference. What is important is that there is a single body

responsible for promulgating and monitoring compliance with indigent defense standards, securing adequate financing to guarantee effective representation, overseeing the training of defense providers, public education and defending the system from attack. The best commissions have been able to significantly increase resources, set meaningful standards, and, most importantly, have been responsible for the professionalization of indigent defense. Most of the states that have created such commissions require appointments by Executive, Judicial and Legislative representatives to ensure oversight by those directly answerable to the state citizenry. Other appointments are generally made through statewide and local bar associations. (See Appendix C for a state-by-state chart detailing the make-up and responsibility of indigent defense commissions in other states).

The creation of such a committee would resolve many of the problems highlighted in this report, including the following:

- *Ensuring the independence of the defense function, including insulating the State Public Defender from political pressures.*

In accord with ABA standards, the defense function must be independent of judicial or other control over policy and budgetary decisions. Currently, because of the unique position of the State Public Defender under the authority of the Human Resource Department of the Executive branch, we believe the State Public Defender has been limited in his ability to freely advocate for needed resources. The Commission should be given the authority to hire the Chief Executive of the State Defender System, and be given the authority to fire said person for just cause. In addition, the commission could set binding contract standards to ensure that contracts are entered into throughout the state that do not leave a potential conflict between a provider's personal finances and the rights of defendants.

- *Promoting a unified indigent defense voice to address defender concerns statewide.*

When future criminal justice legislation is proposed that could severely impact defense budgets or workload, the commission could testify to the financial impact or the constitutionality of the proposed act.

- *Ensuring that effective minimum qualifications, training, workload and contracting standards will be enforced.*

- *Guaranteeing that indigent defense data will be collected and reported in a uniform manner.*

Without data, policymakers are left to make critical funding decisions based on anecdotal testimony provided by criminal justice practitioners. One role of an indigent defense commission could be to collect uniform data on cases throughout the state. In this way, educated decisions can be made regarding the effectiveness of defense systems including the impact of trial rates.

- *Studying issue of quality representation, including the impact of race and gender on defense representation.*

We heard several claims of institutional racism, be it disparate application of the death penalty or the belief that minority defendants get harsher sentences. The simple fact is that despite many stories of mistreatment of defendants at the hands of all components of the criminal justice system, no claims can be sustained at this time with factual evidence because of the lack of data. The defense community must bear responsibility for collecting this data in a uniform manner. Since some of the claims of prejudice are directed at the indigent defense providers, the independent commission is the proper organization to track these claims.

RECOMMENDATION #3: The Plea for an Intermediary Level Criminal Appellate Court

We recommend that the response to the Supreme Court's increasingly heavy workload should be the creation of an intermediate appellate court, rather than fast track criminal appeals which can undermine due process rights of defendants. We understand that adding an intermediate appellate court requires an amendment to Article 6 of the Nevada Constitution. A constitutional amendment would need a vote of the general population. The referendum has to also pass through the Nevada legislature. Even though an intermediate level court seems to be inevitable to those working within the court system, the history of the Nevada legislature and the public is one which has not traditionally embraced this concept. Because of the heavy caseload the Supreme Court cannot

perform the major function of an appellate court of last resort: the development of the law in an orderly and coherent manner. With an intermediary level court, the justices can focus most of their energies on the cases that pose questions of great public interest and develop a sophisticated body of case law.

An analysis of the statistical data would conclude that the Nevada Supreme Court is one of the most overloaded Courts in the country.⁶³ As far back as 1975, the legislative commission studying the workload of the supreme court determined that an intermediate court of appeal should be created immediately rather than adding additional justices to the bench.

Time does not permit extended consideration of more than 1,200 appeals annually. All other cases go through a formal administrative filtering process. Upon filing, an appeal is examined by the clerk of the court to make sure that all jurisdictional and procedural issues have been removed. The case is then subjected to an extensive screening process conducted by the court's central staff. Staff attorneys examine the legal issues contained in each appeal filed. When the issues are not particularly complex and do not require oral argument, a staff attorney will prepare a memorandum to a particular justice recommending an appropriate disposition of the appeal. The attorney will then prepare an order disposing of the appeal and articulating any pertinent legal rationale. Over seventy percent of all appeals filed are disposed of in this manner.

Although this system may seem efficient, it does not conform with the highest standards of appellate justice. Without intermediate appeal, the filtering system grows larger, becomes more strained, and the inevitable transpires: more and more decisions will be disposed of by the administrative machine.

RECOMMENDATION 5: Make Better Use of Law School Resources

⁶³ Nevada's population has increased from approximately 936,000 in 1985 to an estimated 1,730,443 in 1998. State Court Caseload Statistics: Annual Report 1991, National Center for State Courts, at 297 (1991); Nevada State Demographer's Office.

In 1998, the first law school in the state was opened at the University of Nevada. The establishment of the William S. Boyd School of Law is viewed by many as a very positive step. So far fewer Nevadans have aspired to law careers because of associated costs involved in attending an out-of-state law school. Women and minorities have been especially disadvantaged by the lack of an in-state law school. A law school can provide to the wider legal community interns, clerks and a forum for on-going socio-legal research.

The William S. Boyd School of Law has developed a partnership with Clark County Legal Services and Nevada Legal Services, and has instituted a mandatory community service program for first-year students. The law school hopes to create a multi-disciplinary legal clinic which will not only serve community needs, but further the educational and research activities of the school. The law school also hopes to become part of the local legal services network by providing assistance in areas underserved by legal service providers.

We recommend that the law school also support indigent criminal defense. Most public defender offices would appreciate the assistance of law students in research and students in turn would benefit from exposure to criminal defense work. In several jurisdictions across the country, law school students are used to supplement investigator staffs, and many third-year law students represent clients under the supervision of staff attorneys in public defender offices.

The State of Nevada should also consider entering into a student loan forgiveness program for those students that graduate from the local law school and go into the service of indigent defense work.

RECOMMENDATION 6: Formalize a Plan to Conduct Performance Evaluations of Indigent Defense Providers on a Regular Basis.

The scope of this study did not allow us to spend more than a few days at each site. To that

extent, none of the indigent defense providers studied underwent a formal performance or management evaluation. We viewed our mandate as looking systemically at those problems that could be addressed on a statewide basis, not as an evaluation of every office we visited. Having said that, it is our professional opinion that each of the public defender organizations would benefit from a management audit that would assess further whether or not the limited resources are being used in the most efficient manner.

APPENDIX A

Anecdotal Evidence of Racial Bias Uncovered in our Study

Though it is hard to pierce the veil of distrust created historically by race relations, the absence of minority groups in criminal justice decision-making positions adds to the perception that the system doles out unfair justice to non-white people. There was a general acknowledgment that non-white, young males or those from out of state are “outsiders” who threaten the integrity of the community. At the same time, most judges told us that while they make sincere efforts to look beyond skin color, biases were pervasive and had to be attacked in many fronts.

