



Review of Dallas County Public Defender: Appellate Division and Caseload Standards

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The Task Force on Indigent Defense (Task Force) was recently asked to review the operations and cost effectiveness of the appellate division of the Dallas County Public Defender. In addition, we were asked to provide assistance on appropriate caseloads for attorneys in the trial division of the public defender. Jim Bethke, Director to the Task Force, visited Dallas on June 19, 2008 for initial interviews. Wesley Shackelford, special counsel to the Task Force, conducted a follow-up visit to Dallas on July 2-3, 2008 to meet with key stakeholders and gather additional information. The visit included meetings with judges (appellate, district, and county), court staff, county personnel, public defender staff, and the appellate division of the district attorney's office. In Part I we discuss the appellate division and in Part II we discuss the caseload standards for the trial division. Due to the expedited time-frame needed by the County, this report is limited in scope.

Part I. Appellate Division

Overview of Appellate Division

The division was modeled after the Bexar County Appellate Public Defender and was formed on November 13, 2006. On that date Katherine Drew was hired as the division chief and the division accepted its first appointment. An additional four attorneys and a legal secretary were hired over the next two months to reach the full complement of staff. The attorneys in the office are very experienced appellate attorneys and all have previously served in the appellate section of at least one district attorney's office. There has been no turnover in staff since the division was formed.

All interviewed on this visit spoke highly of the quality of service provided by the division. Ms. Drew, the division chief, was often cited for her exceptional work on behalf of defendants and for her job in hiring top appellate attorneys to complete the division's staff. Judges from the district and statutory county courts, as well as justices on the Fifth District Court of Appeals, reported consistently high quality briefs being filed by attorneys in the new division. Two trial judges with prior significant experience as appellate attorneys were especially complimentary of the work of the office, and one offered that it would be a disaster if the appellate division was abolished. Another district judge indicated that the attorneys in the division are among the best attorneys in the county. Two attorneys from the Appellate Division of the District Attorney's Office even indicated that the appellate public defender does high quality work on par with the best attorneys in private practice. They said the specialization allowed by an appellate division tends to improve the quality of the work produced. The chief of the district attorney's appellate division indicated that the briefs filed by the attorneys in the public defender's appellate division raised appropriate legal issues on appeal and cited the relevant cases. This assessment of the appellate division's work was contrasted by many stakeholders who noted that the level of representation provided by private assigned counsel was not consistent and included both high and poor quality briefs regularly being filed.

Linda Thomas, Chief Justice of the Fifth District Court of Appeals, reported that attorneys from the appellate division were timely in their filing of briefs. They often did not ask for time extensions, whereas other attorneys routinely ask for extensions. This punctuality allows the court to more efficiently process cases. One consequence of late filings is that the court must regularly abate appeals filed by non-appellate division attorneys for failing to timely file briefs. This requires the case to be sent back to the trial court for a hearing and results in clogged dockets at the Fifth Court. Incarceration costs including extended time at the county jail and increased inmate transportation costs are hidden expenses which do not appear as indigent costs but which may be affected by late filings and remands. Under Tex. Code Crim. Proc. art. 42.09, inmates sentenced to less than ten years for a felony offense may be incarcerated at the local county jail until disposition of their appeal is complete.

The appellate division provides good communication with each client to whom it is appointed. An initial letter is sent to the client with a two page summary of the entire appellate process. The division requires attorneys to meet with clients at least once after appointment to a case and provides copies of all briefs and reply briefs filed in their case.

Cases Handled by Appellate Division

The appellate division provides services in a variety of different case types. Each appellate case type requires varying amounts of time and resources. In fact there is no national consensus as to how to accurately measure appellate caseloads because of the huge variability between cases. Tracking aggregate costs per case can be misleading, and instead tracking attorneys' efforts on an hourly basis is a better measure of appellate attorney expenses. The division chief keeps records on each case assigned to the division and all other work performed by staff. She is commended for keeping such detailed records, including the number of hours worked by attorneys on each case assigned.

The bulk of the work of the division is in the traditional role of representing an indigent defendant on appeal. This includes direct appeals where attorneys represent indigent defendants appealing from convictions in felony and misdemeanor courts. This area of representation includes motions for rehearing in the court of appeals and petitions for discretionary review to the Court of Criminal Appeals (PDRs). The division has also been appointed to represent indigent defendants by drafting post-conviction writs of habeas corpus for proceedings under Tex. Code Crim. Proc. art. 11.07.

As of the end of May, 2008, the division has not filed any *Anders* briefs, which are only to be filed in cases where there is no arguable merit to appeal. Although not quantified, it was reported to Reviewer that *Anders* briefs are much more commonly filed by private assigned counsel. The filing of *Anders* briefs should be used sparingly and the lack of any of them being filed is an indicator that the appellate division is providing thorough representation.

In addition to traditional indigent defense services, the division has provided a variety of other types of legal services to Dallas County. The division has been appointed to assist the courts in preparing findings of fact and conclusions of law in post-conviction habeas corpus proceedings. These so-called “writ master” cases made up a large part of the division’s initial work after its creation, but the division has stopped accepting these appointments since January 1, 2008 because of the large increase in appointments on direct appeals. The division has also provided assistance to the county criminal courts by preparing findings of fact and conclusions of law in administrative license revocation cases (ALR). While these types of assignments have been routinely made by the courts in Dallas County, they may create an appearance of a lack of independence and we therefore recommend that they be discontinued in favor traditional case appointments.

