



Bureau of Justice Statistics

Special Report

September 2010, NCJ 231175

Census of Public Defender Offices, 2007

County-based and Local Public Defender Offices, 2007

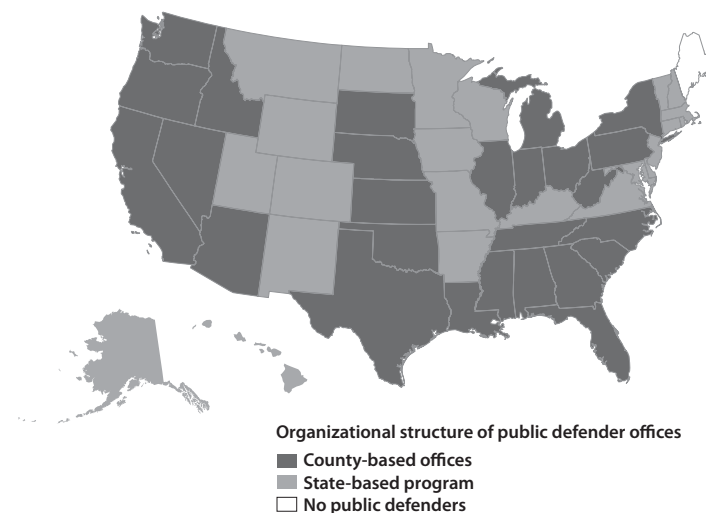
Donald J. Farole, Jr., Ph.D., and
Lynn Langton
BJS Statisticians

In 2007, 49 states and the District of Columbia had public defender offices to provide legal representation for some or all indigent defendants. In 27 states and the District of Columbia, counties or local jurisdictions funded and administered public defender offices. In the remaining 22 states, one office oversaw indigent defense operations throughout the state (figure 1).

Public defender offices administered at the local level and funded principally by the county or through a combination of county and state funds are referred to as county-based offices. Although the public defender office in the District of Columbia was entirely federally funded, it operates like a county-based office and was classified as such.

Figure 1.

Counties or local jurisdictions funded and administered public defender offices in 27 states and the District of Columbia in 2007



Highlights

- County-based public defender offices received more than 4 million cases and spent nearly \$1.5 billion in operating expenditures in 2007.
- Offices providing county-based public defender services in 25 states with death penalty statutes spent a combined total of nearly \$30 million for capital case representation in 2007.
- Misdemeanors and ordinance violations accounted for the largest share (56%) of cases received by county-based public defender offices.
- About three-quarters (73%) of county-based public defender offices exceeded the maximum recommended limit of cases received per attorney in 2007.
- County-based offices employed a median of 7 litigating public defenders.
- In 2007, 40% of all county-based public defender offices had no investigators on staff.
- The attrition rate of attorneys in county-based offices was less than 1% in 2007.

Professional guidelines for the provision of indigent defense

County-based and Local Public Defender Offices, 2007 presents the Bureau of Justice Statistics' (BJS) 2007 Census of Public Defender Offices (CPDO) data in the context of applicable professional guidelines for representing indigent clients. The American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA), and special commissions, such as the National Study Commission on Defense Services (1976) and the President's National Advisory Commission on Criminal Justice Standards and Goals (1973), have released professional guidelines for the provision of indigent defense. In 2002 the ABA condensed these guidelines into the ABA's *Ten Principles of a Public Defense Delivery System*. The ten principles are widely regarded as a succinct statement of the currently accepted requirements for adequate defense representation and are referenced throughout the report. The report also references professional guidelines from the American Bar Association *Standards for Criminal Justice, Providing Defense Services* (3rd ed. 1992) and the National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995).

Ten Principles

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

5. Defense counsel's workload is controlled to permit the rendering of quality representation.

6. Defense counsel's ability, training, and experience match the complexity of the case.

7. The same attorney continuously represents the client until completion of the case.

8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.

9. Defense counsel is provided with and required to attend continuing legal education.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Other professional guidelines

National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Chapter 13: The Defense* (1973).

National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976).

American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992).

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

County-based public defender offices employed 71% of the nation's 15,026 public defenders in 2007 (table 1). The 10,705 attorneys in county-based offices served a total population of approximately 167 million residents. These attorneys handled more than 4 million cases in 2007, which was 73% of the total number of public defender cases nationwide.

In 1963 the United States Supreme Court ruled in *Gideon v. Wainwright* that state courts are required to ensure that the provisions of the right to counsel under the Sixth and Fourteenth Amendments apply to indigent defendants. Since the *Gideon* ruling, states, counties, and jurisdictions have established varying means of providing public representation for defendants unable to afford a private attorney. Indigent defense systems typically provide representation through some combination of three methods:

1. A public defender office.
2. An assigned counsel system in which the court schedules cases for participating private attorneys.
3. A contract system in which private attorneys contractually agree to take on a specified number of indigent defendants or indigent defense cases.

The Bureau of Justice Statistics' (BJS) 2007 Census of Public Defender Offices (CPDO) collected data on public defender offices, one of three methods

used to deliver indigent defense services. Public defender offices had a salaried staff of full or part-time attorneys who were employed either by the government or by a public, nonprofit organization, to represent indigent defendants.

The CPDO collected data on the staffing, caseloads, expenditures, standards and guidelines, and attorney training from the approximately 1,000 public defender offices in 49 states and the District of Columbia in 2007. Maine had no public defender offices in 2007. The CPDO was the first systematic, national study of public defender offices. Public defender offices employed over 15,000 litigating attorneys in 957 offices nationwide, received approximately 5.6 million indigent defense cases, and spent about \$2.3 billion representing indigent defendants in 2007.

