

**OFFICE OF THE DEFENDER GENERAL**

---

**Fourteenth Report**

**Fiscal Year 1989/1990**

---

**March 1991**

10-3-91  
MFI

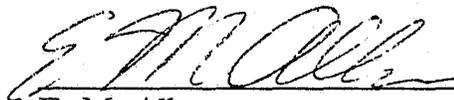
129879

## OFFICE OF THE DEFENDER GENERAL

### Fourteenth Report

Pursuant to Vermont Statutes Annotated, Title 13 §5256, I herewith present the Fourteenth Report of the Office of the Defender General. Due to severe flooding of our central office at 141 Main Street in Montpelier on December 25, 1989, a great deal of material necessary to the preparation of the annual report was lost or damaged. As a result, no report was submitted for Fiscal Year 1989. This report attempts to cover both 1989 and 1990, though some information regarding the assigned counsel program for FY 1990 could not be retrieved after the waters had receded.

As it is with most annual reports, this one is, in large part, comprised of numbers: numbers of cases, percentages of increase, graphs and tables. It is important to remember that these numbers represent individual criminal defendants and juveniles who passed through our court system. These numbers also represent the strenuous efforts of the men and women who provide indigent defense services, whether as public defenders, assigned counsel, investigators or legal secretaries, in the State of Vermont. Their work on behalf of often unpopular clients makes the constitutional promise of fair and equal justice a reality for all of us.



E. M. Allen  
Defender General  
State Office Building  
Montpelier, VT 05602

March 1991

129879

U.S. Department of Justice  
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Office of the Defender  
General (Vermont)

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

## TABLE OF CONTENTS

I. PURPOSE .....	1
II. STATUS OF PUBLIC DEFENDER SYSTEM .....	1
III. HISTORY .....	2
IV. PROGRAM STRUCTURE .....	4
A. Public Defense .....	6
1. Appellate Defender .....	7
2. Prisoners' Rights Office .....	9
3. Juvenile Defender .....	9
B. Assigned Counsel .....	10
V. DEMAND FOR SERVICES .....	11
A. Public Defense Added Clients .....	11
B. Public Defense Understaffing and Caseload Relief .....	12
VI. SPECIAL DEMANDS .....	14
A. Homicide .....	14
B. Sexual Assault .....	14
C. Motor Vehicle Caseload .....	15
D. Juvenile Caseload .....	16
VII. COSTS/CLIENT CONTRIBUTION FOR PUBLIC DEFENSE SERVICES .....	17
VIII. CONCLUDING REMARKS .....	18
APPENDIX	
STATE-WIDE PUBLIC DEFENSE STATISTICS .....	20
STATE-WIDE ASSIGNED COUNSEL STATISTICS .....	26
GRAPHS .....	32
EXPENDITURES .....	38
CASELOAD RELIEF POLICY .....	39

## **I. PURPOSE**

The Office of the Defender General provides legal representation at trial and appellate levels for indigent persons accused of a felony or a misdemeanor carrying a penalty of imprisonment or a fine of more than \$1,000.00; for children who are the subject of juvenile proceedings, whether as alleged delinquents or as children in need of care and supervision (CHINS); for other parties to juvenile proceedings, children in the custody of the Commissioner of Social and Rehabilitation Services; for persons in the custody of the Commissioner of Corrections who have a claim for relief; for persons in extradition proceedings; and for persons in parole hearings and other post-conviction relief hearings. Title 13 Vermont Statutes Annotated Sections 5232, 5233, 5253; Title 33 V.S.A. Sections 658 and 659; Vermont Supreme Court Administrative Order No. 4, Section 1.

## **II. STATUS OF PUBLIC DEFENDER SYSTEM**

Vermont's commitment to the provision of counsel for indigent defendants and children in abuse, neglect and delinquency cases continues to face significant and critical challenges. The fundamental problem is one of resources keeping pace with caseload demands. Based upon past fiscal years, current staffing, and caseload patterns, the following trends and factors have had, and will continue to have impact upon the public defense mission: a continuing pattern of caseload escalation; an increase in the number of homicide cases in which representation is handled by public defenders; continued increases in the reporting and prosecution of child abuse, neglect, delinquency and sexual assault cases; expanding post-conviction pressures within the Prisoners' Rights caseload; and increases in the costs of criminal litigation. Court dockets continue to be strained, with increased public awareness and vigorous prosecution of certain categories of cases, such as sex, motor vehicle, and drug offenses, that were formerly less prevalent in the judicial system. For public defenders, the complexity and volume of caseloads sustained in recent years and continuing into FY 91 have pressed the constitutional and statutory obligations to provide effective assistance of counsel to the very limit.

During FY 88, Public Defenders and Assigned Counsel Contractors made unprecedented efforts to provide capable representation. The number of trials conducted was roughly double that of FY 87. However, to respond effectively to the volume of cases, the public defense system increased reliance upon caseload relief measures such as the hiring of temporary employees and assignment of cases to private counsel to provide representation for the poor in FY 88. Beginning in FY 89, the Defender General embarked upon a three-year program of rebuilding and reorganizing Vermont's public defense system. Three new public defender positions were authorized, and the assigned counsel contract system for conflict of interest cases was strengthened. This rebuilding program continued in FY 1990 as two attorney positions were added. Additional staffing was also provided to meet the new demands of DWI legislation. Thereafter, these modest increases were somewhat negated by staff and appropriation reductions during the fiscal year.

However, the increase in the public defender caseload, which created the need for the aforementioned rebuilding program, has continued unabated. A continued increase in caseload, coupled with a lack of additional resources for defending that caseload, will result in three possible consequences: a general erosion of the quality of representation provided to indigent defendants, a failure by the state to fulfill its constitutional duty of providing counsel to all who qualify, or a devaluing of the quality of justice as Vermont's criminal justice system is forced to abandon its principles in the pursuit of efficiency.

### III. HISTORY

In 1972, the Vermont General Assembly created the Office of the Defender General, thereby establishing one of the nation's first state-wide public defense systems. This legislative initiative was entirely consistent with a long-standing Vermont tradition of providing counsel to indigent defendants in serious criminal cases. As early as 1872, the Vermont General Assembly took a preeminent lead in protecting the rights of defendants. Unlike most states, which have had the notion of public defense thrust upon them pursuant to the decisions of the federal judiciary, the Vermont Legislature created a state-supported system of assigning counsel from the private bar to represent indigent criminal defendants on an ad hoc basis.

Vermont's assigned counsel system of representation was far more developed than that of most other states. In those states that recognized the United States Constitution's Sixth Amendment requirement that accused persons be represented by counsel, there was essentially no means for compensation of assigned counsel. It was not considered the responsibility of the government to provide these services.

In 1932, the United States Supreme Court held in Powell v. Alabama that appointment of counsel was necessary in capital cases where the accused is ignorant, illiterate and unable to afford an attorney. In 1963, the Court discarded these special circumstances in its landmark case, Gideon v. Wainwright, stating that a defendant in a felony case who is unable to afford counsel has a right to be defended by an attorney who is appointed and paid by the state.

During this period, the Vermont assigned counsel system was administered by the Supreme Court. Due to the increasing and unpredictable costs of providing counsel to indigent criminal defendants, in 1969 the House Appropriations Committee requested that the Court conduct a study to ascertain improving the assigned counsel system in order to gain better fiscal control. Chief Justice James Holden appointed a committee to recommend improvements to the system and several studies were commissioned.

In 1971, Vermont's Judicial Council recommended to the Vermont General Assembly that a state-wide public defender system be established. Under the direction of then District Court Judge Hilton J. Dier, Jr. (who retired in 1989 after having served as a Superior Court Judge since 1975), a pilot program was conducted in Addison County during 1971-2. By comparing the assigned counsel system with public defense, the

committee found that the overall cost per case was twenty-three percent less expensive when managed by the public defender.

Experts testified that a public defense system would result in a more effective criminal justice system. Consequently, the Legislature enacted a significant portion of the model Public Defender Act which became law on July 1, 1972. Title 13 V.S.A., Ch. 163. Vermont's initial Public Defender Act was drafted broadly enough to allow for the federally-mandated expansions of the right to counsel without substantial amendments to the law.

Soon after Vermont established its state-wide system, the U.S. Supreme Court held in Argersinger v. Hamlin (1972) that indigent criminal defendants were entitled to counsel for any criminal charge which could result in any term of imprisonment, whether or not the charge was a felony or a misdemeanor. Vermont accurately anticipated the Court's decision in Scott v. Illinois (1979) where the Court reaffirmed Argersinger allowing a judge to make a pre-trial determination whether the defendant would not be sentenced to confinement if convicted of a misdemeanor charge. If the Court determines that imprisonment will not be imposed after conviction, the defendant does not have a Constitutional right to counsel. Three years prior to the Scott decision, the Vermont Legislature codified the pre-determination rule in 13 V.S.A. Section 5201(4)(B).

During the early years of the public defense program, Defender General Robert West attracted a substantial amount of federal money to support the program. This initiative partially defrayed the expense generated by the expanding federal mandates requiring that states provide counsel to indigent persons.

Defender General James L. Morse (now an Associate Justice of the Supreme Court) successfully anticipated imminent federal cutbacks. This allowed for a smooth transition from reliance upon federal monies to state funding. In addition to this initiative, in 1978, Defender General Morse inaugurated Vermont's first public defense contracts. By contracting with experienced criminal defense lawyers for an amount that was less than the cost to run a staff office, the State saved money.

Although the proponents of Vermont's public defense system were correct in predicting significant savings over assigned counsel representation, they could not foresee the explosion in caseload as a result of these federal decisions. The caseload expanded at such a high rate that supplemental appropriations were needed to provide required counsel. With the increase in caseload came an increase in the number of conflict cases. This required a more active assigned counsel system to handle conflict cases. In addition to higher-than-anticipated costs of public defense, the assigned counsel system, with its inherent problems, continued to be necessary on a far greater scale than believed desirable.

In 1981, Defender General Andrew Crane recommended a restructuring of the assigned counsel program. The system of assigning counsel was expensive, unpredictable, and sometimes resulted in the assignment of counsel that were unfamiliar with criminal

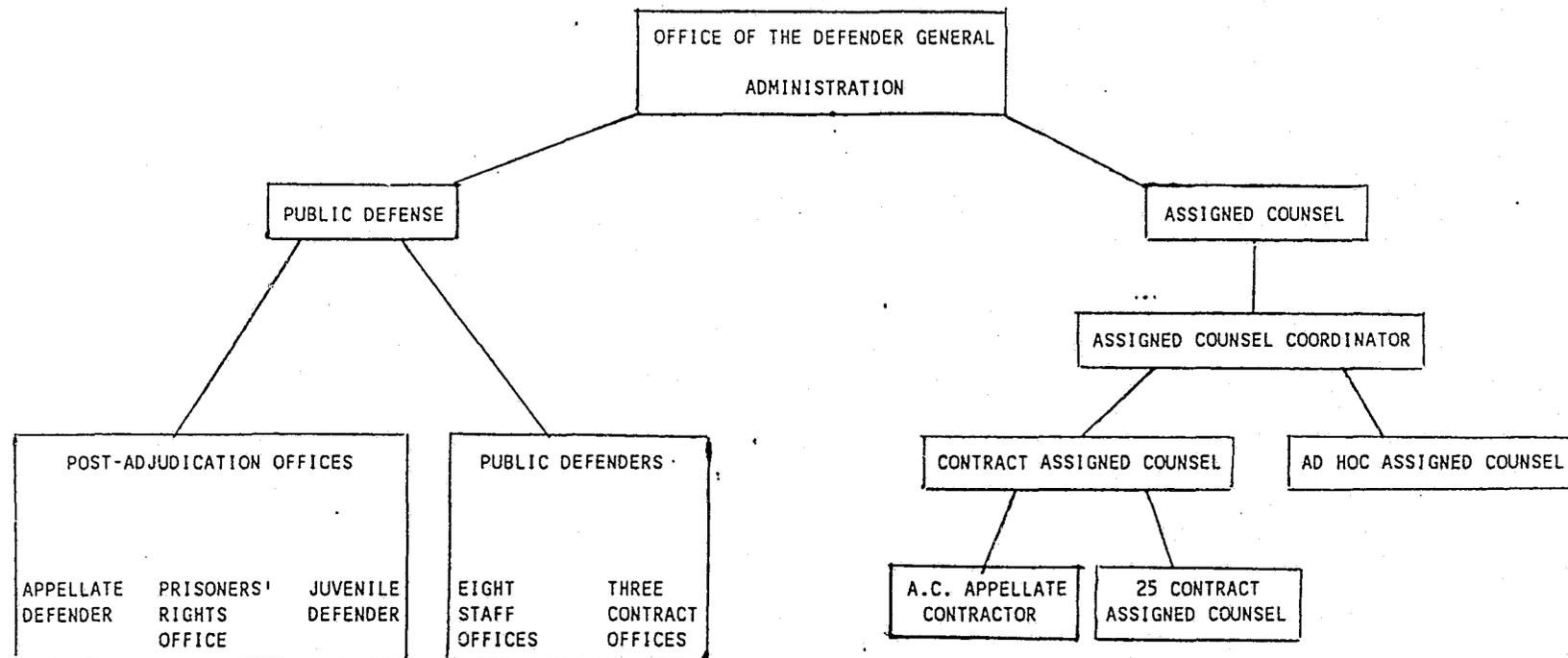
practice. On July 1, 1982, Defender General Crane entered into contracts with private attorneys to provide criminal defense in conflict cases. The system provided savings to the State because a ceiling was placed upon the costs at the beginning of the fiscal year (modeled after the public defense contracts). In July, 1986, Defender General David Curtis implemented a "split contract" system for contract assigned counsel to provide at least two contract assigned counsel for each county, further strengthening the system's capacity to absorb conflict of interest cases.