Additionally, the division provides infrequent representation for indigent people in cases arising outside the criminal law context. The main categories of these civil cases are appeals from parental terminations and involuntary commitments.

Overall, the number of cases assigned to the appellate division is increasing. Direct appeal appointments totaled 136 in FY 2007 and have already reached 216 through 8 months of FY 2008. The office is projected to receive 300 appointments for the full year, which with a staff of five attorneys would amount to 60 cases per attorney.¹ By way of comparison, the Bexar County Appellate Public Defender Office (APDO) handled 140 cases in FY 2007 with its 4 attorneys, or 35 cases per attorney. Included among the cases were three appeals from death penalty sentences, which take substantially longer than typical appeals due to the extremely long records.

As is customary in other public defender office appellate divisions, the attorneys provide legal research services to the trial attorneys in the public defender’s office. As one of the district judges noted, this support is very beneficial since appellate attorneys are typically much more efficient in conducting legal research and are able to provide timely advice on issues that arise at trial. The district attorney’s appellate section provides similar services to the assistant district attorneys trying cases. The division maintains records on this type of work, which show that it only averaged about 12 hours per month.

Attorneys from the division have extended their expertise on criminal law with the rest of the local legal community. Recent appellate decisions from the Court of Criminal Appeals have been summarized monthly and shared with trial court judges, the trial court public defenders, and the Dallas Criminal Defense Lawyers Association. This information sharing is a significant benefit accruing to the entire criminal courts system.

Cost Evaluation of Appellate Division

Dallas County is currently considering the cost effectiveness of providing representation via the appellate division of the public defender’s office. Possible options are to assign

¹ These caseload figures are substantially higher than the 25 cases per year maximum recommended by the National Advisory Commission on Criminal Justice Standards and Goals Task Force on Courts: Standard 13.12 Workload of Public Defenders. (1973).

more appeals to the appellate division and revise staffing levels to meet the volume or to abolish the office and return to a strictly private assigned counsel system. It is our opinion that the appellate division is cost effective and should be continued and perhaps expanded to cope with the increasing number of cases to which it is being appointed. The data systems in place to track the number of cases in each of the categories for attorneys in the division and for private assigned counsel do not provide an adequate way to measure cost effectiveness. However a comparison on an hourly basis shows that the division is cost effective.

The latest data sheet provided to Reviewer from the Dallas County Budget Office showed a number of appeals assigned to court appointed attorneys and to the appellate division of the public defender's office. It also listed the amount of money spent on appeals in preceding years and projected amounts for FY2008 for court appointed counsel and the appellate division. The figures indicate that the cost per appeal is higher for the appellate division than for the court appointed counsel. **We are of the opinion that the case numbers listed are incorrect and for the reasons below should not be used as the basis to determine whether the appellate division is cost effective.**

Because there is no centralized attorney appointment data system, the only reliable case count is those assigned to and tracked by the appellate division of the public defender's office directly. The Budget Office's data sheet arrives at a number of appeals assigned to the court appointed attorneys by subtracting the number of cases assigned to the appellate division from the total number of notices of appeal (NOAs) filed with the district clerk. For FY2007 this is 639 NOAs – 135 cases to appellate division = 504 court appointed cases. However, the total number of attorneys of all types listed in the court's data system for FY2007 is only 484. Of these only 310 are court appointed, 120 are public defenders, and 54 are retained. The discrepancy between 639 and 484 is not explained, but at a minimum the 54 cases indicating an attorney was hired by a defendant must be removed from the equation when attempting to determine the number of court appointment attorneys ($504 - 54 = 450$).

This type of calculation does not take account of the many different types of cases that are included in the appeals category. Direct appeals of criminal convictions take a substantial amount of time, far exceeding that required for other types of appeals cases such as serving as writ master or many post-conviction writs of habeas corpus cases. The attorney fee schedule in place for the Dallas County District Courts provides an expected range of 18-35 hours for a direct appeal from a jury trial, although the judges interviewed indicated they would pay whatever the reasonable number of hours required for each appeal.

The data analysis shows increasing costs for appellate representation since formation of the appellate division. There appear to a number of factors at work. First, the case counts may reflect multiple bills paid on the same cases, such as for a motion for rehearing or oral argument, and thereby distort the actually number of cases. This would result in a lower cost per case than is correct.

Next, there is a one-time increase in costs associated with funding the new appellate division staff in FY 2007 while simultaneously continuing to pay court appointed attorneys for work completed on appeals during that year. Appeals typically take months to complete so payments should be expected to continue for some time to court appointed attorneys who were assigned much earlier. This fact highlights another significant issue with cost per appellate case calculations. Comparison of cases assigned to the amount of funding expended does not make sense in the context of appellate cases. Payments made this year will in many instances be for cases assigned to attorneys in the prior year. This payment method does not correlate with how the case information is reported to the Task Force by the auditor in each county. The Indigent Defense Expenditure Report (IDER) is submitted annually. This report covers each county fiscal year (October 1- September 30) and includes the number of cases disposed by court, type (trial or appeal), who provided the service (appointed, public defender, or contract defender), and the amount of money expended that is associated with those cases. Disposition of appeals cases for IDER purposes are interpreted to be when the appeals brief is filed and the appointed attorney submits a voucher to be paid and not at the appellate case disposition. Appellate cases may take years to be disposed, and reporting appellate cases paid in years after the brief is filed is misleading. Matching cases disposed with the payments associated with those cases gives a much more accurate picture of costs in a jurisdiction.

