

Some National Trends in Public Defense

Michigan Indigent Defense Commission

December 15, 2015

Robert C. Boruchowitz

Seattle University School of Law

Defender Initiative

Fred T. Korematsu Center for Law and Equality



In partnership with The Sixth
Amendment Center

Partnership

SEATTLE
UNIVERSITY
SCHOOL OF LAW

Defender Initiative

Law school based project to improve public defense representation for thousands of people in Washington and provide models for application in other states.



SIXTH AMENDMENT CENTER
ensuring fairness & equal access to justice

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The Defender Initiative



[Robert C. Boruchowitz](#)

Director and Professor from Practice

The Defender Initiative began in 2008 and is an unusual law school-based project aimed at providing better representation for people accused of crimes and facing loss of their liberty in juvenile and other court proceedings and in the process increase fairness in and respect for the courts. The Initiative also advocates for diversion and reclassification of some misdemeanor offenses, including possession of marijuana and suspended driver license cases. This can save money, improve the misdemeanor courts and reduce racial disparity in the criminal justice system. The Initiative is part of the Fred T. Korematsu Center for Law and Equality, whose mission is to advance justice and equality through a unified vision that combines research, advocacy, and education.

The project, led by its Director, Robert C. Boruchowitz, will advance efforts to improve public defense representation for thousands of people in Washington and provide models for application in other states.

Through a combination of public education, research and writing, and strategic litigation, The Defender Initiative will focus on providing counsel in courts that do not currently provide lawyers and on reducing excessive defender workloads that threaten the effectiveness of the right to counsel, fostering a commitment to excellence in representation, and ensuring that defender lawyers with adequate resources are available and prepared to help accused persons at every stage of prosecution.

Recent
Joint
Effort in
Utah

THE RIGHT TO COUNSEL IN UTAH

AN ASSESSMENT OF TRIAL-LEVEL
INDIGENT DEFENSE SERVICES



OCTOBER 2015

Recent Developments

- Counsel at First Appearance
- Systemic Denial of Counsel Lawsuits
 - New York State, Five Counties
 - Two Cities in Washington, *Wilbur* case
- Diversion of Driving While Suspended Cases
- Examples of Strong Defender Models
- Example of Strong Assigned Counsel Model
- Case Weighting Studies

Michigan Pilot Project Counsel at First Appearance

Grantee Name and Address:

55th District Court, 700 Buhl, Mason, Michigan 48854

SCAO Contract Number:

Final Progress Report:

X Final Report: 4/1/2014-9/30/2014; 10/1/2014-3/31/2015

Person Completing this Report (Name and Title):

Thomas P. Boyd, Chief Judge

Telephone Number:

517.676.8414

Fax Number:

517.481.2230

E-mail Address:

tboyd@ingham.org

D: Describe how the project is improving court performance and detail the evaluation process.

In *Rothgery v Gillespie County* (Texas), 554 US 191 (2008), the United States Supreme Court held that the 6th amendment right to counsel attaches when a liberty determination is made. In Michigan, bond is set (a liberty determination) at arraignment (or before). Further, the Michigan Indigent Defense Commission Act includes all of the following: (1) "All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services." MCL 780.991(1)(c); (2) "A preliminary inquiry regarding, and the determination of, the indigency of any defendant shall be made by the court not later than at the defendant's first appearance in court." MCL 780.991(3)(A); (3) ". . . counsel continuously represents and personally appears at every court appearance throughout the pendency of the case." MCL 780.991(2)(D), emphasis added.

In short, Michigan indigent criminal defense systems will be required to provide counsel at arraignment. We are not aware of any system currently meeting this obligation. The FAP was designed to pilot a method of meeting this obligation.

Representation at arraignment increased court efficiency and decreased jail bed utilization during FAP I. The accompanying data provides thorough analysis of our findings. However, a few highlights will be helpful in understanding this conclusion.

- 13.3% of cases were resolved prior to arraignment. Appointed Counsel successfully resolved the case prior to arraignment, usually through reduction to civil infraction or non-reportable misdemeanor. A significant savings for the entire system.
- Mean case age was reduced 20% from 32.65 days to 26.22 days.
- Time in jail from arraignment to release from custody on that charge was reduced 28% from 8.99 days to 6.443 days.