In 1988 and 1989, Defender General Walter Morris (now a District Court Judge) successfully sought additional funding necessary to maintain the number of contractors and thereby to limit the number of cases assigned to the more expensive ad hoc assigned counsel. As Defender General, Judge Morris also recognized that the combination of increasing caseloads and unchanged funding would eventually discourage practitioners from entering into such contracts.

In upholding its impressive history of concern for the rights of the individual, Vermont has assumed the responsibility of its constitutional and historical mandates. However, increasing caseloads and economic hard times will challenge the abilities of the Public Defense and Assigned Counsel programs to provide effective legal representation for their clients in FY 1992.

#### **IV. PROGRAM STRUCTURE**

To the extent that its services are required by the United States Constitution and the Vermont Statutes, the Office of the Defender General is unique in state government. Vermont laws governing the services of the Office require the Defender General to administer both the Public Defense and Assigned Counsel programs. The Defender General directly supervises the public defense staff; the assigned counsel program is managed by an Assigned Counsel Coordinator, in consultation with the Defender General.



A public defender is assigned once a presiding judge has determined that an individual is financially eligible for public defense services. There is a three-tiered system of appointment in most of the twelve regions of the State as provided by the Vermont Supreme Court's Administrative Order No. 4, Sections 3 and 4. First, assignments are made to the local public defender. Second, in the event of a conflict of interest, the appointment is shifted to a local assigned counsel contractor. If the conflict situation continues because, for example, the case involved more than two defendants charged with the same crime, the court assigns counsel from another assigned counsel contractor lawyer or firm from that region (some counties have three contractors and the majority have two). Third, if the public defender and all of the assigned counsel contractors have a conflict of interest, the court will appoint an attorney from the private bar on an ad hoc basis.

### **A. Public Defense**

There are eleven public defense field offices located throughout the State. Eight of these offices are full-time staff offices: Bennington County (located in Bennington); Caledonia and Essex Counties (served from an office in St. Johnsbury); Chittenden County (located in Burlington); Franklin and Grand Isle Counties (served from an office in St. Albans); Lamoille County (located in Hyde Park); Orleans County (located in Newport); Rutland County (located in Rutland City); and Windham County (located in Brattleboro). In FY 89, three new attorney positions were added to upgrade two offices formerly staffed by solo attorneys (Newport and Hyde Park), and to respond to caseload demands in Burlington, location of the state's busiest criminal court.

Three of the offices are public defense contract offices or, private law firms that have entered into a contract with the Defender General to provide public defense services. They are: Sessions, Keiner, Dumont, Barnes and Everitt (Addison County); Rubin, Rona, Kidney and Myer (Washington County); and Welch, Graham and Manby (Windsor and Orange Counties).

While representation provided by Vermont's public defenders continues to be of high caliber, the quality of services is threatened by burgeoning caseloads, and especially increases in the number of more serious offenses, such as homicides, sexual assault and other crimes of violence without corresponding increases in public defense staff.

Public Defense and post-adjudication offices are managed by the Office of the Defender General in Montpelier. The Defender General also relies upon an Assistant, an Accountant and Administrative Secretary to assist in the business management of both programs.

Legal services are also provided in public defense through three post-adjudication offices based in Montpelier. If the initial conflict of interest no longer exists after disposition of a case, those offices may, and do, serve assigned counsel clients in addition to public defense clients.

## 1. Appellate Defender

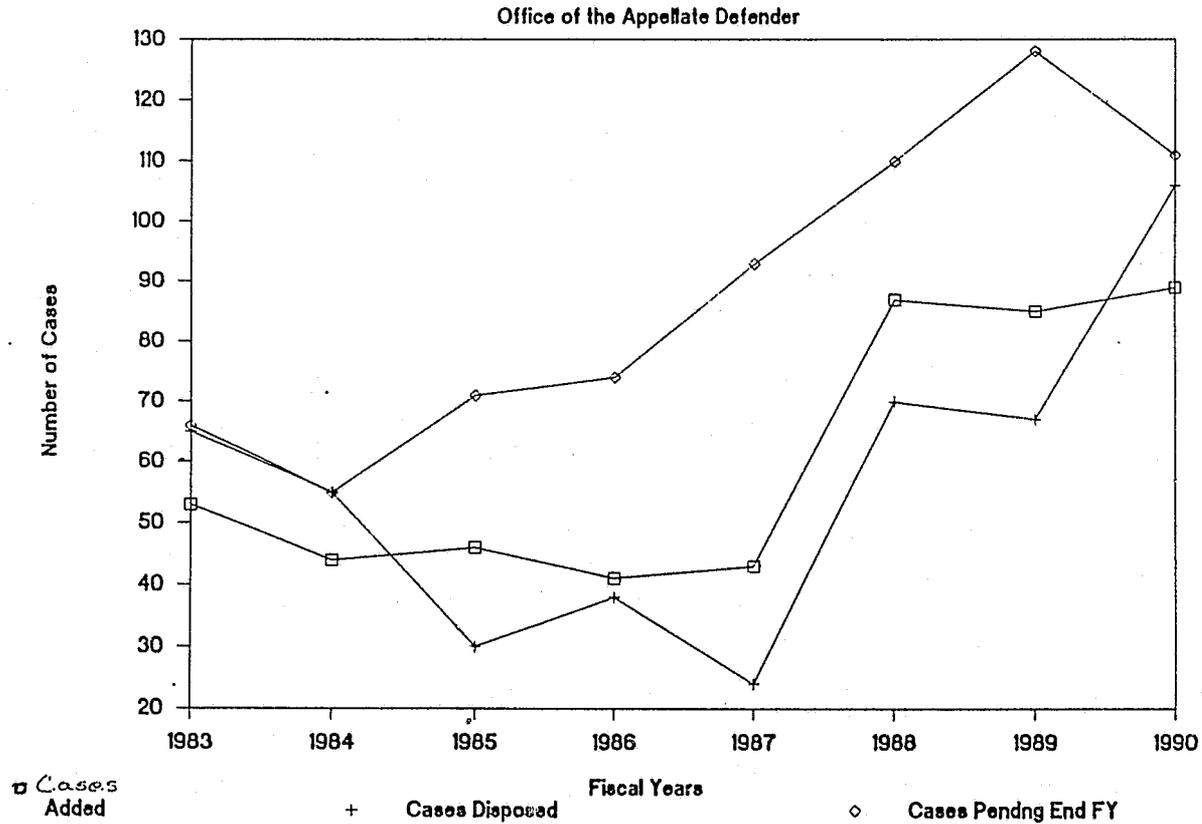
The Appellate Defenders prepare briefs and argue appeals before the Vermont Supreme Court for clients who decide to exercise their right to appeal their convictions or sentences. The workload of the Appellate Defenders was given additional dimension as a result of the Vermont Supreme Court's decision in State v. Jewett, 146 Vt. 221 (1985), creating new emphasis upon the State's Constitution in criminal, juvenile, and prisoners' cases. Since Jewett, state constitutional questions have been raised increasingly in appellate cases necessitating additional effort in the development of an independent state constitutional jurisprudence. In addition to their principal work of briefing and argument of appeals, the Appellate Defenders assist public defenders in bail appeals and other proceedings before the Supreme Court, and they represent clients in appeals that are taken up by the State. For example, if the State decides to appeal a pretrial ruling suppressing a confession of a public defense client, or to challenge a final decision of the court in a juvenile case, the Appellate Defenders will respond on the client's behalf. The Appellate Defenders are assisted by one Administrative Secretary.

Caseload pressures in the Appellate Defender's office have required the development of a system of priorities. The appeals of incarcerated individuals are handled immediately. During FY 1988, appellate caseload pressures on the two appellate defenders became so great that several appeals had to be assigned to private counsel, in response to progress orders entered by the Supreme Court to advance pending cases. The number of added appellate cases increased by 102% from FY 87 to FY 88; the number of appellate cases pending at year's end increased by 18% from FY 87 to FY 88 and by 16% from FY 88 to FY 89. In response to this increase in caseload, a third appellate defender position was added in FY 1990.

## OFFICE OF THE APPELLATE DEFENDER

<u>Fiscal Year</u>	<u>Cases Added</u>	<u>Cases Disposed</u>	<u>No. Cases Pending End FY</u>
1983	53	65	66
1984	44	55	55
1985	46	30	71
1986	41	38	74
1987	43	24	93
1988	87	70	110
1989	85	67	128
1990	89	106	111

## OFFICE OF THE DEFENDER GENERAL



## 2. Prisoners' Rights Office

The Prisoners' Rights Office provides legal assistance to clients who are in the custody of the Commissioner of Corrections. 13 V.S.A. Section 5253(a). This work includes post-conviction relief, habeas corpus petitions, and monitoring conditions of confinement and parole. These legal services are provided to persons who are confined in a correctional facility, and to those who are under probation and parole supervision. The Prisoners' Rights Office consists of two Attorneys, one Investigator and one Secretary.

The Prisoners' Rights Office has also been confronted with an expanding caseload, as more people are sent to prison, in conjunction with a pattern of increasing sentences. Vermont's jails have become seriously overcrowded. The result is that more prisoners are seeking redress with respect to conditions in the jails, and systemic challenges to jail conditions are necessitated. Special needs populations, such as youthful offenders, sex offenders, and offenders with mental illnesses or retardation require special programming and treatment to advance the societal goal of rehabilitation. In turn, such specialized treatment raises additional legal issues which must be addressed on behalf of incarcerated clients. In order to deal with the caseload stress, the Prisoners' Rights Office has given priority to representation of clients with "restriction of liberty" claims. During FY 88, caseload relief measures in the form of temporary employees and assignment of cases to private counsel were required to assist in provision of representation in priority cases to the prisoner population, as required by the constitutions and statutes. Such measures continued during FY 89 and FY 90 as the incarcerated population steadily increased.

## 3. Juvenile Defender

The Office of the Juvenile Defender represents children who are in state custody as a result of abuse, neglect, unmanageability or delinquency. Representation includes: administrative and dispositional review proceedings; outreach and representation of juveniles in restrictive and secure facilities (including Woodside and out-of-state institutions); representation of juveniles in CHINS, termination of parental rights, and delinquency proceedings; and technical assistance to public defenders representing juveniles in CHINS or delinquency proceedings. The office consists of one and a half Attorneys and two Investigators.

During FY 1989, the Office of the Juvenile Defender participated in 823 Administrative Review hearings and 275 Dispositional Review hearings; and monitored the placement of 238 juveniles in the Woodside Facility. During FY 1990, the Office of the Juvenile Defender participated in 838 Administrative Review hearings and 266 Dispositional Review hearings; and monitored the placement of 284 juveniles in the Woodside Facility. The office also represents children in out-of-state placement hearings, habeas corpus proceedings and at Eighteen-Month-Court Reviews to assure that the children's custody and permanency planning is in their best interests. As more and more abused and severely emotionally disturbed children come into state custody, the Juvenile

Defender's Office has actively supported efforts to improve the juvenile court process and efforts to provide a coordinated system of treatment for those children.

The increasing number of juveniles confined in the Woodside facility has added significantly to the amount of legal and paralegal work required of the Juvenile Defender's Office. There are now more admissions, an increased average length of stay, a higher average daily population and more restraints. In response to litigation filed by the Juvenile Defender's Office, the Department of Social and Rehabilitation Services has implemented hearing procedures for admitting and releasing juveniles to and from Woodside. These changes have required a substantial increase in workload, travel time and expense for the staff of the Juvenile Defender's Office to assure that the juveniles confined at the facility receive appropriate treatment opportunities and placements.

### **B. Assigned Counsel**

Assigned Counsel contracts were entered into with twenty-five law firms or individual attorneys in FY 1990. In an effort to reflect more equitable compensation based upon caseload, the Defender General reallocated the contract amounts for all counties based upon their past caseload. Adequacy of compensation for assigned counsel contractors and ad hoc appointments continues to be of major concern. A significant indicator of the seriousness of the problem is that experienced and effective assigned counsel contractors are declining to renew their contracts in increasing numbers due to the low rate of compensation in relation to caseloads. In FY 89, there were eight experienced firms who would not renew their contracts, citing this problem. In FY 90, despite efforts to improve contract firm compensation, another seven firms declined to renew their contracts.

The Defender General has a contract with an Assigned Counsel Coordinator to oversee the general management of the program. The Coordinator's duties consist of overseeing the daily operations of the program.

The Assigned Counsel Contractors bring stability and savings to the budget. Beginning in FY 86, the Defender General established a "split" system of assigned counsel contracts in each county, to reduce the number of "third tier" conflicts requiring ad hoc assignment of counsel from the private bar. The objective is to assure that in each county, there are at least two contractors to take conflict cases (for FY 91, there are 24 law firms under contract throughout the state). This initiative has functioned very well as a cost containment measure within the assigned counsel program, notwithstanding systemic pressures resulting from the sheer volume of new cases, expansion of post-conviction relief caseloads, and dispositional reviews in juvenile cases. However, it has become increasingly difficult to find prospective contractors in certain counties. Caseloads in these offices have increased dramatically in recent years; added felony cases increased by 16.6% in FY 1989 and by 22.5% in FY 1990.