Unfortunately, during my visit I identified other case counting problems with the IDER that also make it unreliable for the instant analysis. In the appeals context, the only cases intended to be reported are those where an attorney is assigned to represent an indigent defendant in preparation of a direct appeal, PDR, or writ of habeas corpus (i.e. indigent defense). The IDER should not include writ master cases or ALR appeals, where attorneys are working on behalf of a judge as master in reviewing a case before the court. It also should not include appeals from parental terminations or involuntary commitments. It appears that at least some of these other, non-indigent cases are being included in the figures reported to the Task Force. We are working with the auditor's office to correct these numbers if possible and at minimum to correctly count them going forward. They are not available for this report.

Given the many difficulties and challenges discussed above in assessing cost effectiveness on the basis of expenses per case, I propose that this be measured through hourly costs. This is the approach Bexar County has taken with its APDO to determine cost effectiveness. This seems an appropriate comparison, since the Bexar County APDO was the model used by Dallas in forming the appellate division of the Dallas Public Defender and is the only other public defender office in the state that provides representation in a large number of appeals.

The method for calculating the average hourly rate of the appellate division follows. The County sets out a total of 2080 hours worked per employee for each fiscal year. The total hours available for the appellate division comes to 10,400 hours (2080 hours x 5 employees). The total cost of the appellate division, including five attorneys and a secretary, is expected to be \$629,675 for FY 2008. Each of the attorneys in the appellate division carries a full caseload and is expected to devote their full attention to legal work

on appeals and to a limited extent to the other legal research activities discussed above. Non-billable time by the division includes 144 annual hours spent on research for the trial public defender, an estimated 400 hours per year spent on administration by the division chief (20% of her time), an estimated 100 hours per year spent providing case updates to the private bar, and an estimated 10% non-billable weekly downtime for the attorneys (1040 annual hours). These total estimated non-billable hours come to 1684 hours, leaving an estimated 8716 billable hours by the division. Dividing \$629,675 by 8716 billable attorney hours results in a cost per attorney work hour of \$72.24. This \$72 per hour expense is a conservative estimate since attorneys in the division often work extra overtime beyond their normal work hours to complete briefs in a timely manner.²

In contrast, attorneys who are court appointed to represent indigent defendants on appeal matters are paid \$100 per hour. Reviewer was told that while in the past some judges would pay less than the hourly amount in the fee schedule, the judges with whom the Reviewer spoke all indicated they approved vouchers at the \$100 rate. The judges also indicated that they approved payments for whatever number of hours appeared reasonable for the case. From these facts, one can assume that the average hourly rate for private appointed attorneys is \$100 per hour.

Comparing the hourly cost of the public defender with the hourly cost of the private bar shows the public defender to be a much cheaper option for the County. One reason for the lower cost of the public defender is that working together in a division allows for the consolidation of resources and the ability to easily share research and other information. This greatly enhances efficiency in drafting appeals and all other matters.

Summary

The appellate public defender division is respected by the judges we interviewed and its counterpart in the District Attorney's office. In addition, all that were interviewed indicated that the office is providing high-level legal services that on balance are better than the average level of service provided by private assigned counsel attorneys. The cost for providing these services appears to be lower than that charged by the private bar. The division is also providing limited, but important, services to the trial attorneys in the public defender's office that should raise its overall effectiveness. Costs have risen in the initial term because of the continuing payments on cases previously assigned to private counsel, while expenses have simultaneously been added to staff the new division.

Due to challenges in collecting accurate case data and the highly varied nature of the types of cases, we cannot accurately portray cost per case information. It will take some time for the older assigned counsel cases to be completed and for the appellate division's disposition of cases to catch up to appointments it has received. Instead we recommend using an hourly rate approach to assess costs. The division is currently operating at an approximately \$72 per attorney hour cost for billable work, while private assigned

² The calculation of hourly attorney costs counting their full work week of 40 hours is only \$60.55 (\$629,675 ÷ 10,400 hours). Since all of the work performed by the attorneys benefit the county, if not individual clients, this may be the better figure to use.

counsel are paid \$100 per hour. The division has only been in existence for 20 months and after another full fiscal year of operation it will be easier to assess the division's effectiveness. Given the strong support for the appellate division by the judges and our finding that it is cost effective, we recommend that the appellate division of the Dallas County Public Defender be continued and perhaps expanded to cope with the increasing number of cases to which it is being appointed.

Part II. Caseload Standards for Trial Division

Public Defender Overloading and Caseload Standards

This part of the report is intended to provide Dallas County with information on appropriate caseloads for public defender attorneys and the dangers of overloading attorneys with too many cases. It draws on national standards, standards in other states, as well as other public defenders in Texas. It has been reported to us that Dallas County has directed that the assistant public defenders be assigned a minimum number of new cases each month. In the case of attorneys assigned to county criminal courts this number is 100 new misdemeanor cases per month, which equates to 1200 new cases assigned per year. In the case of attorneys assigned to district courts this number of cases is 40 new felony cases per month, or 480 new cases assigned per year. **The caseload figures above are three or more times higher than nationally recommended standards and are substantially higher than the caseloads of other Texas public defenders.**

Overloading public defenders can pose a serious threat to the indigent's right to competent counsel. According to a report by the U.S. Department of Justice, no variable has a more direct impact on productivity and efficiency than caseload standards.³ Some of the basic aspects of competent counsel include: acting timely to protect the client's rights; being fully and adequately prepared; independently investigating a case; building a relationship with client; and regular communication with client.⁴ All of these elements demand time, and an overburdened attorney will often fail to fulfill these requirements for some or even all of his/her clients.

