

OFFICE OF THE DEFENDER GENERAL

Sixteenth Annual Report

Fiscal Year 1992

March 1993

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'IT IS MY JOB TO MAKE YOUR JOBS AS DIFFICULT AS POSSIBLE.'

- Governor Howard Dean, M.D.

addressing the Vermont Association of
Criminal Defense Lawyers February 21, 1992

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OFFICE OF THE DEFENDER GENERAL

Sixteenth Annual Report

Pursuant to Vermont Statutes Annotated, Title 13 §5256, I herewith present the Sixteenth Annual Report of the Office of the Defender General. This report chronicles Fiscal Year 1992, the first in which the State of Vermont attempted to renege on its constitutional and statutory obligations to assure equal justice for all. That these obligations were, in the end, honored is due entirely to the extraordinary efforts and sacrifices, both personal and financial, of the men and women of the public defender and assigned counsel systems. Despite the Administration's entreaties to engage in unethical conduct by abandoning their responsibilities to their clients, these dedicated professionals managed to provide excellent representation to the citizens whom they served. Despite the Administration's effort to sabotage defense services in favor of a more popular Law and Order objective, these lawyers, investigators and support staff demonstrated a dedication unmatched in the rest of state government. They deserve the support and gratitude of their neighbors.

While the clients of the defender program are, in this report, presented only as numbers, it is vital that we remember that each is a citizen who, in different circumstances, could be any one of us. When a public defender protects the rights of even the most reviled accused felon, the rights of every citizen are thereby preserved.



E. M. Allen
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March 1993

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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 7
 - 3. Juvenile Defender 8
 - B. Assigned Counsel 9
- V. DEMAND FOR SERVICES 10
 - A. Public Defense Added Clients 10
 - B. Public Defense Understaffing and Caseload Relief 11
- VI. SPECIAL DEMANDS 13
 - A. Homicide 13
 - B. Sexual Assault 13
 - C. Motor Vehicle Caseload 14
 - D. Juvenile Caseload 15
- VII. COSTS/CLIENT CONTRIBUTION FOR PUBLIC DEFENSE SERVICES 16
- VIII. CONCLUDING REMARKS 17
- APPENDIX
- STATE-WIDE PUBLIC DEFENSE STATISTICS 19
- STATE-WIDE ASSIGNED COUNSEL STATISTICS 22
- GRAPHS. 25
- EXPENDITURES 30
- CASELOAD RELIEF POLICY 31

I. PURPOSE

As required by statute, the Office of the Defender General provides legal representation for indigent persons accused of criminal offenses carrying a penalty of imprisonment or of a fine of more than \$1,000.00, for children who are the subject of juvenile proceedings as alleged delinquents or as children in need of care and supervision (CHINS), for other parties to juvenile proceedings, for 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; and for needy persons in extradition or parole proceedings. 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 and assigned counsel; continued increases in the reporting and prosecution of child abuse, neglect, delinquency and sexual assault cases; and increases in the costs of criminal litigation. 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, have strained court dockets. For public defenders, the complexity and volume of caseloads assigned in recent years and continuing into FY 92 have pressed the constitutional and statutory obligations to provide effective assistance of counsel beyond the sustainable capacity of current staffing.

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 effectively negated by staff and appropriation reductions in Fiscal Year 1991 and continuing into FY 1992.



Unfortunately, the increase in the public defender caseload has continued unabated while the aforementioned rebuilding program has not. As a result, in FY 1992, the minimum staffing level necessary to fulfill the statutory and constitutional duties of the State to all the citizens entitled to services could not be sustained, and it was necessary to furlough the entire system for the last week of the fiscal year. In FY 1993 the gap between demand and resources has widened, and it has been necessary during the first half of the year to refer cases to more expensive service providers.

The Administration has suggested that the system should respond to excessive caseloads by generally doing less for our clients, or by choosing not to pursue those cases which are less likely to succeed. Unless it was the intention of the Administration to conspire to violate the civil rights of Vermont citizens, these suggestions reflect a profound ignorance of the constitutional right to counsel and of an attorney's ethical duties to his or her clients. An attorney must competently and zealously represent the interests of each client, regardless of the wishes of any third party which is financing the representation. It is precisely this zealous, independent representation to which each citizen is entitled under the Sixth Amendment of the U.S. Constitution and which it is Vermont's responsibility to provide. The State's budget may determine the capacity of the public defender system, but it has no effect on the demand for defense services or the nature of those services.

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. Most states either failed to recognize the constitutional right or had no means for fulfilling the obligation.

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.

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 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.

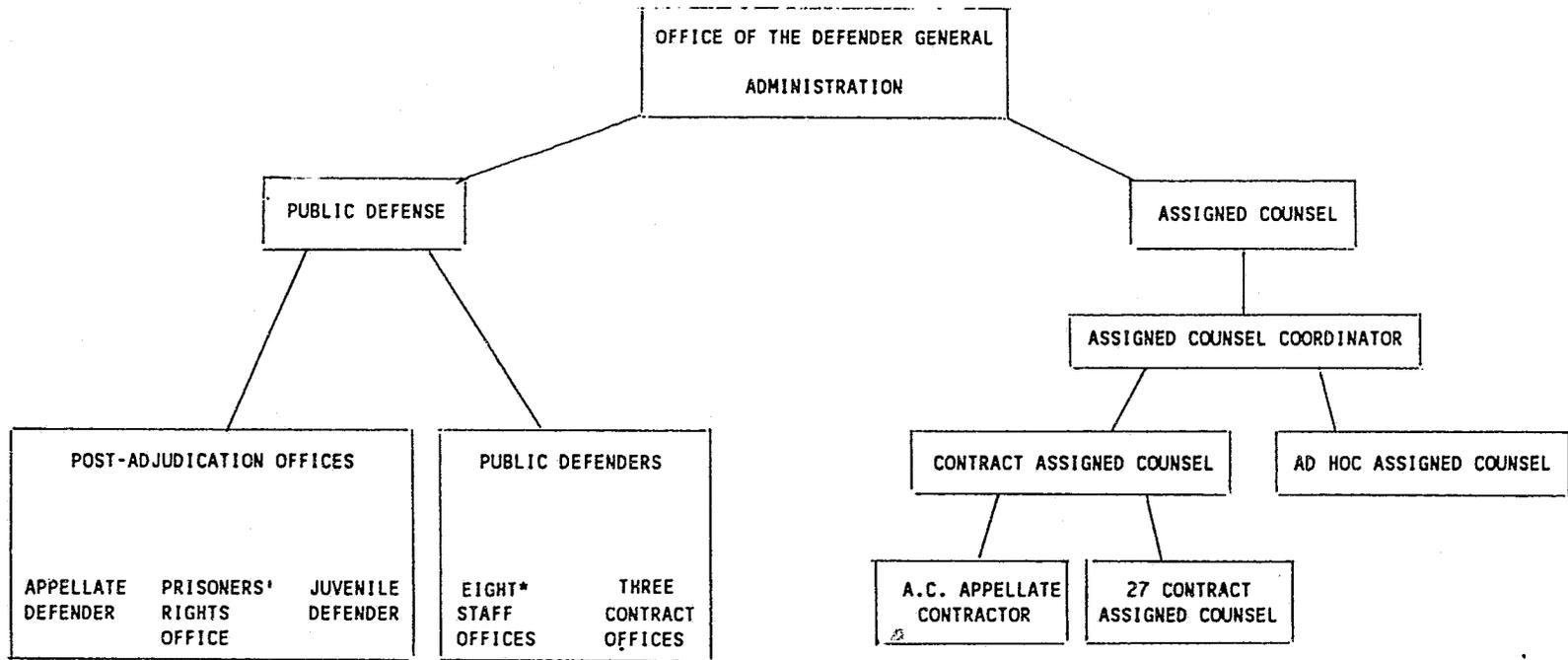
In 1981, Defender General Andrew Crane recommended a restructuring of the assigned counsel program. The system of assigning counsel was expensive, unpredictable, and sometimes resulted in the assignment of counsel that were unfamiliar with criminal practice. On July 1, 1982, Defender General Crane entered 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.