The Defender General continues to closely monitor costs of the assigned counsel program, especially those for ad hoc, or random assignment of counsel by the courts. Of

course, the contractual system was never designed to handle all assigned counsel cases. There will always be a need for some ad hoc appointments to handle multiple conflict of interest cases. Steps are taken to control the costs and reduce the number of conflicts, to the extent that this is possible. Beginning in FY 1986, the Defender General required that in conflict juvenile cases, the public defender represent the child and the assigned counsel contractor represent the adult. Therefore, the dispositional (18-month) juvenile review hearings and administrative review hearings are handled primarily by the Juvenile Defender's office or local public defenders, providing continuity in representation for these children and cost savings through staff, rather than private counsel services.

By imposing the same strict set of expenditure guidelines that the public defenders adhere to, the Assigned Counsel Coordinator has attempted to control expenses. However, the appointments and associated expenses for counsel continue to be unpredictable. For example, homicides referred to contract counsel and ad hoc assignments because of conflicts of interest have resulted in significant budget problems. The objective has been to increase the number of homicides in which representation is provided by the core public defense program, but this is not always possible. Even the most experienced contract law firms require investigative and expert services in preparation of more complex cases, and these costs are a matter of on-going concern.

In addition, as caseload pressures in public defender offices continue to mount, the challenge has been to limit recourse to ad hoc assignments for caseload relief for those public defender offices that cannot, consistent with ethical mandates, take on any more cases.

While the Assigned Counsel Contract and Ad Hoc appointment system has fulfilled its role well since 1982, increased caseload pressures make it necessary to reorganize and strengthen this program to cope with the demands of a rapidly-changing judicial system. Specialized contracts would also prove useful to improve quality of services and reduce costs in post-conviction prisoners cases, a specialized area of practice for which it is difficult to find qualified attorneys, and in juvenile proceedings, which account for a disproportionate number of ad hoc assignments. Another initiative that must be considered for future years is the establishment of staff or contract "alternate defender" offices, which devote all of their practice to handling indigent conflict cases. For the more populous areas of the state, recourse to such offices appears inevitable.

## **V. DEMAND FOR SERVICES**

### **A. Public Defense Added Clients**

One of the measures of the demand for defense services is the number of Added Clients during a fiscal year. The constant influx of new cases, coupled with cases pending creates the "caseload" (i.e., the total number of cases, criminal or juvenile, for which offices are responsible during the fiscal year). Added client statistics illustrate the total demand on an office or the system's resources during the fiscal year. Most cases turn over rapidly

and few individual cases have a lengthy life expectancy. Ideally, the majority of defense work occurs when a case is opened, when the events and circumstances surrounding a charge are still fresh in memory.

During FY 1989, public defenders experienced a 7.3% increase in added clients over FY 1988 and a 4% increase in FY 1990 over FY 1989. However, the increases were not consistent from county to county and likewise varied as to types of cases. For example, in FY 1989 the Windham County office added 43% more clients than in the previous year, but, in FY 1990, that office's caseload declined while those in Bennington and Washington Counties rose by over 20%. The caseload of the Rutland County office increased by more than 15% in each year. Likewise, the number of added felony cases declined somewhat between FY 1988 and FY 1989 but increased in FY 1990. Juvenile cases followed the opposite pattern, while misdemeanor cases increased in both years. In the first half of FY 1991, the public defense caseload increased by 9.1% over the same period in the previous year, though felony charges increased by 23%. Thus, the overall pattern of increasing caseloads has continued during these years.

<u>FISCAL YEAR</u>	<u>NO. ADDED CLIENTS</u>	<u>YEARLY CHANGE</u>
1980	4,736	7.0%
1981	5,281	11.5%
1982	5,878	11.3%
1983	6,859	16.7%
1984	6,759	-1.5%
1985	7,463	10.4%
1986	8,026	7.5%
1987	9,204	14.7%
1988	8,947	-2.8%
1989	9,600	7.3%
1990	9,979	4.0%

From FY 80 through FY 90, the number of public defense Added Clients increased 111%, while the number of public defenders available to represent them in district court increased only 76%. As a result of the growing number and complexity of cases, the public defense system has been chronically understaffed, and, with the number of public defenders likely to decline in FY 1992 while the caseload increases, the situation will worsen.

### **B. Public Defense Understaffing and Caseload Relief**

Understaffing is the most serious problem the Defender General faces. The modest increase of seven trial lawyers from FY 80 through FY 88 had proven insufficient to meet the caseload demands experienced in this span of years. With approval of the Governor, the Defender General requested and obtained authorization for new attorney positions in FY 89 and FY 90. While these positions have served to avoid a virtual breakdown of the system for providing counsel for the poor, the problem has not been solved.

For several years, the Office of the Defender General has assessed the effects of caseload on staff resources by relying primarily upon a formula developed by the National Legal Aid and Defender Association. This formula, the Lawyer Equivalency Caseload (LEC), translates cases and their type into the number of lawyers required to handle such cases. The standard is that no criminal defense lawyer should handle, without running the risk of professional malpractice, more than 150 felony, or 400 misdemeanor, or 200 juvenile or miscellaneous new clients per year, or a combination thereof. Such maximum caseloads cannot be handled without the hard work and dedication of public defenders, their investigators and support staff. Caseloads in excess of the standards raise concern about effective client representation.

In the following chart, the LEC column indicates the number of attorneys that the client caseload required under the standards for the fiscal year. The TRIAL ATTORNEYS column states the actual number of public defenders who handled that fiscal year caseload. The chart and attached Graph A, establish that for the last three fiscal years, public defense understaffing has reached levels of serious concern, with great risk of compromising the quality of client representation.

FISCAL YEAR	LEC	TRIAL ATTORNEYS	PERCENT UNDERSTAFFED
1980	18.8	16.8	10.6%
1981	20.6	17.6	14.6%
1982	22.4	19.0	15.2%
1983	25.7	20.0	22.2%
1984	24.9	22.0	11.6%
1985	27.4	23.0	16.1%
1986	29.8	23.0	22.8%
1987	33.7	24.0	28.2%
1988	33.4	24.0	28.1%
1989	35.6	28.5	19.9%
1990	36.7	29.5	19.6%

Through FY 1987 and FY 1988, it was clear that the expanding caseload had pressed public defenders' constitutional, statutory and ethical obligations to provide effective assistance of counsel to the very limit. Consequently, the Defender General developed and implemented a caseload relief policy (see Page 39) that provides for a range of relief measures, including assignment of certain public defense cases to private attorneys at a significantly greater cost. The caseload relief policy is implemented only where necessary to assure effective representation of indigent clients. Limited programs of caseload relief were implemented in two of the District Courts during FY 88. And, while staff resources added in FY 89 have brought some measure of stabilization to the field offices, continuing caseload relief may be necessary.

## VI. SPECIAL DEMANDS

### A. Homicide

During the early years of the Office of the Defender General, outside counsel were routinely hired to represent homicide defendants at substantial expense. The theory supporting this practice was that public defenders did not yet have the experience and expertise to provide adequate representation to homicide defendants. This situation has changed dramatically over the past several years with the advent of experienced staff public defenders and public defense contractors. At present, most public defender offices have at least one pending homicide case, as do a number of the assigned counsel contract offices. These cases require a great deal of time from the attorneys involved for legal research, investigation and trial preparation, and through the displacement of resources, place significant hardships on other attorneys, investigators and secretaries.

Homicide cases also pose a special financial problem for the indigent defense system. Pursuant to Administrative Order No. 4, the maximum payment for representation by ad hoc assigned counsel in murder cases (and in cases involving other offenses which carry a possible penalty of life imprisonment) is \$10,000. Pursuant to the terms of their agreements with the Office of the Defender General, assigned counsel contractors are entitled to \$5,000 in addition to the normal contractual amount for providing representation in a murder case. As it is difficult to predict the number of homicide cases in any given year and impossible to know the pattern of conflicts which will arise from those cases, budgeting for the payment of these amounts is problematical. In spite of the additional compensation, it is not realistic to assume that a homicide defense can be conducted without a significant pro bono contribution on the part of assigned attorneys beyond the time for which they are compensated.

### B. Sexual Assault

There has been a staggering increase in the last seven years in the prosecution of sex crimes in Vermont. There are no more profound and serious cases routinely processed in the trial courts than charges of sexual assault and lewd and lascivious conduct. These cases are less likely than other charges to be resolved without a trial and, if proven, are likely to result in lengthy sentences of incarceration. Post-sentencing, serious civil liberties issues must be addressed in the context of "compelled" treatment, and the inadequacy of present treatment resources for sex offenders in the state. In all, such cases require an exceptional amount of work and consume a large part of the indigent defense resources.

Much like homicide cases, the costs of representing persons charged with sex crimes are high. For example, expert evaluations for sex offenders require more than the average psychological examination. Novel evidentiary procedures which limit constitutional rights of the accused consume a great deal of effort. Expert testimony regarding "syndrome" and other forensic evidence is often presented on both sides of such cases.

The pattern of high volume sexual offense cases first set in FY 84 continues. In FY 1990, public defenders represented 107 persons charged with lewd and lascivious conduct, and 132 persons charged with sexual assault. As is true of homicides, it does not appear there will be any significant decrease in the number of sex crimes prosecuted in Vermont in the foreseeable future;

PUBLIC DEFENSE - SEX OFFENSES

FISCAL YEAR	L & L	SEXUAL ASSAULT	YEARLY TOTAL	CHANGE
1976	38	23	61	
1977	40	13	52	-14.8%
1978	63	23	86	65.4%
1979	24	38	62	-27.9%
1980	42	35	77	24.2%
1981	31	34	65	-15.6%
1982	32	32	64	-1.5%
1983	30	39	69	7.8%
-----				
1984	56	59	114	65.2%
1985	83	74	157	37.8%
1986	86	109	195	24.2%
1987	71	116	187	-4.1%
1988	75	109	184	-1.6%
1989	81	114	195	5.9%
1990	107	132	239	22.6%

C. Motor Vehicle Caseload

Motor vehicle misdemeanor charges accounted for 34% of the total public defender caseload in FY 90. Within the category of all motor vehicle offenses, DWI charges (1,551). DLS charges (2,279) are the most common, constituting almost 30% of all public defender cases in FY 1990. Of particular concern is the escalation of DLS charges from year to year, evidence that our current approaches to motor vehicle offenses and driver rehabilitation are in need of progressive revision.

PUBLIC DEFENSE - DWI AND DLS OFFENSES

FISCAL YEAR	DWI	YEARLY CHANGE	DLS	YEARLY CHANGE
1976	432	---	322	---
1977	609	41.0%	569	76.7%
1978	567	-6.9%	680	19.5%
1979	587	3.5%	414	-39.1%
1980	517	-11.9%	555	34.1%
1981	592	14.5%	670	20.7%
1982	808	36.5%	852	27.2%
1983	1,185	46.7%	1,148	34.7%
1984	1,325	11.8%	1,259	9.7%
1985	1,512	14.1%	1,375	8.4%
1986	1,542	2.0%	1,643	19.5%
1987	1,570	1.8%	1,938	18.0%
1988	1,423	-9.4%	2,172	12.1%
1989	1,455	2.2%	2,082	-4.1%
1990	1,551	6.6%	2,279	9.5%

**D. Juvenile Caseload**

Public defense disposed cases involving CHINS petitions increased .6% in FY 1990 over FY 1989 with 950 petitions reported, the greatest number since statistics were first maintained in FY 1976. However, delinquency cases decreased in both Public Defender and Assigned Counsel caseloads.

## JUVENILE CASELOAD

FISCAL YEAR	CHINS	DELINQUENCY	TOTAL	CHANGE
1976	311	244	555	---
1977	312	346	658	18.6%
1978	385	372	757	15.0%
1979	424	369	793	4.8%
1980	419	410	829	4.5%
1981	305	326	631	-23.9%
1982	421	381	802	27.1%
1983	708	428	1,136	41.6%
1984	612	315	927	-18.4%
1985	625	382	1,007	8.6%
1986	758	411	1,169	16.1%
1987	831	470	1,301	11.29%
1988	888	479	1,367	5.1%
1989	944	516	1,460	6.8%
1990	950	384	1,334	-8.6%

Juvenile cases require the same quality of representation provided in other serious cases. There are many parties involved in these cases including: juvenile(s); parents and other adult parties; SRS; state's attorneys; and lawyers representing each of these parties. These cases can require extended litigation, whether involving CHINS petitions, modification requests, termination of parental rights, or delinquency matters. Although the Juvenile caseload represents 10% of the public defense caseload, the complexity of the legal, social and emotional aspects of these cases assumes a much larger proportion of the workload than statistics might indicate. The establishment of the Family Court, while providing a better venue, has also resulted in greater demands on attorney time.

Assigned counsel play a critical role in juvenile cases, by assuring that the system deals rationally with the competing interests of children, who must be protected from abuse and neglect, and preservation of the family unit where possible, an interest which must be accorded great value in our society. In FY 90, 40% of the assigned counsel caseload was comprised of juvenile cases.