Systemic Litigation



Relationship HH and Wilbur Triangle

Hurrell Harring
NY COA

State and 5 Counties Settle H-H

Washington
Lawyers
Inspired by H-H
sue two cities

US DOJ Files SOI in H-H, citing
Wilbur

Wilbur Judge Cites
Hurrell Harring in
denying Summary
Judgment

Judge Lasnik Decides
Wilbur

US DOJ Files SOI in Wilbur

Focus on Cronic Not Just Strickland

- “The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.”
 - United States v. Cronic
466 U.S. 648 (1984).

Kimberly HURRELL–HARRING et al.,
on Behalf of Themselves and All Others
Similarly Situated, Appellants,

v.

STATE of New York et
al., Respondents.

Court of Appeals of New York.

May 6, 2010.

Background: Individuals who, as indigent criminal defendants, were assigned public defenders in various criminal prosecutions brought putative class action against State, alleging that public defense system was deficient and presented unacceptable risk that indigent defendants were being denied constitutional right to counsel. The Supreme Court, Albany County, Eugene P. Devine, J., denied State's motions to dismiss, and State appealed. The Supreme Court, Appellate Division, 66 A.D.3d 84, 883 N.Y.S.2d 349, reversed. Individuals appealed as of right.

Holdings: The Court of Appeals, Lippman, C.J., held that:

- (1) individuals stated cognizable claim for constructive denial of their Sixth Amendment right to counsel, and
- (2) arraignment was critical stage of criminal proceeding for purposes of right to counsel, even if guilty plea was not elicited at arraignment.

Affirmed as modified. Pigott, J., filed dis-

- ...whether the **State** has met its foundational obligation under Gideon to provide legal representation.... It is alleged that the experience of these plaintiffs is illustrative of what is a **fairly common practice in the aforementioned counties of arraigning defendants without counsel and leaving them, particularly when accused of relatively low level offenses, unrepresented in subsequent proceedings where pleas are taken and other critically important legal transactions take place.**

■ arraignment itself must under the circumstances alleged be deemed a critical stage...it is clear from the complaint that plaintiffs' **pretrial liberty interests were on that occasion regularly adjudicated with most serious consequences, both direct and collateral, including the loss of employment and housing, and inability to support and care for particularly needy dependents.** There is no question that a bail hearing is a critical stage of the State's criminal process.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH JEROME WILBUR, *et al.*,

Plaintiffs,

v.

CITY OF MOUNT VERNON, *et al.*,

Defendants.

No. C11-1100RSL

ORDER DENYING DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT
AND PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

■ “The evidence could support a finding ... that the assignment of public defenders is little more than a sham.”

Attorney General Holder Endorses Caseload Limits, Cites Wilbur SOI

The Washington Post

Defendants' legal rights undermined by budget cuts

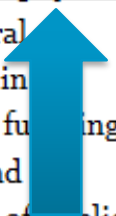
By Eric H. Holder Jr., Published: August 22

Eric H. Holder Jr. is attorney general of the United States.

Fifty years ago, the U.S. Supreme Court unanimously held that everyone who is charged with a serious crime has the right to an attorney. In *Gideon v. Wainwright*, Justice Hugo Black observed for the court that “in our adversary system, any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided to him.” As a prosecutor, as a judge and as our nation’s attorney general, I have seen this reality firsthand.

Despite the promise of the court’s ruling in *Gideon*, however, the U.S. indigent defense systems — which provide representation to those who cannot afford it — are in financial crisis, plagued by crushing caseloads and insufficient resources. And this year’s forced budget reductions, due largely to sequestration, are further undermining this critical work.

The Justice Department is strongly committed to supporting indigent defense efforts through an office known as the Access to Justice Initiative, which I launched in 2010, and a range of grant programs. The department took this commitment to a new level on Aug. 14 by filing a statement of interest in the case of *Wilbur v. City of Mt. Vernon* — asserting that the federal government has a strong interest in ensuring that all jurisdictions are fulfilling their obligations under *Gideon* and endorsing limits on the caseloads of public defenders so they can provide quality representation to each client.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH JEROME WILBUR, *et al.*,

Plaintiffs,

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CITY OF MOUNT VERNON, *et al.*,

Defendants.