Vermont's impressive history of concern for the rights of the individual has, in recent years, fallen prey to a faltering economy and political opportunism. The indigent defense program is always an easy target for general frustration with the criminal justice system, and significant damage has resulted from uninformed decisions made at the highest levels of state government. Consequently, increasing caseloads and diminishing resources imperil the ability of this program to fulfill Vermont's constitutional obligations.

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.



*Addison supplemented by contract

A public defender is assigned once a presiding judge has determined that an individual is financially eligible for public defense services and subject to an incarcerative penalty. 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 involves more than two co-defendants charged with the same crime, the court assigns another local assigned counsel contractor (some counties have three contractors and the majority have two). Third, if the public defender and all of the local 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. Entering FY 92, seven of these offices are full-time staff offices: Bennington County (located in Bennington); 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).

Four of the offices are public defense contract offices, private law firms that have entered into a contract with the Defender General to provide public defense services. In FY 1992, they were: Sessions, Keiner, Dumont, Barnes and Everitt (Addison County); Rubin, Rona, Kidney and Myer (Washington County); Welch, Graham and Manby (Windsor and Orange Counties); and Sleigh and Williams (Caledonia and Essex Counties).

While representation provided by Vermont's public defenders continues to be of high caliber, the quality of services is threatened by burgeoning caseloads, which include significant increases in the number of felonies and juvenile cases without corresponding increases in public defense staff.

Both field offices and post-trial offices are managed by the Office of the Defender General in Montpelier. The Defender General also relies upon an Assistant and an Accountant to assist in the business management of both programs.

Post-trial representation for Public Defense clients is provided through three post-adjudication offices based in Montpelier. If initial conflicts of interest no longer exist after disposition of a case, those offices may, and do, serve assigned counsel clients as well.

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. 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 arguing 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 appellate cases increased sharply during the late eighties and overwhelmed the capacity of appellate staff. In response to this increase in caseload, a third appellate defender position was added in FY 1990. As a result, this office has managed in both FY 90 and FY 91 to dispose of more cases than were added to its caseload during those years and has reduced its backlog of pending cases to the lowest level since FY 86. Briefs are now being filed in a timely fashion rather than in response to court orders following missed deadlines and requests for extensions. However, fiscal constraints have required the reduction of staff by half a position.

2. Prisoners' Rights Office

Pursuant to 13 V.S.A. §§5253(a), 5232(2) and 5233(a)(1), the Office of the Defender General is responsible for providing legal services to persons in the custody of the Commissioner of Corrections. This responsibility, which originally involved parole revocations, habeas corpus petitions and post-conviction relief but was broadened by statutory amendment in 1973, is fulfilled by the Prisoners' Rights Office. The staff of this office consists of two attorneys, one investigator and one secretary who have the duty of providing representation to more than 1,000 persons who are in the custody of the Commissioner of Corrections at any given time.

The scope of the legal issues addressed by the Prisoners' Rights Office is limited to the conviction which resulted in a prisoner's incarceration and to the

conditions under which the prisoner is confined, such as mistreatment by staff and inadequacy of physical facilities. As the prison population in Vermont has grown far faster than correctional capacity and as special needs groups (e.g. youthful offenders, sex offenders, offenders with mental health needs) have appeared within that population, the demands for legal services have greatly increased. The present staffing level, unchanged for many years, is increasingly inadequate, and it has been necessary to prioritize the issues to which the staff will devote its efforts.

Thus, the Prisoners' Rights Office fulfills the statutory requirements, the state's constitutional duty to provide access to the courts and the need for an effective means for the prison population to raise complaints in a safe and constructive manner.

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 one and a half Investigators.

During FY 1992, the Office of the Juvenile Defender participated in 843 Administrative Review hearings and 287 Dispositional Review hearings; it monitored the placement of 228 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 large 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. In recent years there have been 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, while important for safeguarding the rights of juveniles, 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-seven law firms or individual attorneys in FY 1992. Despite efforts in recent years to achieve a more equitable compensation by reallocating the contract amounts for all counties based upon their past caseload, adequacy of compensation for assigned counsel contractors 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. Each year, about a third of the participating firms decline to renew their contracts.

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 most counties, there are at least two contractors to take conflict cases. 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. However, it has become increasingly difficult to find prospective contractors in certain counties. Caseloads in these offices have increased dramatically in recent years; added cases increased by 20% in FY 92 alone, and by 84% over the last four years.

The Defender General has a contract with an Assigned Counsel Coordinator to oversee the daily operations of the program.

The Defender General and the Assigned Counsel Coordinator continue 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.

Through many of the same procedures used to limit expenditures in the public defender system as well as other methods, the Assigned Counsel Coordinator, in cooperation with the Office of the Defender General, has endeavored to control costs in the Assigned Counsel program. However, an increasing number of homicides and other serious felonies have reached the assigned counsel caseload due to conflicts and have generated significant budget problems. The costs associated with such cases are

increased by the need for investigative services and expert scientific services, such as DNA identification analysis.

Costs of providing representation are also increased by the appointment of ad hoc counsel when the case in question could be handled by the public defender system or the assigned counsel contractor system at a significantly lower cost. In an effort to reduce such costs, the Defender General, with the cooperation of the courts, began in the final months of FY 91 and continued into FY 92 a program of maximizing the use of public defenders and contractors and minimizing ad hoc assignments. This program, discussed in detail in the two reports of the Defender General on the Assigned Counsel Program (September 1991 and February 1992), yielded significant results. The next step in the process of reducing reliance on ad hoc counsel is to expand the contractor system in a few particular geographic and caseload areas. While this step requires an additional outlay of funds, the benefit of such an expansion would be realized a year later and would be double, if not triple, the initial investment. Of course, all of these efforts will be for naught if the public defender system's caseload capacity is reduced by lack of funding to the point that large numbers of cases must be moved from the cheapest service providers (i.e. the public defenders) to the most expensive (i.e. ad hoc assigned counsel). Unfortunately, this is precisely what is happening to some degree in FY 93, in which a short-sighted but popular funding recommendation by the Administration has resulted in substantial unnecessary expenses. But for the intercession of the Legislature, which restored funding through H.944, the situation and cost would have been much worse.

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.