This report presents data on the policies and operations of the 530 county-based public defender offices operating in 27 states and the District of Columbia. It examines office expenditures, caseloads, staffing, and policies and procedures, by public defender office case volume, as measured by the number of cases received per office in 2007. CPDO findings based on state-based public defender programs are discussed in the BJS report, *State Public Defender Programs, 2007*, BJS Web, September 2010.

Table 1.

Characteristics of public defender offices, by type of office, 2007

Type of offices	Number of states ^a	Population served (in thousands) ^b	Number of offices ^c	Number of cases received ^d	FTE litigating attorneys ^e	Total expenditures (in thousands)
U.S. total	50	240,160	957	5,572,450	15,026	\$2,310,040
State-based	22	73,370	427	1,491,420	4,321	833,358
County-based	28	166,790	530	4,081,030	10,705	1,476,682

^aIncludes the District of Columbia, which is classified as county-based public defender office due to its unique status outside of any state's jurisdiction. In 2007 Maine did not have city, county, or state public defender offices.

^bIncludes the population served only in those jurisdictions that had a public defender office in 2007.

^cExcludes public defender offices that are privately funded or principally funded by federal or tribal governments and those that provide primarily conflict of interest representation, or felony capital, juvenile, or appellate cases services. Also excludes all other providers of indigent services, including attorneys or offices providing contract or assigned council services on an individual or case basis.

^dAlaska's state-based public defender program did not report caseload data. Caseload data were available for 97.4% of all county-based offices.

^eSee *Methodology* for a definition of full-time equivalent (FTE) litigating attorney.

The public defense function should be independent of undue political influence. To safeguard independence and promote efficiency and quality of services, a nonpartisan board should oversee defender systems.

County-based offices handled a median of about 2,500 cases with a median operating expenditure of \$708,000 in 2007

The 27 states and the District of Columbia with county-based public defender offices operated a total of 530 offices in 2007 (table 2). The District of Columbia had one office in 2007, while Illinois had 70 offices, the most county-based offices among the 27 states.

County-based public defender offices served a median population of about 117,000 residents with a median operating budget of about \$708,000 in 2007. County-based offices received a median of nearly 2,500 cases and employed a median of 7 litigating attorneys. The 154 offices with the highest caseloads (more than 5,000 cases) in 2007 served a median population of approximately 430,000 residents, received a median of approximately 10,100 cases, and employed a median of 28 litigating attorneys per office.

One in 3 county-based public defender offices had an advisory board or commission

About 1 in 3 (36%) county-based public defender offices had an advisory board or commission in 2007 (table 3). Of the 189 county-based offices with an advisory board or commission, a county commission was either the sole appointing entity or one of multiple appointing entities for 44% of these offices. The state governor was an appointing authority for 36% of offices, and the state legislature was the appointing authority for 20%. A county commission was less likely to be an appointing authority for offices with larger caseloads than for those with smaller caseloads. Conversely, a state supreme court was less likely to be an appointing authority in offices with smaller caseloads than those with higher caseloads.

In about 4 in 5 (83%) county-based offices with an advisory board or commission, the board had authority to hire or remove chief public defenders. In two-thirds of the offices, the advisory board had rule-making authority (68%) and the ability to make budgetary decisions (67%).

Table 2.

General characteristics of county-based public defender offices, by office caseload, 2007

Office caseload	Number of offices	Median population served	Median number of cases received	Median FTE litigating attorneys ^a	Median total office expenditures ^b
All offices	530	116,810	2,482	7	\$707,510
Less than 1,000 cases received	136	27,789	429	2	133,771
1,000-2,500	123	69,973	1,553	5	553,791
2,501-5,000	103	144,466	3,595	9	1,000,000
More than 5,000	154	430,317	10,093	28	3,000,000

Note: Details do not sum to total due to missing data on public defender office caseload. Population data were available for 99.2%, caseload data were available for 97.4%, FTE litigating attorney data were available for 99.2%, and expenditure data were available for 97.2% of all county-based offices.

^aSee *Methodology* for a definition of full-time equivalent (FTE) litigating attorney.

^bThe Census of Public Defender Offices, 2007 instructed respondents to report either fiscal or calendar year 2007 total public defender office expenditures for indigent defense functions, excluding any fixed capital costs.

Table 3.

Authorities appointing county-based public defender office advisory boards or commissions, and authority exercised by boards, by office caseload, 2007

Office caseload	Offices with an advisory board		Advisory board appointment					Advisory board authority			
	Number	Percent	Governor	Supreme Court	Legislature	County commission	Other ^a	Hire or remove chief public defender	Rule-making	Budgetary	Other ^b
All offices	189	36%	36%	15%	20%	44%	65%	83%	68%	67%	16%
Less than 1,000 cases received	30	22	35	7	14	52	59	83	80	77	17
1,000-2,500	54	44	39	13	17	56	57	83	69	72	11
2,501-5,000	45	44	41	11	21	48	64	91	51	49	16
More than 5,000	55	36	29	22	26	31	73	78	71	67	24

Note: Details do not sum to 100% because multiple agencies may be involved in appointing the advisory board, and the advisory board may have multiple areas of authority. Caseload data unavailable for five offices with an advisory board.

^aIncludes statutorily determined appointing bodies, state bar association, and state law school ex officio deans.

^bIncludes general supervision of operations, recommendations regarding per case fees, approval of district public defenders and deputy chief public defender selections, approval of union contracts and employee salaries, and authority to contract for indigent defense services.

Four in 5 county-based public defender offices followed specific criteria or written guidelines to determine indigency

In 2007, 83% of county-based public defender offices reported using formal criteria to determine if a defendant qualified as indigent and was eligible for public representation (table 4). Nearly all (98%) offices with formal criteria used a defendant's income level as a criterion. The majority of county-based public defender offices used a sworn application (79%) or the judge's discretion (67%) as criteria. Less than half (41%) of county-based offices used an unsworn application, and about 1 in 3 (34%) offices used the defendant's ability to post bail or bond as a criterion to determine indigency.