No. C11-1100RSL

MEMORANDUM OF DECISION

Judge Lasnik's Opinion

■ Timely and confidential input from the client regarding such things as possible defenses, the need for investigation, mental and physical health issues, immigration status, client goals, and potential dispositions are essential to an informed representational relationship. **Public defenders** are not required to accept their clients' statements at face value or to follow every lead suggested, but they **cannot simply presume that the police officers and prosecutor have done their jobs correctly or that investigation would be futile.**

Mere appointment of counsel to represent an indigent defendant is not enough to satisfy the Sixth Amendment's promise of the assistance of counsel. While the outright failure to appoint counsel will invalidate a resulting criminal conviction, less extreme circumstances will also give rise to a presumption that the outcome was not reliable. For example, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, if there is no opportunity for appointed counsel to confer with the accused to prepare a defense, or circumstances exist that make it highly unlikely that any lawyer, no matter how competent, would be able to provide effective assistance, the appointment of counsel may be little more than a sham and an adverse effect on the reliability of the trial process will be presumed. Cronic, 466 U.S. at 658-60; Avery v. Alabama, 308 U.S. 444, 446 (1940).

The Court finds that the combination of contracting, funding, legislating, and monitoring decisions made by the policymaking authorities for the Cities directly caused the truncated case handling procedures that have deprived indigent criminal defendants in Mount Vernon and Burlington of private attorney/client consultation, reasonable investigation and advocacy, and the adversarial testing of the prosecutor's case. The Cities are therefore liable under § 1983 for the systemic Sixth Amendment violation proved by plaintiffs. See Miranda v.

Order

- The Cities shall hire one part-time Public Defense Supervisor to work at least twenty hours per week.
- Among the duties:
- Monthly supervision and evaluation of whether the public defenders are responding appropriately to information provided by the client and discovery obtained in each case, including pursuing additional discussions with the client, investigations, medical evaluations, legal research, motions, etc., as suggested by the circumstances.

New York—Favorable Settlement

WHEREAS, Plaintiffs and the State intend that the terms and measures set forth in this Settlement Agreement will ensure counsel at arraignment for indigent defendants in the Five Counties, provide caseload relief for attorneys providing Mandated Representation in the Five Counties, improve the quality of Mandated Representation in the Five Counties, and lead to improved eligibility determinations;

(1) The **State** of New York (the "State") shall ensure.....

\$5.5 Million in Attorneys' Fees and Costs- Incentive and Deterrent

XII. ATTORNEYS' FEES AND COSTS

- (A) The State agrees to make a payment to Plaintiffs' counsel, the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, in the aggregate amount of \$5.5 million, as follows:
- (1) The sum of \$2.5 million (Two Million Five Hundred Thousand Dollars) for which an I.R.S. Form 1099 shall be issued to the New York Civil Liberties Foundation, and the sum of \$3.0 million (Three Million Dollars) for which an I.R.S. Form 1099 shall be issued to Schulte Roth & Zabel LLP in full and complete satisfaction of any claims against the State and the Five Counties for attorneys' fees, costs, and expenditures incurred by Plaintiffs for any and all counsel who have at any time represented Plaintiffs in the Action through the Effective Date.

Key Areas

- Supervision and Training
- Investigators, Interpreters, Expert Witnesses
- Communicate effectively with clients—promptly, in-person, and confidentially
- Qualifications and experience for types of cases assigned
- Eligibility

Caseloads Cannot Exceed NAC Limits

(3) In no event shall numerical caseload/workload standards established under paragraph IV(B)(1) or paragraph IV(E) be deemed appropriate if they permit caseloads in excess of those permitted under standards established for criminal cases by the National Advisory Commission on Criminal Justice Standards and Goals (Task Force on Courts, 1973) Standard 13.12.

Original NAC Standards

Standard 13.12

Workload of Public Defenders

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for postjudgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.

Commentary

In attempting to establish workload standards for public defender offices, the Commission encountered

a number of difficulties. First, present practice was difficult to ascertain because some offices do not measure workload in terms of number of cases. Second, the definition of a case varied from jurisdiction to jurisdiction. Third, cases within a given classification in one jurisdiction may require more work than cases within that same classification in other jurisdictions. For example, juvenile, mental health, and traffic cases embrace a right of jury trial in some States and not in others. Finally, physical and geographical factors that influenced an office's caseload capacity differ among jurisdictions. An office which, from a single location in a geographically large jurisdictional area, is required to serve numerous distant scattered courts has a lower caseload capacity per attorney than an office in a geographically small jurisdiction or one in which all the courts, the jail, and the public defender's office itself are housed in a single building.