One specific area of concern universally articulated by judges, public defenders and prosecutors is the difficulty of getting minority jurors to sit on jury panels.⁶⁴ In addition, when potential minority jurors are called for jury duty, some feel that attorneys are too quick to use their peremptory strikes in an unreasonable manner.⁶⁵ When citizens do not or cannot participate at this level, the distrust can set in for the whole system and result in such instances as judges finding it hard to win the trust of African-American defendants in enrolling them in a drug rehabilitation program.

Even though the Nevada Supreme Court in several cases has remanded the matter to the district court for a finding on whether the prosecutor’s use of the peremptory challenge to exclude a black juror violated the petitioner’s constitutional rights, very few trial courts have found that the peremptory challenge was based on racial grounds.⁶⁶

⁶⁴The Nevada Revised Statute 6.020 to 6.190 sets out regulations on juries.

⁶⁵The study done by Litigation Technologies on Jury Composition for the Second Judicial District on observation of potential jurors in October and November, 1992 and May and June, 1993 indicated that members of racial minorities were under represented by 63.99 percent. Even though the authors of the report submit that the limitations of the study preclude conclusive causes of the observed disparity, they argue that the statistical probability of such a disparity occurring by chance alone is less than 1 in 10,000.

⁶⁶In *Reginald Hayes v. State of Nevada*, filed Aug 26 1988, the Nevada Supreme Court remanded the matter to the district court for an evidentiary hearing and a determination of whether the one African American juror excluded by the State was for racial reasons and whether the appellants’ rights under the standards set out in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986) were violated. Appellants, all African Americans, argued that the State’s exclusion of the only black potential juror violated their constitutional rights of due process, equal protection and an

Most judges have taken small steps to break with tradition and create a more equitable playing field in the court. Evenly distributing minorities so that they are not at the end of the court docket is one such small measure that has helped heal wounds and build bridges between the communities. One judge feels that unshackling detained defendants who do not pose a flight risk before they appear before the court is essential to a fair hearing and that defendants are entitled to basic human dignity, especially in a court of law.

Certain district court judges and Supreme Court Justices commented on the differential treatment accorded to minority defendants, especially young African-Americans. Most judges feel that race does not color their view of a defendant, but a long criminal record may arouse bias.

More outreach and public education is necessary to win the trust and interest of minority communities. At the same time, further study should be taken to determine if the following claims are valid:

Bias in the Exercise of Police Discretion

It was suggested that police weigh race in their decisions to detain and arrest people. Some judges and defenders expressed serious concern about racial profiling at the stage of arrest. It was also mentioned that since there were so few police officers trained to converse in Spanish, some degree of misunderstanding and miscommunication was inevitable between officers and Latino

impartial jury under the standard set out in *Batson*.

After conducting an evidentiary hearing the District Court in its decision and order held that the prosecution's use of the peremptory challenge was based on racially neutral reasons and were not violative of the *Batson* ruling.

In several other cases, the Nevada Supreme Court has rejected appellants' contentions that prosecutors have exercised peremptory challenges against African-Americans for racial reasons and that the district court erred in over ruling the *Batson* challenge. In the 1988 case, *Browning v. State*, 104 Nev.269 and the 1998 case of *Leonard v. State*, 114 Nevada 1196, the African American appellants in both these cases argued that the elimination of prospective minority jurors deprived them of their right to an impartial jury drawn from a representative cross section of the community in violation of the fourteenth amendment right to equal protection of the law. The Supreme Court held that the reason given by the State relating to the dismissal of panel members was sufficiently "racially neutral". The explanation given by the state in each of these cases was that the dismissed panel members had expressed equivocal responses to the death penalty.

The Nevada Supreme Court has also upheld peremptory challenges to excuse African-Americans from the venire panel when the reason given by the State relates to the potential jurors youth or inexperience. The Supreme Court has argued that this kind of reasoning is not a pretext for a racially driven motive. *Thomas v. State* 114 Nev.1127; *Darren Maurice King v. The State of Nevada* 116 Nev. Adv. Op. No.38.

In *Washington v. State*, 112 Nev. 1067, the Supreme Court accepted as "race- neutral" the prosecutor's explanation in response to the *Batson* challenge raised by Washington, that he wanted to excuse the African American juror due to his job as a cook, and lack of education and children.

defendants.

Country wide evidence suggests discriminatory practices by police against racial minorities is a nationwide phenomenon. A number of studies have documented the unusually high arrest rates for blacks suspected of crime compared to other groups.⁶⁷ Experts note that the highly discretionary nature of policing increases the danger of selective police conduct by allowing officers to act on subjective stereotypes and assumptions regarding race.⁶⁸ Again, we do not take a stand on whether such bias exists specifically in Nevada, we merely note the frequency in which we heard such claims and suggest further study be conducted.

Racial Bias in Parole and Probation Practices

Our qualitative interviews also suggest an appearance of discrimination in parole revocation in the counties we visited. Under the Federal Parole Guidelines, parole authorities are authorized to consider characteristics, such as drug abuse history, educational level, employment history, which might have a disparate impact on parole decisions regarding inmates of color.⁶⁹

Parole and probation officers were criticized as overly harsh on all defendants. The general concern was that since parole and probation officers are law enforcement agents in Nevada they tend often to side with the law enforcement officers and the district attorney, and in some instances have

⁶⁷ See e.g. Brown, Bridges Over Troubled Water: A Perspective on policing in the Black Community , in Black Perspectives in Crime In the Criminal Justice System 79 (R.L. Woodson Ed. 1977) ; McNeeley and Pope, Race, Crime and Criminal Justice: An Overview, in Race, Crime and Criminal Justice 13-14 (R.L. McNeeley and C. Pope Eds. 1981).

⁶⁸ See Charles Ogletree, Does Race Matter, in Criminal Prosecutions in Champion, July 1991. See also Developments in the Law- Race and the Criminal Process, 101 Harvard Law Review, 1472 (1988). This article provides an exhaustive and compelling analyses of race in the criminal justice system concerning issues of racial discrimination by police, prosecutors and jurors and racial disparity in capital and non- capital cases.

⁶⁹ In *Inmates of Nebraska Penal and Correctional Complex v. Greenholtz*, 565 F. 2d. 1368 (8th Cir. 1977), cert denied., 439 U.S. 841 (1978), a group of Native American and Chicano inmates challenged their disproportionately low rates of parole on the grounds that certain race-specific and culture-specific characteristics lead to more unfavorable dispositions in their case. The Eighth Circuit rejected their claim, holding that the statistical disparities in parole rates which represented less than two standard deviations, although "somewhat disturbing" were not "sufficiently significant" to support a verdict for the plaintiffs.

even made recommendations for harsher sentences. Since most judges follow the parole and probation officers' recommendations in revoking parole, bias on the part of the parole and probation agents threatens the integrity of the whole criminal justice system.

