A National Survey

Criminal Defense Systems

The quality of justice in the United States depends upon the effective and efficient functioning of the entire criminal justice system. The components of that system—law enforcement, prosecution, defense, the courts, and corrections—are interrelated; the smooth functioning of the system requires their coordination. Of all the components of the criminal justice system, however, the least is known, from a statistical point of view, about defense.

The defense of accused persons is constitutionally mandated and must be provided even when such costs are borne by the public. Defense services for the indigent are provided by various systems in every jurisdiction in the United States.

Since the last national survey of indigent defense services was done in 1973, timely answers have not been available for such questions as how are defense services for the indigent provided? by whom? and at what expense?

Therefore, the Bureau of Justice Statistics funded a survey in the fall of 1981 to provide national data on public defense system types, funding sources, costs, and caseloads. Practitioners, policymakers, and legislators will find these survey results useful in their efforts to make informed decisions about the future of the indigent defense function.

The legal mandate

The Sixth Amendment of the Constitution of the United States provides that the accused in a criminal prosecution is entitled "to have the Assistance of Counsel for his defense." In Johnson v. Zerbst, 304

This Bureau of Justice Statistics Special Report provides substantial baseline data on indigent defense services throughout the United States. Together with future statistical and non-statistical studies of public defense, these data should prove useful for an assessment of our system of providing defense services to indigents. In particular, the data presented here allow us to examine cost and caseload trends in greater detail than was possible with previously available data. The Bureau gratefully acknowledges the cooperation of the many individuals who served as State liaisons and whose generous assistance made this National Criminal Defense Systems study possible.

Steven R. Schlesinger
Director
The Court also determined in a long series of rights that the Sixth Amendment is not limited to the criminal trial itself, but extends to all critical stages in the prosecution, such as arraignment, preliminary hearing, entry of pleas, and sentencing. In Argersinger v. Hamlin, 407 U.S. 367 (1979), the Court held in Gideon v. Wainwright, 372 U.S. 337 (1963), although not in seeking discretionary reviews in a State court or in a State Supreme Court, the right to counsel was extended to those misdemeanor cases which usually lead to imprisonment. (See Scott v. Illinois, 440 U.S. 367 (1979).)

There are three primary systems by which indigent defense services are provided throughout the country:

- Public defender programs established as public or private nonprofit organizations with full-time or part-time salaried staff;
- Assigned counsel systems where private attorneys are retained by the courts as needed from a list of available attorneys; and
- Contract systems in which individual attorneys, bar associations, or law firm contracts to provide services for a specified dollar amount.

In 1973, The Other Face of Justice reported that 3,082 counties (72% of the country's 3,082 counties) continued to rely on assigned counsel and reported that in the majority of counties (1,833 or 60%) that reliance on assigned counsel has increased over the years. The American Bar Association, through its Committee on Indigent Defender Procedures, has established branch offices in various parts of the country to provide representation in some counties through public defender systems. In 1973, 30 States, as a result of a legislative mandate, are providing representation in some counties through public defender systems. In a few cases, the local public defender system is organized as an independent, nonprofit corporation. Public defenders are the primary defense service providers in 4% of all counties in the country, but they serve only a small percentage of the population. In fact, 43 of the largest 50 counties in the United States depend on private counsel, a few counties by a public defender program. The data described herein are part of the only national-level data collected on the provision of potentially nonprofit organizations. Fifteen States (Alaska, Colorado, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Wisconsin) have established branch offices to represent clients in counties where public defender systems do not exist. In those counties, a State's counties' public defender programs are established by the State's counties. Some States, as a result of a legislative mandate for public defender programs, have established branch offices to provide representation in some counties through public defender systems.
Defender salaries vary from $26,000 and $100,000. In only 11% of the counties do chief public defenders earn $100,000 or more a year.

The number of staff attorneys employed by public defenders ranges from 1 to more than 50. Approximately 80% of the county public defenders employ three or fewer full-time attorneys. Many public defender programs in this survey's sample, a total of 4,428 lawyers employed on a full-time basis and 653 are employed part-time. Public defender programs reporting part-time staff were typically found in counties where the population was under 50,000.

The majority of public defender programs are administered by a public defender or supervising coordinator; secretaries employ three or fewer full-time attorneys. The latter categories.

The number of staff attorneys assigned by the office cannot represent both the primary and a separate program to handle assignments that only the highest echelons.

Typically, under an assigned counsel system, a list of eligible and willing attorneys is developed by the office. Approximately 48% of all counties served by assigned counsel, such a list is maintained. Generally, lawyers on the list are not categorized in any way. Specialization does not exist, usually based upon the seriousness of the case. The criteria for creating lists of attorneys for assigned counsel systems vary. In almost half of the counties served by assigned counsel, all lawyers who volunteer are placed on the list. In about one-third of the counties, volunteers must go through a qualifying procedure or participate in a training program. Only 11% of the assigned counsel counties reported having formal procedures for removing lawyers from the list.

In more than two-thirds of the assigned counsel counties, judges are responsible for the assignment of private bar members. In the remaining 34%, the public defender has major impact on the costs of a system, independent of hourly rates. For example, hourly rates for in-court work in Arkansas were very high at $50 per hour. However, the public defender program can be built directly. In almost half of the counties, the typical in-court fee was $50 to $60 per hour.

Maximum fees were established in 40% of the counties for felony cases and in 50% of the counties for misdemeanor cases. Maximum fee limits can have a major impact on the costs of a system, independent of hourly rates. For example, hourly rates for in-court work in Arkansas were very high at $50 per hour. However, the public defender program can be built directly. In almost half of the counties, the typical in-court fee was $50 to $60 per hour.

