HOLISTIC DEFENSE: HAS GIDEON’S TRUMPET CHANGED ITS TUNE?

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Rachel M. Sartini

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DEDICATION

This thesis is dedicated to my husband, Jason Sartini. Without your continued help, support, and overwhelming confidence, I would not be where I am today.
ACKNOWLEDGEMENTS

Thank you to all who have made this journey possible. The encouragement and support of my classmates, teachers, and advisor has been truly remarkable. To all who have participated in the interviews and follow up information requests, you have my sincerest appreciation and thanks.
ABSTRACT

The landscape of indigent defense has undergone several iterations over the last fifty years. The implementation of indigent defense systems varies across states. A two-prong multi-case qualitative analysis was conducted of four public defender offices within the United States, two of which, Delaware and South Carolina, employ a traditional approach, while two, Washington, D.C. and Knox County, TN utilize a holistic approach. A research framework was created based on identified best practices and recommended standards compiled by the National Legal Aid & Defender Association (NLADA) and Executive Sessions on Public Defense (ESPD). The offices were assessed based on these measures. Overall, there is little systemic difference between holistic and traditional public defender offices; however, there is still progress that needs to be made in the areas of funding, workload, and consistency. A single answer of holistic versus traditional will not address the indigent defense social policy issue. Further research is needed to further refine best practices, streamline operations, and create consistent systems throughout the United States.
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<tr>
<td>ABA</td>
<td>American Bar Association</td>
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<tr>
<td>CJA</td>
<td>Criminal Justice Act</td>
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<tr>
<td>CLO</td>
<td>Community Law Office</td>
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<td>COD</td>
<td>Community Oriented Defense</td>
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<td>ESPD</td>
<td>Executive Sessions on Public Defense</td>
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<td>FY</td>
<td>Fiscal Year</td>
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<tr>
<td>IRB</td>
<td>Institutional Review Board</td>
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<td>NLADA</td>
<td>National Legal Aid &amp; Defender Association</td>
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<td>OMB</td>
<td>Office of Management &amp; Budget</td>
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<td>PDS</td>
<td>Public Defender Service</td>
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<td>USC</td>
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Chapter 1

Introduction

“The Law is a mighty machine. Woe to the unfortunate man who, wholly or in part innocent, becomes entangled in its mighty wheels, unless his innocence is patent or his rescue planned and executed by able counsel.” – Edward Johnes, Law Professor

The right to counsel. This concept has been the cornerstone of our Nation’s legal system for over eighty years. It has undergone several iterations, beginning with the formation of the National Legal Aid & Defender Association, an association of attorneys that were responsible for providing legal services to individuals that were unable to afford counsel (NLADA, 2011). The courts took up this cause and upheld the right to an attorney during a capital case (Powell v. Alabama, 1932), later expanded the right to counsel to non-capital state cases (Gideon v. Wainwright, 1963), and finally broadened the right to counsel to include any proceeding when one’s liberty is at stake (Argersinger v. Hamlin, 1972). In each of these cases, the bottom line was consistent: where liberty may be restricted, it is unjust to hold criminal legal proceedings without providing the accused with the benefit of counsel.

The right to counsel dialogue has been ongoing for over a half century. In 1932, there were nine men who were arrested and charged with raping two women. While they were in custody, they were not advised of their right to contact an attorney and only met with counsel a few minutes before their trial began (Powell v. Alabama, 1932). The Supreme Court intervened, reversing the state’s decision and determining that (1) the right to be represented by counsel was necessary for a fair trial and (2) if the defendant is unable to afford counsel, the court should appoint an attorney with sufficient time to prepare for trial. Roughly thirty years later, a man was charged with breaking and entering with the intent to commit larceny. Although he kept requesting an attorney, the particular jurisdiction in which he was arrested only provided counsel
to those charged with capital offenses (Gideon v. Wainwright, 1963). Again, the Supreme Court expanded the right to counsel, ensuring counsel is provided at the state level in a similar manner as in federal cases. Ten years later, a man was arrested, charged, and imprisoned for 90 days without the ability to speak to an attorney for the misdemeanor of carrying a concealed weapon without a permit (Argersinger v. Hamlin, 1972). The state convicted him and reasoned that since misdemeanor charges do not require jury trials, neither should they require the right to counsel. His conviction was overturned and the right to counsel was again expanded, ensuring counsel is provided even in misdemeanor cases where liberty may be restricted. Twenty years later, a man was arrested and given a suspended sentence. No counsel was afforded to this individual during the time he was in custody (Alabama v. Shelton, 2002). Here, again, the importance of counsel was upheld and access expanded, providing an increasingly liberal interpretation of when the right to counsel attaches in criminal matters.