Bail was also seen as a problem with members of minority communities who find it more difficult to show community support and potential for rehabilitation. Some judges recommended more judicial discretion in taking into consideration a defendant's economic background and ability to raise bond.

Race Based Sentencing

Defense attorneys and community members in Nevada are concerned that a disproportionate number of minority defendants are being given higher sentences than their white counterparts. Again, these concerns have been raised many times in many jurisdictions across the country. Nationwide, actual data and anecdotal evidence show that minority offenders nationally are sentenced to prison more often and receive longer terms than whites convicted of similar crimes with similar records.⁷⁰ It is shown in national studies that African-Americans serve an average of thirty five percent of their prison terms before becoming eligible for release. White inmates on the other hand serve only 29 percent of their sentences. The potential of people of color not being paroled as early as white defendants in Nevada was a concern raised by many defense attorneys as well as some of the judges we interviewed.

A significant reason for this problem is inherent to the new federal sentencing guidelines and mandatory minimum sentences which have been adopted through legislative initiatives in Nevada. Although the guidelines purport to be racially neutral, a recent examination of the guidelines suggest

⁷⁰ See J. Petersilia, *Racial Disparities in the Criminal Justice System* (1983). Argues that minorities serve longer minimum sentences than whites in certain states. See also, Zimmerman and Frederick, *Discrimination and the decision to incarcerate*, in *Criminal Justice System and Blacks* 315, 326 (D. Georges-Abeyie ed. 1984) (finding that African Americans are at greater risk of being incarcerated than whites in New York).

that African-American offenders receive longer sentences under the guidelines than white offenders.⁷¹

Aside from the longer sentences served by racial minorities, anecdotal evidence reveals that in Nevada there is a higher chance of the death penalty being sought for an African-American defendant. Even though the Grant Sawyer Center for Justice at University of Nevada, Reno undertook a study on demographics and the death penalty its mandate was limited to the collection of anecdotal evidence.

Empirical evaluations of juvenile court sentencing practices consistently indicate that, after controlling for the effect of present offense and prior record, judicial discretion often results in racial disparities in delinquency dispositions. For example, juvenile court personnel are more likely to hold African-American youth than white youth in pretrial detention, and detained youth receive more severe sentences than those at liberty pending adjudication and disposition.⁷²

Research also suggests that judicial discretion in waiver decisions may also produce racial disparities. For example a recent report by the General Accounting Office finds that blacks more likely than whites have their cases waived for violent property and drug offenses. For violent offenses, the differential rates are fairly consistent across states, with black juveniles having waiver rates from 1.8 times to 3.1 times higher than whites.

⁷¹ Recent Nationwide Sentencing Commission data reveal that 18-35 year old African American males will serve an average of 68.5 months, while white males sentenced under the guidelines will serve, on the average, about 44.7 months.

⁷² See Donna M. Bishop and Charles Frazier, Transfer of Juveniles to criminal Court: A Case Study and Analysis of Prosecutorial Waiver, 5 Notre Dame J.L. Ethics and Pub. Policy 281, 284 (1991).

APPENDIX B

The Reimbursement Model

Few jurisdictions would enter into contracts for the construction of roads or buildings without first articulating standards for the performance of the contractors involved and the quality of the resulting work. Similarly, jurisdictions that provide funding for indigent defense services can best assure that the funding will be used most effectively by requiring that the system for providing indigent defense services meet previously adopted standards.

Understanding the importance of retaining some degree of local control, The American Bar Association, Bar Information Program has worked with states which now award limited state funding to counties, contingent upon the counties' compliance with certain standards, thereby fostering overall improvements in indigent defense systems while leaving control at the local level. For example, the Louisiana Indigent Defense Assistance Board (LIDAB)⁷³ in 1995 adopted standards closely modeled on both ABA and NLADA standards, which address the following areas: performance of indigent defense systems; determination and verification of indigency and the recovery and recoupment of costs expended in the defense of indigents; performance of counsel; provision of counsel to indigents accused of a capital crime; provision of counsel to indigents in non-capital cases on appeal; and conflicts of interest in the representation of indigents. Through its District Assistance Fund, the LIDAB provides supplemental financial assistance for felony case representation to local indigent defender boards which comply with these standards.

In 1989, the Indiana Public Defender Commission was created by statute. Among other responsibilities, the Commission is charged with 1) making recommendations concerning standards for indigent defense services provided for defendants against whom the state has sought the death penalty (including indigency and eligibility standards, attorney qualification standards, conflict of

⁷³ The Louisiana Supreme Court on July 1, 1994 promulgated Rule 31 which created, under the judicial branch of government, the 15-member Louisiana Indigent Defender Board (LIDB). The LIDB develops policy and oversees distribution of funds in connection with the Capital Litigation Program, the Appellate Program, the Expert Witness/Testing Fund, and the District Assistance Fund established pursuant to Rule 31. The LIDB was appropriated \$7.5 million for FY 1998 and employs a chief executive officer and other support staff. (On January 1, 1998, the LIDB became an independent state agency under the executive branch with a new acronym: LIDAB.)

interest; and standards for support services) and 2) adopting guidelines and salary and fee schedules under which counties will be eligible for reimbursement from the state-funded public defense fund (including indigency determination, cost recovery, attorney cost qualification, attorney compensation, and caseload guidelines) .

Following through on its mandate, the Commission first tackled the area of representation in death penalty cases, drafting standards which were ultimately adopted by the Indiana Supreme Court in Indiana Criminal Rule 24, which went into effect in January 1990. Under Rule 24, for the first time in the history of indigent defense in Indiana, state funds became available for counties which complied with the requirements of the rule in providing representation to indigent defendants charged with crimes where the state asked that the death penalty be imposed. Rule 24 includes qualification standards for both lead counsel and co-counsel, maximum caseload standards (outside of the capital case) for counsel, requirements for sufficient support staff and compensation at \$70.00 per hour. Any county that is able to substantially meet these standards is reimbursed by the state for one half the cost of representation.

In 1995, additional state funds for indigent defense became available to Indiana's counties, again through the efforts of the Indiana Public Defender Commission. Since January 1, 1995, counties which substantially comply with the Indiana Public Defender Commission's standards for indigent defense services in non-capital cases, which are closely modeled on ABA and NLADA standards, are eligible for reimbursement for indigent defense expenditures from the Commission.