Largely as a result of revisions in the statute regarding Driving While License Suspended, the public defense caseload of added clients declined by 0.8% during FY 1992. The number of DLS cases dropped from 2,404 in FY 1991 to 1,275 in FY 1992, though the overall caseload declined by only 81 cases. In fact, the system's felony caseload, as measured by added clients, increased by 15% and the juvenile caseload increased by 20%. Thus, while the total number of cases declined, the reduction was among the least serious and demanding cases; the more complex and time-consuming cases increased dramatically. In addition, some counties experienced an increase in

overall numbers, despite the changes in the DLS law. The caseload increased by 21.6% in Franklin County and by 30.1% in Windham County. Throughout the system, public defenders experienced the same increasing demand for services guaranteed by the Constitution which has stressed the system's resources for more than a decade.

<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%
1991	10,726	7.5%
1992	10,645	-.8%

From FY 80 through FY 92, the number of public defense Added Clients increased 125%, 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 actually declining in FY 1993, 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 served to avoid a virtual breakdown of the system for providing counsel for the poor, the problem was not solved. Subsequently, some of the positions were lost due to budgetary constraints, though the caseload has continued to increase.

For several years, the Office of the Defender General has assessed the caseload capacity of staff resources through 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 these standards raise concern about effectively representing clients, meeting ethical standards and fulfilling the constitutional obligation.

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 four fiscal years, public defense understaffing has reached levels of serious concern, with great risk of compromising the quality of client representation.

<u>FISCAL YEAR</u>	<u>LEC</u>	<u>TRIAL ATTORNEYS</u>	<u>PERCENT UNDERSTAFFED</u>
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%
1991	39.3	29.5	24.9%
1992	41.1	29.5	28.2%

Through FY 1987, 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 31) 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 have been implemented in several counties since the policy went into effect. While no such relief was implemented in FY 91 or FY 92, reduced staffing has required such measures in FY 93.

VI. SPECIAL DEMANDS

A. Homicide

The number of homicides in Vermont courts has risen sharply in recent years, and this trend has placed an additional strain on the public defender and assigned counsel systems. Homicide cases were once relatively rare in these systems, but nearly every county had at least one such case during FY 1992, and some counties, such as Rutland and Windham, had several. None of the public defender offices could manage more than two such cases at the same time, and any of the assigned counsel contractors would find more than one such case to be overwhelming.

Homicide cases require extraordinary efforts by both attorneys and support personnel. Extensive investigation, legal research and trial preparation are vital to providing adequate representation, and the actual trial usually absorbs all the time and energy of those involved for several weeks. As might be expected, such cases also place additional burdens on staff members who are not directly involved; the other cases being handled by the office still demand attention, though fewer staff members are available to provide services.

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 eight 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. 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", DNA 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 1992, public defenders represented 128 persons charged with lewd and lascivious conduct, and 173 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

<u>FISCAL YEAR</u>	<u>L & L</u>	<u>SEXUAL ASSAULT</u>	<u>YEARLY TOTAL</u>	<u>CHANGE</u>
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%
1991	113	141	254	6.3%
1992	128	173	301	18.5%

C. Motor Vehicle Caseload

Motor vehicle misdemeanor charges accounted for 24.2% of the total public defender caseload in FY 92. Within the category of all motor vehicle offenses, DWI charges (1,712) and DLS charges (1,275) are the most common.

Recent changes in the DWI and DLS statutes had a significant effect on the motor vehicle caseload. Enhanced penalties, new evidentiary issues and increased enforcement resulted in a greater burden for public defenders handling DWI cases. On the other hand, decriminalization of some DLS offenses significantly reduced the number of such cases assigned to public defenders in FY 92.

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%
1991	1,480	-4.6%	2,404	5.5%
1992	1,712	15.7%	1,275	-47.0%

D. Juvenile Caseload

In FY 1992, there was a dramatic increase in the juvenile caseload. The number of CHINS petitions filed increased by 23.4%, while the number of delinquency petitions rose by a more modest 12.5%. This burden of this increase in caseload was exacerbated in many counties by the fact that these cases were litigated in the Family Court, rather than the District Court where the vast majority of public defender cases are handled. While the Family Court is clearly a better environment for juvenile litigants, it poses staffing and scheduling problems for public defenders in larger counties.

In addition, due to policy changes in the Department of Social and Rehabilitative Services, there has been a major increase in cases involving the Termination of Parental Rights. These cases have become among the most time-consuming handled by public defense, both in preparation and in actual trial-time, hearings lasting a week or more are common. Such cases are particularly demanding on Assigned Counsel, who usually represent parents.

JUVENILE CASELOAD

<u>FISCAL YEAR</u>	<u>CHINS</u>	<u>DELINQUENCY</u>	<u>TOTAL</u>	<u>CHANGE</u>
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	11.3%
1988	888	479	1,367	5.1%
1989	944	516	1,460	6.8%
1990	950	384	1,334	-8.6%
1991	923	503	1,426	6.9%
1992	1,139	566	1,705	19.6%

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 12% 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 1992, 46% 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 demands on the public defense and assigned counsel programs have always exceeded 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 to alter the nature of the 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 Code of Professional Responsibility requires zealous advocacy. 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 revised system, the process of "recoupment" (post-case recovery of fees) was replaced with a procedure by which a modest contribution (a minimum of \$25 to \$50) by clients having an ability to pay is ordered, with the payment being made at arraignment or as soon as possible thereafter. Although such contributions were rarely ordered and little effort was put into collection, this system did generate significantly more revenue than its predecessor.

In FY 1992 a much more sweeping revision of the client contribution program was enacted by the Legislature to be put in place in FY 1993. The program includes improved financial disclosure forms, a pilot program for screening financial information, a schedule of contributions based on income and type of offense, a division of payments between "co-payments" (due at the time of assignment) and "reimbursements" (due within 60 days of assignment), and a collection process. The goals of this legislation were to increase the amount of money collected, to develop more consistent standards of eligibility and contribution on a state-wide basis, and to assess the cost-effectiveness of a screening process. Based on the first six months of operation, each of these goals has been attained to some degree. While receipts are well below some predictions, this program will generate more funds from client contribution than any previous Vermont effort. Standards of financial eligibility and orders of contribution have become uniform throughout the state, and we now have a clear understanding of the benefits and costs of a formal screening program. Most importantly, this program has hopefully laid to rest some questions which have frequently arisen to obscure the more important issues of indigent defense.

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.