In the years between 1932 and 2002, society has seen quite a change in the landscape for the right to counsel. The Supreme Court, time and again, expanded the right for counsel to be provided to every criminal defendant, regardless of wealth:

where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeblemindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case. (Powell v. Alabama, 1932)

As a result, an attorney was required for people, whether or not they could afford one, whenever they were charged with a capital crime or in any state-level criminal proceeding where an individual’s liberty was on the line. Although the Court provided guidance on when attorneys should be provided, it did not provide a framework for implementation of its rulings.
Consequently, public defense systems were inconsistently created across the country. Four state level public defense offices, selected for the variety in public defender methods utilized and controlling for the crime rate of their jurisdictions, embody the inconsistencies and were identified for in depth systemic research in this project: Delaware; Washington, D.C.; Knox County, TN; and South Carolina.

The public defense office in Delaware was established in 1964 in order to provide indigent defendants, both adults and juvenile, across the entire state with attorneys. Washington, D.C.’s Public Defenders Services began in 1960 through Congressional action and was instructed to represent indigent defendants within Washington, D.C. through criminal, juvenile and mental health cases. In response to the decision in *Gideon v. Wainwright*, Tennessee’s Knox County Community Law Office began in 1963 to provide legal and social services for those charged with crimes in the county. South Carolina’s Commission on Indigent Defense was created through Act 164 in 1993, and provides statewide criminal defense services for indigent defendants. Although each jurisdiction has similar a mission, there are differences among the approaches, breadth and depth of services provided, and requirements for individual eligibility.

Policy groups intent on revising and improving the services provided to indigent criminal defendants, primarily the Executive Sessions on Public Defense (ESPD) and the National Legal Aid & Defender Association (NLADA), organized and identified ideal standards and expectations for public defense services. These standards focused on commonly held beliefs on pitfalls of public defense, such as workload limits, attorney qualifications, and training requirements, which resulted from various cases detailing assigned counsel’s ineffective representation (Fabelo, 2001; NLADA, 2011).
The public defense systems studied address the issues raised by the NLADA and ESPD equally and appear to operate in a holistic manner. No one method adheres to all recommendations, nor does either system utilize a mechanism that ensures the workload is limited according to the ABA recommendations. There is no singular policy modification that will enhance this social policy issue. Each state’s law creates the framework that the public defenders operate within. In an effort to continue to align the systemic offerings with the clients’ needs, it will be essential to deploy an integrated, consistent revision to the state, county, or district laws that authorized the creation of their respective public defender office. To this end, addressing the areas of office funding, use of consistent definitions and notification processes, and further research will be essential to positively enhance the public defender office.
Chapter 2

Literature Review

“Every saint has a past and every sinner a future.” –Oscar Wilde

Historical Context – Law, Control, Equality, Protection, and Public Defense

Laws were created to govern society. Over time, the rule of law became a requirement that aided in the “bulwark against tyranny, chaos, and injustice” (Solum, 2014) and entailed “public, prospective laws, with the qualities of generality, equality of application, and certainty” (Tamanaha, 2004). Laws became an extension of the government’s ability to control the population (Hatch, 2009). Although they started as a way to manage the peace within society, laws slowly turned into the creation of standards and expectations that gave certain parties power over other groups.

The years after Gideon found the court system more focused on controlling crime than on the indigent defendant and the elimination of the crime cycle (Taylor-Thompson, 1999). Providing an attorney to those who were unable to afford counsel was reactionary, the result of a court decision rather than a thoughtful approach to addressing a social policy issue. Public defenders in turn are focused at removing the immediate threat of legal jeopardy (Steinberg, 2006).