Very little exists in the way of in-depth studies of defense caseload capacities in criminal and related fields. The Airlie House report—Report of the Conference of Legal Manpower Needs of Criminal Law, Airlie House, Virginia, 41 *F.R.D.* 389, 393 (1966)—estimated that a public defender could handle 150 felony cases per year and from "less than" 300 misdemeanors to "nearly 1000 misdemeanors per year." No estimates regarding juvenile court or other tradi-

- 150 Felony
- 400 Misdem.
- 200 Juvenile
- 200 Mental H.
- 25 Appeals

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- X
:
KIMBERLY HURRELL-HARRING, et al., on :
Behalf of Themselves and All Others Similarly :
Situating, :
:
Plaintiffs, :
:
-against- :
:
THE STATE OF NEW YORK, et al., :
:
Defendants. :

Index No. 8866-07
(Connolly, J.)

III. COUNSEL AT ARRAIGNMENT

(A) (1) The State of New York (the “State”) shall ensure, within 20 months of the Effective Date and continuing thereafter, that each criminal defendant within the Five Counties who is eligible for publicly funded legal representation (“Indigent Defendant”) is represented by counsel in person at his or her Arraignment. A timely Arraignment with counsel shall not be delayed pending a determination of a defendant’s eligibility.

Diversion of Suspended Driver License Cases and Re-Licensing Programs

Spokane Community Relicensing Program



DWLS₃ Diversion



- ALL jurisdictions benefit from directly interfacing with the defendants through our Diversion Programs
- Both City and County Prosecutors have diversion programs specifically for handling DWLS₃ cases.
- These are both designed to reduce potential jail time and assist defendants with reinstating their privilege.
- The diversion programs help alleviate court congestion and compliance with defender case load standards.
- In 2014 the City diverted 948 DWLS₃ cases.
 - All of these are set to meet with the CRP staff on a docket.

Program Objectives



- It is the intent of the legislature to “assist suspended drivers to regain their license and insurance and pay outstanding fines.”
 - RCW 46.20.341
- Assist citizens in obtaining and maintaining job opportunities by *reinstating their privilege* to drive
- Help people in need by *removing collection fees* and *reestablishing reasonable time payments* on millions of dollars worth of legal obligations
- Promote community safety and welfare by increasing the number of *responsible and insured drivers*

The Participants



- Active (billed) participants in 2014 (not including AWM)
 - Averaged 1472 active participants billed each month
 - Total of 17,662 billings by PAR for the year
- Number of people helped through CRP 2008-2014
 - Applications = 16,668
 - Total Enrollments = 9,147
- Number of people helped through CRP in 2014
 - Applications = 2,937
 - Total Enrollments = 1,262

Payments Received From Participants



	<u>2014</u>	<u>2008-2014</u>
● Spokane County	\$ 377,625	\$2,303,862
● Spokane City	\$ 364,853	\$2,224,221
● Pend Oreille	\$ 5,826	\$ 29,770
● Cheney	\$ 6,437	\$ 27,939
● Medical Lake	\$ 2,560	\$ 20,141
	<u>\$757,301</u>	<u>\$4,605,933</u>
● Total received in 2014:	<u>\$757,301</u>	



Contact Information

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Relicensing Program

- The King County Prosecutor's Office offers an invitation to enroll in the Relicensing Program in lieu of filing the criminal charges of Driving While License Suspended in the Third Degree and No Valid Operator's License. Individuals who appear are then offered a variety of payment options including community service and the Community Work Program (work crew).
- In addition, King County District Court allows individuals who are suspended with no pending charges or individuals with pending charges who want help obtaining their license appear as walk-ins.

King County District Court has a full service Re-licensing Program to assist individuals with a suspended drivers' license. The program is being held in two locations: West Division in the Seattle Courthouse and the South Division in the Burien Courthouse.

To take advantage of this program come to the King County District Court's Relicensing Program at either of their two locations:

Burien Courthouse

601 SW 149th St, Burien, WA, 98166

Courtroom 4, every Thursday, at 8:45 A.M.

Seattle Courthouse

516 Third Avenue, Third Floor, Seattle, WA 98104

Room E326, most Tuesdays at 8:45 A.M.

Check-in concludes at 9:00am at both locations, please arrive at 8:45 a.m.