PUBLIC DEFENSE FY 1992: STATE-WIDE

CASES ADDED

	<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	2307	16.4	8226	58.7	1683	12.0	1805	12.9	14,021
Clients	1735	16.3	6012	56.5	1574	14.8	1324	12.4	10,645

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	2459	16.7	8738	59.2	1705	11.6	1853	12.6	14,755
Clients	1793	16.4	6308	57.5	1537	14.0	1326	12.1	10,964

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Guilty	6	33.3	40	56.3
Not Guilty	8	44.4	17	23.9
Insan. Def.-Guilty	0	0.0	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	2	11.1	6	8.4
Hung Jury	1	5.6	1	1.4
Mistrial	0	0.0	3	4.2
Court Dismissal	1	5.6	4	5.6
TOTAL	18	100.0	71	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)	760	43.3	4188	59.8
Guilty Reduced Charge	43	2.4	317	4.5
Guilty Fel. Reduced to Misd.	288	16.4	0	0.0
Transfer to Juv. Court	25	1.4	52	0.7
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	353	20.1	1219	17.4
Insufficient Evidence	97	5.5	344	4.9
Diversion	44	2.5	206	2.9
Other	62	3.5	314	4.5
Dismissed by Court	85	4.8	369	5.3
TOTAL	1757	100.0	7009	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	524	64.8	102	35.2	1843	40.5
Probation	178	22.0	134	46.2	1060	23.3
Deferred Sentence	94	11.6	18	6.2	64	1.4
Fine Only	13	1.6	36	12.4	1584	34.8
TOTAL	809	100.0	290	100.0	4551	100.0

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:	No.	%	Felonies-Fraud	No.	%
Arson	26		Embezzlement	19	
Assault & Robbery	24		Extortion	3	
Larceny from Person	<u>5</u>		False Personation	5	
TOTAL	55	0.4	False Token	153	
Felonies-Serious Crimes Against Persons:			Forgery	67	
Aggravated Assault	105		Perjury	5	
Kidnapping & Unlaw. Rest.	38		Utt. Forged Instr.	102	
Lewd & Lascivious	128		Welfare Fraud	<u>58</u>	
Manslaughter	3		TOTAL	412	2.8
Murder	22		Felonies-Drug Related		
Sexual Assault	<u>173</u>		Fraud to Procure	19	
TOTAL	469	3.2	Dispensing	40	
Felonies-Serious Crimes Against Property:			Possession with Intent to Sell	<u>66</u>	
Burglary	433		TOTAL	125	0.8
Grand Larceny	188		Felonies-Motor Vehicle:		
Receiving Stolen Property	101		DWI & CN	<u>173</u>	
Retail Theft	53		TOTAL	173	1.2
Unlawful Mischief	54		Felonies-Other:		
Unlawful Trespass	<u>123</u>		Escape	43	
TOTAL	952	6.4	Obstruction of Justice	28	
			Impede Police Officer	29	
			Miscellaneous	<u>173</u>	
			TOTAL	273	1.8

MISDEMEANORS

Misdemeanors-Fraud	No.	%	Misdemeanors-Drug Related:	No.	%
Bad Check	246		Fraud to Procure Drugs	3	
False Statement	95		Possession Marijuana	147	
Welfare Fraud	<u>0</u>		Possession Pills	<u>26</u>	
TOTAL	341	2.3	TOTAL	176	1.2

Misdemeanors-Disorderly and Endangering Crimes:			Misdemeanors-Property:		
Annoying Telephone Calls	41		Petit Larceny	369	
Disorderly Conduct	582		Receiving Stolen Prop.	133	
Viol. Abuse Order	232		Retail Theft	370	
Viol. Cond. of Release	253		Theft of Services	29	
Reckless Endangering	43		Unlawful Mischief	454	
Simple Assault	1287		Unlawful Trespass	<u>269</u>	
Simple Assault-Police	121		TOTAL	1624	11.0
Possession Malt Bev.	<u>227</u>		Misdemeanors-Miscel.:	243	1.6
TOTAL	2786	18.9			

Misdemeanor Motor Vehicle Offenses:

	No.	%
Careless & Negligent	175	
Driving to Endanger	18	
Driving W/ License Suspended	1275	
Driving While Intoxicated	1712	
Elude Police Officer	135	
Leaving Scene Accident	133	
Operating W/O Owner's Consent	<u>120</u>	
TOTAL	3568	24.2

OTHER

Non-Criminal Proceedings	No.	%	Juvenile	No.	%
Contempt	73		Children in Need of		
Extradition	95		Care & Supervision	1139	
Habeas Corpus	0		Juvenile Delinquents	<u>566</u>	
Post-Conviction Relief	4		TOTAL	1705	11.6
Violation of Probation	1517				
Sentence Reconsideration	31				
Other	<u>133</u>				
TOTAL	1853	12.6			

Charges Partially Handled: 2343

ASSIGNED COUNSEL FY 1992: STATE-WIDE

CASES ADDED

	<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	1020	23.3	1364	31.2	1714	39.2	275	6.3	4,373
Clients	714	22.3	803	25.1	1487	46.4	200	6.2	3,204

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	1133	24.4	1565	33.7	1598	34.4	350	7.5	4,646
Clients	799	24.4	898	27.4	1346	41.1	230	7.0	3,273

DISPOSITION RESULTS

I. TRIALS

	<u>Felonies</u>		<u>Misdemeanors</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Guilty	24	64.9	15	51.7
Not Guilty	6	16.2	11	37.9
Insan. Def.-Guilty	2	5.4	0	0.0
N.G. Insanity	0	0.0	0	0.0
Guilty LIO	1	2.7	0	0.0
Hung Jury	1	2.7	0	0.0
Mistrial	0	0.0	0	0.0
Court Dismissal	3	8.1	3	10.3
TOTAL	37	100.0	29	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)	485	50.6	806	59.1
Guilty Reduced Charge	25	2.6	35	2.6
Guilty Fel. Reduced to Misd.	123	12.8	0	0.0
Transfer to Juv. Court	18	1.9	13	1.0
Dismissed by State's Attorney:				
Bargain Companion Charge(s)	187	19.5	361	26.5
Insufficient Evidence	63	6.6	58	4.3
Diversion	23	2.4	27	2.0
Other	16	1.7	40	2.9
Dismissed by Court	18	1.9	23	1.7
TOTAL	958	100.0	1363	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	356	66.5	49	39.5	453	52.9
Probation	109	20.4	48	38.7	225	26.3
Deferred Sentence	67	12.5	6	4.8	33	3.9
Fine Only	3	0.6	21	16.9	145	16.9
TOTAL	535	100.0	124	100.0	856	100.0

TYPES OF CRIMES

FELONIES

Felonies-Serious Crimes Against Persons/Property:	No.	%	Felonies-Fraud	No.	%
Arson	23		Embezzlement	1	
Assault & Robbery	31		Extortion	1	
Larceny from Person	5		False Personation	3	
TOTAL	59	1.3	False Token	41	
			Forgery	25	
Felonies-Serious Crimes Against Persons:			Perjury	7	
Aggravated Assault	55		Utt. Forged Instr.	41	
Kidnapping	12		Welfare Fraud	11	
Lewd & Lascivious	47		TOTAL	130	2.8
Unlawful Restraint	8				
Murder	6		Felonies-Drug Related		
Sexual Assault	105		Fraud to Procure	4	
TOTAL	233	5.0	Dispensing	40	
			Possession with Intent to Sell	29	
Felonies-Serious Crimes Against Property:			TOTAL	73	1.6
Burglary	287				
Grand Larceny	115		Felonies-Motor Vehicle:		
Receiving Stolen Property	57		Motor Vehicle Felony	22	
Retail Theft	31		TOTAL	22	0.5
Unlawful Mischief	19				
Unlawful Trespass	41		Felonies-Other:		
TOTAL	550	11.8	Escape	14	
			Obstruction of Justice	9	
			Impede Police Officer	11	
			Miscellaneous	32	
			TOTAL	66	1.4