Looking at the evolution of law and public defense through a theoretical lens, social control theory presupposes that the characteristics of the individuals involved in the conflict can predict how the resulting dispute is handled (Hatch, 2009). Modern society in the United States operates through direct social control, where punishment is the result of wrong behavior and compliance results in rewards. Social control theory suggests that a poor individual charged with a crime would be found guilty after trial more frequently than a wealthy individual charged with
the same crime. Empirical research, however, does not support this claim. Instead, indigent defendants accepted plea agreements, thus eliminating the trial, more frequently than their wealthier counterparts regardless of the particular crime (Green, 2003). On one hand, taking a plea resolves the case more quickly and results in the defendant potentially being back in society faster; however, the result of a plea deal can not only leave a permanent mark on the defendant’s criminal history that cannot be easily removed, it also restricts the possibility of a right to an appeal to only the most narrow of circumstances.

**Traditional Methods of Public Defense**

While the Supreme Court case *Gideon v. Wainwright* is often seen as the basis for the public defender concept, it actually pre-dated the *Gideon* decision by fifty years (Spangenberg & Beeman, 1995). The offices that employed this approach were relatively few and were located in large cities such as New York City and Los Angeles. Until *Gideon*, there was no articulated nationwide method that would provide counsel to those who were unable their own attorney. The federal courts and a few states were already providing counsel prior to the 1964 decision. After *Gideon*, providing legal counsel for indigent defendants became a requirement. Without explicit instructions on the implementation of the system for public defense, a variety of models were created: public defender’s offices, contracted public defender systems, and assigned public counsel systems (Spangenberg & Beeman, 1995).

The traditional public defender office consisted of permanent, state employed attorneys who would be responsible for providing legal services to those individuals who were identified as indigent and were charged with crimes where jail time could result.

Contracted systems describe the method by which the state or jurisdiction enters into an agreement with either private attorneys, private law firms, or non-profit groups who then become
responsible for providing indigent counsel. The fees for such services vary from a per case or per contract schedule. This type of system is typically utilized as an alternative should a conflict of interest arise or to supplement an existing traditional public defender office when handling certain types of cases. Other jurisdictions, such as New York City, contract out public defense services to several non-profit organizations throughout the city, such as the Bronx Defenders and the Brooklyn Defenders. Additionally, some states, such as Washington, enter into a contract agreement to handle any caseload in excess of the particular standards for the state’s traditional public defender office (Jenkins, 2012).

Assigned counsel systems utilize private attorneys who are assigned to cases as they arise. Typically, such systems appeal to newer, less experienced attorneys, as they are able to gain trial experience quickly with the volume of indigent defense. Most states that employ this type of public defender system create lists of public criminal defense attorneys on a volunteer basis. These attorneys are utilized as needed. Others believe that the assigned counsel systems are also able to provide a pool of experienced lawyers, keep the independence of the public defender intact, and are no more expensive than public defense systems (Feeney & Jackson, 1991).

While there are frequently three types of public defense methods found across the United States, there are also variations within the three discussed above. Some states, such as Louisiana, chose a method of public defense with a slight variation on the public defender office through the use of Indigent Defender Boards, which provide public defenders with sufficient training and experience through the implementation of certification standards. These systems also created better pay and smaller caseloads in an effort to provide indigent individuals the defense available to wealthier defendants (Calogero, 1995).
Although studies found that while neither privately retained attorneys nor public defenders saw better outcomes, there is the continued belief that public defenders are less effective than their private counterparts (Feeney & Jackson, 1991). Private defense attorneys appear to spend more time with their clients as compared to the amount of time public defenders appear to spend with their clients, perpetuating the division between the quality of counsel provided by private versus public defenders, since defendants presume private attorneys spend more time working on their client’s cases (Feeney & Jackson, 1991). Additionally, the connection defendants make between the public defenders and their ties to the state result in a continued belief that public defenders are representative of the state’s wishes, not the client’s.

Many issues plagued the traditional public defense systems including public defense office underfunding, high caseloads assigned to each attorney, minimal levels required for counsel’s performance, lack of support services, underpaid attorneys, disparate career trajectory for career choice when compared to prosecutors, and a lack of oversight in quality control within the public defenders office (Lee, 2004).

**Shifting Focus- Individual Case to Whole Person**

The decision in *Gideon* set the foundation for early methods of indigent defense: protection from government entities through an even playing field in the courtroom, equality in the ability to provide a defense regardless of financial status, and an unanticipated consequence of distrust between the client and the attorney.