Judges (52%) and public defenders (47%) were the most common entities responsible for screening potential clients for indigency in jurisdictions

served by county-based public defender offices. Pretrial services or probation officers were involved in the screening process in 4% of these jurisdictions (not shown in a table).

The majority of county-based public defender offices used a court-administered assigned counsel program for conflict cases

Public defender offices had various procedures to handle cases in which there was a conflict of interest, such as a co-defendant already handled by the defender office. The majority (52%) of county-based public defender offices reported handling conflict cases through a court administered assigned counsel program; about a quarter (23%) of offices handled conflict cases through previously established contracts with private attorneys (figure 2). Less than 1 in 10 (7%) county-based public defender offices used an ethical screen, whereby an

The defender office should screen clients for eligibility, with eligibility decisions then subject to review by the court. The determination of eligibility should be based on the liquid assets of the defendant, as well as the defendant's own assessment of his or her ability to obtain sufficient representation. The office should not base indigency determinations on whether the defendant was able to post bond following his or her arrest.

Table 4.

Criteria used to determine whether a defendant qualified for public counsel representation in county-based public defender offices, by office caseload, 2007

Office caseload	Offices with formal criteria		Criteria used to determine indigency									
	Number	Percent	Income level	Sworn application	Judge's discretion	Residence in public institution ^a	Debt level	Receipt of public assistance	Federal poverty guidelines	Unsworn application	Ability to post bail or bond	Other ^b
All offices	439	83%	98%	79%	67%	66%	66%	62%	62%	41%	34%	16%
Less than 1,000 cases received	112	82	98	82	78	64	65	45	49	37	28	20
1,000-2,500	113	92	98	81	63	74	63	68	69	36	33	17
2,501-5,000	88	85	97	73	64	59	55	63	65	42	32	14
More than 5,000	115	75	98	78	64	66	80	72	67	48	38	15

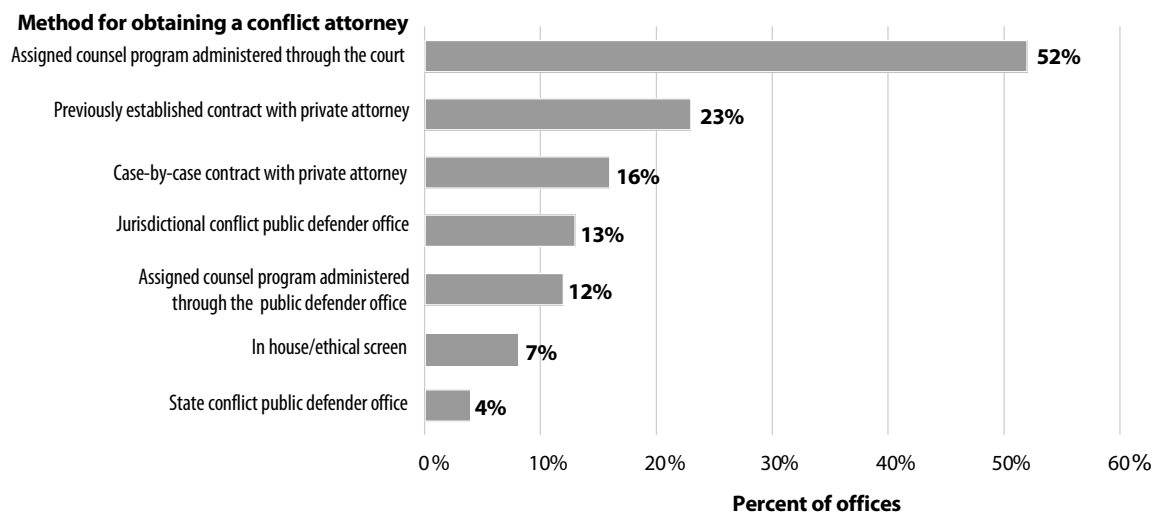
Note: Details do not sum to total due to missing data on public defender office caseload.

^aIncludes residence in a public mental health institution or a correctional institution.

^bIncludes family status, number of dependants, monthly expenses, worker's compensation or disability, bankruptcy, liquid assets, letters from employers, and judicial discretion.

Figure 2.

Types of conflict attorney systems in county-based public defender offices, 2007



Note: Percentages do not sum to 100% because some offices obtained conflict attorneys through multiple methods.

office would take a case regardless of the conflict but preclude an attorney with conflicting connections from involvement in the case.

More than 4 in 5 county-based public defender offices charged fees for defense services

Eighty-two percent of county-based public defender offices allowed for some form of cost recoupment for public defender services in 2007 (table 6). Among the offices that permitted cost recoupment, the most widely available fee was a charge based on the cost for the defender's services (69% of offices). A majority of offices also allowed recoupment of court-related expenses (63%) and standard statutory fees (53%). More than 2 in 5 (44%) offices charged an up-front application or administrative fee, which typically ranged from \$10 to \$200 depending on the state and the type of case.¹ The least commonly available fee was for expert witness expenses (15%) in 2007.

County-based public defender offices received more than 4,000,000 cases in 2007

County-based public defender offices received 4,081,030 cases in 2007, with a median of about 2,500 cases per office (table 7). The office with the highest case volume reported receiving 354,000 cases; the office with the lowest case volume reported receiving no cases in 2007 (not shown in a table). Misdemeanors and ordinance violations accounted for the majority (56%) of cases received in county-based public defender offices. County-based public defender offices received a median of 1,013 misdemeanor and ordinance violation, 853 felony non-capital, 150 juvenile-related, 15 civil, and 2 appeals cases in 2007.²

¹American Bar Association. (December 2001). 2001 Public Defender Up-front Application Fees Update. <<http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-table.pdf>>.

²The CPDO did not collect data from public defender offices providing primarily juvenile or appellate case representation.