### VII. COSTS/CLIENT CONTRIBUTION FOR PUBLIC DEFENSE SERVICES

As former Defenders General have indicated, the public defense and assigned counsel programs always have operated beyond the capacity of their resources. This is so because program appropriations have always followed major trends and demands of the justice system, often by several years. The Office of the Defender General is unique among departments of state government in that it has no ability to reduce either the number of clients served or the quality of service rendered in the event of unmitigated

economic hardship. The United States and Vermont Constitutions and the Vermont statutes require that vigorous and effective public defense services be made available to eligible defendants. The "product" of the programs cannot simply be reconfigured to provide more for less, despite rigid cost containment efforts.

In this context, contribution to the costs of criminal defense services by clients having some ability to pay has been an issue and problem with which the Legislature, the courts and the Defender General's office have attempted to deal since the inception of Vermont's public defense program in 1972.

In FY 88, at the urging of the Defender General, the Legislature approved a comprehensive revision of the state's system for seeking client contributions to the costs of public defense. Under the new system, the process of "recoupment" (post-case recovery of fees) was abandoned. As is the case in most other jurisdictions, the recoupment system had proven to be ineffective, time-consuming when pursued, and unjust in application. Beginning in FY 89, a new system under which a modest contribution (a minimum of \$25 to \$50) made by clients having an ability to pay is implemented, with the payment being made at arraignment or as soon as possible thereafter.

Procedural safeguards are provided to assure that persons constitutionally entitled to assignment of counsel are not deprived of counsel for inability to contribute to costs. Contributions may not be sought from clients having incomes below the poverty guidelines, or receiving public assistance, since this would be violative of constitutional and statutory guarantees.

The contribution requirement may not result in a criminal sanction; rather, it is treated as a civil obligation established by the acceptance of state-provided assistance.

No system of public defense client payment will result in generation of significant revenues. This is the experience not only in Vermont, but in all other jurisdictions dealing with the question. However, in its first two years of operation, the new system has proven to be far more effective than its predecessor.

## VIII. CONCLUDING REMARKS

More than a quarter century ago, Justice Black wrote in his opinion in Gideon v. Wainwright, 372 U.S. 335 (1963), "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." It is the role of public defenders and assigned counsel in our criminal justice system to make the "ideal" of fair and equal justice a reality. This role becomes more difficult but also more vital in an atmosphere of frustration with the courts, outrage over particular crimes and impatience for success in campaigns against such crimes as drunk driving and drug trafficking. As our

system of justice attempts to reconcile the desire for a safe and orderly society with the preservation of constitutional rights and principles, the efforts of public defenders and assigned counsel to obtain fair and equal justice for their indigent clients serve the interests of all our citizens.

The Office of the Defender General will be challenged during the coming year to continue to provide skilled representation to an expanding caseload despite necessarily diminished resources. The effort will require a reexamination of all the components of the public defense system to determine whether greater economy or efficiency can be achieved without sacrificing the quality of our services. With the support of the Governor, the Legislature and the Public, that effort can be successful.

PUBLIC DEFENSE FY 1989: STATE-WIDE

CASES ADDED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	No.	%	No.	%	No.	%	No.	%	No.
Charges	1629	13.1	7679	61.9	1511	12.2	1591	12.8	12,410
Clients	1264	13.2	5822	60.6	1373	14.3	1141	11.9	9,600

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	No.	%	No.	%	No.	%	No.	%	No.
Charges	1555	13.2	7252	61.4	1460	12.4	1535	13.0	11,803
Clients	1203	13.3	5488	60.6	1319	14.6	1053	11.6	9,063

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty	21	56.8	27	52.9
Not Guilty	13	35.1	11	21.6
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	1	2.7	7	13.7
Hung Jury	0	0.0	3	5.9
Mistrial	1	2.7	0	0.0
Court Dismissal	1	2.7	3	5.9
TOTAL	37	100.0	51	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty as Charged (Plea)	413	39.3	3264	57.7
Guilty Reduced Charge	29	2.8	609	10.8
Guilty Fel. Reduced to Misd.	206	19.6	0	0.0
Transfer to Juv. Court	23	2.2	71	1.2
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	183	17.4	838	14.8
Insufficient Evidence	52	5.0	210	3.7
Diversion	35	3.3	221	3.9
Other	46	4.4	196	3.5
Dismissed by Court	63	6.0	252	4.4
TOTAL	1050	100.0	5661	100.0

CONVICTIONS

	Felonies		F. Reduced to M.		Misdemeanors	
	No.	%	No.	%	No.	%
Incarceration	276	60.0	92	44.7	1428	36.6
Probation	119	25.9	67	32.5	723	18.5
Deferred Sentence	56	12.2	9	4.4	52	1.3
Fine Only	9	2.0	38	18.4	1704	43.6
<b>TOTAL</b>	<b>460</b>	<b>100.0</b>	<b>206</b>	<b>100.0</b>	<b>3907</b>	<b>100.0</b>

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:	No.	%	Felonies-Fraud	No.	%
Arson	17		Embezzlement	26	
Assault & Robbery	24		Extortion	1	
Larceny from Person	8		False Personation	5	
<b>TOTAL</b>	<b>49</b>	<b>0.4</b>	False Token	89	
Felonies-Serious Crimes Against Persons:			Forgery	42	
Aggravated Assault	51		Perjury	2	
Kidnapping	13		Utt. Forged Instr.	101	
Lewd & Lascivious	81		Welfare Fraud	23	
Manslaughter	1		<b>TOTAL</b>	<b>289</b>	<b>2.4</b>
Murder	11		Felonies-Drug Related		
Sexual Assault	114		Fraud to Procure	19	
<b>TOTAL</b>	<b>271</b>	<b>1.0</b>	Dispensing	42	
Felonies-Serious Crimes Against Property:			Possession with Intent to Sell	88	
Burglary	321		<b>TOTAL</b>	<b>149</b>	<b>1.3</b>
Grand Larceny	121		Felonies-Motor Vehicle:		
Receiving Stolen Property	75		DWI-Death/Injury Result.	5	
Retail Theft	45		<b>TOTAL</b>	<b>5</b>	<b>0.04</b>
Unlawful Mischief	21		Felonies-Other:		
Unlawful Trespass	78		Escape	50	
<b>TOTAL</b>	<b>661</b>	<b>5.6</b>	Habitual Offender	2	
			Impede Police Officer	17	
			Miscellaneous	63	
			<b>TOTAL</b>	<b>132</b>	<b>1.1</b>

MISDEMEANORS

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	169				
False Statement	71		Fraud to Procure Drugs	2	
Welfare Fraud	<u>1</u>		Possession Marijuana	174	
TOTAL	241	2.0	Possession Pills	<u>23</u>	
			TOTAL	199	1.7
Misdemeanors-Disorderly and Endangering Crimes:			Misdemeanors-Property:		
Annoying Telephone Calls	22		Petit Larceny	272	
Disorderly Conduct	404		Receiving Stolen Prop.	74	
False Alarm	8		Retail Theft	262	
Noise in Night	3		Theft of Services	30	
Reckless Endangering	37		Unlawful Mischief	292	
Simple Assault	713		Unlawful Trespass	<u>226</u>	
Simple Assault-Police	68		TOTAL	1156	9.8
Possession Malt Bev.	<u>188</u>				
TOTAL	1443	12.2	Misdemeanors-Miscel.:	174	1.5

Misdemeanor Motor Vehicle Offenses:

	No.	%
Careless & Negligent	147	
Driving to Endanger	16	
Driving W/ License Suspended	2082	
Driving While Intoxicated	1455	
Elude Police Officer	91	
Leaving Scene Accident	127	
Operating W/O Owner's Consent	<u>121</u>	
TOTAL	4039	34.2

OTHER

Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	114		Children in Need of Care & Supervision	944	
Extradition	98		Juvenile Delinquents	<u>516</u>	
Habeas Corpus	2		TOTAL	1460	12.4
Post-Conviction Relief	3				
Violation of Probation	1212				
Sentence Reconsideration	24				
Other	<u>82</u>				
TOTAL	1535	13.0			

Charges Partially Handled: 2011

PUBLIC DEFENSE FY 1990: STATE-WIDE

CASES ADDED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	No.	%	No.	%	No.	%	No.	%	No.
Charges	1747	13.3	8381	64.0	1355	10.4	1611	12.3	13,094
Clients	1371	13.7	6191	62.0	1270	12.7	1147	11.5	9,979

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	No.	%	No.	%	No.	%	No.	%	No.
Charges	1703	13.1	8296	63.9	1334	10.3	1652	12.7	12,985
Clients	1375	13.9	6182	62.5	1229	12.4	1112	11.2	9,898

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty	7	43.8	18	40.9
Not Guilty	5	31.2	15	34.1
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	1	6.2	0	0.0
Guilty LIO	1	6.2	2	4.5
Hung Jury	0	0.0	3	6.8
Mistrial	0	0.0	0	0.0
Court Dismissal	2	12.5	6	13.6
TOTAL	16	100.0	44	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty as Charged (Plea)	488	43.5	3743	58.8
Guilty Reduced Charge	24	2.1	546	8.6
Guilty Fel. Reduced to Misd.	244	21.7	0	0.0
Transfer to Juv. Court	15	1.3	46	0.7
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	139	12.4	1073	16.8
Insufficient Evidence	85	7.6	270	4.2
Diversion	41	3.6	244	3.8
Other	45	4.0	230	3.6
Dismissed by Court	42	3.7	218	3.4
TOTAL	1123	100.0	6370	100.0

**CONVICTIONS**

	<u>Felonies</u>		<u>F. Reduced to M.</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Incarceration	316	60.9	107	43.7	1621	37.6
Probation	117	22.5	94	38.4	901	20.9
Deferred Sentence	76	14.6	12	4.9	60	1.4
Fine Only	10	1.9	32	13.1	1726	40.1
<b>TOTAL</b>	<b>519</b>	<b>100.0</b>	<b>245</b>	<b>100.0</b>	<b>4308</b>	<b>100.0</b>

**TYPES OF CRIMES**

**FELONIES**

<b>Felonies-Serious Crimes Against Persons/Property:</b>	<b>No.</b>	<b>%</b>	<b>Felonies-Fraud</b>	<b>No.</b>	<b>%</b>
Arson	30		Embezzlement	22	
Assault & Robbery	22		Extortion	4	
Larceny from Person	6		False Personation	21	
<b>TOTAL</b>	<b>58</b>	<b>0.4</b>	False Token	97	
<b>Felonies-Serious Crimes Against Persons:</b>			Forgery	32	
Aggravated Assault	86		Perjury	3	
Kidnapping	11		Utt. Forged Instr.	97	
Lewd & Lascivious	107		Welfare Fraud	41	
Manslaughter	3		<b>TOTAL</b>	<b>317</b>	<b>2.4</b>
Murder	8		<b>Felonies-Drug Related</b>		
Sexual Assault	132		Fraud to Procure	14	
<b>TOTAL</b>	<b>347</b>	<b>2.7</b>	Dispensing	45	
<b>Felonies-Serious Crimes Against Property:</b>			Possession with Intent to Sell	85	
Burglary	349		<b>TOTAL</b>	<b>144</b>	<b>1.1</b>
Grand Larceny	114		<b>Felonies-Motor Vehicle:</b>		
Receiving Stolen Property	74		DWI-Death/Injury Result.	11	
Retail Theft	54		<b>TOTAL</b>	<b>11</b>	<b>0.08</b>
Unlawful Mischief	44		<b>Felonies-Other:</b>		
Unlawful Trespass	80		Escape	55	
<b>TOTAL</b>	<b>715</b>	<b>5.5</b>	Habitual Offender	2	
			Impede Police Officer	7	
			Miscellaneous	47	
			<b>TOTAL</b>	<b>111</b>	<b>0.9</b>

**MISDEMEANORS**

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	211		Fraud to Procure Drugs	1	
False Statement	77		Possession Marijuana	184	
Welfare Fraud	<u>7</u>		Possession Pills	<u>18</u>	
TOTAL	295	2.3	TOTAL	203	1.6

**Misdemeanors-Disorderly and Endangering Crimes:**

Annoying Telephone Calls	38	
Disorderly Conduct	499	
False Alarm	11	
Noise in Night	8	
Reckless Endangering	46	
Simple Assault	846	
Simple Assault-Police	82	
Possession Malt Bev.	<u>196</u>	
TOTAL	1726	13.3

**Misdemeanors-Property:**

Petit Larceny	274	
Receiving Stolen Prop.	104	
Retail Theft	340	
Theft of Services	31	
Unlawful Mischief	410	
Unlawful Trespass	<u>244</u>	
TOTAL	1403	10.8

**Misdemeanors-Miscel.:** 222 1.7

**Misdemeanor Motor Vehicle Offenses:**

	No.	%
Careless & Negligent	191	
Driving to Endanger	24	
Driving W/ License Suspended	2279	
Driving While Intoxicated	1551	
Elude Police Officer	131	
Leaving Scene Accident	148	
Operating W/O Owner's Consent	<u>123</u>	
TOTAL	4447	34.2

**OTHER**

Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	107		Children in Need of		
Extradition	89		Care & Supervision	950	
Habeas Corpus	1		Juvenile Delinquents	<u>384</u>	
Post-Conviction Relief	3		TOTAL	1334	10.3
Violation of Probation	1370				
Sentence Reconsideration	22				
Other	<u>60</u>				
TOTAL	1652	12.7			

**Charges Partially Handled: 2445**

ASSIGNED COUNSEL CONTRACTOR FY 1989: STATE-WIDE

CASES ADDED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	No.	%	No.	%	No.	%	No.	%	No.
Charges	615	23.1	830	31.2	1022	38.4	192	7.2	2,659
Clients	449	22.7	525	26.6	862	43.6	141	7.1	1,977