The right to counsel stems from the requirement that everyone is protected from the limitation on their personal liberty by ensuring their ability to be represented by counsel. Research on an indigent’s right to counsel has shown a shift from simply ensuring counsel is provided to ensuring the counsel provided is effective (Hatch, 2009). The protection of the
defendant, necessitated by the belief that all are innocent until proven guilty, has been the building block of the right to counsel in the courts. Further, the concept of equality under the law, in the context of criminal defense, has been clear through case law as far back as Powell v. Alabama (1932), and visible again in Miranda v. Arizona (1966), when law enforcement officers were required to ensure that all suspects were informed of their right to counsel before any custodial interrogation. Over time, the Court has clearly stated that equality is a necessary part of the legal process and has expanded the right to an attorney from just certain federal cases, to a right to an attorney in all felony cases, and to include juvenile defense.

Recent cases have demonstrated the need for continued monitoring of the right to counsel for indigent defendants. In Mississippi, a judge took exception to a public defender’s ‘zealous representation’ of her client, removing her from all assigned cases and prohibited the attorney from representing any further clients (Rapping, 2015). A Texas judge suspended a public defender for practicing for 12 months because an ‘untimely’ filed motion was considered egregious behavior (Lithwick, 2015). In several counties in New York State, defendants have not been provided with counsel, required to pay a fine, and are sent to jail if they do not pay the required amount (McDonald, 2015). Another case involving New York State resulted in a settlement to hire more public defenders, investigators, and support staff; increase training opportunities for public defense staff; and require increased communication between the attorneys and their clients after allegations purporting the state run public defense office deprived “these defendants and the class they represent of their constitutional right to meaningful and effective assistance of counsel” (Cusano, 2015). These examples demonstrate the how the right to counsel can be limited or threatened by certain state actions. Other problems can also limit the effectiveness of a public defender’s ability to provide counsel to his or her clients.
The literature identifies a significant gap in indigent defense due to the defendant’s inability to form a relationship and establish rapport with their assigned public defender. Even repeat offenders are unable to establish a relationship with an assigned attorney. There is little time for an initial bond between the two parties as most indigent defendants are unable to make bail and remain in jail until their hearing. Additionally, the inability of the indigent defendant to select the attorney that represents them starts the attorney-client relationship off on unstable footing. The lack of a foundational relationship, coupled with the client’s inability to guide the public defender’s decisions with respect to use of expert testimony, results in continued feelings of distrust (Green, 2003).

Public defenders also experience this difficulty. Instead of establishing rapport with their client, they are more likely to establish a bond to the system and the players within it (Galanter, 1995). The impersonal assignment of counsel to indigent defendants creates a false sense of security and results in the client’s increased suspicion of the public defender’s motives. Public defenders integrate with the familiar players in the system - the judges and prosecutors. The client’s feelings of distrust are further compounded by the inequitable distribution of funding between the prosecution and public defender’s offices. Additionally, a 2011 report by the Justice Policy Institute noted that in FY2005 the State of Tennessee, the prosecutor’s office spent between 130-139 million dollars while public defenders offices were provided roughly 56.4 million to represent their indigent clients.

The perception of wealth plays a unique, and often overshadowed, role in the courts. Prosecutors invest more time and attention in the cases with perceived wealthier defendants than they do with the defendants they perceive to be poor, believing that the wealthier defendants will have a more aggressive defense counsel than the poor, who would be more likely to settle and
accept a plea deal (Goodman & Porter, 2002). While the commonly held belief suggests that the poor defendants are seemingly targeted in the courtroom, the truth is that typically, the prosecutor is more likely to provide an indigent defendant, or seemingly poor defendant, with a plea deal and would instead save their resources for the wealthier defendants. Regardless of reality and which group tends to be more vigorously prosecuted, an unequal relationship exists. Regardless which group is favored, the indigent defendant’s perception of inequality further perpetuates the feeling of distrust.

When considering the concept of equality with respect to the indigent defense system, the indifference principle can provide a suitable definition: the ability of the system to treat wealthy and poor defendants equally (Goodman & Porter, 2002). While the data show some aberrations, the criminal justice system is a surprisingly equal opportunity system. Further, there were no statistically significant differences between private and appointed attorneys taken as a whole (Cohen, 2011). Both public defenders and privately retained counsel provide defendants with equitable treatment in the courtroom. Instead, the type of appointed attorney appears to play a part in the outcome of the case (Feeney & Jackson, 1991). There are more significant problems with assigned counsel systems versus the traditional public defense systems, such as defendants receiving longer sentences or less favorable outcomes (Cohen, 2011).