The Commission's non-capital standards require that any county with a population over 12,000 must adopt a comprehensive plan for indigent defense services either pursuant to or consistent with statutory provisions, and must submit the plan to the Commission. (By statute, most counties have the option of developing a public defender program, a private bar contract program, or an assigned counsel system in which private attorneys are appointed by judges on a case by case basis.) The standards also contain requirements relating to the eligibility of counsel, payment by the accused of defense costs, and a set of qualification standards for attorneys in felony, juvenile, misdemeanor,

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appeal and other cases. As with Rule 24 reimbursements, the public defense fund which the Commission oversees is the source of the monies used to make the reimbursements.

APPENDIX C

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
ALABAMA	None	Not applicable	None	Not applicable
ALASKA State Public Defender Agency (Executive agency, Department of Administration)	None	Not applicable	Appointed by Governor from nominations of judicial council. Confirmed by majority of legislature in joint sitting. Four-year term; renewal requires legislative confirmation. Member of bar. Governor can remove for good cause.	Appoint, supervise and control assistant public defenders and other employees. Submit annual report to legislature & Supreme Court on number and types of cases, dispositions and expenditures. Full-time; private practice prohibited.
ALASKA Office of Public Advocacy (Executive agency, Department of Administration)	None	Not applicable	Public Advocate appointed by Governor. Serves at will of Governor.	Provides Guardians Ad Litem for abused and neglected children and status offenders. Provides representation in conflict cases from the Alaska Public Defender Agency. Acts as Public Guardian and conservator for citizens with disabilities.
ARIZONA	None	Not applicable	None	Not applicable
ARKANSAS Arkansas Public Defender Commission (Executive agency)	Seven members appointed by Governor: at least four licensed Arkansas attorneys experienced in criminal defense; at least one county judge. Governor designates one member as Chair. No more than two residents of same congressional district. No two members from same county. Serve five- year terms.	Establish policies and standards for Public Defender System. Approve budgets for trial public defender offices. Require annual reports from trial public defender offices. Appoint Executive Director. Evaluate performance of Executive Director, Capital, Conflicts & Appellate Office, trial public defenders and private assigned counsel. Maintain list of private attorneys willing and qualified to accept capital case appointments. Authorize contracts with trial public defenders.	Executive Director appointed by Commission. Must have experience in defense of capital cases. Serves at will of commission.	Supervise capital conflict and appellate office. Maintain records of operation of public defender system. Prepare budget for commission. Implement attorney performance procedures pursuant to commissioner's standards. Maintain court opinions, statutes, etc. for use by trial public defenders and court-appointed counsel. Maintain appellate brief bank. Convene training program related to public defender system. Prepare annual report.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
CALIFORNIA California Habeas Resource Center (Judicial Branch)	Five-member Board of Directors confirmed by the Senate. Each of the state's five Appellate Projects shall appoint one board member; all must be attorneys. No lawyer working as judge, prosecutor or in a law enforcement capacity is eligible. Four year terms.	Appoint Executive Director.	Executive Director appointed by Board of Directors. Must be member of California state bar during the five years preceding appointment and possess substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time. Serves at the will of the board.	Hire up to 30 attorneys to represent any indigent person convicted and sentenced to death in California in postconviction actions in state and federal courts. Work with the supreme court to recruit attorneys to accept death penalty habeas case appointments and to maintain a roster of attorneys so qualified. Employ investigators and experts to provide services to appointed attorneys in capital postconviction cases. Develop and maintain brief bank for use by appointed counsel. Review case billings and recommend compensation of members of the private bar to the court. Prepare annual report on the status of appointment of counsel for indigent prisoners in capital postconviction cases.
COLORADO Office of State Public Defender Commission (Judicial agency)	Five members appointed by Supreme Court. No more than three from same political party. Three attorneys, two non-attorneys. No judges, prosecutors, public defenders or law enforcement personnel.	Appoint State Public Defender and discharge for cause.	State Public Defender appointed by Commission. Five-year, renewable term. Member of bar five years prior to appointment. Full-time position.	Employ and set compensation for all employees (rates approved by Supreme Court); establish regional offices as necessary; provide commensurate legal services to indigents accused of crimes as are available to non-indigents, independently of any political consideration or private interests.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
COLORADO Office of Alternate Defense Counsel (Judicial Agency)	Nine members appointed by Supreme Court. No more than five from same political party. Six member lawyers, each representing one of the six congressional districts, all of whom are Colorado licensed lawyers practicing criminal law. Three members citizens not licensed to practice law in Colorado. No member at any time a judge, prosecutor, public defender or employee of a law enforcement agency. Serve four-year terms.	Select an Alternate Defense Counsel; serve as an advisory board to the alternate defense counsel; advise alternate defense counsel on development and maintenance of competent and cost-effective representation. Shall meet at least annually.	Alternate defense counsel appointed by Commission to renewable five-year term. Must be licensed to practice law in Colorado for at least five years prior to appointment. May not hold private practice. Serves at will of the Commission.	Employ and set compensation for all employees. Provide legal representation to indigent persons and partially indigent persons in circumstances when the state public defender has a conflict of interest by contracting with licensed attorneys and investigators. Legal services provided to indigents shall be commensurate with those available to non-indigents and independent of any political considerations or private interests.
CONNECTICUT Public Defender Services Commission (Autonomous body within judicial department for fiscal and budgetary purposes only.)	Seven members: two judges appointed by Chief Justice; one member appointed by each: Speaker of House, President Pro Tem of Senate, minority leader of House, minority leader of Senate. Chairman appointed by Governor. Three-year term. No more than three, other than chairman, from same party. Two of four non-judicial members non-attorneys. No public defenders.	Adopt rules for Division of Public Defender. Establish a compensation plan comparable to state's attorneys. Establish employment standards. Appoint Chief Public Defender and Deputy Chief Public Defender. Remove Public Defender and Deputy Public Defender for cause following notice and hearing. Submit annual report to Chief Justice, Governor and Legislature by October 15. (See duties of public defender.)	Chief Public Defender appointed by Commission for a four-year term. Member of state bar for five years. Full-time position.	Direct and supervise work of all personnel. Submit annual report, including data and recommendations for changes in law, to Commission by September 15. (Note extensive list in Sec. 51-291.)
DELAWARE Office of the Public Defender (Executive agency)	None	Not applicable	Public Defender appointed by Governor. Six-year term. Qualified attorney licensed in Delaware.	Appoint assistant attorneys, clerks, investigators and other employees as necessary and set salaries. Determine indigency prior to arraignment. Prepare annual report.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