In addition to failing to meet these basic requirements, an overextended attorney is unlikely to be able to provide quality legal advice and advocacy. Attorneys either focus on the most serious cases or those clients they feel are innocent, while their other cases receive limited attention.⁵ Both choices have similar, negative, consequences. Choosing to focus on the most serious cases while others are neglected can result in innocent

³ U.S. Department of Justice. Compendium for Indigent Defense Systems. Vol. 1 – Standards of Administration; E-9. Plan for Defense Services or Public Defender- Case Overload and Case Management.

⁴ American Council of Chief Defenders; National Legal Aid and Defender Association. Ethics Opinion 03-01. (Apr. 2003).

⁵ Spangenberg, Robert , et al. Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services: Final Report. The Spangenberg Group; Prepared for: The Administrative Office of the Courts for Chief Judge Kaye's Commission on the future of Indigent Defense Services, p 45 (Jun. 2006); Freedman, Monroe H. *An Ethical Manifesto for Public Defenders*, v39 n4 Valparaiso Univ. L. Rev. p 917 (2005).

people being convicted, or those who need treatment remaining in jail.⁶ A similar result occurs when attorneys focus only on clients they believe are innocent. Unfortunately, attorneys, like all other parties, often cannot determine the innocence or guilt of a client without researching the facts.⁷ Some public defenders live with the constant fear of an innocent person being sent to prison, simply because they slipped through the cracks.⁸

Overburdening a public defender may not only result in ineffective counsel, but it may create a conflict of interest between clients. An attorney cannot accept a new client, if representing the client would create a conflict with his/her representation of another client. Accepting a new client creates such a conflict when, it would prevent the attorney from spending the appropriate amount of time on the current client's case.⁹

Public defenders have an ethical obligation to avoid taking on new clients when they cannot provide them with adequate counsel. A public defender who is assigned a client he/she cannot adequately represent is ethically required to decline the assignment. Any supervisor who knowingly orders an attorney to accept a client that he/she cannot provide quality counsel for has committed an ethical violation and the attorney may file a report against the supervisor.¹⁰ If required by a court to accept an excessive caseload, a public defender is required to put into the record that, because of the caseload, he/she cannot provide competent counsel. Additionally, the attorney must inform his client of any plea offers, that he/she cannot offer competent legal counsel, and therefore cannot advise the client whether to accept the plea. If the client accepts the plea, the attorney would be required to put into the record that he/she did not advise the client about the plea because he/she could not offer competent and conflict-free counsel.¹¹

Public defender's have an obligation to decline any new clients to whom they cannot provide competent representation since their primary duty is to current clients. When a public defender finds himself overloaded, he/she has an obligation to seek permission from the court to withdraw from assigned cases. Tex. Code Crim. Proc. art. 26.044(j) specifically provides that a public defender may refuse an appointment if it has insufficient resources to provide the defendant adequate representation.

⁶ American Council of Chief Defenders. *American Council of Chief Defenders Statement on Caseloads and Workloads*, p 2, (Aug. 2007).

⁷ Freedman, Monroe H. *An Ethical Manifesto for Public Defenders*, v39 n4 Valparaiso Univ. L. Rev. p 916-17 (2005).

⁸ Gibeaut, John. *Defense Warnings*, ABA Journal 40 (Dec. 2001).

⁹ American Council of Chief Defenders; National Legal Aid and Defender Association. Ethics Opinion 03-01. (Apr. 2003): Freedman, Monroe H. *An Ethical Manifesto for Public Defenders*, v39 n4 Valparaiso Univ. L. Rev. p 920 (2005).

¹⁰ Freedman, Monroe H. *An Ethical Manifesto for Public Defenders*, v39 n4 Valparaiso Univ. L. Rev. p 921 (2005).

¹¹ Freedman, Monroe H. *An Ethical Manifesto for Public Defenders*, v39 n4 Valparaiso Univ. L. Rev. p 922 (2005).

National Caseload Standards

In 1973 the National Advisory Commission on Criminal Justice Standards and Goals published maximum standard caseloads for public defenders (NAC) (Table 1). The figures remain the only recommended national standards established on appropriate public defender caseloads. This report was designed to serve as a guidepost, to aid public defender offices in determining staff requirements for given caseloads. They have been remarkably successful in their role as guideposts; many jurisdictions have caseload standards that are identical or very similar to those published by the NAC thirty five years ago.

Table 1: NAC Caseload Standards¹²

Type of Case	Maximum caseload
Felonies	150
Misdemeanors	400
Juvenile	200
Mental Health Act	200
Appeals	25

The NAC caseloads represent the maximum number of cases for each category that should be handled in a twelve month period. Caseloads given for each category represent the recommended maximum for an attorney handling only cases in that category.¹³ For example, on average, a PD office which handles only felonies should not be assigned annually, more than 150 cases per attorney. When an attorney handles a mixed caseload, the standard should be applied proportionally.¹⁴ For example, an attorney who is given 120 felonies annually is working at 80% of the caseload maximum and could not be assigned more than 80 misdemeanors (or 20% of the Misdemeanor maximum).