Non-Traditional Methods of Public Defense

The concept of holistic defense is credited to the Bronx Community Defenders. While they may be the most widely known holistic defense group, there have been others who began the idea of holistic defense earlier, like the Roxbury Defenders in Massachusetts (Cloud, 2013). Regardless of who conceived the idea first, the concept of holistic defense has generated significant buy-in over time.
Holistic defense is considered “whole-client” representation (Clarke, 2001). The defendants represented by these offices typically have the ability to access a whole host of additional resources. Some of these address other factors of their life that may have contributed to their arrest for a particular crime. Similar to the traditional method of public defense, which has several different types, there is a spectrum of holistic defense models. On one end of the spectrum, the attorneys partner with community groups and form strong community bonds, while on the other end of the spectrum, there are additional support services available within the confines of the holistic law office that are utilized as needed to support the whole client. The most notable aspect of holistic defense is the defense strategy; an attorney in a holistic defense practice provides not only the legal assistance needed, but also the civil assistance that demonstrates a belief in the client’s ability to change. This belief may provide clients with a greater bond to their attorney as well as a feeling of obligation to change their behavior and alter the course of their life (Lee, 2004).

**Framework History & Origin**

In 1911, the National Legal Aid & Defender Association (NLADA) was founded by fifteen legal aid societies to provide legal services for those who are unable to afford counsel. On the 40th Anniversary of *Gideon v. Wainwright*, the NLADA identified five problems still plaguing public defense systems: no counsel at all; excessive caseloads; lack of enforceable standards; underfunding; and lack of independence (NLADA, 2011). The Justice Department, in a report issued three years prior to NLADA’s five problems, identified many of the same areas of concern: standards; high caseloads; funding (Langton & Farole, Jr., 2009).

The Brennan Center for Justice at the New York University School of Law is a nonpartisan law and policy institute that works to improve democracy and justice systems. The
Center describes itself as ‘part think tank, part advocacy group, and part cutting-edge communications hub’ that creates innovative policies on a variety of issues. The Brennan Center for Justice also partners with the Community-Oriented Defense (COD) Network, whose members address the needs of the client “beyond the immediate criminal case, to engage in systemic reform of failed criminal justice policies, and to enlist the involvement of community members in developing and implementing” unique approaches to problems. Together, these organizations have studied the indigent defense system to determine how to best ensure the right to counsel.

In partnership with the COD, the Brennan Center for Justice crafted 10 principles for community-oriented defense: create a “client-centered practice”; meet clients’ needs; partner with the community; fix systemic problems; educate the public; collaborate; address civil legal needs; pursue a multidisciplinary approach; seek necessary support; and participate in COD network. Each principle was created along with an affirmative statement of belief and action, further cementing the need to move away from the traditional method and begin to incorporate alternative, creative methods that assisted in both the criminal matter in front of the court as well as prevent future recidivism (Savner & Clark, 2010).

The Executive Sessions on Public Defense, a joint taskforce of criminal defense practitioners, police officers, journalists, and prosecutors who “are prepared to take joint responsibility for rethinking and improving society’s responses to an issue” convened at Harvard University in 2001 to discuss public defense and policy options (Fabelo, 2001). As a result, an applied approach to public defense systems that appears to mitigate the negative aspects of the systems while accentuating the positive themes was produced, listing essential building blocks for public defender systems (Fabelo, 2001). The required elements for all public defense systems
were identified: independence, coverage, workload, qualifications, support services, training, notification time, and access to counsel.

Although most states created various types of public defense systems, public defender groups such as NLADA, the COD, and the ESPD identified basic expectations that were missing or not as prominent within the current office dynamic. There was also clear overlap among the groups’ determination of the necessary elements for satisfactory indigent defense: access to counsel, excessive caseloads, independence, and funding. Aside from these core qualities, some groups favored training and performance standards while other groups believed in a greater partnership with the community would enrich and enhance the public defender’s ability to adequately represent their clients.