DISTRICT of COLUMBIA D.C. Public Defender Service (independent agency)	Eleven member Board of Trustees. Appointed by panel of two U.S. judges, two D.C. judges and Mayor of D.C. Three-year term; not more than two consecutive. No judges. Four of eleven members non-attorney residents of D.C.	Establish general policy but shall not direct conduct of particular cases. Submit fiscal year report to Congress, chief judges of U.S. Courts and D.C. Courts and D.C. Mayor. Arrange annual independent audit. Quarterly reports to court on matters relating to appointment system. Appoint Director and Deputy Director and set their salaries.	Director appointed by Trustees. Serve at pleasure of Trustees. Member of D.C. Bar. No private practice.	Employ and supervise personnel. Set compensation not to exceed salary paid to U. S. Attorneys and staff.
FLORIDA Florida Public Defender Association (FPDA); Florida Public Defender Coordination Office (FPDCO)	None per se, but the FPDA is governed by a Board of Directors comprised of the 20 elected public defenders in Florida, two representatives of the assistant public defender staff and one representative apiece from public defender investigative and administrative staff. The FPDCO works with the FPDA.	The FPDA engages in activities that promote and develop the public defender system in Florida. The FPDCO coordinates FPDA meetings; collects caseload and budget information from public defenders; analyzes public defender workload; prepares annual funding formulae which are based on caseload and attorney unit cost and used by the three branches of government and the circuit public defenders in the budget request process; monitors pertinent legislative developments; conducts training for public defender staff; and circulates pertinent case law to the elected public defenders.	Not applicable	Not applicable
GEORGIA Georgia Indigent Defense Council (separate agency within Judicial branch)	Fifteen member council. Supreme Court selects members: ten lawyers; three lay persons; and two county commissioners. Selected for four year terms.	Recommend standards and guidelines for local programs. Administer state funds to local public defender programs that comply with standards. Support local defenders. Provide local attorneys with technical, clinical help and training. Prepare budget.	Director selected by Council.	Duties and responsibilities not contained in statute.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
HAWAII Office of State Public Defender (Executive Agency, Department of Budget and Finance)	Five member Defender Council. Appointed by Governor. Serve at Governor's pleasure. One member form each county. Chairman selected by members.	Council shall be governing body of Office of State Public Defender. Shall appoint Public Defender. Approve employment decision of Public Defender.	State Public Defender appointed by Council. Four-year term. Qualified to practice law in Hawaii. Full-time position.	Subject to approval of Council: employ assistant public defenders, investigators and other support personnel. Assistant public defenders may be part-time and engage in private practice other than criminal law.
IDAHO State Appellate Public Defender (The Department of Self-Governing Agencies)	None	Not applicable	State Appellate Defender appointed by the governor with advice and consent from the senate from a list of 2-4 persons recommended by a committee comprised of the president of the Idaho state bar association, chairmen of the senate judiciary and rules committee, and a citizen at large appointed by the governor. The chief justice of the Idaho supreme court, or her designee, is ex officio member of the committee. Public defender must be attorney licensed to practice in Idaho with at least five year experience practicing law. Four-year term; removed only for good cause.	Provide appellate and postconviction representation to indigent defendants convicted of felony offenses in those counties which participate in the capital crimes defense fund; prepare annual report. Employ deputy state appellate defenders and other employees. Adopt necessary policies or rules.
ILLINOIS Office of State Appellate Defender (agency of the Judicial department)	Board of Commissioners. Nine members. Appointed by various courts and bars. Governor appoints Chair. Serves one six-year term.	Approve budget. Advise Appellate Public Defender on policy. Can recommend dismissal of the Appellate Public Defender.	State Appellate Defender appointed by Illinois Supreme Court. Four-year term. Qualified to practice law in Illinois.	Provide representation in criminal appeals. Establish offices around the state. Train and assist trial level defenders.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
INDIANA Public Defender Commission (Policy board for capital and non-capital representation) (Judicial agency)	Public Defender Commission: Eleven members: three appointed by Governor; three appointed by Chief Justice; one appointed by Board of Indiana Criminal Justice Institute; two House members appointed by the Speaker of the House; two Senate members, appointed by Speaker Pro Tempore of the Senate. Four-year term. No law enforcement officers or court employees. Members designate one member Chair.	Set standards for indigent defense services in capital and non-capital cases. Adopt guidelines and fee schedule under which counties may be reimbursed. Make recommendations concerning the delivery of indigent defense services in Indiana. Prepare annual report on operation of public defense fund.	Not applicable, but see below.	Not applicable, but see below.
INDIANA Public Defender of Indiana (State post- conviction public defender) (Judicial agency)	None, but see above.	Not applicable, but see above.	Public Defender appointed by Supreme Court. Four-year term. Resident. Practicing lawyer in Indiana for three years.	Represent all indigent defendants in post- conviction proceedings.
IOWA Office of the State Public Defender (independent agency within Executive branch)	5 members: no more than three licensed to practice law in Iowa. Three members appointed by Governor - one who is nominated by Iowa State Bar, and one who is nominated by state supreme court. Two members from the General Assembly, one from each chamber and no more than one from a political party. Each member serves a three-year term.	(Not applicable) Advise the Governor, General Assembly and the state public defender regarding hourly rates and per case fee limitations for court-appointed counsel.	State Public Defender appointed by Governor. Four-year term. Licensed to practice law in Iowa.	Oversee all 18 public defender offices. Coordinate non-public defender indigent defense program. Contract with attorneys when public defender unable to take case.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
<p>KANSAS State Board of Indigent Defense Services (Executive branch agency)</p>	<p>Nine members: five lawyers, four non-lawyers. Appointed by Governor and confirmed by Senate. Two members from First Congressional District, one of whom is a registered Kansas lawyer, and at least one member from each other Congressional District. At least one (and up to five) registered Kansas lawyer from each county with over 100,000 population. No members may be judicial or law enforcement personnel. Three-year terms.</p>	<p>Appoint Director and public defenders. Maintain statistics on indigent defense representation. Conduct training programs. Establish public defender offices. Enter into contracts with attorneys to provide indigent defense representation and with cities or counties for misdemeanor representation. Provide technical assistance to public defenders and private attorneys.</p>	<p>Board appoints Director who must be licensed in Kansas and demonstrate commitment and ability in criminal law.</p>	<p>Serve as Chief Executive Officer of Board. Supervise operation, policies, procedures of Board. Prepare annual report.</p>
<p>KENTUCKY Department of Public Advocacy (independent state agency within Executive branch)</p>	<p>Nine appointed members plus deans of Kentucky law schools. Two members appointed by Governor. One by speaker, one by president of the senate, two by Supreme Court; two criminal lawyers appointed by Governor from list of five submitted by Bar Association, one appointed by Governor from list submitted by Kentucky Protection and Advocacy Advisory Board. Four-year term. No prosecutors or law enforcement officials. Chair elected by Commission to one-year term. Also a 17-member citizen advisory board appointed by the Public Advocate.</p>	<p>Recommend to Governor three attorneys as nominees for Public Advocate. Assist Public Advocate in selecting staff. Provide general supervision of Public Advocate and review performance. Engage in public education and generate political support. Review and adopt annual budget. Not interfere with handling of cases.</p>	<p>Public Advocate appointed by Governor from nominees submitted by Commission. Member of Kentucky Bar with five years experience. Four-year term.</p>	<p>Appoint Deputy Public Defender. Appoint assistant public defenders and other personnel. Serve as ex officio, non-voting member of Commission. Appoint 17-member Advisory Board for Protection and Advocacy Division.</p>