The King County Prosecutor's Office offers an invitation to enroll in the Relicensing Program in lieu of filing the criminal charges of Driving While License Suspended in the Third Degree and No Valid Operator's License. Individuals who appear are then offered a variety of payment options including community service and the Community Work Program (work crew). The King County Department of Adult and Juvenile Detention, Community Corrections Division manages the Community Work Program. Individuals have 6 months to complete the program. The case is referred to the King County Prosecutor's Office for determination of filing once the individual is out of compliance. In addition, King County District Court allows individuals who are suspended with no pending charges or individuals with pending charges who want help obtaining their license appear as walk-ins.

A hearing is set inviting participants to voluntarily enroll in the program. At the hearing, a King County District Court Judge may mitigate and adjudicate any King County District Court infraction fines. The participant then meets with the following service providers to address outstanding fines:

Transworld Systems, Inc. - Once an individual makes the first monthly payment; the hold on the license will be removed. The participant makes monthly payments until the balance is paid in full.

Community Service- Individuals are able to perform community service at the rate of \$15.00 for each hour worked. Individuals are referred to community-based organizations as part of the Relicensing Program or they are able to self-refer. The District Court holds are released once the court receives written proof of community service hours performed.

Community Work Program- Individuals are able to participate in work crew and receive credit towards King County District Court fines at the rate of \$150 for every 8-hour day worked.

TSI Time Payment Program- Individuals are able to make a 10% down payment on non-collection fines and monthly payments for the remaining balance.

Examples of Strong Defender Programs



THE
PUBLIC DEFENDER SERVICE
for the District of Columbia

Why PDS is a Model Program

For more than 50 years, PDS has led the nation in providing exceptional advocacy and quality legal representation to indigent adults and children. Judges and prosecutors alike, as well as public defender agencies and criminal justice bars across the country, acknowledge and respect the outstanding work of PDS's attorneys. PDS is recognized as one of the few defender organizations in the world to meet the standards outlined in the American Bar Association's [*Ten Principles of a Public Defense Delivery System*](#).

Halting Assembly Line Justice

**PDS: A Model of
Client-Centered
Representation**

EVALUATION
PUBLIC DEFENDER SERVICES FOR THE DISTRICT OF COLUMBIA

Washington, DC
August 2008



The client-centered Public Defender Services for the District of Columbia (PDS) stands in contradistinction to this national phenomenon. Qualified, well-trained attorneys meet early and often with clients to help them make informed decisions about their pending charges and remain the client's counsel – when feasible – throughout the life of the case. Attorney performance is closely supervised and management systems are in place to limit case intake when an adjustment of workload is necessary to maintain quality representation. Case decisions are based solely on the interests of the client – without undue political or judicial influence. The independence of PDS' non-partisan Board of Trustees has allowed for a long line of superior leadership, assuring that recruitment from America's top law schools continues year after year. PDS' active participation in system-wide criminal justice initiatives and the support and assistance it provides to the courts, appointed attorneys and the community produce benefits far beyond the requirements of individual cases.

PDS Has Independence, Limits Caseload, Has Strong Training, Works in Community

PDS simply does not accept cases if, in doing so, they would harm a client and/or put an attorney in breach of her ethical duty to provide competent representation due to case overload. To accomplish this goal, the PDS management team starts from the belief that the high number of variables in their system forecloses the possibility of constructing strict numeric caseload standards. Rather, when establishing an appropriate workload for individual attorneys at PDS, supervisors assess the following criteria: quality of representation; parity with opposing counsel; complexity of the litigation; preparation of lawyers to handle complex litigation; local practice rules; speed of turnover of cases; percentage of cases litigated to conclusion; extent of support services available to staff attorneys; court procedures and visiting procedures in custody facilities; and other activities. PDS has established a management infrastructure to closely monitor attorney workload in its various divisions that takes into account all of the above referenced factors as they set appropriate workload levels for each attorney.

PDS also has a unit dedicated to bringing civil rights and constitutional lawsuits designed to change systemic criminal justice practices through the use of the courts' injunctive relief powers.

Department of Public Defense

Providing high-quality legal representation and advocacy for indigent clients in King County

The department's attorneys are highly skilled and dedicated and are committed to ensuring quality legal representation and advocacy for anyone facing a criminal charge, in keeping with both the U.S. Constitution and the state Constitution. DPD staff also tries to help clients address the underlying issues that brought them into the criminal justice system by placing them in drug treatment programs, mental health programs, or other alternatives to incarceration. The department strives to connect clients to a holistic suite of services – from housing to job training – so as to break the cycles that can lead to arrest.