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	No.	%	No.	%	No.	%	No.	%	No.
Charges	453	21.6	680	32.5	786	37.5	176	8.4	2,095
Clients	349	23.1	437	28.9	612	40.5	114	7.5	1,512

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty	9	45.0	6	75.0
Not Guilty	6	30.0	0	0.0
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	0	0.0	0	0.0
Hung Jury	3	15.0	0	0.0
Mistrial	0	0.0	1	12.5
Court Dismissal	2	10.0	1	12.5
TOTAL	20	100.0	8	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	No.	%	No.	%
Guilty as Charged (Plea)	153	45.4	306	51.8
Guilty Reduced Charge	10	3.0	29	4.9
Guilty Fel. Reduced to Misd.	60	17.8	0	0.0
Transfer to Juv. Court	4	1.2	15	2.5
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	55	16.3	133	22.5
Insufficient Evidence	27	8.0	39	6.6
Diversion	4	1.2	23	3.9
Other	5	1.5	23	3.9
Dismissed by Court	19	5.6	23	3.9
TOTAL	337	100.0	591	100.0

CONVICTIONS

	<u>Felonies</u>		<u>F. Reduced to M.</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Incarceration	114	66.3	23	38.3	129	37.7
Probation	35	20.4	26	43.3	117	34.2
Deferred Sentence	21	12.2	2	3.3	14	4.1
Fine Only	2	1.2	9	15.0	82	24.0
<b>TOTAL</b>	<b>172</b>	<b>100.0</b>	<b>60</b>	<b>100.0</b>	<b>342</b>	<b>100.0</b>

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:	No.	%	Felonies-Fraud	No.	%
Arson	9		Embezzlement	0	
Assault & Robbery	12		Extortion	0	
Larceny from Person	3		False Personation	0	
<b>TOTAL</b>	<b>24</b>	<b>1.2</b>	False Token	15	
			Forgery	7	
Felonies-Serious Crimes Against Persons:			Perjury	2	
Aggravated Assault	10		Utt. Forged Instr.	23	
Kidnapping	2		Welfare Fraud	3	
Lewd & Lascivious	20		<b>TOTAL</b>	<b>50</b>	<b>2.4</b>
Manslaughter	0				
Murder	2		Felonies-Drug Related		
Sexual Assault	41		Fraud to Procure	0	
<b>TOTAL</b>	<b>75</b>	<b>3.6</b>	Dispensing	19	
			Possession with Intent to Sell	23	
Felonies-Serious Crimes Against Property:			<b>TOTAL</b>	<b>42</b>	<b>2.0</b>
Burglary	134				
Grand Larceny	39		Felonies-Motor Vehicle:		
Receiving Stolen Property	16		DWI-Death/Injury Result.	0	
Retail Theft	18		<b>TOTAL</b>	<b>0</b>	<b>0.0</b>
Unlawful Mischief	6				
Unlawful Trespass	17		Felonies-Other:		
<b>TOTAL</b>	<b>230</b>	<b>11.0</b>	Escape	8	
			Habitual Offender	0	
			Impede Police Officer	5	
			Miscellaneous	19	
			<b>TOTAL</b>	<b>32</b>	<b>1.5</b>

MISDEMEANORS

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	11		Fraud to Procure Drugs	2	
False Statement	9		Possession Marijuana	19	
Welfare Fraud	<u>1</u>		Possession Pills	<u>6</u>	
TOTAL	21	1.0	TOTAL	27	1.3
Misdemeanors-Disorderly and Endangering Crimes:			Misdemeanors-Property:		
Annoying Telephone Calls	0		Petit Larceny	53	
Disorderly Conduct	49		Receiving Stolen Prop.	26	
False Alarm	0		Retail Theft	21	
Noise in Night	0		Theft of Services	5	
Reckless Endangering	5		Unlawful Mischief	60	
Simple Assault	125		Unlawful Trespass	<u>27</u>	
Simple Assault-Police	4		TOTAL	192	9.2
Possession Malt Bev.	<u>17</u>		Misdemeanors-Miscel.:	39	1.9
TOTAL	200	9.6			

Misdemeanor Motor Vehicle Offenses:

	No.	%
Careless & Negligent	9	
Driving to Endanger	3	
Driving W/ License Suspended	97	
Driving While Intoxicated	56	
Elude Police Officer	10	
Leaving Scene Accident	5	
Operating W/O Owner's Consent	<u>21</u>	
TOTAL	201	9.6

OTHER

Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	18		Children in Need of		
Extradition	3		Care & Supervision	566	
Habeas Corpus	7		Juvenile Delinquents	<u>220</u>	
Post-Conviction Relief	11		TOTAL	786	37.5
Violation of Probation	120				
Sentence Reconsideration	7				
Other	<u>10</u>				
TOTAL	176	8.4			

Charges Partially Handled: 180

AD HOC ASSIGNED COUNSEL FY 1989: STATE-WIDE

CASES DISPOSED

	<u>Felonies</u>		<u>Misdemeanors</u>		<u>Juvenile</u>		<u>Misc.</u>		<u>Total</u>
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>
Charges	198	22.7	208	23.8	399	45.8	67	7.7	872
Clients	137	22.0	123	19.7	312	50.0	52	8.3	624

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Guilty	8	50.0	4	80.0
Not Guilty	5	31.2	1	20.0
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	0	0.0	0	0.0
Hung Jury	1	6.2	0	0.0
Mistrial	0	0.0	0	0.0
Court Dismissal	2	12.5	0	0.0
TOTAL	16	100.0	5	100.0

II. OTHER DISPOSITIONS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Guilty as Charged (Plea)	79	49.1	93	49.7
Guilty Reduced Charge	4	2.5	7	3.7
Guilty Fel. Reduced to Misd.	19	11.8	0	0.0
Transfer to Juv. Court	0	0.8	0	0.0
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	33	20.5	64	34.2
Insufficient Evidence	19	11.8	9	4.8
Diversion	1	0.6	3	1.6
Other	2	1.2	6	3.2
Dismissed by Court	4	2.5	5	2.7
TOTAL	161	100.0	187	100.0

CONVICTIONS

	Felonies		F. Reduced to M.		Misdemeanors	
	No.	%	No.	%	No.	%
Incarceration	59	64.8	7	36.8	61	58.6
Probation	22	24.2	5	26.3	30	28.8
Deferred Sentence	9	9.9	2	10.5	2	1.9
Fine Only	1	1.1	5	26.3	11	10.6
<b>TOTAL</b>	<b>91</b>	<b>100.0</b>	<b>19</b>	<b>100.0</b>	<b>104</b>	<b>100.0</b>

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:	No.	%	Felonies-Fraud	No.	%
Arson	3		Embezzlement	1	
Assault & Robbery	2		Extortion	0	
Larceny from Person	0		False Personation	1	
<b>TOTAL</b>	<b>5</b>	<b>0.6</b>	False Token	8	
Felonies-Serious Crimes Against Persons:			Forgery	5	
Aggravated Assault	8		Perjury	0	
Kidnapping	8		Utt. Forged Instr.	8	
Lewd & Lascivious	7		Welfare Fraud	1	
Manslaughter	0		<b>TOTAL</b>	<b>24</b>	<b>2.8</b>
Murder	6		Felonies-Drug Related		
Sexual Assault	20		Fraud to Procure	0	
<b>TOTAL</b>	<b>49</b>	<b>5.6</b>	Dispensing	11	
Felonies-Serious Crimes Against Property:			Possession with Intent to Sell	4	
Burglary	60		<b>TOTAL</b>	<b>15</b>	<b>1.7</b>
Grand Larceny	12		Felonies-Motor Vehicle:		
Receiving Stolen Property	10		DWI-Death/Injury Result.	1	
Retail Theft	2		<b>TOTAL</b>	<b>1</b>	<b>0.1</b>
Unlawful Mischief	1		Felonies-Other:		
Unlawful Trespass	4		Escape	2	
<b>TOTAL</b>	<b>89</b>	<b>10.2</b>	Habitual Offender	0	
			Impede Police Officer	1	
			Miscellaneous	12	
			<b>TOTAL</b>	<b>15</b>	<b>1.7</b>

MISDEMEANORS

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	7		Fraud to Procure Drugs	0	
False Statement	2		Possession Marijuana	3	
Welfare Fraud	<u>0</u>		Possession Pills	<u>0</u>	
TOTAL	9	1.0	TOTAL	3	0.3
<b>Misdemeanors-Disorderly and Endangering Crimes:</b>			<b>Misdemeanors-Property:</b>		
Annoying Telephone Calls	0		Petit Larceny	20	
Disorderly Conduct	18		Receiving Stolen Prop.	11	
False Alarm	0		Retail Theft	5	
Noise in Night	0		Theft of Services	2	
Reckless Endangering	3		Unlawful Mischief	18	
Simple Assault	41		Unlawful Trespass	<u>13</u>	
Simple Assault-Police	3		TOTAL	69	7.9
Possession Malt Bev.	<u>4</u>		<b>Misdemeanors-Miscel.:</b>	9	1.0
TOTAL	69	7.9			

Misdemeanor Motor Vehicle Offenses:

	No.	%
Careless & Negligent	4	
Driving to Endanger	1	
Driving W/ License Suspended	22	
Driving While Intoxicated	12	
Elude Police Officer	2	
Leaving Scene Accident	1	
Operating W/O Owner's Consent	<u>7</u>	
TOTAL	49	5.6

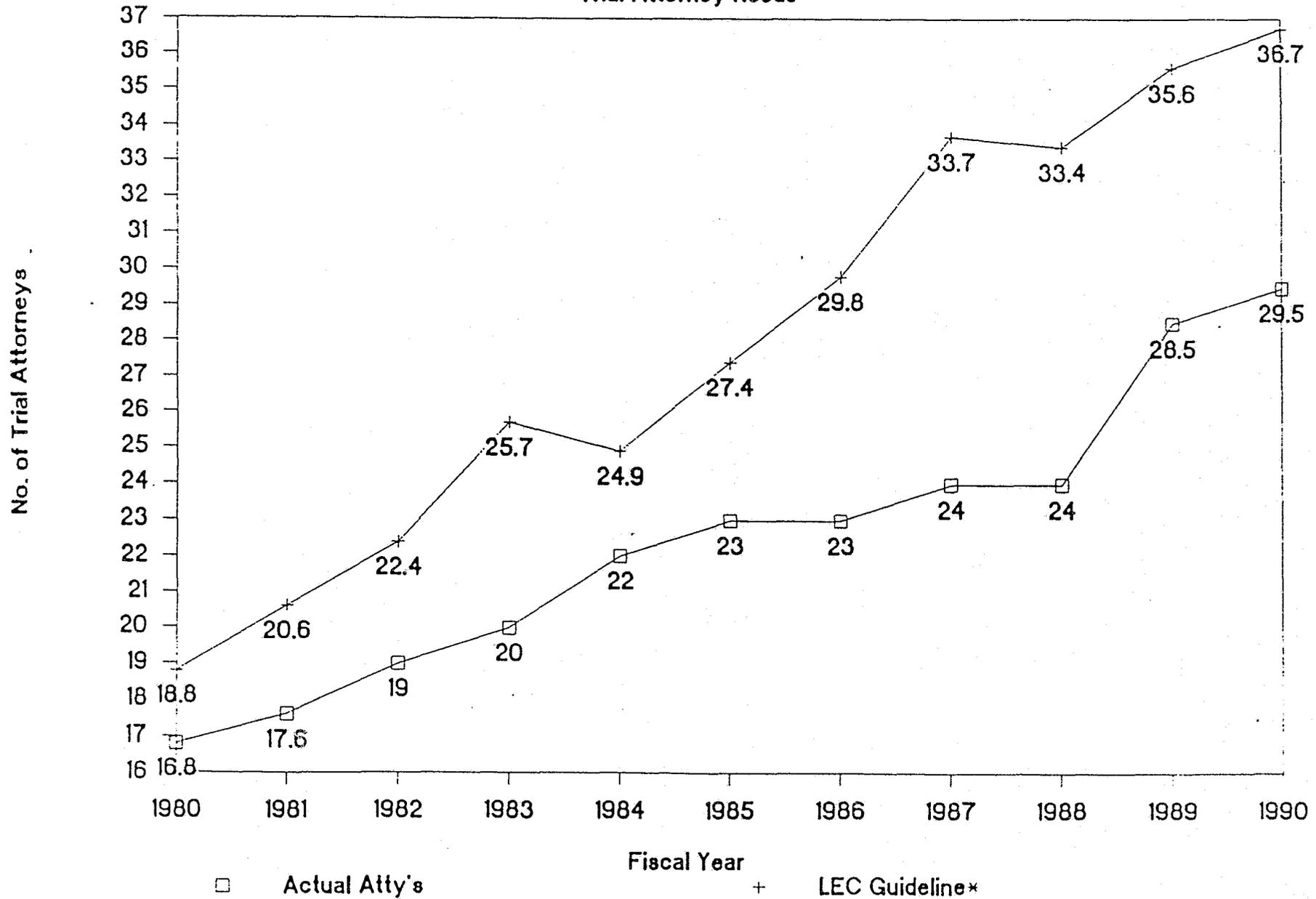
OTHER

Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	6		Children in Need of Care & Supervision	347	
Extradition	0		Juvenile Delinquents	<u>52</u>	
Habeas Corpus	3		TOTAL	399	45.8
Post-Conviction Relief	11				
Violation of Probation	28				
Sentence Reconsideration	1				
Other	<u>18</u>				
TOTAL	67	7.7			