Almost 4% of the counties served by contract defense services provided primary defense services through a public defender system and reported that the contract program was substantially different from the two types of cases, the typical in-court fee was $50 to $60 per hour.

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are not obligated to take new cases.

This revised national expenditure estimate is provided at an estimated cost per case until the dollar amount of the contract is reached. At that point, the contract may be renegotiated, but the lawyers are not obligated to take any new cases.

The contract type of indigent defense system is growing in this country and is under review for its potential to influence the handling of public defense cases. The study was designed to examine this issue.

THE COST OF INDIGENT DEFENSE

In 1976, the National Study Commission on Defense Services recommended that a conservative estimate of the total amount being spent annually for defense in this country for indigent defense was $200 million. The most recent national estimate, made in 1980, but based in part on limited data, projected an annual expenditure of approximately $435 million.

This study revealed national expenditure estimates ranging from $50 million to $700 million. The range of estimates in the United States included:

- $50 million for the District of Columbia
- $150 million for New York City
- $200 million for Los Angeles
- $300 million for Chicago
- $400 million for Houston
- $500 million for Philadelphia
- $600 million for San Francisco
- $700 million for New York City
- $800 million for Los Angeles
- $900 million for Chicago

The study also found a strong correlation between the number of indigent defense cases handled and the cost per case. The higher the number of cases, the lower the cost per case. Overall, the average cost per case was $387.62.

Comparisons with other justice systems

State per capita spending for indigent defense and State per capita spending for other justice systems are not comparable. The State per capita spending for indigent defense is likely to provide substantially more funds to the State for running the program than the State per capita spending for other justice systems.

Table 4. Per capita cost and average cost per public defense case, 1981

<table>
<thead>
<tr>
<th>State</th>
<th>Total</th>
<th>Per capita cost</th>
<th>Per case cost</th>
<th>Cost/Case</th>
<th>Cost/Case</th>
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</tr>
</thead>
<tbody>
<tr>
<td>California</td>
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Cost/Case

Table 5. Per capita cost and average cost per public defense case, 1981

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Table 7. Per capita cost and average cost per public defense case, 1981

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£407 and Oklahoma the lowest at £45. Table 10 shows the rate to that in most States the average cost per case falls between £100 and £125. Only in 1 out of 5 States does the average cost per case exceed £150. An analysis of regional costs per case reveals the same pattern as the regional cost per case. The West was the highest at £243 and the Southeast the lowest at £126. The number of court cases per year in the 50 largest counties, 10 of which increased from 100 1950 to 1965.

**Variations in case processing**

An attempt was made to survey, to examine the case processing time and to determine the effectiveness of the determination of indigent defendants. These included the time between arrest and arraignment, and the time between arrest and appointment of counsel. A stratified sample of 400 counties, representing the major judicial districts, was selected. In the remaining States the county was selected as the unit of representation in conflict cases, and the only available data imposes some limitations on the survey. The stratified sample was used to select the most appropriate sample counties for each of the sample counties where indigent defense services are provided.

**Changes in methods of providing indigent representation**

The survey effort attempted to depict and record the trends in the methods of providing indigent representation in counties across the country during the past 5 years. The survey respondents were asked to provide information on the types of systems in place and the effectiveness of the methods used.

<table>
<thead>
<tr>
<th>Type of System</th>
<th>Public Defender</th>
<th>Assistant or County Counsel</th>
<th>City or County Attorney</th>
<th>County Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of counties reporting case</td>
<td>50%</td>
<td>25%</td>
<td>25%</td>
<td>0%</td>
</tr>
</tbody>
</table>

**Methodology**

A stratified approach to data collection was employed to assure reasonable statewide estimates as well as adequate regional and national coverage. Data collection activities were divided into five phases:

- **Survey planning**
- **Survey respondent identification**
- **Survey respondent identification**
- **Survey data analysis**
- **Survey data compilation and analysis**

The county was selected as the unit of representation in conflict cases, and the only available data imposes some limitations on the survey results. The stratified sample was used to select the most appropriate sample counties for each of the sample counties where indigent defense services are provided. The full report includes a brief description of how data collection equipment is being used to collect cost and caseload data as well as determine the effectiveness of the methods used.

**Summary**

Survey results show that there has been a modest change over the past 10 years in the types of systems providing indigent defense services to defendants in the country. There has been little change in the methods of providing indigent representation. The survey respondents were asked to provide information on the types of systems in place and the effectiveness of the methods used.

**Further reading**

The full report of the data on which this one was based, A National Survey of Criminal Defense Systems, is available in microfiche (order no. NCJ-94702) from the National Criminal Justice Reference Service, Box 6909, Rockville, Md. 20850. It includes a 15-page summary, State Profiles of Indigent Defense Services, which provides the following for each State: a report of the county organization indicating the determination of local and regional governments; a report of the establishment of the survey findings and other data can be used along with future data collection efforts. The stratified approach to data collection employed in this survey has collected in estimating the full extent of the available data, and the survey respondents are often difficult to access, the situation seems likely to be much worse than the available data suggests. On the one hand, the survey respondents are often difficult to access, the situation seems likely to be much worse than the available data suggests. On the one hand, the survey respondents are often difficult to access, the situation seems likely to be much worse than the available data suggests. On the one hand, the survey respondents are often difficult to access, the situation seems likely to be much worse than the available data suggests.
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Special Report