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
LOUISIANA Louisiana Indigent Defender Program (separate agency within Executive branch created by Supreme Court Rule)	Seven to fifteen members. Appointed by Chief Justice of Supreme Court with concurrence of majority of justices. Renewable three-year terms. One member from each of the six Supreme Court districts. One additional member from First Supreme Court District. Not more than three non-lawyer members. At least three experienced criminal lawyers.	Members elect Chair. Establish uniform standards and guidelines for statewide program. Subdivide state into regions. Select most appropriate system for delivery in each region. Set policy for the Expert public defenders. Set eligibility standards Witness/Testing Fund and the District Assistance Fund. Set eligibility standards and guidelines for district defender boards to receive Expert Witness/Testing and District Assistance Funds.	Chief Executive Officer selected by Board. Attorney with five years prior experience in criminal practice. Board sets term.	Supervise attorneys in Appellate Division and Capital Litigation programs. Manage monies in Expert Witness/Testing Fund and District Assistance Fund. Assist Board in enforcing its standards and guidelines.
MAINE	None	Not applicable	None	Not applicable
MARYLAND Office of the Public Defender (Executive agency)	Three-member Board of Trustees; two must be active attorneys. Appointed by Governor. Three-year term. Chair designated annually by Trustees.	Study and observe operation of Public Defender office. Coordinate activities of district Advisory Boards. Appoint Public Defender. Advise Public Defender on all relevant matters.	Public Defender appointed by Board of Trustees. Term is at the pleasure of Trustees. Attorney admitted in Maryland plus five years in practice.	Appoint Deputy Public Defender with Board approval. Appoint First District Defender in each judicial district. Appoint assistant public defenders with advice of District Defenders. Appoint other employees. Maintain at least one office in each district. General responsibility for operation of all offices. Maintain records. Supervise district defenders' maintenance of local attorney panels.
MASSACHUSETTS Committee for Public Counsel Services (independent agency; Judicial branch for budget purposes only)	Fifteen members. Appointed by Justices of Supreme Judicial Court. Three-year term. Chair elected by the Committee.	Establish standards for public counsel and private counsel divisions. Establish uniform standards of indigency. Establish guidelines for training and for qualification and removal of counsel in public and private divisions. Prepare annual report. Appoint chief counsel and two deputies. Extensive list of other duties and responsibilities enumerated by Statute.	Chief Counsel appointed by Committee. Attorney. Serves at pleasure of Committee.	Overall supervision of various divisions of committee. Perform duties as defined by the Committee. Authorize all payments certified by judges for private counsel.

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STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
MICHIGAN State Appellate Defender Office, Appellate Defender Commission (agency of Judicial branch)	Seven members appointed by Governor. Two recommended by Supreme Court; one recommended by Court of Appeals; one recommended by Michigan Judges Association; two recommended by State Bar; one non-attorney. Four-year term. No member a sitting judge, prosecutor or law enforcement officer.	Choose State Appellate Defender. Develop appellate defense program. Develop standards for program. Maintain list of attorneys willing and qualified for appointment in indigent appellate cases. Provide CLE training for attorneys on list.	State Appellate Defender chosen by Commission. Can only be removed for cause.	Provide appellate representation. Maintain a manageable caseload. Prepare and maintain brief bank available to court-appointed attorneys who provide appellate services to indigents.
MINNESOTA State Board of Public Defense (separate agency within Judicial branch)	Seven members. One district court judge appointed by Supreme Court. Four attorneys familiar with criminal law but not employed as prosecutors, appointed by Supreme Court. Two public members appointed by Governor.	Elect chair and appoint State Public Defender. Chair may appoint Chief Administrator. Prepare annual report. Recommend budget for Board, Office of State Public Defender and public defense corps. Establish procedures for distribution of funds for public defense. Set standards for state and district public defenders and court-appointed system.	State Public Defender appointed to four-year term. Full-time position.	Provide appellate and post-conviction proceeding representation in all indigent cases. Assist in trial representation in conflict of interest cases when requested by a district public defender or appointed counsel. Conduct training programs.
MISSISSIPPI Public Defender Commission of the State of Mississippi	None. (Mississippi Public Defender Act of 1998 repealed in 2000.)			
MISSOURI Office of State Public Defender (independent department in Judicial Branch)	Public Defender Commission: Seven members: four lawyers; no more than four from same party. Appointed by Governor with advice and consent of Senate. Six-year term. State Public Defender is ex officio member without vote. Chair elected by members.	Select director and deputies. Establish employment procedures. Review office performance and monitor director. Public education to ensure independence of system. Advise on budgetary matters. Contract with private attorneys. Approve fee schedule for assigned counsel.	Director appointed by Commission. Four-year term. Attorney with substantial criminal law experience, also experienced in personnel administration.	Administer and coordinate operation. Direct and supervise work of employees. Submit annual report to budget to Commission. Supervise training. Contract out for legal services with approval of Commission.

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STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
MONTANA State Appellate Public Defender (Executive branch agency)	Five members. One trial level judge, nominated by Judges Association. Three attorneys, nominated by State Bar, who must have criminal defense experience. One lay person nominated by Governor. Staggered terms, one or two years.	Appoint Appellate Public Defender. Help gather attorney list for appointments of counsel at trial and state post-conviction. Draft criminal defense standards for counsel.	State Appellate Defender hired by Commission. No term limit.	Provides representation in state post-conviction or appeals if defendant claims ineffective assistance. Help in or assume responsibility in appeals. Assume case if trial or Supreme Court judge appoints.
NEBRASKA (Executive branch agency)	Commission for Public Advocacy. Nine members: six members for each judicial district; chair and two positions at large. Governor appoints from list prepared by State Bar. Non-salaried. Qualified attorneys with criminal defense experience or demonstrated commitment. Budget is from general funds and recovery of one-third of expenses from Nebraska's counties.	Provide legal services and resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony resource center divisions. Select a chief counsel.	Chief Counsel selected by Commission. Serves at will of Commission. Five years Nebraska practice. Criminal defense experience including capital case defense.	Overall supervision of appellate, capital and major case divisions and litigation support fund. Prepare budget and annual report. Establish and administer projects and programs for the operation of the commission. Oversee training programs.
NEVADA State Public Defender (Judicial branch agency)	None	Not applicable	Four-year term. Selected by Governor. Nevada Bar member.	Establish statewide system for all counties who choose to be part of state system. Oversee activities of these programs. Prepare annual budget. Annual report to legislature.
NEW HAMPSHIRE Judicial Council (Judicial branch agency)	State-level Judicial Council. Fourteen members. One selected from each court level: Supreme, Superior, Probate; President of the New Hampshire Municipal and District Court Justices Association (ex officio); Attorney General (ex officio); President of New Hampshire Bar Association (ex officio); representative from Superior Court Clerks; seven others appointed by Governor, four of whom must be attorneys.	The Judicial Council's responsibilities related to indigent defense include contracting with local defender corporations and individual attorneys for provision of defense services and general supervision of indigent programs in regard to: allocation of cases between public defender program and assigned counsel; performance of counsel; competence of counsel; fiscal and budgetary matters.	The Executive Director of the New Hampshire Public Defender, a private non-profit corporation under contract with the Judicial Council, is selected by the corporations board of directors.	Executive Director's responsibilities are contained in a contract with the Judicial Council.