The same attorney should represent a client through all stages of case proceedings.

Most county-based offices required the same attorney to represent clients throughout all stages of the case proceedings

Vertical representation refers to the practice of one attorney representing a client from arraignment through the duration of the case. It is distinguished from horizontal representation in which a different attorney represents the same client at various stages of the case. Sixty percent of county-based public defender offices had a written policy requiring vertical representation of indigent cases (table 5).

Public defender programs can charge fees to indigent defendants under circumstances in which the defendant's contribution would not impose significant financial hardship.

About 7 in 10 (71%) offices reported providing primarily vertical representation in felony, non-capital cases (these offices may or may not have had written policies requiring vertical representation), compared to 13% of offices that handled conflict cases through a combination of vertical and horizontal representation. Public defender offices with smaller caseloads were more likely than those with higher caseloads to provide vertical representation.

The majority of county-based public defender offices had formal policies that required the most experienced attorneys to handle the most complex cases (58%) and about a quarter (28%) required that an attorney be appointed to the case within 24 hours of client detention. Offices with lower caseloads were less likely to have these policies in place than offices with higher caseloads.

Table 5.

Operating guidelines and representation practices used by county-based public defender offices, by office caseload, 2007

Office caseload	Operating guidelines included a policy related to—				Representation provided in felony, non-capital cases—*			
	Attorney representation of client through all stages of proceedings	Matching attorney experience with case complexity	Matching attorney experience with types of cases handled	Attorney appointment within 24 hours of client detention	Vertical	Horizontal	Combination of vertical and horizontal	One attorney through arraignment, one for the duration of the case
All offices	60%	58%	51%	28%	71%	4%	13%	12%
Less than 1,000 cases received	54	29	28	16	89	2	5	4
1,000-2,500	60	55	49	22	72	4	18	6
2,501-5,000	58	68	56	29	67	5	9	19
More than 5,000	65	79	70	40	56	5	19	20

*Seven offices did not provide representation in non-capital felony cases and are excluded.

Misdemeanor and ordinance violations made up a greater share of cases received in offices with higher caseloads than in offices with lower caseloads. These cases made up a median of 59% of the overall caseload in offices receiving 5,000 cases or more and a median of 45% of the overall caseload in offices receiving fewer than 1,000 cases (not shown in a table).

The 530 county-based public defender offices received a total of 1,210 felony capital cases in 2007. Nearly all (1,086) felony capital cases were received in the 153 highest-caseload offices. Seven in 10

(70%) offices in states that had death penalty statutes in 2007 reported receiving no felony capital cases in that year.

The CPDO did not collect data on the total number of indigent defense cases received by all indigent defense providers within a jurisdiction. Thus, the extent to which variations in the numbers and types of cases received were due to differences in the operation of all methods of indigent defense is unknown.

Table 6.

Types of cost recoupment that could be required for public defender representation in county-based public defender offices, by office caseload, 2007

Office caseload	Offices allowing recoupment		Cost recoupment that may have been required—						
	Number	Percent	Attorney cost	Court-related expenses	Standard statutory fee	Application or administrative fee	Facilities fee	Expert witness fee	Other*
All offices	432	82%	69%	63%	53%	44%	42%	15%	22%
Less than 1,000 cases received	101	74	73	58	44	22	35	14	25
1,000-2,500	102	83	60	62	48	41	33	17	19
2,501-5,000	83	81	68	63	52	57	45	12	24
More than 5,000	134	87	74	68	64	55	50	16	23

Note: Percentages do not sum to 100% because offices may require indigent defendants to pay more than one fee.

*Includes standard fees set by a commission or administrative rule and court reporter or investigator fees.

Table 7.

Number of cases received by county-based public defender offices, by office caseload and case type, 2007

Office caseload	Total	Felony capital ^a	Felony non-capital	Misdemeanor/violation ^b	Juvenile-related ^c	Civil ^d	Appeals
Total caseload							
All offices	4,081,030	1,210	1,231,435	2,273,771	375,175	160,375	20,183
Less than 1,000 cases received	62,582	19	20,674	31,059	6,363	3,299	668
1,000-2,500	200,396	45	78,101	87,062	18,706	10,956	1,252
2,501-5,000	374,617	60	143,451	168,608	37,937	16,237	1,402
More than 5,000	3,443,435	1,086	989,209	1,987,042	312,169	129,883	16,861
Median caseload per office							
All offices	2,482	0	853	1,013	150	15	2
Less than 1,000 cases received	429	0	110	193	40	4	0
1,000-2,500	1,553	0	550	689	137	17	3
2,501-5,000	3,595	0	1,200	1,800	249	1	5
More than 5,000	10,093	1	3,500	6,000	992	300	10

Note: Numbers may not sum to total due to missing data on public defender office caseloads. Includes cases that were assigned to and accepted for representation by the public defender office.

^aThe District of Columbia, Michigan, and West Virginia did not have death penalty statutes in 2007. Offices in these jurisdictions were excluded from the calculation of median felony capital caseload per office.

^bIncludes misdemeanors that carry a jail sentence and ordinance or municipal infractions or violations.

^cIncludes juvenile delinquency, delinquency appeals, and transfer or waiver of hearing cases.

^dIncludes mental commitment, state post-conviction or habeas corpus, federal habeas corpus, status offense, child protection or dependency, termination of parental rights, or sexually violent predator cases.

County-based public defender offices spent nearly \$30 million providing capital case defense in 2007

In 2007, 25 of the 27 states with county-based public defender offices had death penalty statutes. (The District of Columbia, Michigan, and West Virginia did not have the death penalty in 2007.) Public defender offices in states with a death penalty statute received more than 1,200 death penalty eligible cases, spending nearly \$30 million to provide capital case representation (table 8). Offices with a caseload of more than 5,000 cases in 2007 received 90% of the death penalty eligible cases during the year. Public defender offices represented 932

indigent defendants in cases in which the prosecutor filed for the death penalty.