Thematic Application

Major themes identified in the literature were aligned with the elements in the ESPD framework and the common problems identified by the NLADA.
These themes provide a foundation for research on public defense methods:

Table 2.1. Literature Theme Linkage to Research Framework

<table>
<thead>
<tr>
<th>Literature Theme</th>
<th>ESPD/NLADA Application</th>
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<tbody>
<tr>
<td>Control</td>
<td>Independence/Lack of Independence</td>
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<tr>
<td>Protection</td>
<td>Coverage &amp; Support Services/No Counsel At All</td>
</tr>
<tr>
<td>Equality</td>
<td>Workload, Qualifications, &amp; Training/Underfunding &amp; Lack of Enforceable Standards</td>
</tr>
<tr>
<td>Distrust</td>
<td>Notification Time &amp; Access to Counsel/Excessive Caseloads</td>
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Although it appears that the holistic method for public defense may have closed the gap, it is possible that the traditional methods have evolved to address the concerns many organizations had with traditional indigent defense systems. In order to understand how these systems operate and determine whether or not they meet the issues raised by the ESPD and NLADA, my research questions are “Do holistic public defense systems address more of the problems within the public defense system? Have holistic public defense systems met the expectations identified by interest groups more frequently than have traditional defense systems?”
Chapter 3

Methodology

“The lack of competent, vigorous legal representation for indigent defendants calls into question the legitimacy of criminal convictions and the integrity of the criminal justice system as a whole.” –Janet Reno, Former Attorney General, United States of America

My study consisted of a two-prong multi-case qualitative analysis of four public defender offices within the United States. The indigent defense offices were chosen based on an assessment of the crime index for each state as well as the type of indigent defense office being run. Although there are variations within the holistic as well as the traditional methods, the two basic categories of public defense systems are either traditional or holistic.

A review of Census data listed the crime index by state, with the relative median score of 682 (Census, 2015). Two traditional offices and two holistic offices were selected with a crime index of 682: State of Delaware, Office of the Public Defender; South Carolina Commission on Indigent Defense; Public Defender Service of Washington, DC; and Knox County Public Defender’s Community Law Office of Knox County, Tennessee.

I submitted an IRB application, sample questions, and a recruitment script and received approval on December 22, 2014. See Appendix A for all IRB materials submitted. An initial codebook was created, utilizing the requirements and problems identified from ESPD and NLADA, respectively. The NLADA principles and the ESPD public policy recommendations were grouped into nine code categories: independence/lack of independence; coverage; support services; workload; qualifications; training; notification time, enforceable standards, and access to counsel/no counsel at all. From these nine main codes, I formulated definitions for each code, based primarily on the professed ideal model for public defense services. Detailed definitions can be found in Appendix B. Once the information was grouped into the nine main codes, I created three child codes for each parent code in order to further refine the data collected with
respect to how closely the data emulates the definition of each code: very similar, somewhat similar, and not at all similar. For example, if I identified a particular interview response as falling into the category of “training” (parent code), I used the definition of training, compared it with the data I labeled as “training”, and selected the best child code fit, either very similar to the definition, somewhat similar to the definition, or not at all similar to the definition. This process was repeated throughout the entire data set.

Prong 1: Publicly Available Data Reconnaissance

I reviewed information publicly available on each state or county’s public defender website, in order to identify adherence or non-adherence to the systemic standards identified through the literature: the amount of public defender interaction with clients, information pertaining to caseload limits, methodology for case assignments, qualifications of attorneys hired, and on-site or office sponsored public defender training provided. Additionally, I obtained state regulations pertaining to the creation of the public defender’s office, the state requirements for criminal defenders to practice criminal law, and any law, rule, or regulation surrounding public defender offices from Delaware, South Carolina, Tennessee, and Washington, D.C. This information gathered was imported into Dedoose, an online qualitative analysis system, for coding.

Prong 2: Field Interviews

Email solicitations were sent out to all public defenders, executive staff members, and social support staff identified on each state website, requesting their participation in a telephone interview. I did not target administrative personnel, as the focus of the study was on the systemic operations of each office, the interaction with clients, and information pertaining to workloads, case assignments, qualifications of attorneys hired, and associated training provided. Offices
that did not respond were sent a second email recruitment message a week later. All potential participants were able to freely able to respond and participate. Interviews were scheduled based on participant availability. For those that responded, telephone interviews were conducted with five senior employees from four different indigent defender’s offices.