Charges Partially Handled: 37

# Defender General's Office

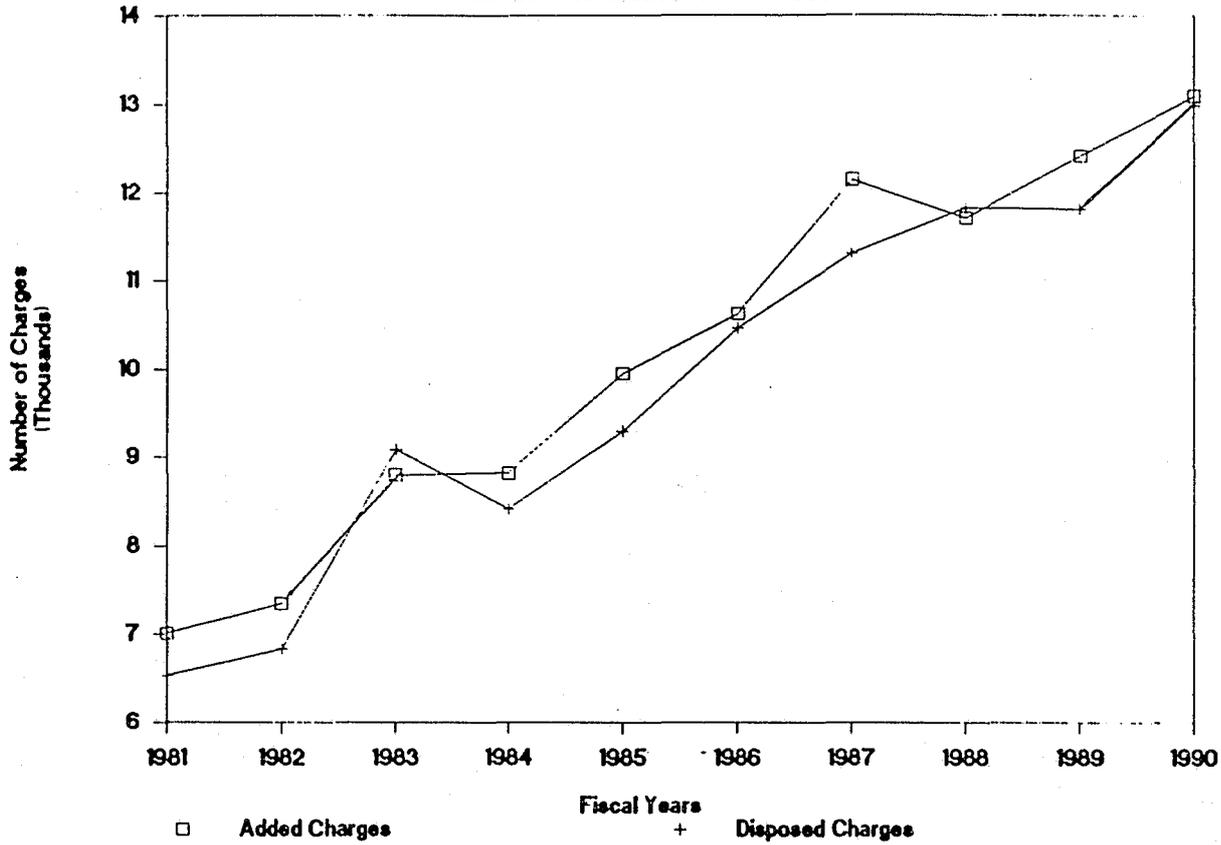
## Trial Attorney Needs



\*Based upon Lawyer Equivalency Caseload standards, which dictate that public defender caseload should not exceed 150 felonies, 400 misdemeanor and 200 juvenile cases per year.