About 1 in 4 county-based public defender offices in states with death penalty statutes had a specialized death penalty unit to provide legal representation for trial-level capital cases. Less than 1 in 10 offices had specialized units to provide representation for direct appeals or post-conviction capital cases.

Table 8.

Capital case representation among offices in states with death penalty statutes, by office caseload, 2007

Office caseload	Death penalty eligible cases		Number of death penalty cases ^b	Percent of offices that have a specialized death penalty unit providing representation for —		
	Representation expenditures ^a	Cases received		Trial level cases	Direct appeals	Post-conviction cases
All offices	\$29,751,000	1,210	932	22%	8%	7%
Less than 1,000 cases received	203,000	19	9	7	2	3
1,000-2,500	583,000	45	38	18	7	8
2,501-5,000	2,229,000	60	61	19	10	7
More than 5,000	26,736,000	1,086	812	41	14	8

Note: The District of Columbia, Michigan, and West Virginia did not have death penalty statutes in 2007. Offices in these jurisdictions were excluded.

^aRounded to nearest thousand dollars.

^bDeath penalty eligible cases in which the prosecutor filed for the death penalty, potentially including cases that were received prior to 2007.

The defense counsel's workload should be sufficiently controlled to allow defenders the time needed to provide quality representation in each case. Furthermore, public defenders are expected to decline appointments that exceed the established caseload limits.

The 1973 U.S. Department of Justice's National Advisory Commission (NAC) on Criminal Justice Standards and Goals recommended the following maximum annual caseloads for a public defender office: on average, defenders in these offices should not exceed, per year, 150 felony, 400 misdemeanor, 200 juvenile, 200 mental health cases, or 25 appeals.

Less than half of county-based public defender offices reported caseload limits or the ability to refuse appointments due to caseload

In 2007, 15% of county-based public defender offices had formal caseload limits, and 36% had the authority to refuse appointments due to excessive caseloads (table 9). About 6 in 10 (59%) offices reported having neither caseload limits nor the authority to refuse cases. About half (49%) of offices that received more than 5,000 cases reported having the authority to refuse appointments due to excess caseload, compared to 28% of offices that received fewer than 1,000 cases in 2007.

More than 7 in 10 county-based offices had an insufficient number of attorneys to meet the professional guidelines

County-based public defender offices received a median of 853 felony non-capital cases and 1,000 misdemeanor cases, and employed a median of 7 full-time equivalent (FTE) litigating public defenders per office in 2007 (table 10). The median number of litigating attorneys was 14 times greater in the highest caseload offices (28) than in offices having the smallest caseloads (2).

The National Advisory Commission (NAC) guidelines recommend a caseload for each public defender's office, not necessarily each attorney in the office. They state that "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."³ While 'caseload' can apply to the number of cases per attorney at a given time, BJS interprets the NAC standard as applicable to the sum of cases attorneys in an office are responsible for in a given year. Because the CPDO only collected data on cases received in 2007, these caseload numbers may understate the actual caseload of attorneys who are responsible not only for the new cases received in a given year but also cases pending from previous years.

One way to examine the numeric caseload guideline is to assess the number of cases received per FTE litigating attorney. Since the CPDO did not collect

³Department of Justice, National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts § 13.12 (1973).

data on the caseloads of individual attorneys, it was assumed for estimation purposes that the felony and misdemeanor cases received in 2007 were equally distributed among FTE litigating attorneys.

Using this estimation method, a public defender office would meet the guideline for cases received in 2007 if the FTE litigating attorneys received no more than 75 felony non-capital and 200 misdemeanor cases.⁴

This conservative measure also assumes that attorneys did not have any cases pending from previous years and did not handle any other type of

case. Still, 36% of county-based public defender offices met the guideline for felony non-capital cases per attorney, and 66% met the guideline for the number of misdemeanor cases per attorney. Offices with larger overall caseloads were more likely than those with smaller caseloads to exceed the maximum recommended limit for both felony and misdemeanor cases. About 4 in 5 offices that

⁴The NAC guideline frames caseloads as though an attorney handles only one type of case. The misdemeanor and felony caseload guidelines were halved to follow the analytic assumption that attorneys handle both types of cases.

Table 9.

Caseload limits and the authority to refuse appointments due to caseload in county-based public defender offices, by office caseload, 2007

Office caseload	Percent of offices with—		
	Caseload limits	Authority to refuse appointments due to caseload	Either caseload limits or authority to refuse appointments due to caseload
All offices	15%	36%	41%
Less than 1,000 cases received	12	28	31
1,000-2,500	14	27	32
2,501-5,000	16	40	44
More than 5,000	20	49	57

Table 10.

Professional guidelines related to attorney caseloads in county-based public defender offices, by office caseload, 2007

Office caseload	Number of offices	Median FTE litigating attorneys ^b	Cases received in 2007 ^a					
			Felony non-capital			Misdemeanor		
			Median number of cases	Median number of cases per FTE litigating attorney	Percent of offices with at least one attorney per 75 cases received ^c	Median number of cases	Median number of cases per FTE litigating attorney	Percent of offices with at least one attorney per 200 cases received ^c
All offices	527	7	853	100	36%	1,000	146	66%
Less than 1,000 cases received	136	2	110	50	69	183	100	87
1,000-2,500	123	5	550	110	33	651	136	73
2,501-5,000	102	9	1,200	140	17	1,650	170	58
More than 5,000	154	28	3,500	126	22	5,302	208	48

Note: Details do not sum to total due to missing data on public defender office caseload.

^aRefers to cases appointed to and accepted for representation by the public defender office.

^bSee *Methodology* for a definition of full-time equivalent (FTE) litigating attorney.