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STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
NEW HAMPSHIRE New Hampshire Public Defender (Judicial branch)	None	Not applicable	The judicial council, with approval of the governor and council, contracts with an organization or group of lawyers approved by the board of governors of the New Hampshire bar Association to operate a public defender program.	Represent indigent defendants in criminal cases or juveniles charges as delinquents in the district, municipal, superior and supreme courts.
NEW JERSEY Office of the Public Defender (Executive Agency, Part of Division of the Public Advocate)	None	Not applicable	Appointed by Governor with advice and consent of Senate. Five-year term. Attorney, experienced in practice in New Jersey.	Appoint deputy and assistant public defenders as well as support personnel. Establish State Public Defender system for all counties. Engage and compensate assigned counsel.
NEW MEXICO State Public Defender (Executive department)	None	Not applicable	Chief Public Defender appointed by and serves at pleasure of Governor. Attorney active for five years prior to appointment and is experienced in defense or prosecution.	Manage all operations of department. Set fee schedule for assigned counsel. Establish local public defender districts. Appoint district public defenders who serve at his/her pleasure.
NEW YORK Capital Defender Office (independent agency in Judicial branch)	None	Not applicable	Capital Defender selected by three-member Capital Defender Office Board of Directors.	In consultation with Board of Directors, hire attorneys as deputy capital defenders, investigators and other staff. The Capital Defender Office provides both direct representation and consultation services; it also has responsibility for determining, in consultation with the administrative board of the judicial conference, attorney qualification standards.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
NORTH CAROLINA Office of Indigent Defense Services (independent office in Judicial Department)	Commission on Indigent Defense. Thirteen members. Chief Justice appoints one active or former member of North Carolina judiciary; Governor appoints one non-attorney; General Assembly appoints one member recommended by President Pro Tempore of the Senate and one member recommended by the Speaker of the House of Representatives; the North Carolina Public Defenders Association, the North Carolina State Bar, the North Carolina Bar Association, the North Carolina Academy of Trial Lawyers, the North Carolina Association of Black Lawyers and the North Carolina Association of Women Lawyers each appoint one member (with no restrictions). Plus, the Commission will appoint three members, who must reside in different judicial districts from one another - one must be a non-attorney, one may be an active member of the North Carolina judiciary, one must be Native American.	Appoint the Director of the Office of Indigent Defense Services. Develop standards and guidelines governing provision of indigent defense services. Determine methods of delivering indigent defense services (appointed counsel, contract counsel, part-time public defender, full-time public defender, appellate defender or some combination of these) throughout the state. Establish compensation rates for court-appointed counsel and schedules of allowable expenses, appointment and compensation for expert witnesses. Approve budget for Office of Indigent Defense Services.	Not applicable	Not applicable
NORTH CAROLINA Appellate Defender Office (Judicial branch agency)	None	Not applicable	Appellate Defender appointed by Commission on Indigent Defense	Provide appellate representation to indigents. Maintain appellate brief bank. Provide CLE training. Consult with attorneys representing defendants in capital cases. Recruit qualified, willing attorneys for state and federal death penalty post-conviction proceedings.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
NORTH DAKOTA North Dakota Legal Counsel for Indigents Commission (Judicial agency)	Seven members. Chief Justice appoints; one county government representative recommended by North Dakota Association of Counties; one judge recommended by Chief Presiding Judge; three recommended by State Bar; and two recommended by Attorney General. Three-year terms. Chief Justice appoints Chair. State Court Administrator provides staff.	Review cost and caseload data. Prepare annual report and budget. Provide planning, guidelines and technical assistance to counties and judicial districts re: indigent defense services. Adopt guidelines for indigent defense services. Review disputed fee decisions of trial judges.	None	Not applicable
OHIO Ohio Public Defender Commission (independent commission within the Executive branch)	Nine members. Chair appointed by Governor. Four appointed by Governor; two of whom are from each political party. Four members appointed by Supreme Court. Chair and at least four members are bar members. Four-year terms.	Provide, supervise and coordinate legal representation. Establish rules for Public Defender such as compensation, indigency standards and case loads. Approve budgets.	State Public Defender appointed by Commission. Attorney with minimum of four years experience. State bar member.	Appoint Assistant State Public Defender. Supervise maintenance of Commission standards. Keep records and financial information. Establish compensation procedures.
OKLAHOMA Oklahoma Indigent Defense System Board (Executive branch agency)	Five members for five-year terms. Appointed by Governor, subject to advice and consent of Senate. At least three lawyers. Governor designates Chair.	Make policies for indigent defense programs. Approve budget. Appoint advisory council of indigent defense attorneys. Establish policies on maximum case loads. Appoint Executive Director.	Executive Director appointed by and serves at pleasure of Board. Licensed as Oklahoma attorney for four years. Experienced in criminal defense.	Develop state system, with exception of Oklahoma and Tulsa counties. Prepare system budget. Keep list of private attorneys for capital and non-capital case appointments. Advisor to indigent defenders. Act on system's behalf in legislative efforts. Conduct training.
OREGON State Public Defender Office (agency of Judicial branch)	Six member Board appointed by Chief Justice of Supreme Court for four-year terms.	Make policy for statewide appeals. Selects state Public Defender. Chairman chosen by committee. Responsible for establishing policy of program.	Selected by independent committee under Judicial branch. Four-year term. Full-time; private practice prohibited.	Two levels - appellate (on-staff) and trial (contract provider). Report to Legislature biannually.
PENNSYLVANIA	None	Not applicable	None	Not applicable