- All Washington defenders must comply with standards including caseload limits set by Washington Supreme Court

The Defender Association in Seattle

- Kim Taylor-Thompson, wrote in a 2003 law review article, *Tuning Up Gideon's Trumpet*, that the Defender Association of Seattle has an earned reputation for “innovative and client-centered representation.”



A rich history of zealous and skilled advocacy

For several years, public defense services were provided by four nonprofit organizations. Those organizations have become part of the Department of Public Defense and no longer exist as independent nonprofits. But collectively, they form a rich legacy of public defense in King County, a legacy that is still honored and celebrated in legal circles throughout the region.

The Defender Association

The Defender Association – the oldest of the four firms – was founded in 1969 with Model Cities' funding, a mere six years after the U.S. Supreme Court ruled in *Gideon v. Wainwright* that the right to counsel extended to the states. Former Assistant U.S. Attorney John Darrah, later a King County Superior Court judge, was the first director, working with a staff of four out of a small office in the Smith Tower. In 1970, TDA secured the first government contract to provide public defense work in King County.

The firm established early on its determination to address systemic barriers to justice, successfully challenging, for instance, the prolonged periods suspects were held in the city jail without appearing before a magistrate and the practice of requiring a defendant in a criminal traffic case to post bail to obtain a trial date. Its logo – St. George slaying the dragon of injustice – captured the firm's zealous spirit.

Over the years and under the leadership of TDA's longest-serving director, Bob Boruchowitz, TDA became both a regional and national model, known for furthering criminal justice system reforms and providing client-centered representation. It hired skilled attorneys, as well as dedicated support staff, all of whom were fierce advocates for the rights of their clients. It became one of the first public defense firms in the nation to hire social workers and garnered national attention for its legal intern program and investigator intern program. It also implemented programs that addressed some of the underlying issues its clients faced. The most well-known of these are [TeamChild](#), now an independent agency, which breaks down barriers to community services for youth involved in the juvenile justice system, and the Racial Disparity Project, which works on numerous fronts to reduce racial bias in the criminal justice system.

In 1983, TDA helped found the statewide [Washington Defender Association](#), which provides case assistance, training and advocacy for defenders across the state. Additionally, TDA sought state funding to assist lawyers handling death penalty cases. When TDA became a division of the county's Department of Public Defense, the agency's Board of Directors renamed its organization the [Public Defender Association](#) and assumed responsibility for it; PDA now houses the Racial Disparity Project and the Washington State Death Penalty Assistance Center.

Floris Mikkelsen, who served as the director of TDA for more than six years, continues as the director of the county's TDA Division and remains committed to client-centered representation and advocacy within the Department of Public Defense.

Strong Assigned Counsel Program

Committee for Public Counsel Services

The Public Defender Agency of Massachusetts

What We Do

We provide legal representation in Massachusetts for those unable to afford an attorney in all matters in which the law requires the appointment of counsel. This includes representation in criminal, delinquency, youthful offender, child welfare, mental health, sexually dangerous person and sex offender registry cases, as well as related appeals and post-conviction matters.

Representation is provided by a combination of approximately 500 staff attorneys and 3,000 private attorneys trained and certified to accept appointments. Support for and supervision of these attorneys is provided by the [Private Counsel](#) and [Public Defender](#) Divisions (for criminal cases and relat-

What We Do

The Private Counsel Division of CPCS delivers legal services to indigent clients through assigned private attorneys in criminal defense [trial](#) and [post-conviction](#) cases as well as [commitment and registration](#) cases for persons convicted of sex offenses. Our mission is to provide excellent legal services to each and every client by assuring that all assigned attorneys possess the skills they need through experience or [training](#), meet high [standards of performance](#) and have ready access to mentoring, supervision and continuing legal education. To support this effort CPCS also provides consulting attorneys with expertise in trial skills, [post-conviction matters, immigration law, forensic evidence and expert witnesses](#), community resources and [sex offender registration](#). The CPCS Private Counsel division welcomes feedback about our service from clients and from assigned attorneys.