The NAC standards are a good starting point in developing caseloads, but cannot be accepted as universal standards. They do not account for administrative work, travel time, or other professional requirements that reduce the time an attorney can spend on cases. They also fail to consider the differences in work required by cases within a category. For example a case involving felony homicide will require significantly more work than a burglary case¹⁵.

In addition to factors not considered in the 1973 NAC standards, changes that have occurred over time impact the applicability of these standards. In many areas litigation

¹² The National Advisory Commission on Criminal Justice Standards and Goals Task Force on Courts: Standard 13.12 Workload of Public Defenders. (1973).

¹³ The National Advisory Commission on Criminal Justice Standards and Goals Task Force on Courts: Standard 13.12 Workload of Public Defenders. (1973).

¹⁴ American Council of Chief Defenders. *American Council of Chief Defenders Statement on Caseloads and Workloads*, (Aug. 2007).

¹⁵ The Spangenberg Group. *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance p 8 (2001).

has become increasingly complex and requires more hours.¹⁶ Intricate sentencing practices, including sterner treatment of juveniles and collateral consequences require more work and preparation. Scientific evidence, such as forensic evidence, is becoming more and more important and complex.¹⁷

While changes on the national scale have impacted caseload standards, variations between localities arguably have a larger impact. The relationship between the Public Defender Office and the District Attorney's Office is one factor that can affect caseloads. If the DA's office engages in difficult and firm negotiation practices, it can increase the Public Defender office's workload per case and therefore decrease the caseload they can handle. Similarly, a DA's office with far superior resources and funding can, by virtue of their ability to prosecute more cases, force defenders to work excessive hours to meet the caseload requirement or decrease their caseload. Additionally, local court and legislative practices can affect caseload. Finally, the composition of a jurisdiction's population can influence the amount of work attorneys must exert to dispose of a case. For example, changes in immigration laws have resulted in increased hours for attorneys in regions with high immigrant populations.¹⁸

Example of Other States' Caseload Standards

Because of all the factors, both local and temporal, which can cause variation in the amount of cases an attorney can handle, the National Legal Aid & Defender Association recommends that jurisdictions engage in case weighting to develop specific workload standards.¹⁹ Workload takes in account factors that make one type of case more time consuming than others.²⁰ In order to establish its workload, a jurisdiction must find the total number of hours spent on one category of cases and divide it by the number of cases that fall into the category. The resulting quotient equals the average hours required to dispose of one case from that category. Dividing the total work hours an attorney can devote annually to working on cases by the average number of hours needed to complete one case produces the maximum workload for that category.

¹⁶ American Council of Chief Defenders. *American Council of Chief Defenders Statement on Caseloads and Workloads*, (Aug. 2007).

¹⁷ American Council of Chief Defenders. *American Council of Chief Defenders Statement on Caseloads and Workloads*, (Aug. 2007); The Spangenberg Group. *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance p 8 (2001).

¹⁸ American Council of Chief Defenders. *American Council of Chief Defenders Statement on Caseloads and Workloads*, (Aug. 2007); Spangenberg, Robert, et al. *Second Interim Report: An Evaluation of the Bexar and Hidalgo County Public Defender Office After One Year of Operation*. The Spangenberg Group; Prepared for: The Texas Task Force On Indigent Defense, p 13 (Mar. 2007).

¹⁹ National Legal Aid and Defender Association. *An Introduction to Caseload Standards & Case-Weighting*; American Council of Chief Defenders. *American Council of Chief Defenders Statement on Caseloads and Workloads* (Aug. 2007).

²⁰ Spangenberg, Robert, et al. *Second Interim Report: An Evaluation of the Bexar and Hidalgo County Public Defender Office After One Year of Operation*. The Spangenberg Group; Prepared for: The Texas Task Force On Indigent Defense, p 45 (Mar. 2007).

Example: For jurisdiction X, there were 1,000 hours spent dealing with 10 type A felonies. This results in an average of 100 hrs per case. In jurisdiction X, attorneys spend 1700 hrs on cases; the resulting workload for type A felonies is 17 per year.

Use of workloads can help offices accurately determine staffing needs for expected caseloads, as well as what caseloads are appropriate for their jurisdiction.²¹ While variations between jurisdictions prevent one from being able to look at the standards of another county to determine one's own standard, looking at different state caseloads can provide a basis for determining if a proposed set of caseload standards are reasonable or appear to fall beyond the bounds of acceptable caseload standards. Table 2 provides the maximum caseloads for fifteen States.

Table 2: Maximum Caseloads Established by Various State Offices²²

State	Felony	Misdemeanor	Juvenile	Appeals	Authority
Arizona	150	300	200	25	<i>State of Arizona v. Joe U. Smith</i> , 681 P. 2d 1374 (1984).
Colorado	33-386	196-430	249	-	The Spangenberg Group. <i>Weighted-Caseload Study for the Colorado State Public Defender</i> . November 1996.
Florida	200	400	250	50	Florida Public Defender Association. <i>Comparison of Caseload Standards</i> . July 1986.
Georgia	150	400	200	25	Georgia Indigent Defense Council. <i>Guidelines of the Georgia Indigent Defense Council for the Operation of Local Indigent Defense Programs</i> . October 1989.
Indiana	120-200	400	250	25	Indiana Public Defender Commission. <i>Standards for Indigent Defense Services in Non-Capital Cases: With Commentary</i> . January 1995.