^c1973 U.S. Department of Justice's National Advisory Committee (NAC) on Criminal Standards and Goals suggest that public defenders carrying both felony and misdemeanor cases should carry no more than 75 felony or 200 misdemeanor cases per year.

There should be 1 managerial attorney for every 10 staff attorneys in an office to ensure effective attorney supervision.

received more than 2,500 cases in 2007 failed to meet the national guideline of felony non-capital cases per attorney.

Another way to examine caseloads is to calculate the number of defenders needed to meet the nationally accepted caseload guideline of 150 felony non-capital cases, 400 misdemeanor cases, 200 juvenile cases, or 25 appellate cases per defender each year. To calculate the total number of attorneys needed in each office, analysts first computed the number of attorneys needed to handle the cases received in each of the four case categories: felony non-capital, misdemeanor, juvenile-related, and appellate. The numbers of attorneys needed for each case type were then summed to get the total number of litigating attorneys recommended by the caseload guideline.

To meet this guideline in 2007, the median office would have needed 11 attorneys who only handled the median number of felony, misdemeanor, juvenile-related, or appellate cases reported (not shown in table). The median office reported

employing 7 FTE litigating attorneys, approximately 64% of the estimated number needed.

Twenty-seven percent of county-based public defender offices reported sufficient numbers of litigating attorneys to handle the cases received in those offices in 2007 (figure 3). About a quarter (23%) of all offices reported less than half of the number of litigating attorneys required to meet the professional guidelines for the number of cases received in 2007 (not shown in a table).

Three in 5 (60%) offices that received fewer than 1,000 cases in 2007 reported employing a sufficient number of attorneys to meet the caseload guideline. Among offices with an overall caseload of more than 5,000 cases, 88% reported an insufficient number of attorneys to meet the professional guideline.

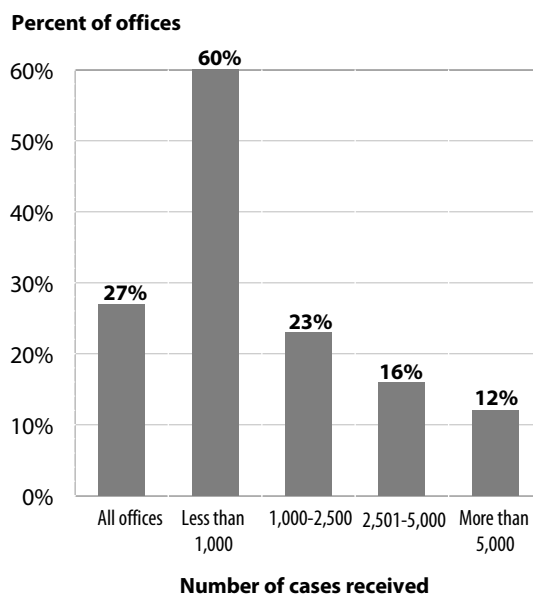
Four in 5 (84%) county-based public defender offices met the professional guideline of 1 managerial attorney per 10 staff attorneys

County-based public defender offices employed a total of 490 chief public defenders, 185 managing attorneys, and 958 supervisory attorneys in 2007 (table 11). These offices also employed a total of 8,595 full-time assistant public defenders and 1,053 part-time defenders.

The 273 county-based offices with 5 or more litigating attorneys reported a median of 1.7 managerial attorneys for every 10 assistant public defenders (not shown in a table).⁵ Sixteen percent of these offices had less than 1 managerial attorney for every 10 staff attorneys. In offices that received more than 5,000 cases in 2007, 1 in 5 (20%) did not meet this guideline.

Figure 3.

Percent of county-based public defender offices reporting sufficient number of FTE litigating attorneys required to meet caseload guidelines, 2007



⁵Since the professional guideline recommends 1 managerial attorney for every 10 staff attorneys, the guideline is inapplicable to offices with fewer than 5 FTE assistant public defenders. The guideline applies to offices with at least 5 and less than 10 FTE assistant public defenders, since these offices may employ part-time managerial attorneys.

County-based public defender offices employed 7,500 support staff in addition to attorneys in 2007

County-based public defender offices in 27 states and the District of Columbia employed 7,514 support staff in 2007 (table 12). Support staff refers to employees, such as clerical and administrative staff, paralegals, investigators, social workers, indigency screeners, and interns, who are not typically attorneys, but who provide case assistance for public defenders. About half (46%) of these support staff were in clerical or administrative

positions. County-based public defender offices employed about 1,500 investigators and 800 paralegals.

About three-quarters (5,696 of 7,514) of all support staff were employed in the 153 high caseload offices which received more than 5,000 cases in 2007. These offices employed 95% of all training staff, 85% of all social workers, and 81% of all investigators. Collectively, the 136 offices that received fewer than 1,000 cases employed a total of one social worker, one indigency screener, and no training staff in 2007.

Table 11.

Full and part-time public defenders employed by county-based public defender offices, by office caseload and position title, 2007

Office caseload	Total number of full-time attorneys					Total part-time attorneys	Percent of offices with 1 or more managerial attorneys per 10 FTE assistant public defenders*
	Total full-time attorneys	Chief public defenders	Managing attorneys	Supervisory attorneys	Assistant public defenders		
All offices	10,228	490	185	958	8,595	1,053	84%
Less than 1,000 cases received	239	108	0	4	127	179	86
1,000-2,500	488	96	1	34	357	275	88
2,501-5,000	1,033	89	11	123	810	248	92
More than 5,000	8,152	185	168	773	7,026	346	80

Note: Details do not sum to total due to missing data on public defender office caseload. See *Methodology* for a definition of full-time equivalent (FTE).

*FTE managerial attorney refers to all full and part-time attorneys in a supervisory position, including chief public defenders, supervisory attorneys, and managing attorneys. Includes only the 273 offices with 5 or more FTE litigating attorneys.