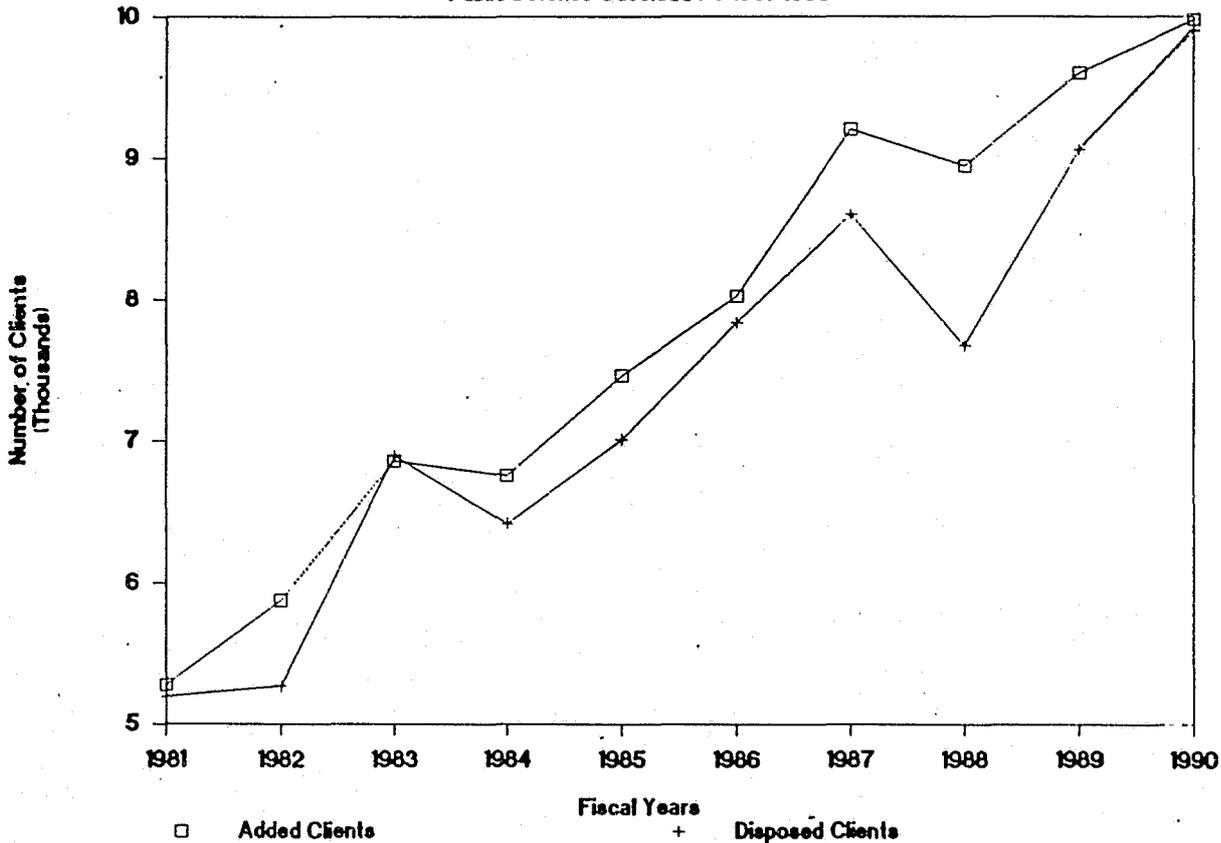
# Office of the Defender General

Public Defense Caseload FY 1981-1990



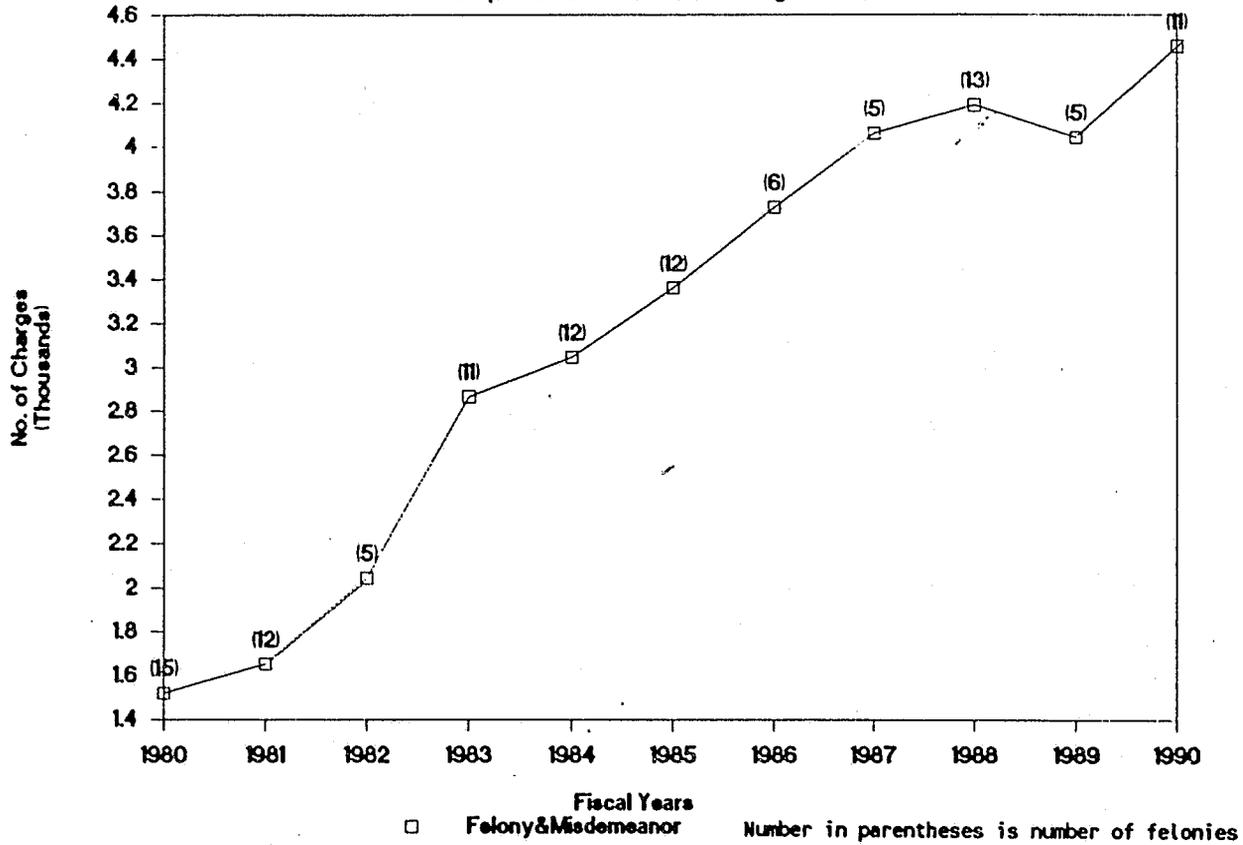
# Office of the Defender General

Public Defense Caseload FY 1981-1990



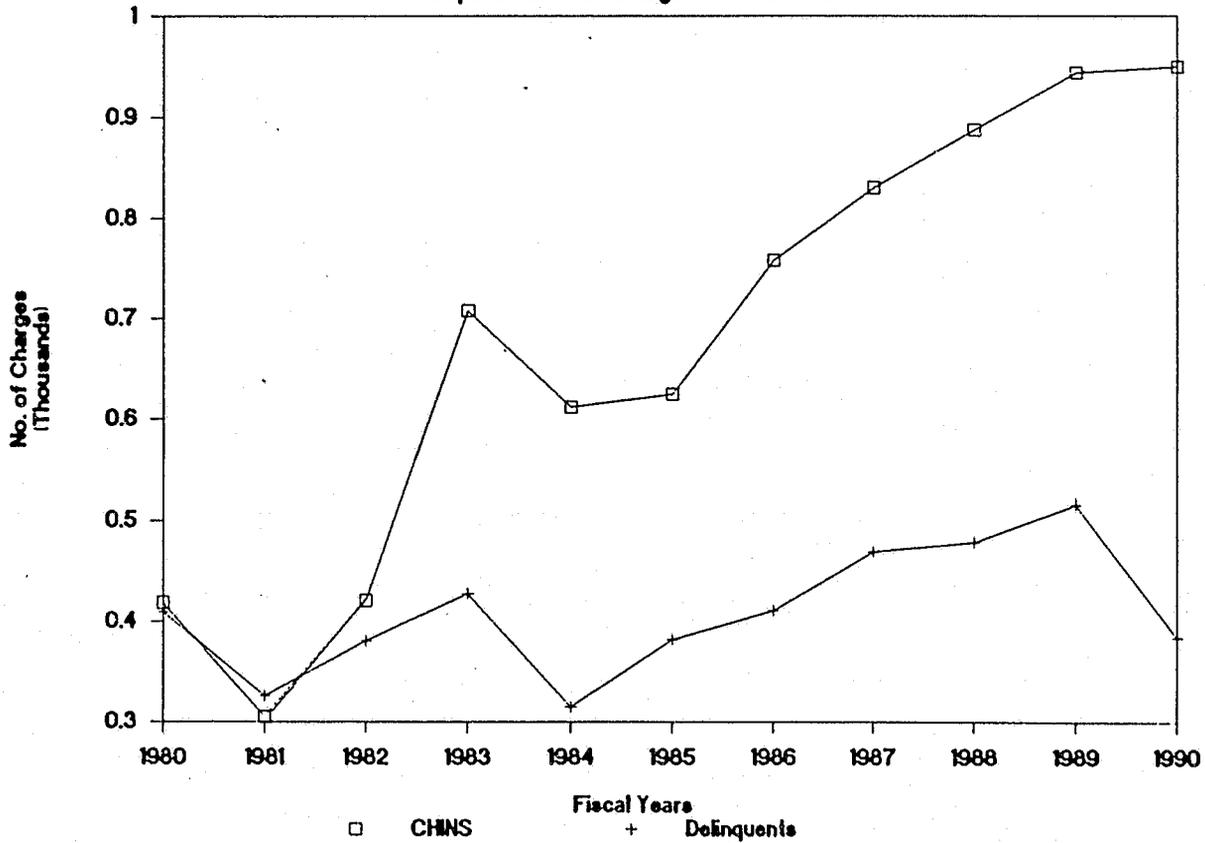
# Office of the Defender General

Disposed PD Motor Vehicle Charges

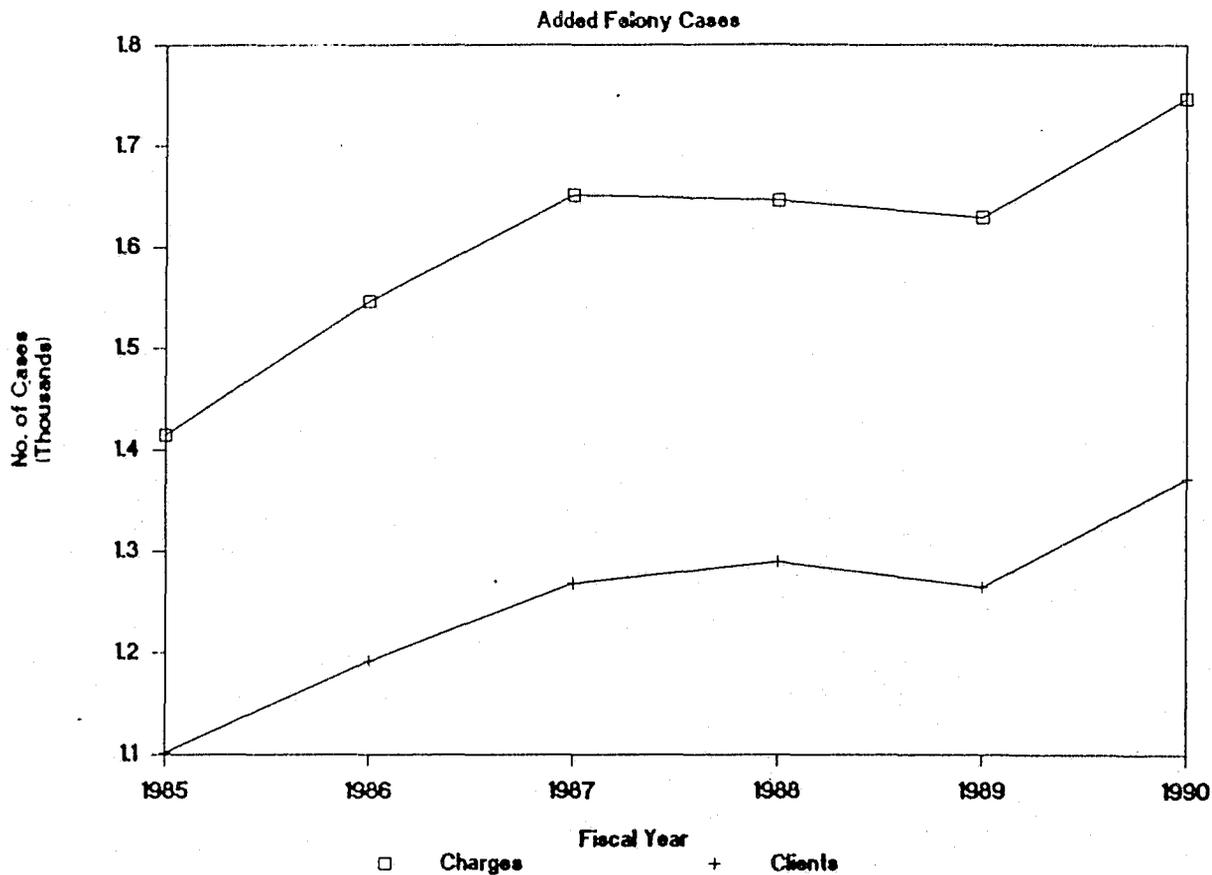


# Office of the Defender General

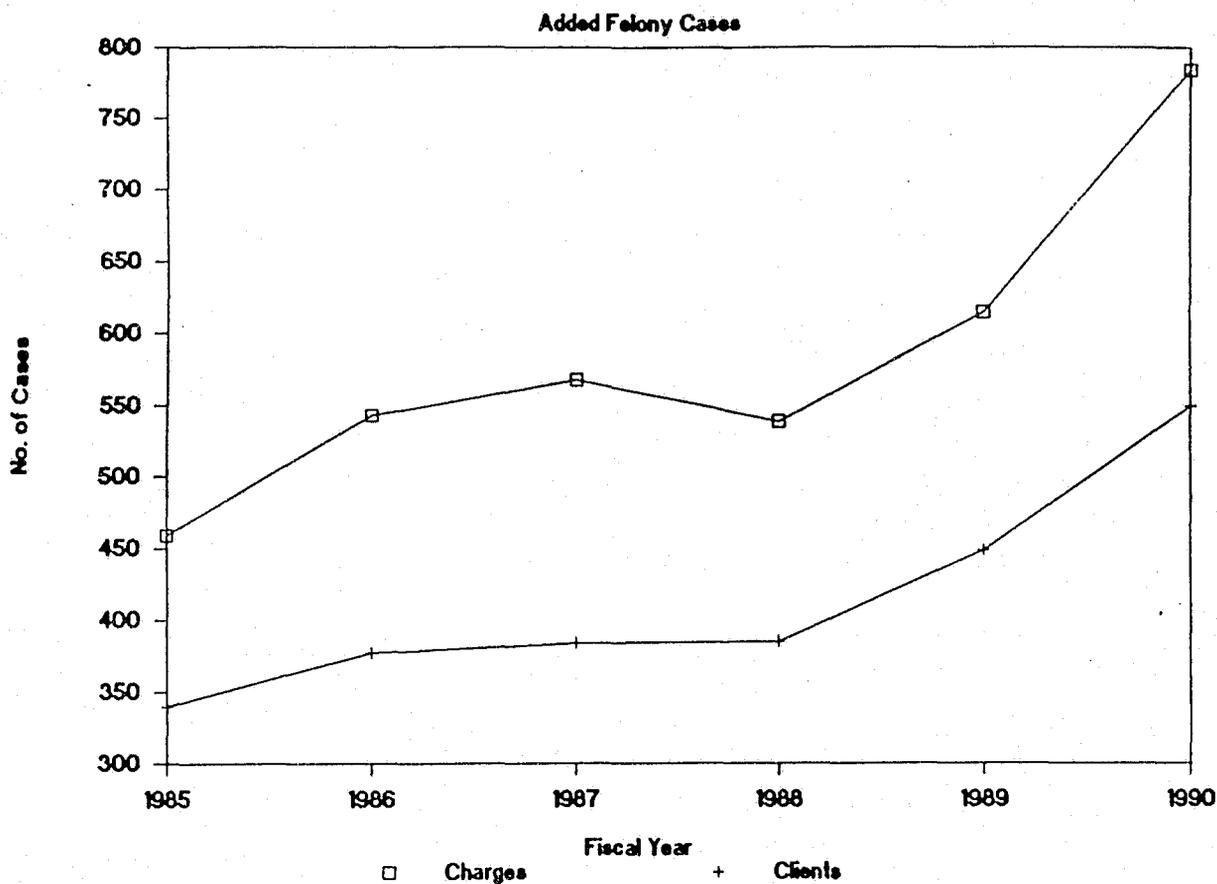
Disposed Juvenile Charges FY 1980-1990



# DEFENDER GENERAL PUBLIC DEFENSE

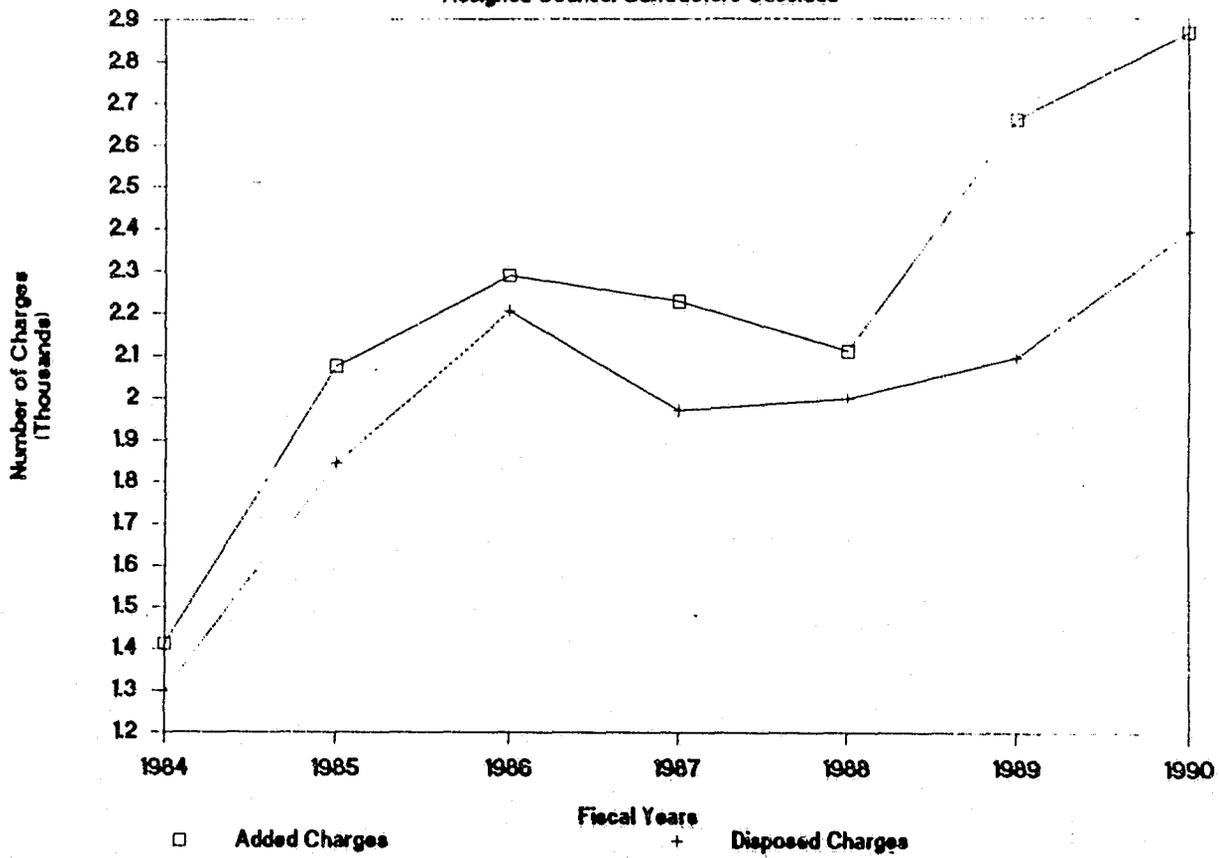


# DEFENDER GENERAL - AC CONTRACTORS



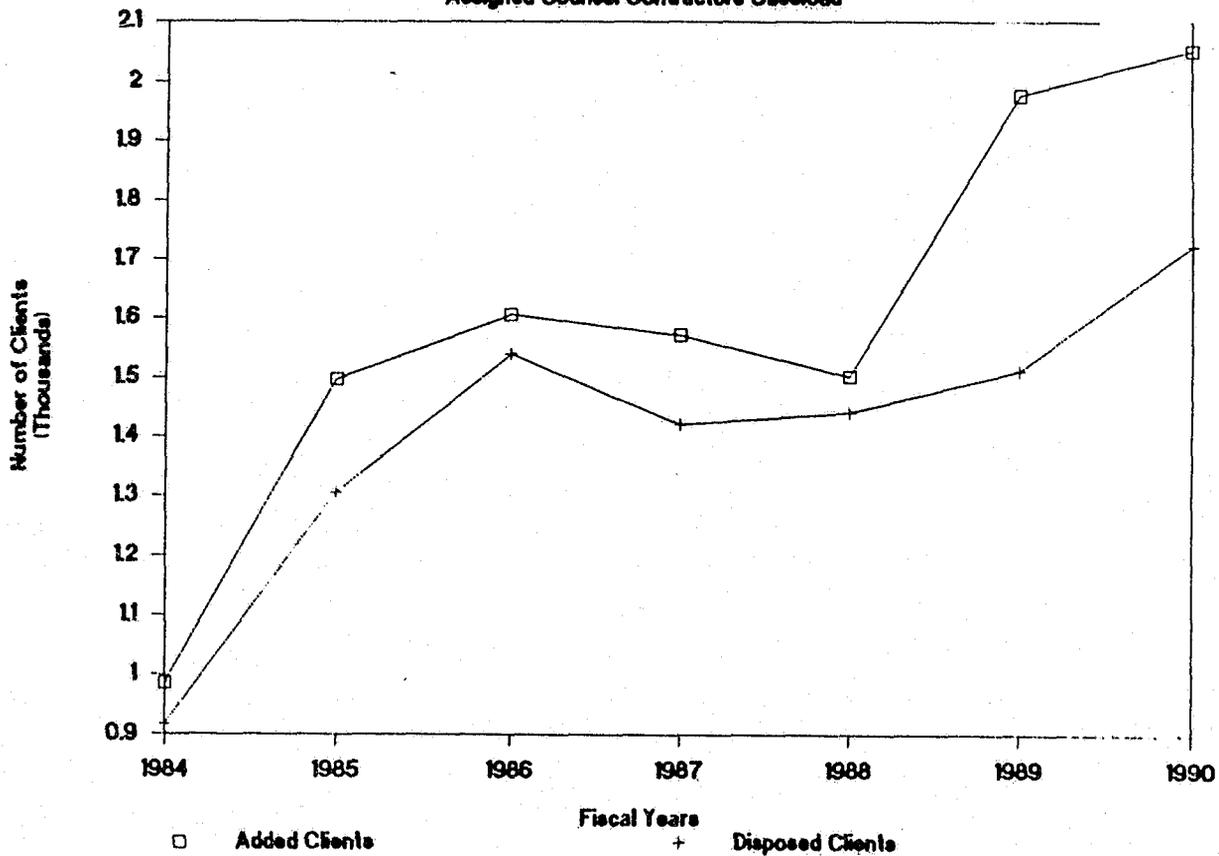
# Office of the Defender General

Assigned Counsel Contractors Caseload



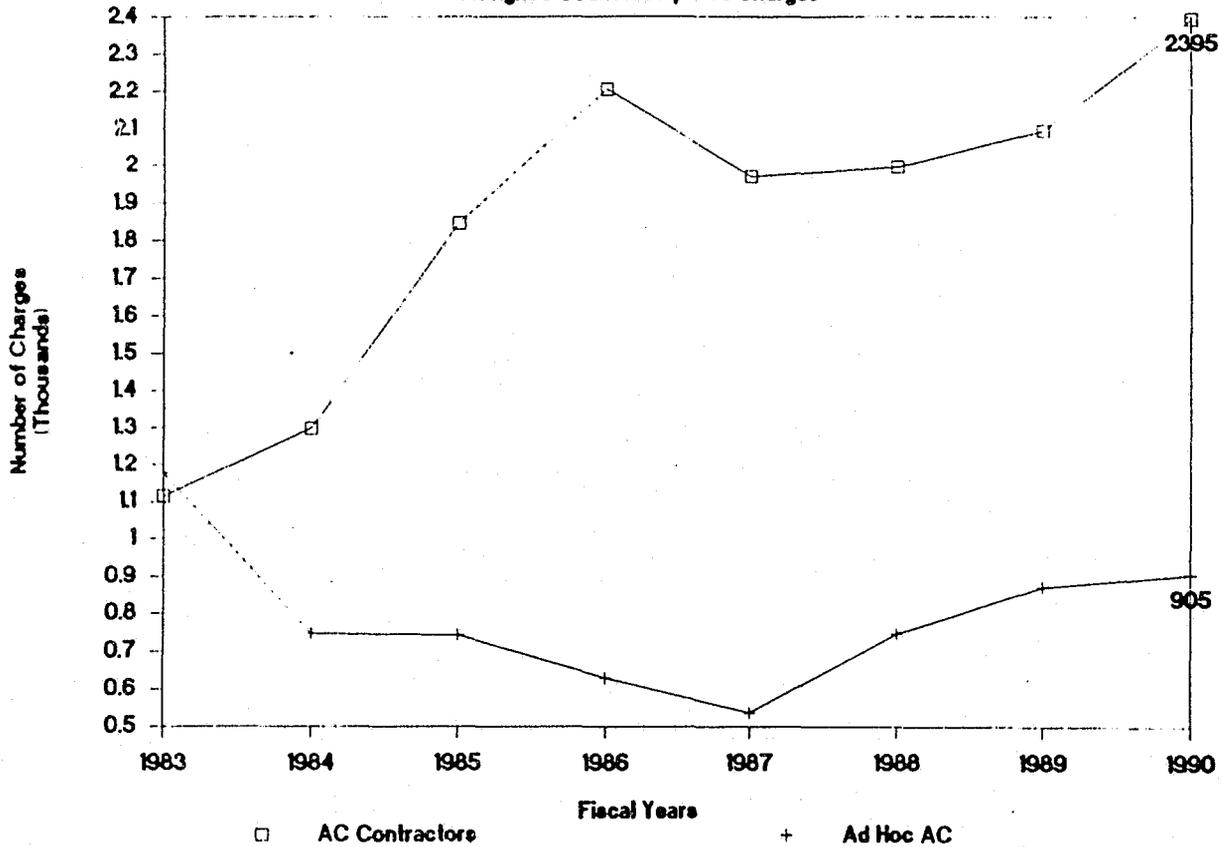
# Office of the Defender General

Assigned Counsel Contractors Caseload



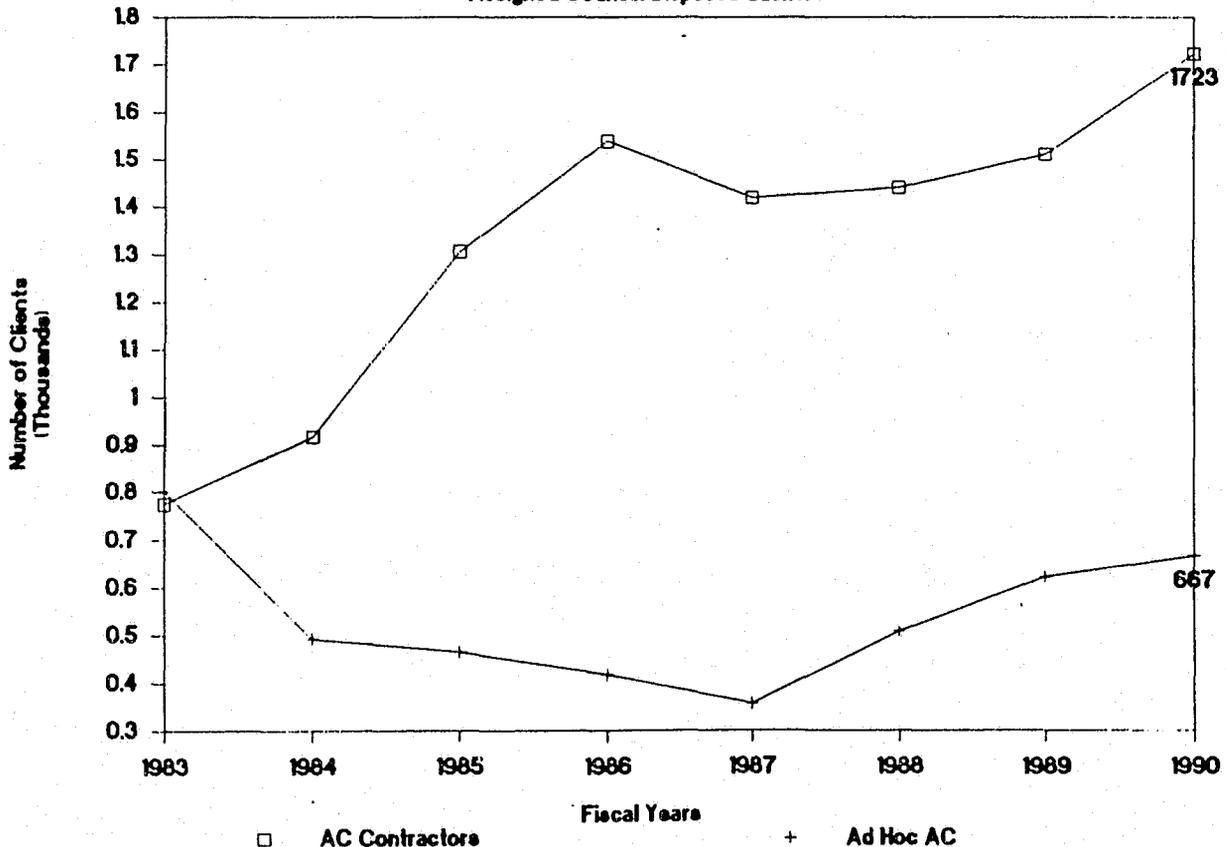
# Office of the Defender General

## Assigned Counsel Disposed Charges



# Office of the Defender General

## Assigned Counsel Disposed Clients



OFFICE OF THE DEFENDER GENERAL  
EXPENDITURES BY PROGRAM AND APPROPRIATION

Public Defense

<u>Fiscal Year</u>	<u>Personal Services</u>	<u>Operating</u>	<u>Total</u>
1985	\$1,598,993	\$285,000	\$1,883,993
1986	1,751,877	332,400	2,084,277
1987	1,887,381	346,996	2,234,377
1988	2,066,413	361,229	2,427,642
1989	2,463,623	459,848	2,923,471
1990	2,801,630	481,700	3,283,330

Note: FY 1990 expenditures include \$59,828 of expenses related to flooding in central offices

Assigned Counsel

<u>Fiscal Year</u>	<u>Personal Services</u>	<u>Operating</u>	<u>Total</u>
1985	\$657,685	\$18,000	\$675,685
1986	672,121	21,400	693,521
1987	634,119	22,139	656,258
1988	759,817	29,966	789,783
1989	886,311	31,475	917,786
1990	919,978	35,041	955,019

OFFICE OF THE DEFENDER GENERAL  
141 MAIN STREET  
STATE OFFICE BUILDING  
MONTPELIER, VERMONT 05602

Purpose

Policy of the Defender General Concerning Excessive Workloads of Public Defenders

Introduction

Title 13 V.S.A. Section 5253(a) provides:

The defender general has the primary responsibility for providing needy persons with legal services under this chapter.... He may provide these services personally through public defenders..., or through attorneys-at-law....

Canon 6 of the Code of Professional Responsibility adopted by the Vermont Supreme Court states "A lawyer should represent a client competently."

The ABA Standards for Criminal Justice provide, in Standard 5-4.3:

Neither defender organizations nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of their professional obligations. Whenever defender organizations or assigned counsel determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organizations or assigned counsel must take such steps as may be appropriate to reduce their pending or projected workloads.

During FY 1987, public defenders experienced a 14.7% increase in added clients. In most public defender offices, staffing is insufficient to meet the demands of the burgeoning caseload. Accordingly, it is imperative that procedures be

10/13/87

established to determine when a public defender is in danger of violating professional, ethical and legal obligations to their clients, as well as a range of methods to effectively deal with that problem.

### Discussion

The Defender General's Office has relied upon the standards adopted in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals in determining the need for additional staff. Those standards provide:

The caseload of a public defender 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; ...and appeals per attorney per year: not more than 25.

The NAC Standards appear to be the only current national numerical standards governing the limitation of public defender and appellate caseloads.