²¹ National Legal Aid and Defender Association. *An Introduction to Caseload Standards & Case-Weighting*: American Council of Chief Defenders. American Council of Chief Defenders Statement on Caseloads and Workloads (Aug. 2007).

²² The Spangenberg Group. *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance p 8 (2001); Spangenberg, Robert , et al. *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services: Final Report*. The Spangenberg Group; Prepared for: The Administrative Office of the Courts for Chief Judge Kaye's Commission on the future of Indigent Defense Services, p 45 (Jun. 2006); and The Spangenberg Group. *Review of the Caddo Parish Indigent Defender Office*, p 25-26. Prepared for Caddo Parish Indigent Defender Board, Feb. 2007.

Louisiana	150-200	400-450	200-250	40-50	Louisiana Indigent Defense Board. <i>Louisiana Standards on Indigent Defense.</i> 1995.
Massachusetts	200	400	300	-	Committee for Public Counsel Services. <i>Manual for Counsel Assigned Through the Committee for Public Counsel Services: Policies and Procedures.</i> June 1995.
Minnesota*	120	400	175	-	Minnesota State Public Defender. <i>Caseload Standards for District Public Defenders in Minnesota.</i> October 1991.
Missouri	40-180	450	280	28	Missouri State Public Defender System. <i>Caseload Committee Report.</i> September 1992.
Nebraska	50	-	-	40	Nebraska Commission on Public Advocacy. <i>Standards for Indigent Defense Services in Capital and Non-Capital Cases.</i> May 1996.
Oregon	240	400	480	-	Oregon State Bar. <i>Indigent Defense Task Force Report.</i> September 1996.
Tennessee	55-302	500	273	-	The Spangenberg Group. <i>Tennessee Public Defender Case-Weighting Study.</i> May 1999.
Vermont	150	400	200	25	Office of the Defender General. <i>Policy of the Defender General Concerning Excessive Workloads for Public Defenders.</i> October 1987.
Washington	150	300	250	25	Washington Defender Association. <i>Standards for Public Defender Services.</i> October 1989.
Wisconsin	145	323	207	-	The Spangenberg Group. "Caseload/workload Study for the State Public Defender of Wisconsin" September 1990

The average maximum caseloads per attorney from the states listed in the previous table are: 188 felonies; 397 misdemeanors; 255 juveniles; and 33 appeals per year. Additionally, some states have a range of maximum caseloads for their felonies.

Colorado’s felony caseload, for example, ranges from 33-386. This range signifies the differences within the felony cases. The more serious ones are limited to 33 annually while the caseload for the less serious offenses reaches up to 386. For computation of the above statistics, the larger number was used because most felonies (and misdemeanors) fall within the less serious category. However, while small in number, the more serious offenses could represent a significant portion of the hours devoted to cases in that category, and their exclusion could have resulted in the given averages being somewhat higher than if they had been factored in based on the proportion of work time each category accounted for. The inclusion of the more serious offenses could have brought the averages closer to the NAC standards.

Other Texas Public Defender Caseloads

Table 3 lists the average caseloads and any maximum caseload standards (caps) for Texas public defender offices who responded to questions about attorney caseloads in their respective office. From the table, one can see that the offices tend to use mixed felony and misdemeanor caseloads because the attorneys are not strictly separate by case level.

Table 3: Attorney Caseload Averages of Texas Public Defenders

County	Annual Attorney Caseload Averages and Caps
Bowie/Red River	Mixed felony/misdemeanor average of 700
El Paso	Mixed felony/misdemeanor average of 300
Hidalgo	Misdemeanor maximum cap of 500
Kaufman	Mixed felony/misdemeanor average of 300
Travis	Juvenile average of between 300 and 350
Val Verde	Mixed juvenile/felony/misdemeanor average between 500 and 550
Wichita	Mixed felony/misdemeanor average of between 300 and 400

Positive Impact of Caseload Standards

The establishment and enforcement of reasonable caseload standards will help ensure that a jurisdiction avoids assigning counsel that cannot adequately represent the defendants, but caseload standards can create other positive outcomes. In 2003 the National Legal Aid & Defender Association produced a report titled, *The Implementation and Impact of Indigent Defense Standards*. The 2003 survey asked respondent jurisdictions if they had different indigent defense standards in place, and if these standards had a positive or negative impact in different areas. Of those surveyed, 47% of jurisdictions reported having some type of caseload standards.²³

Despite the fact that less than half of all respondents reported having caseload standards, a significant number of respondents consistently reported that these standards had a positive impact. Over thirty percent of respondents reported that these standards had a positive impact in three different areas. Thirty seven percent of respondents said that they

²³ Wallace, Scott and David Carroll. *The Implementation and Impact of Indigent Defense Standards*. National Legal Aid and Defender Association, p 22 (Dec. 2003).