I conducted structured interviews, which consisted of approximately 20 questions specifically tailored towards the systemic requirements identified in the literature. Interview questions are available in Appendix C. Each interview lasted between 45 minutes to one hour. Participants were advised that the interview would be recorded and transcribed. All five participants agreed to being recorded. I scheduled telephone interviews, which were recorded through Uberconference. I transcribed all interviews. Each participant was asked if they would be open to additional questions, if necessary, and each participant agreed. After reviewing the transcripts, I needed to send follow-up questions to one public defender office in order to obtain further clarification. A follow-up email was sent and a response was received within one business day.

Identifying information of the participants, except for the particular state office they were from, was removed from all transcripts. All interview transcripts, subsequent email responses, all information gathered through online searches of the public defense offices, and each state’s indigent defense regulations were uploaded into Dedoose for coding and analysis.

A limitation of this study was the available data on the Internet. Recently, I found that the South Carolina Commission on Indigent Defense’s website was revised and now includes an enormous amount of additional information and contacts. Had this been available, my potential pool of interviewees would have been much larger as each public defender’s contact information for all 16 districts now is available online.
Coding

I coded all uploaded media twice. The first round of initial coding grouped the media into one of nine parent codes. The parent codes were chosen from the ESPD and NLADA standards. I created definitions for each parent code based on the ideals and principles ESPD or NLADA published for each of my seven codes. Data that related to any of the nine parent codes was coded into that category. From there, I reviewed each parent code and determined, based on my definitions, simultaneous magnitude coding based on which relationship existed between the parent code and the child code: very similar, somewhat similar, or not at all similar to the definition for each parent code. Definitions for the parent codes were modified during the coding process when I found that certain terms were used in different ways.

Lastly, I deconstructed each state’s laws pertaining to indigent defense, to include how public defender offices should be organized, how attorneys should be hired, and how additional support services are obtained. I identified areas that pertained to the nine parent codes identified by my initial research framework. Each state’s laws were then coded with the same parent codes and three child codes indicated above in order to determine the respective adherence to the recommended ESPD and NLADA standards.

I analyzed each state based on descriptors and final coding, first based on the presence or absence of parent codes within each jurisdiction and then based on the child code category determination. Subsequently, each type of public defense office was reviewed based on the code co-occurrence relationship to the child code determination.

Additionally, I utilized thematic coding to identify any repetitive themes that were present in the literature as well as in the data I reviewed. Based on my assessment, two additional codes were added: public defender expectations and funding.
Chapter 4

Results

"Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

–Lewis Powell, Jr., U.S. Supreme Court Justice

Typically Considered Traditional Public Defender Offices

Delaware

Delaware utilizes a public defender system that spans the entire state. This system, the Model Defender Act, was implemented in January 1964, shortly after the decision in Gideon. In addition to the public defender’s office, there is a separate conflict division, which was created in 2011, that provides defense counsel for indigent defendants when there is a conflict of interest identified in their case.

The goal of the Delaware Public Defender’s Office is to “provide quality representation equal or better than any private attorney or law firm. It is our duty and privilege to defend our clients” (Delaware Office of the Public Defender, Accessed February 22, 2015). The Public Defender’s Office has been recognized as one of the top workplaces in Delaware for three years in a row- 2011, 2012, and 2013. The salary for assistant public defenders in Delaware starts at around $55,944.

Independence: The Governor appoints the Public Defender for a six-year period. There are no limitations on the number of terms a Public Defender can serve. The Public Defender appoints additional attorneys, who serve indefinitely. There are three main counties, with one large county and two smaller ones. In New Castle County, the largest county, supervision is provided for those handling felonies in Superior Court; separate supervisors are assigned for those in the Court of Common Pleas; and separate supervisors for those handling Family Court
cases. In the smaller counties, Kent and Sussex counties, supervisors work with the assistant public defenders at all three levels of court.