MISDEMEANORS

Misdemeanors-Fraud		No.	%	Misdemeanors-Drug Related:		No.	%
Bad Check		30		Fraud to Procure Drugs		0	
False Statement		21		Possession Marijuana		35	
Welfare Fraud		<u>0</u>		Possession Pills		<u>25</u>	
	TOTAL	51	1.1		TOTAL	60	1.3
Misdemeanors-Disorderly and Endangering Crimes:				Misdemeanors-Property:			
Annoying Telephone Calls		15		Petit Larceny		121	
Disorderly Conduct		114		Receiving Stolen Prop.		56	
Viol. Abuse Order		34		Retail Theft		47	
Viol. Cond. of Release		115		Theft of Services		3	
Reckless Endangering		20		Unlawful Mischief		120	
Simple Assault		317		Unlawful Trespass		<u>54</u>	
Simple Assault-Police		22			TOTAL	401	8.6
Poss/Furn. Malt Bev.		<u>42</u>					
	TOTAL	679	14.6	Misdemeanors-Miscel.:		54	1.2

Misdemeanor Motor Vehicle Offenses:

	No.	%
Careless & Negligent	28	
Driving to Endanger	11	
Driving W/ License Suspended	123	
Driving While Intoxicated	85	
Elude Police Officer	22	
Leaving Scene Accident	15	
Operating W/O Owner's Consent	<u>36</u>	
	TOTAL	320
		6.9

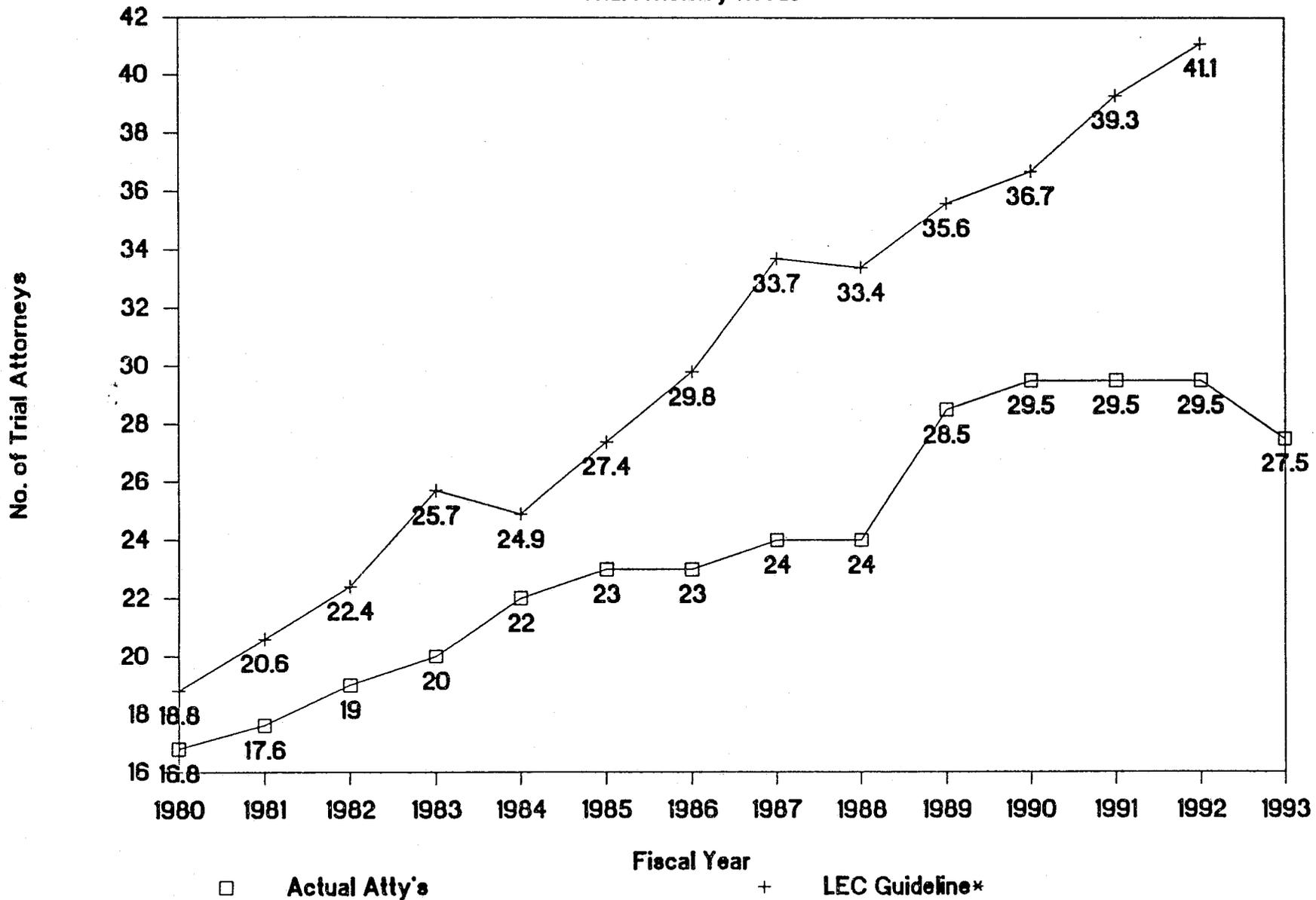
OTHER

Non-Criminal Proceedings		No.	%	Juvenile		No.	%
Contempt		25		Children in Need of			
Extradition		2		Care & Supervision		1318	
Habeas Corpus		2		Juvenile Delinquents		<u>280</u>	
Post-Conviction Relief		30			TOTAL	1598	34.4
Violation of Probation		227					
Sentence Reconsideration		17					
Other		<u>47</u>					
	TOTAL	350	7.5				