not only worked to reduce attorney workloads, but that they also resulted in increased staff. Thirty-one percent reported that they improved the quality of service and nearly twenty six percent of respondents said they reduced turnover and increased morale.²⁴ Decreasing turnover and increasing morale is crucial for providing adequate defense. In order to adequately represent defendants in more difficult cases, defense attorneys must have a wealth of experience, but heavy caseloads often result in burnout and higher turnover rates. This results in many attorneys leaving public defender offices as they become qualified to handle the most difficult cases.²⁵ Twenty percent of respondents reported better attorney supervision with the implementation of caseload standards. Perhaps a little surprisingly, over eleven percent, or nearly a quarter of those respondents who have caseload standards reported that their implementation resulted in greater cost savings and efficiency as well as improved fiscal management and case tracking. Out of twenty one categories, caseload were reported to have no impact in only three and over ninety-seven percent of those with caseload standards indicated that they had a positive impact.²⁶

Proper Ways to Increase Caseloads:

Caseloads have a finite limit, but there are ways that limit can be increased. One major way to increase caseloads, and cost savings with them, is to ensure the public defender’s office has sufficient staff. If a public defender’s office lacks support staff, attorneys have to spend more time doing clerical work (work that could be done for secretarial pay, but instead is done by a higher paid attorney). This situation decreases the time attorneys can devote to case work, and therefore decreases their caseload.²⁷ Some states have formulas to determine the appropriate number of support staff for a public defender’s office. The Indiana Public Defender Commission sets the ratio of support staff per attorney for each category of offenses, and reduces the maximum caseload for offices that fail to meet the support staff requirements (Table 4).²⁸

Table 4: Indiana Public Defender Support Staff Ratios

Offense	Paralegal : Atty.	Investigator : Atty.	Law Clerk Appeal	Secretary	Normal Caseload	Reduced Caseload
Felonies	1:4	1:4	-	1:4	120-200	100-150
Misdemeanors	1:5	1:6	-	1:6	400	300

²⁴ Wallace, Scott and David Carroll. The Implementation and Impact of Indigent Defense Standards. National Legal Aid and Defender Association, p 26 (Dec. 2003).

²⁵ Dwyer, Jim, Peter Neufeld and Barry Scheck. Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted. New York: Doubleday, 2000. p 191.

²⁶ Wallace, Scott and David Carroll. The Implementation and Impact of Indigent Defense Standards. National Legal Aid and Defender Association, p 26 (Dec. 2003).

²⁷ National Legal Aid and Defender Association. An Introduction to Caseload Standards & Case-Weighting:

²⁸ Figures taken from; Standards for Indigent Defense Services in Non-Capital Cases. Adopted effective Jan. 1, 1995, Amended July 13, 2006. Accessed at <http://www.in.gov/judiciary/pdc/docs/standards/indigent-defense-non-cap.pdf> on July 1, 2008.

Juvenile	1:4	1:6	-	1:5	250	200
Appeals	-	-	1:2	-	25	20
Mental Health	1:2	-	-	-	-	-

Technology is another factor that can increase a public defender’s caseload. Technology can save attorney time by increasing the speed of research and by improving communication. Thus, technology enables public defenders to become more efficient workers.

Pitfalls of a Quota System

As mentioned earlier, caseload standards are meant to be applied to an office, not to individual attorneys. This is because cases within a category can vary widely. A study in North Carolina found that the average case preparation time of a felony can range from 105.1 hours to 6.4 hours, depending on the class of felony. A study in Tennessee found similar results, with the average hours ranging from 131.4 to 5.4 hours, depending on the class of felony. Misdemeanors can vary as well, with the average in North Carolina ranging from 5.8 to 3.3 hours.²⁹ The wide ranges found in felonies can effect what caseload an attorney can handle. While evenly dispersing all types of felonies across attorneys could create a more uniform caseload, it is probably not in the best interest of a public defenders office to do this. Just as counties may find it beneficial to allow the more experienced attorneys work on felonies while the less experienced work on misdemeanors, they might also find it valuable to assign the most difficult cases to their most experienced attorneys, and assign the less serious felonies to attorneys with limited felony experience.

Independence of the Defense Function

Independence of the defense function affects the ability of defense attorneys to represent clients in an ethical fashion. This independence is linked very closely with caseload standards. If an attorney has no independence as to how cases should be handled, he/she may also be pressured to accept cases in a greater volume than he/she can ethically manage.

The control that judges in Dallas exert over the public defender office’s appointments may well be unique in the United States.³⁰ Such control conflicts with the first of the ABA’s *Ten Principles for a Public Defense Delivery System*, which explicitly limits judicial oversight and calls for the establishment of an independent oversight board whose members are appointed by diverse authorities, so that no single official or political

²⁹ NC Office of Indigent Defense Services. Superior Court FY05 Study” Statewide Private Attorney Fee Application Average Hours and Frequency Distributions per Case by Charge Type, pg 2(Nov. 2005): Spangenberg Group. Tennessee Public Defender Case-Weighting Study: Final Draft Report, pg 55 (Apr. 1999).