It is clear that these standards cannot and should not be considered as fixed criteria. Numerous other subjective factors must be considered in making a determination that the workload in a particular office is or is not excessive. For example, those factors are: the level of experience of the public defenders; the speed of turnover of cases in the district; the percentage of cases tried; and the complexity of pending cases, etc. Further, we have historically applied the standards to the number of added clients in a given time period without regard to the number of pending or disposed cases. The implementation of case weighting policies, which are additional means to measure workload, will be undertaken in the balance of FY 1988 and in FY 1989. It is apparent, however, that with the statistical resources presently available to the Defender General's Office, the NAC standards are the best guidelines available for judging whether or not the workload in a particular office is or may become excessive.

In adopting criteria, it is important to recognize that any standards not impair the ability of an individual attorney to perform his/her duties according to professional and ethical standards.

### Policy:

The minimum standards promulgated by the NAC pertaining to workload of public defenders are adopted by the Defender General

10/13/87

as guidelines to determine whether the caseload in a specific public defender office is excessive. Case weighting policies, when implemented by the Defender General, will serve to supplement the NAC standards.

Procedure:

1. Every public defense office shall report statistics relative to the number of added clients on a monthly basis to the central office in Montpelier.

2. After receipt of the statistics, the central office will determine the Lawyer Equivalent Caseload (LEC) for each office.

3. If the LEC for any public defender office exceeds the attorney staff for that office by fifteen percent (15%) or more, the central office will notify the public defender office and the presiding judge of the District Court served by that office.

4. If the added caseload of the public defender office exceeds the staffing level by 15% or more but less than 25%, the Defender General may direct that caseload relief measures be implemented. Before making such a directive, the Defender General shall consider the various factors influencing the caseload in that office and shall also consider reasonable alternative means of dealing with the caseload pressures, within existing office resources.

5. In the event that the added caseload exceeds the staffing levels by 25% for more than one month, the Defender General shall direct that caseload relief measures be implemented, unless she/he finds that there are exceptional circumstances which justify continuing to add to the cases, or that there are reasonable alternative methods to deal with the increase which have been or will be implemented. Caseload relief measures may include, without limitation, a directive that the public defense office not accept additional cases; provision for ad hoc assignment of categories of cases, such as misdemeanors to private counsel; provision of temporary services of attorneys and investigators and other support staff under contract; and other procedural measures effecting allocation of defense resources within the circuit and within the state.

6. The status of caseload relief measures shall be reviewed monthly by the Defender General.

7. The decision to implement caseload relief measures effecting assignment of cases shall be communicated to the presiding judge of the relative District Court(s).

8. These standards shall not impair the ability of an individual attorney to perform his or her duties according to professional and ethical standards, including expressly Canon 6 of the Code of Professional Responsibility.

10/13/87