Charges Partially Handled: 315

Defender General's Office

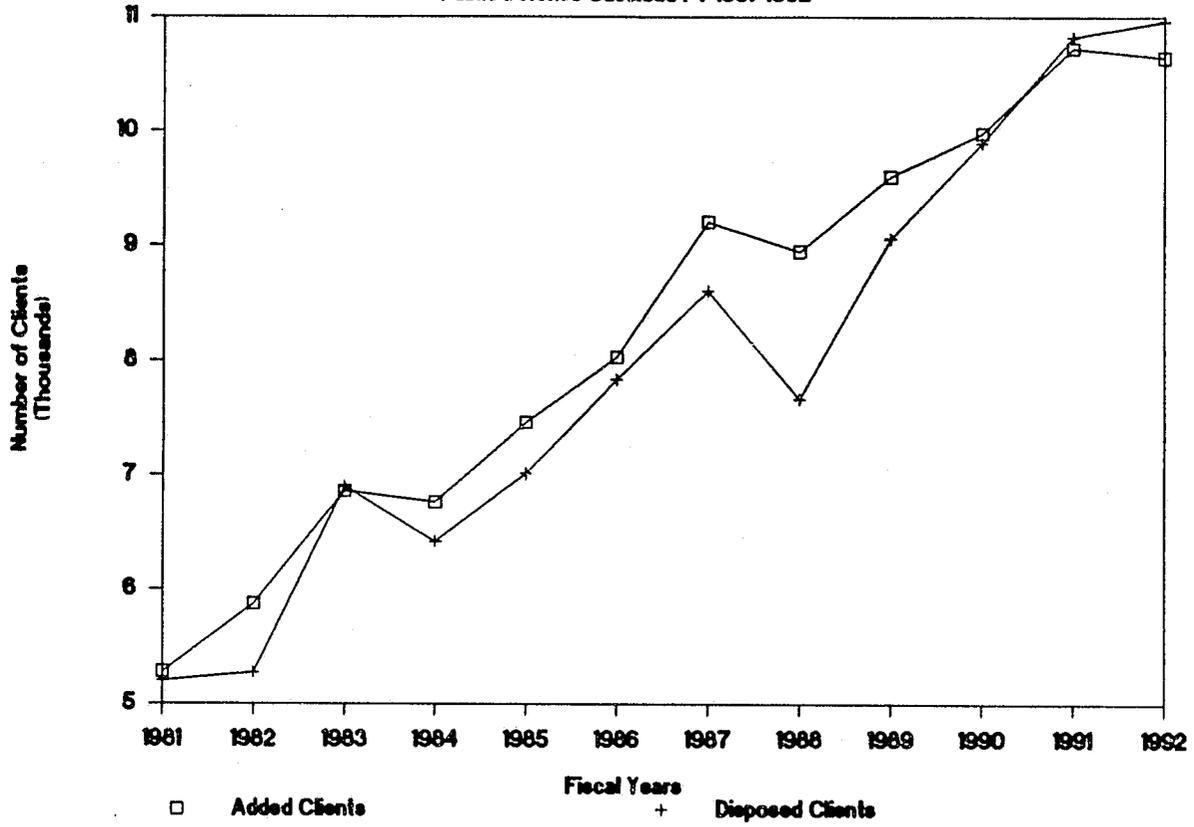
Trial Attorney Needs



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

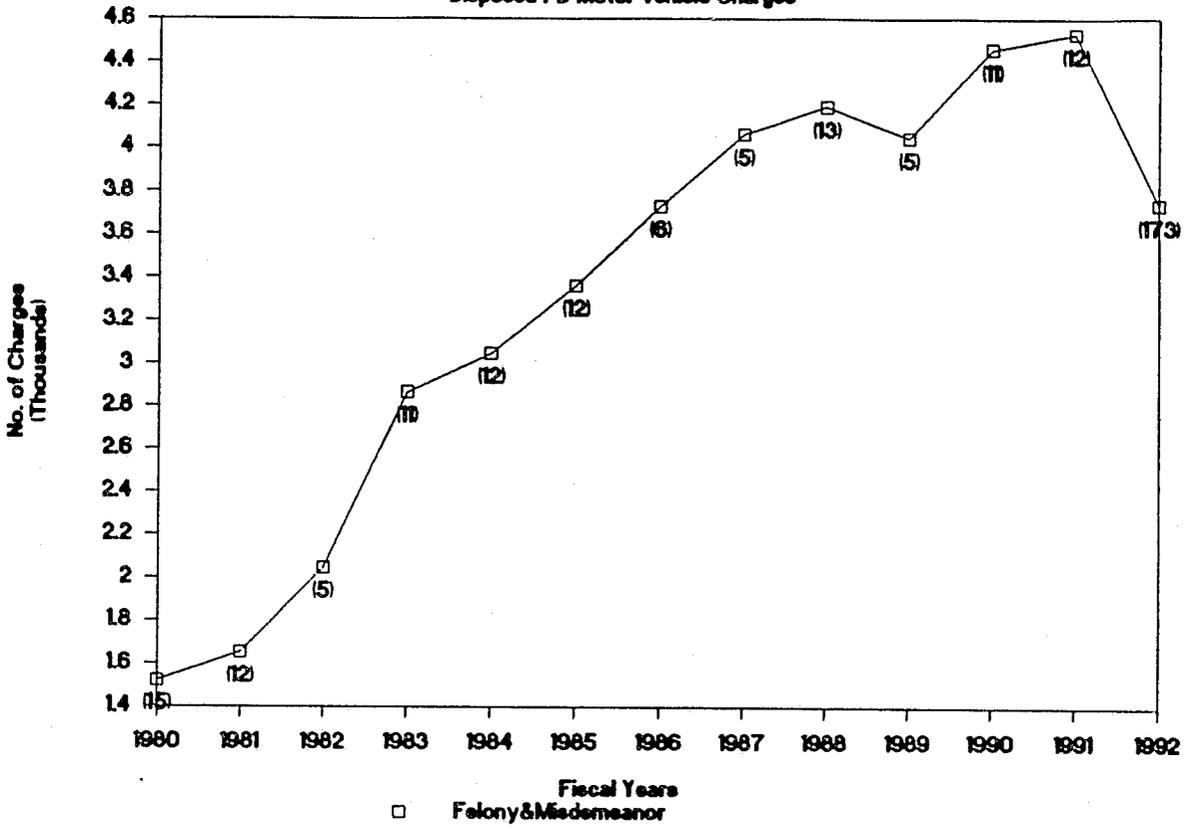
Office of the Defender General

Public Defense Caseload FY 1981-1992



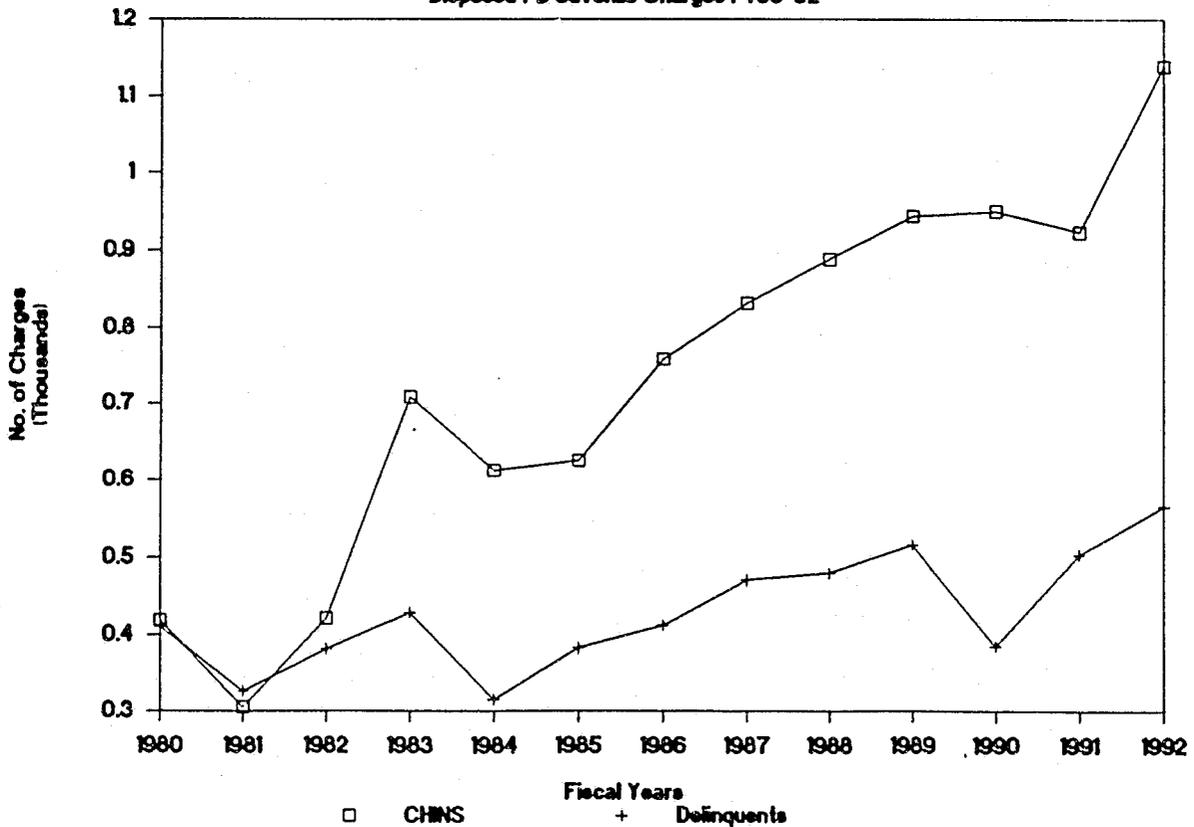
Office of the Defender General

Disposed PD Motor Vehicle Charges

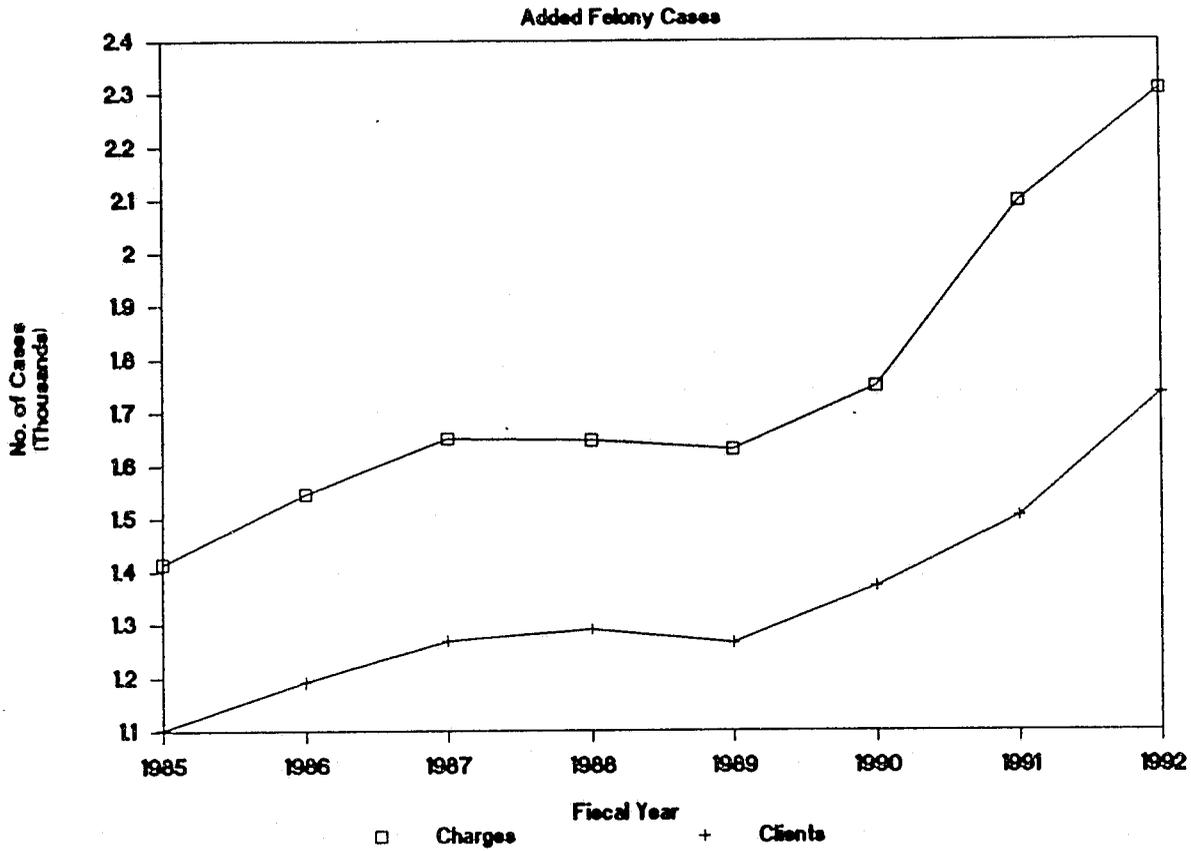