Table 12.

Full and part-time support staff employed by county-based public defender offices, by office caseload and position title, 2007

Office caseload	Number of offices	Median FTE support staff per office ^a	Total FTE support staff ^a									
			All support staff	Investigators	Social workers	Indigency screeners	Paralegals	Administrative	Clerical	Training	Interns	Other ^b
All offices	526	4	7,514	1,529	367	88	779	2,419	1,056	41	644	592
Less than 1,000 cases received	136	1	221	17	1	1	57	112	17	0	11	7
1,000-2,500	123	3	478	90	4	7	52	222	65	0	30	9
2,501-5,000	102	5	864	161	27	29	64	305	131	1	108	39
More than 5,000	153	19	5,696	1,233	313	51	600	1,612	824	39	488	538

Note: Details do not sum to total due to missing data on public defender office caseload.

^aSee *Methodology* for a definition of full-time equivalent (FTE).

^bIncludes human resources staff, forensic specialists, clinical psychologists, information technology (IT) specialists, interpreters, and investigators hired on a contractual basis.

A public defender program should have at least 1 investigator for every 3 litigating attorneys in a public defender program.

Defender organizations should offer professional development opportunities to assist attorneys in providing quality representation for indigent clients. Public defense counsels should also have systematic and comprehensive training appropriate to specific areas of practice.

Four in 10 county-based public defender offices employed no investigators in 2007

In 2007, 7% of the 469 county-based public defender offices with at least 1.5 FTE litigating attorneys met the accepted professional guideline for the ratio of investigators to attorneys (table 13).⁶ Two of these 469 offices employed 2 or more investigators per 3 litigating attorneys.

Forty percent of all county-based offices employed no investigators. Among offices receiving less than 1,000 cases in 2007, nearly 9 in 10 (87%) had no investigators on staff.

⁶Since the guideline recommends 1 investigator per 3 litigating attorneys, the guideline is inapplicable to offices with fewer than 1.5 FTE litigating attorneys. The guideline applies to offices with at least 1.5 and less than 3 FTE litigating attorneys, since these offices may employ part-time investigators.

Nearly all county-based offices provided opportunities for public defense attorneys to improve trial skills

More than 9 in 10 (92%) county-based public defender offices reported having formal policies concerning continuing education requirements (table 14). About half (48%) had formal policies related to annual attorney performance review.

The CPDO collected data on the types of training provided by county-based public defender offices. Nine in 10 (92%) offices provided attorneys with professional development opportunities in the area of trial skills. A majority also provided opportunities in juvenile delinquency (76%), mental illness (58%), and appellate cases (53%). Sixty-two percent of offices in states that had the death penalty in 2007 provided professional development opportunities in death penalty defense. Civil defense training (20%) was the least common type of professional development offered by county-based public defender offices. Offices with higher caseloads were more likely to offer professional development opportunities in trial skills as well as juvenile delinquency, mental illness, and appellate cases.

Table 13.

Full-time equivalent (FTE) investigators in county-based public defender offices, by office caseload, 2007

Office caseload	Number of offices	Median FTE litigating attorneys	Percent of offices with no FTE investigators	Percent of offices with at least 1 FTE investigator per 3 litigating attorneys*
All offices	526	7	40%	7%
Less than 1,000 cases received	136	2	87	7
1,000-2,500	123	5	45	13
2,501-5,000	102	9	22	4
More than 5,000	153	28	7	5

Note: See *Methodology* for a definition of full-time equivalent (FTE).

*Includes only the 469 offices with at least 1.5 FTE litigating attorneys. Offices with at least 1.5 and less than 3 FTE litigating attorney that employ a part-time investigator could meet the nationally recommended guidelines regarding the ratio of investigators to litigating attorneys.

Table 14.

Office policies and attorney professional development opportunities in county-based public defender offices, by office caseload, 2007

Office caseload	Percent of offices with—		Percent of offices providing professional development training in—							
	Continuing legal education for attorneys	Annual attorney performance review	Civil	Death penalty trial defense*	Juvenile delinquency	Trial skills	Appellate cases	Dependency cases	Mental illness cases	Other
All offices	92%	48%	20%	62%	76%	92%	53%	41%	58%	23%
Less than 1,000 cases received	84	18	27	43	69	77	39	43	40	20
1,000-2,500	93	42	16	58	74	97	56	42	57	19
2,501-5,000	98	56	12	63	76	94	56	39	54	20
More than 5,000	96	73	25	80	84	98	62	42	77	29

*The District of Columbia, Michigan, and West Virginia did not have death penalty statutes in 2007. Offices in these jurisdictions were not included in the calculation of the percent of offices providing professional development in death penalty trial defense.

The attrition rate of assistant public defenders in county-based offices was less than 1% in 2007

County based public defender offices turned over less than 1% of their assistant public defenders due to resignation, termination, retirement, or illness (table 15). The median attrition rate was 0% among offices receiving fewer than 2,500 cases in 2007. This may be due in part to the fact that there was little opportunity for turnover because these offices employed few litigating attorneys—37% of all

offices receiving less than 2,500 cases employed two or fewer FTE litigating attorneys (not shown in table). The median attrition rate in offices receiving more than 5,000 cases in 2007 was 8%.

The median salary for entry-level assistant public defenders ranged from \$42,000 to \$45,000. With 6 years or more experience, assistant public defenders earned a median salary in the range of \$54,000 to \$68,000. Assistant public defenders in higher caseload offices received higher salaries in general.

Table 15.