³⁰ See The Spangenberg Group, *A Review of Dallas County’s Indigent Defense System*, Finding 11 at p. 33 (August 2004).

party has unchecked power over the indigent defense function. A description of this first ABA principle is stated in the following terms:

The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.³¹

As stated in the U.S. Department of Justice, Office of Justice Programs report, *Improving Criminal Justice Through Expanded Strategies and Innovative Collaborations: A Report of the National Symposium on Indigent Defense*, “The ethical imperative of providing quality representation to clients should not be compromised by outside interference or political attacks.”³² Courts should have no greater oversight role over lawyers representing indigent defendants than they do for attorneys representing paying clients. The Courts should also have no greater oversight of indigent defense practitioners than they do over prosecutors. As far back as 1976, the National Study Commission on Defense Services concluded that: “The mediator between two adversaries cannot be permitted to make policy for one of the adversaries.”³³

The Task Force itself has required each of the eight new public defender offices it has funded to create oversight boards to help establish and manage the office. Such boards typically include a district and statutory county court judge, the constitutional county judge (or designee), a commissioner (or designee), and defense attorneys selected by the local bar association. Their existence provides a forum for the key stakeholders to provide guidance on the operation of the office and to recommend personnel for the Chief Public Defender position. This communication is critical since no public defender may be created without the express consent of at least one of the judges and will only be successful with support from the bench. The commissioners court in any county with an existing office may create such a board under current law and the Task Force’s Legislative Workgroup is currently considering a proposal to more specifically authorize

³¹ American Bar Association, *Ten Principles of a Public Defense Delivery System* (February 2002). In the words of the ABA, the *Ten Principles* “constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.” *Ten Principles of a Public Defense Delivery System*, Introduction (February 2002).

³² NCJ 181344, February 1999, at 10.

³³ NSC Report, at 220, citing National Advisory Commission on criminal Justice Standards and Goals (1973), commentary to Standard 13.9.

their use. To help jurisdictions in the establishment of such independent boards or commissions, NLADA has also promulgated guidelines to assist jurisdictions in establishing independent oversight boards. NLADA's *Guidelines for Legal Defense Services* (Guideline 2.10) states: "A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented."

Cost Evaluation of Public Defenders in Dallas County

It has been reported to us that Dallas County has directed that the assistant public defenders accept a minimum number of new cases each month to remain cost effective vis-à-vis the private assigned counsel. This number of cases assigned to remain cost effective has been set at 100 new cases per month for assistant public defenders serving in county criminal courts (misdemeanors) and 40 new cases per month for assistant public defenders serving in district courts (felonies). It is our understanding that the caseload standards for misdemeanors was already set at 100 cases per month, and the public defender's office reports that for the past nine months attorneys in the misdemeanor have handled 87-130 new cases per month each (with the exception of attorneys in the family violence court). It was also reported that the caseload standards for felony cases had been set at 30-35 new cases assigned per month.

The Dallas County Office of Budget and Evaluation compile extensive data on the courts operations on a quarterly basis. This information allows evaluation of the relative costs of public defenders and assigned counsel for providing indigent defense services. The Judicial Management Report for the First Quarter of 2008 (Report) indicates that attorneys in the county criminal courts (excluding the family violence court) averaged just over 99 new cases assigned per month. The Report also indicates the average cost per case assigned to a public defender was only \$77, while the average cost per case assigned to private counsel was \$150. The Report notes that this means that public defenders remain cost effective. Indeed this very large cost differential suggests public defenders would have been cost effective as compared to private assigned counsel if they had only been assigned just over 50 new cases per month. As to felony cases, the same Judicial Management Report shows that the assistant public defenders were assigned an average of just under 31 new felony cases per month. The Report notes that public defenders average cost per case was \$314 while cases assigned to private counsel averaged \$380. Once again, the public defenders are shown to be cost effective. These cost differentials indicate that public defenders would remain cost effective if assigned only 26 cases per month. Although this analysis cannot take account of potential variations in the types of cases assigned to public defenders and private attorneys, it indicates that public defenders are cost effective at rates of new cases assigned well below the numbers assigned in the First Quarter of 2008 (99 misdemeanors or 31 felonies per attorney per month).

Summary

The establishment of meaningful caseload standards is an important step in ensuring that a public defender office runs appropriately and proficiently. In 2004, the Task Force issued a report on the Dallas County indigent defense system. One of the findings was that caseload numbers far exceed those numbers recommended by the NAC and adopted by the American Bar Association.³⁴ The caseload issue has not improved but has worsened since 2004. National guidelines and guidelines of other jurisdictions can give insight into what the appropriate caseload for a jurisdiction may be. A significant departure from the national guidelines or the guidelines used in other states could be evidence that a public defender's office is not running efficiently and that defense attorneys in this jurisdiction are being overburdened. Numerous variables within a jurisdiction affect the number of cases attorneys can handle and in order to arrive at appropriate caseload standards, these factors must be examined. Failure to do so can result in unrealistic caseload standards, which can cause inefficient use or a failure of the public defender office to meet the constitutional requirements of supplying competent counsel. Our review shows that the average caseloads for assistant public defenders in Dallas are higher than those for other public defender offices in Texas and much higher than national standards and standards in other states. Figures collected by Dallas County and discussed above also demonstrate the cost effectiveness of the public defenders even at caseloads significantly lower than has previously been assigned to them. Therefore, we recommend that Dallas County develop caseload standards that are more in line with other Texas jurisdictions and national guidelines. If Dallas County wants to undertake a caseload study to develop meaningful standards, the Task Force may be able to provide assistance in facilitating this study. The purpose of caseload standards is to help assure that defendants are provided competent, constitutionally required assistance of counsel, while remaining cost effective when compared with the assigned counsel system that is also in place.

³⁴ Spangenberg, Robert , et al. A Review of Dallas County's Indigent Defense System. The Spangenberg Group; Prepared for: The Texas Task Force On Indigent Defense, (Aug. 2004).