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
RHODE ISLAND Office of the Public Defender (agency of Executive branch)	None	Not applicable	Appointed by Governor with advice and consent of Senate. Three-year term. Attorney with five years experience.	Appoint, supervise and direct assistants as necessary. Develop and oversee statewide system by regions.
SOUTH CAROLINA Office of Indigent Defense (independent agency within Executive branch)	Commission on Indigent Defense. Seven members appointed by Governor on recommendation of South Carolina Public Defender Association. One from each congressional district. One from state at-large who serves as Chair. Four-year terms.	Appoint Executive Director of Office of Indigent Defense. Supervise operation of Office of Indigent Defense.	Executive Director appointed by Commission.	Administer Office of Indigent Defense. Distribute state funds to counties. Compile statistics on indigent defense statewide. Report to General Assembly on indigent defense. Maintain list of attorneys qualified to accept appointments in death penalty cases. Administer collection and distribution of public defender application fees and surcharge fines imposed on specified criminal offenses. Supervise staff and carry out requirements of Commission.
SOUTH CAROLINA Office of Appellate Defense (independent state agency within Executive branch)	Commission on Appellate Defense: Dean of the University of South Carolina Law School; President of the South Carolina Public Defenders Association; President of the South Carolina Bar Association; President of the South Carolina Trial Lawyers Association; Chairman of the South Carolina Judicial Council; Chairman of the Senate Judiciary Committee or his designee; and Chairman of the Judiciary Committee of the House of Representatives or his designee. Commission elects Chairman for one-year term.	Appoint Chief Attorney. May, subject to rules of Supreme Court, recommend or establish policies for the operation of the Office of the Appellate Defense. Approve annual budget. Establish indigency criteria.	Chief Attorney appointed by Commission to four-year term. Licensed to practice law in South Carolina.	Submit budget to Commission. Establish training for employees. Represent indigent defendants in appeal of a conviction in trial court or decision of any proceeding in civil commitment or other involuntary placement.
SOUTH DAKOTA	None	Not applicable	None	Not applicable

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STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
TENNESSEE District Public Defenders Conference (agency of the Judicial branch)	Not applicable, but see below.	Not applicable, but see below.	Office of Executive Secretary to District Public Defender Conference. Elected by Conference for eight-year term.	Assist district public defenders to coordinate their responsibilities. Serve as liaison among various branches of state government. Prepare budgets for each district for submission to state. Provide public defenders with minimum law libraries.
TENNESSEE Tennessee Indigent Defense Commission of the Supreme Court of Tennessee (Judicial branch)	Tennessee Indigent Defense Commission of the Supreme Court of Tennessee. Eleven members appointed by Supreme Court from recommendations made by petitioner organizations who pushed for creation of Commission through Supreme Court rule. Three-year terms. Chair appointed by Supreme Court.	Appoint officers. Adopt rules for operation of Commission. Develop a comprehensive plan for indigent defense services in state court system. Collect case information; determine reasonable caseload for district defenders; set standards for criminal defense attorneys representing indigent defendants; set compensation schedule for assigned counsel; set annual budget for court-appointed counsel expenditures; and develop voucher review process.	Not applicable, but see above.	Not applicable, but see above.
TENNESSEE Office of the Post- Conviction Defender and Post-Conviction Defender Commission	Nine members: two appointed by the Governor; two appointed by the lieutenant governor; two appointed by the speaker of the House of Representatives; three appointed by the Supreme Court of Tennessee. Serve four-year terms.	Appoint Post-Conviction Defender; prepare annual budget for the Office of Post- Conviction Defender.	Post-Conviction Defender appointed by Post- Conviction Defender Commission. Four-year term. Must be lawyer in good standing with Supreme Court of Tennessee and possess demonstrated experience in capital case litigation.	Provide legal representation to indigent persons convicted and sentenced to death; hire assistant post-conviction defenders, investigators and support staff; maintain clearinghouse of materials and brief bank for public defenders and private counsel who represent indigents charged or convicted of capital crimes; provide CLE training and consulting services to lawyers representing defendants in capital cases; recruit qualified members of the bar to provide representation in state death penalty proceedings.
TEXAS	None	Not applicable	None	Not applicable

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
UTAH	None	Not applicable	None	Not applicable
VERMONT Office of the Defender General (agency of Executive branch)	None	Not applicable	Defender General appointed by Governor with advice and consent of Senate. Four-year term.	Operates program thru public defenders and deputy public defenders or by contracting out to private attorneys. May establish local offices headed by a public defender. Contract with member of bar to serve as assigned counsel coordinator.
VIRGINIA Public Defender Commission (agency of Judicial branch)	Nine members. Appointed by Speaker of the House in consultation with Senate and House Courts of Justice Committees. Three judges, three practicing attorneys, three lay people. Three-year terms.	Oversee administration of Public Defender Commission. Select Executive Director and individual head public defenders.	Commission selects Executive Director who serves at pleasure of Commission. Member of Virginia State Bar and experienced.	Statute sets up office. Hire staff. Establish and oversee local public defender offices mandated by state legislature.
WASHINGTON Office of Public Defense (independent agency of the Judicial branch)	Advisory Committee has nine members: three persons appointed by the chief justice; two non-attorneys appointed by the governor; two senators and two members of the house of representatives; one person appointed by the court of appeals executive committee; and one member appointed by the Washington State Bar Association.	Submit three names to the Supreme Court for Director of the Office of Public Defense.	Director serves at the pleasure of the supreme court, which selects from list of three names submitted by Advisory Committee. Director must have: practiced law in Washington for at least five years, represented criminal defendants, and proven managerial or supervisory experience.	Administers all criminal defense services; submits to state legislature a biennial budget for costs related to appellate indigent defense; recommends indigency standards; collects information and reports to the legislature on indigency cases; coordinates with the supreme court and judges of each division of the court of appeals to determine how attorney services should be provided. The Office of Public Defense does not provide direct representation.
WEST VIRGINIA	None	Not applicable	None	Not applicable

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2000

STATE Type of Program	Commission	Commission Duties and Responsibilities	Public Defender Selection Process, Terms and Qualifications	Public Defender Duties and Responsibilities
WISCONSIN Wisconsin State Public Defender (independent agency within Executive branch)	Nine members. Appointed by Governor, approved by Senate. At least five must be attorneys. Three-year terms. Chair is elected by Board.	Appoint state Public Defender and establish salary. Approve budget and submit to Governor. Promulgate standards of indigency. Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs. Perform all other duties necessary and incidental. Contract with federal agencies and local public defender organizations for provision of services.	State Public Defender appointed by Board. Member of Wisconsin Bar. Five-year term.	Supervise operation of all state and regional public defender offices. Maintain data and submit biennial budget to Board. Delegate cases to any member of Wisconsin Bar. Negotiate contracts out for representation as directed by Board. Appoint staff.
WYOMING State Public Defender (Executive agency)	None	Not applicable	State Public Defender appointed by Governor. No term specified. Member of Wyoming Bar with experience in defense or prosecution.	Administer public defender program in districts and oversee operation of public defender system statewide. Assistant public defenders appointed by Governor and serve at pleasure of Public Defender. Public Defender may require them to be full-time. Public defender in each district appointed by Governor upon recommendations from district judge and county commissioners.

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