Office of the Defender General

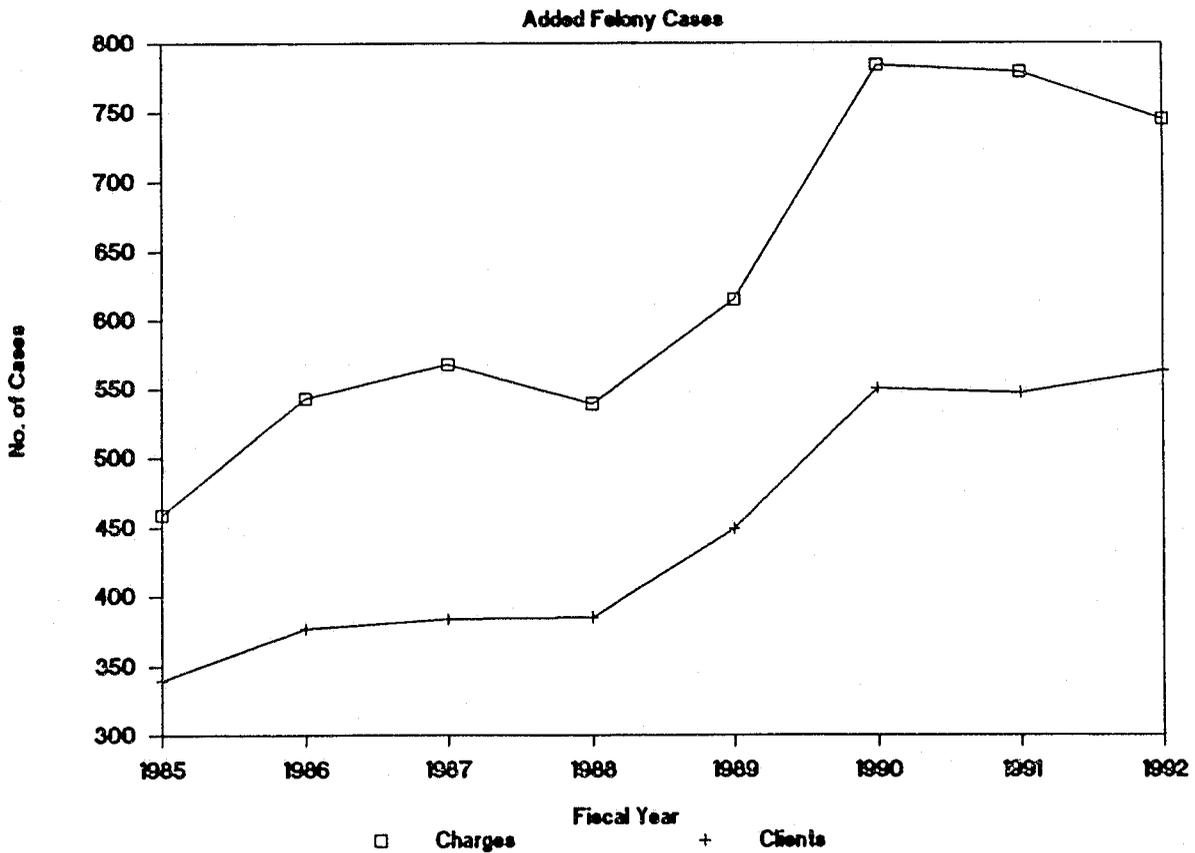
Disposed PD Juvenile Charges FY80-92



DEFENDER GENERAL PUBLIC DEFENSE

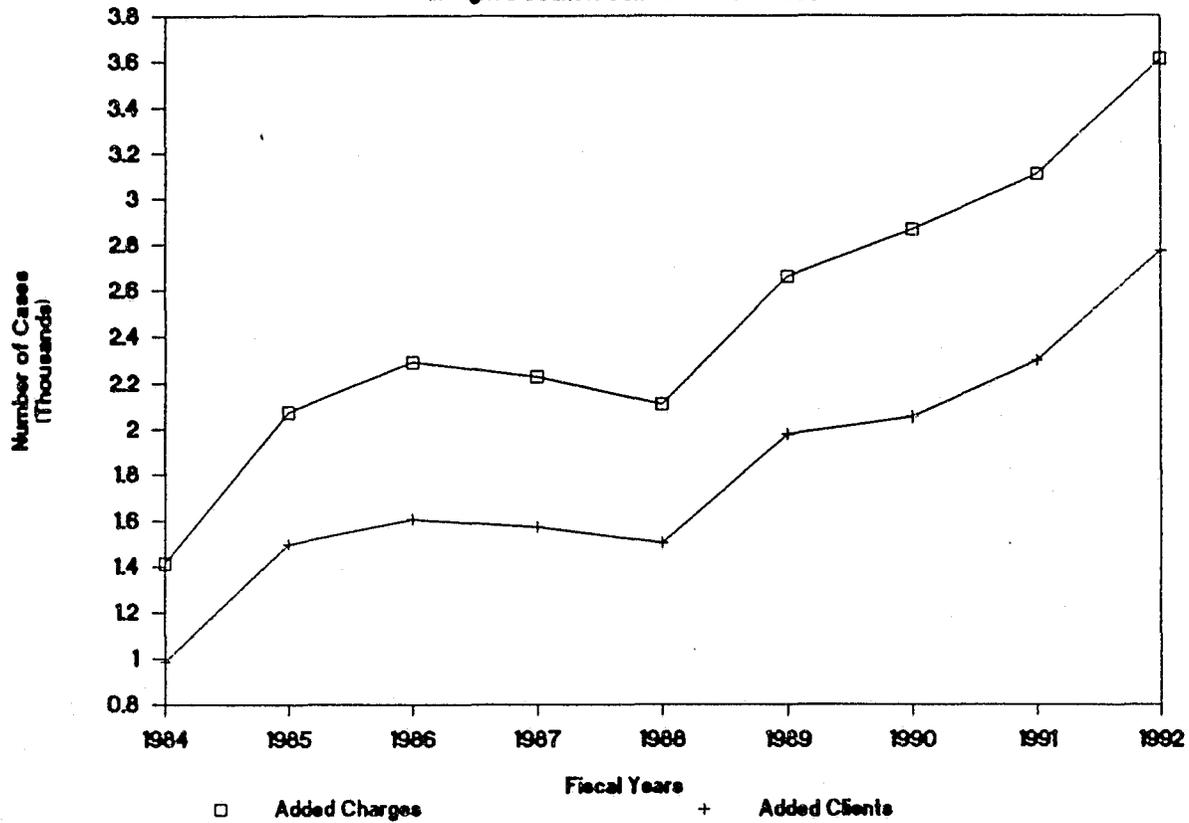


DEFENDER GENERAL - AC CONTRACTORS



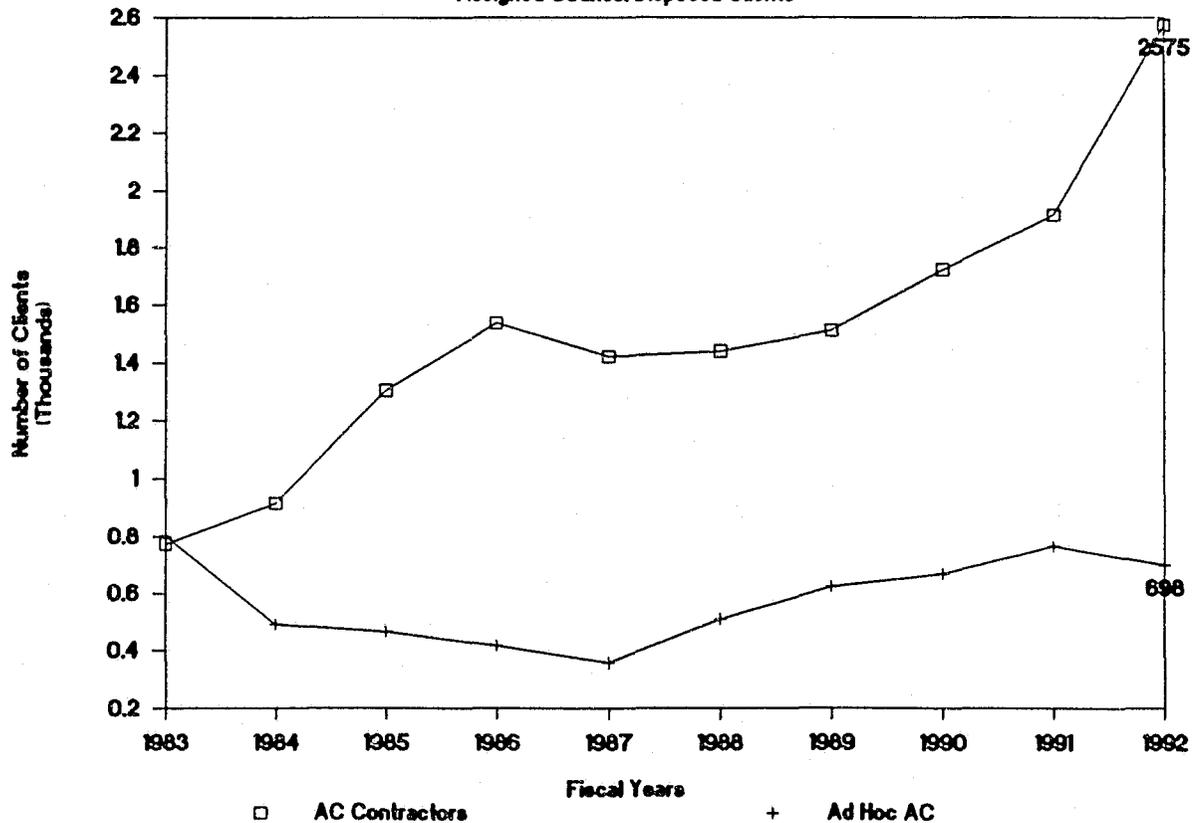
Office of the Defender General

Assigned Counsel Contractors Caseload



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
1991	2,958,850	454,933	3,413,783
1992	2,836,287	409,818	3,246,105

Note: FY 1990 expenditures include \$59,828 and FY 1991 expenditures include \$20,955 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
1991	1,165,897	30,234	1,196,131
1992	1,020,997	30,811	1,051,808

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

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.

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