Committee for Public Counsel Services Assigned Counsel Manual Policies and Procedures

IV. CRIMINAL: PERFORMANCE STANDARDS AND COMPLAINT PROCEDURES

CRIMINAL DISTRICT COURT JURISDICTION, SUPERIOR COURT JURISDICTION, AND MURDER CASES

Part I: Performance Standards Governing Representation of Indigents in Criminal Cases

Part II: Performance Standards Governing Representation of Indigent Juveniles in Delinquency, Youthful Offender, and Criminal Cases

Part III: Performance Standards Governing Representation of Indigent Juveniles in Department of Youth Services Grant of Conditional Liberty Revocation Cases

Part IV: Performance Standards Governing the Representation of Clients on Criminal Appeals and Post-Conviction Matters



Committee for Public Counsel Services

The Public Defender Agency of Massachusetts

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Assigned Counsel Manual*

This manual informs attorneys representing indigent clients through the Committee for Public Counsel Services pursuant to [G.L. c.211D](#) of the qualification, training and performance requirements, the billing process, audit and evaluation procedures, and other policies and procedures related to assignment and compensation.

Attorneys who accept assignments of cases pursuant to [G.L. c.211D](#) are required to follow the policies and procedures in this manual and any other CPCS publications, and any amendments, revisions, or additions to CPCS policies and procedures. Indigent Court Cost vendors are subject to the CPCS General Billing Policies and Procedures.

Caseload Weighting Studies

- New era began in Missouri with ABA funding
- ABA-related Studies now in Texas, Tennessee, Rhode Island, Colorado
- Arnold Foundation and ABA-related study in Louisiana
- Massachusetts study with federal funding

The Missouri Project

A Study of the Missouri Public Defender System
and Attorney Workload Standards



Includes a National Blueprint for Future Workload Studies

**The Committee for Public Counsel Services
Answering Gideon's Call Project (2012-DB-BX-0010)
Attorney Workload Assessment**

October 2014



**Melissa Labriola, Ph.D., Center for Court Innovation
Ziyad Hopkins, Esq., Committee for Public Counsel Services**

Case Available Hours			
Description	Hours	Days	Total
Non-weekend days	8	260	2080
Holidays	8	11	88
Training	8	3	24
Annual Conference	8	1	8
Vacation (less than 5 yrs)	8	15	120
Personal	8	5	40
Sick (estimate)	8	5	40
Non case duties	2	49	98
total non case time			418
Available case time			1662

Exhibit 17. Quality Adjustments to Attorney Case Weight

Case Type	Quality Adjustment (hours)	Frequency (% of cases)	Net Adjustment (hours)	Preliminary Case Weight (hours)	Quality Adjusted Case Weight (hours)
PDD-District					
Bail Only	0.80	100%	0.80	1.39	2.19
Probation- District	3.96	54%	2.14	6.12	8.26
Misdemeanor	10.67	45%	4.80	11.98	16.78
OUI	7.17	52%	3.73	15.96	19.69
Concurrent Felonies 265	14.05	56%	7.89	16.24	24.13
Concurrent Felonies not 265	12.88	49%	6.31	12.81	19.12
PDD-Superior					
Probation - Superior	0.57	34%	0.19	8.98	9.17
Nonconcurrent Felonies 265	34.60	63%	21.79	54.57	76.36
Nonconcurrent Felonies not 265	23.70	53%	12.56	29.69	42.25
Youth Advocacy Division					
Bail Only	1.30	70%	0.91	1.39	2.30
Probation - Juvenile	14.57	55%	8.01	8.24	16.25
Non-Presumptive YO	31.50	66%	20.79	13.98	34.77
Presumptive YO	86.00	64%	55.04	57.36	112.40
Child and Family Law Division					
Status Offenses	10.12	26%	2.63	19.88	22.51
Care & Protection	37.60	66%	24.81	59.64	84.45
Mental Health Litigation Division					
Civil Commitments	12.86	53%	6.81	10.16	16.97

Murder was not adjusted and for the purposes of Delphi analysis, included in Superior Court felony.

Public Policy Research Institute

Texas Indigent Defense Commission

January 2015

Office of Court Administration

Guidelines for Indigent Defense Caseloads

**A Report to the
Texas Indigent Defense Commission**

Pursuant to House Bill 1318
83rd Texas Legislature



Figure 8-5. Final Recommended Caseload Guidelines for Texas
(Based on Delphi Time Estimates and FY 2014 Trial Rates)