Length of service, attrition rate, and base annual salary for assistant public defenders in county-based public defender offices, by office caseload, 2007

Office caseload	Median years of service ^b	Median attrition rate ^c	Median salary for assistant public defenders— ^a					
			Entry level		5 years or less experience		6 years or more experience	
			Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
All offices	6	0.3%	\$42,000	\$45,000	\$46,000	\$54,000	\$54,000	\$68,000
Less than 1,000 cases received	2	0.0	40,000	43,000	45,000	45,000	45,000	51,000
1,000-2,500	6	0.0	40,000	43,000	44,000	52,000	50,000	61,000
2,501-5,000	6	4.8	43,000	45,000	48,000	55,000	55,000	68,000
More than 5,000	8	8.0	44,000	49,000	50,000	57,000	57,000	78,000

^aRounded to the nearest thousand dollars.

^bPublic defender offices were asked to provide the average length of service for public defenders in their office. The data presented in the table are the median responses.

^cAttrition rate is defined as the number of litigating attorneys who left the office in fiscal year 2007, divided by the total number of litigating attorneys employed on the first day of the fiscal year. Attrition rate includes supervisory attorneys and assistant public defenders.

Less than 1% of offices accounted for 21% of all cases received in county-based public defender offices

Three offices with the highest caseloads accounted for one-fifth (21%) of all cases received, 17% of overall operating expenditures, and 16% of all FTE litigating attorneys among the 530 county-based offices in 2007 (table 16). Cases received in these three offices were more likely to be misdemeanors or

ordinance violations than the types of cases received in all other offices. These three offices served 14% of the overall population served by the 530 county-based offices nationwide (not shown in a table).

Table 16.

Cases received, full-time equivalent (FTE) litigating attorneys and support staff, and operating expenditures in the three highest-caseload county-based public defender offices, 2007

Characteristics	All county-based public defender offices	Three highest-caseload offices	
		Total	Percent of all county-based offices
Total caseload	4,081,029	839,553	21%
Felony non-capital	1,231,435	124,818	10
Misdemeanor/violations ^a	2,067,403	569,268	28
Litigating attorney FTE^b	10,705	1,731	16
Support staff FTE^b	7,514	911	12
Total operating expenditures^c	\$1,476,682,000	\$245,924,000	17

^aIncludes misdemeanors that carry a jail sentence and ordinance or municipal infractions or violations.

^bSee *Methodology* for a definition of FTE.

^cRounded to nearest thousand dollars.

Methodology

The 2007 Census of Public Defender Offices (CPDO) collected office-level data from approximately 950 publicly funded public defender offices located in the 49 states and the District of Columbia. (Maine had no public defender offices in 2007 and provided all indigent defense services through assignment to and contract services with private attorneys.) The universe included all public defender offices principally funded by state or local governments and that provided general criminal defense services, conflict services, or capital case representation.

Federal public defender offices that provided primarily contract or assigned counsel services with private attorneys were excluded from the data collection. Additionally, any public defender offices that were privately funded or principally funded by tribal governments, or provided primarily appellate or juvenile services were outside the scope of the project and were excluded.

Scope of Data Collection

The Bureau of Justice Statistics (BJS), the National Legal Aid and Defender Association (NLADA), and a number of chief defenders and other experts in the field of indigent defense collaborated to develop the CPDO data collection instrument. The instrument was sent to the American Bar Association's Standing Committee for Legal Aid and Indigent Defense and the National Association of Criminal Defense Lawyers for review and comment. Data collection began in April 2008 and was completed in March 2009.

Questionnaires were sent to 1,046 public defender offices in the United States. Approximately 97% of the offices provided responses to at least some of the critical items identified in the survey instrument.

Organizational Structure of Public Defender Offices

Office included in the census were administered and funded at the county or state level. State-based offices functioned entirely under the direction of a central administrative office that funded and administered all the public defender offices in the state. County-based offices were administered at the local level and funded principally by the county or through a combination of county and state funds. In

the District of Columbia and states with county-based public defender offices, each of 588 offices submitted one completed questionnaire via hardcopy or online submission. This report examines the 530 offices that served as the principal public defender office for the district. For information on data collection methods in state-based public defender programs, see the BJS report, *State Public Defender Programs, 2007*, BJS Web, September 2010.

Measuring caseload versus workload

The CPDO was designed to collect aggregate data from public defender offices or programs. Respondents were instructed to provide the number of cases received by the office or program in 2007. This caseload number is presented throughout the report as a measure of public defender office labor.

While workload—which factors into account case complexity, administrative duties public defenders may carry, and other matters—is generally considered to be a more accurate measure of the burden on public defenders than caseload, an assessment of workload requires data on the number and types of cases handled by individual attorneys within an office, as well as information about additional attorney responsibilities. The survey instrument and project design did not allow for assessment of the workload of individual attorneys within an office. Providing data on individual attorneys would have been burdensome and time-consuming for the public defender offices and programs.

Calculating number of full-time equivalent (FTE) litigating attorneys

Full-time equivalent (FTE) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. (See U.S. Census Bureau, Government Employment, 1997, Web. Updated annually. <http://quickfacts.census.gov/qfd/meta/long_58632.htm>).

Included as FTE litigating attorneys are attorneys carrying a caseload (supervisory attorneys, assistant public defenders, and chief defenders). Excluded are managing attorneys who do not litigate cases.



Washington, DC 20531

Official Business
Penalty for Private Use \$300

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. James P. Lynch is director.

This Special Report was written by Donald Farole, Jr., Ph.D. and Lynn Langton. Thomas H. Cohen, Ph.D. and Kyle C. Harbacek verified the report.

Georgette Walsh and Jill Duncan edited the report, Tina Dorsey produced the report, and Jayne Robinson prepared the report for final printing under the supervision of Doris J. James.

September 2010, NCJ 231175

This report in portable document format and in ASCII and its related statistical data and tables are available at the BJS World Wide Web Internet site: <<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2211>>.

Office of Justice Programs

Innovation • Partnerships • Safer Neighborhoods
<http://www.ojp.usdoj.gov>