**Coverage:** The Delaware Office of the Public Defender provides indigent criminal defense services for the entire state. The three primary locations employ a total of 82 attorneys, 73 of whom are full time. The intake unit is comprised of interviewers who make the determination of indigent status based on whether or not the client makes $500 every two weeks. Dependents and spouses are taken into account, with money added for spouses and subtracted for dependents, in order to focus solely on the financial status of the client. An automatic determination of indigency is made for all juvenile clients. Additionally, anyone who is incarcerated is automatically determined to be indigent. The intake unit also identifies whether additional services, such as mental health examinations, might be needed for the client.

**Workload:** There is no mechanism utilized to track workload. However, if an attorney indicates he or she is overloaded, the supervisor would take steps to divert or reassign cases to other attorneys. Additionally, individual attorney caseloads were provided for FY14: Superior Court attorneys closed 180 cases on average, above the ABA standard of 150 per attorney; the attorneys in the Court of Common Pleas closed 731 cases, well over the ABA standard of 400 per attorney; Family Court attorneys closed 303, with an ABA standard of 200 per attorney; and Appellate attorneys closed 28, with an ABA standard of 25 per attorney. A case is defined as ‘per indictment’, where one indictment can have one or more charges.

**Qualification:** The Office of the Public Defender hires both new graduates who have demonstrated excellence in criminal law classes during law school or had specialized education in the area of criminal defense, as well as seasoned attorneys. Additional experience, such as volunteering at the Public Defender’s Office or their clerkship, is also taken into consideration.
and heavily weighted. An in-house Director of Training was recently hired and is creating an orientation for new attorneys. Training programs will be customized, based on the amount of experience the particular attorney brings with them to the office.

Case assignments are determined based on the particular court system assignment of the public defender. Experience is taken into account when cases are assigned, especially for serious crimes, including capital cases. Attorneys are graded from Attorney Level 1 through Attorney Level 5, based on their knowledge, skill, and experience. Attorneys at the Level 1 grade are typically new law school graduates and initially handle cases in the misdemeanor court.

**Support Services:** Similar to holistic offices, Delaware’s Public Defender office consists of a plethora of additional on-site services, to include staff investigators, psycho-forensic evaluators, mitigation specialists, and law clerks. Psycho-forensic evaluators assist with mental health evaluations, housing issues, and job placements. The Office of the Public Defender ensures additional support services needed are provided to the client, either externally or internally. Attorneys are required to articulate the particularized need for the expert or additional services to the Chief, Legal Services. A request is made via a form and must contain a justification for the particular expert that is being requested. Final approval or disapproval is granted by the Public Defender.

A conflicts program, with 26 attorneys, is also available should any case within the Public Defender’s Office be found to be a conflict of interest. These attorneys are paid a stipend and an hourly rate per case. Additional support services needed by the conflicts group must be requested through the court and are not provided from the staff of the Public Defender’s Office.

The Public Defender is also involved with the community through a variety of committees and taskforces: Delaware Criminal Justice Council, Videophone Sub-Committee
Chair, Byrne Grant Sub-Committee, Sex Offenders Management Board, Juvenile Justice Collaborative, Delaware Girls Initiative, Domestic Violence Coordinating Council, Supreme Court Mental Health Task Force, School Discipline Task Force, Juvenile Justice Advisory Group, State Advisory Group, and the National Juvenile Defender Center Northeast Regional Center. Participating in such a wide variety of groups creates community bonds between the Public Defender and the people the office serves. This level of community involvement demonstrates a highly holistic office operation. Additionally, it furthers the picture of the public defender as a community advocate.

Public Defenders also handle specialty courts, such as mental health and drug courts, juvenile gun courts, and early psycho-forensic intervention individuals with mental health or substance abuse issues. The variety of specialty courts, both criminal and civil, allows the public defender to address the whole person, rather than just the criminal matter. Lastly, translator services are also provided if needed. Although Delaware is typically noted to be a traditional system, the array of services available leans more towards the holistic system.

**Training:** An internship program allows current law school students the ability to gain experience in the area of criminal defense. Typically, this provides the student with the necessary skills to be hired post-graduation. A former attorney was recently hired to handle the Training and Development Unit. Delaware requires continuing education credits. The Public Defender’s Office holds free on-site trainings on a monthly basis to fulfill these requirements. Additional brownbag workshops are conducted, at which experienced attorneys train the less experienced attorneys on a wide range of topics from how to give an opening statement, a practical example of an opening statement, voir dire for jury selection, and so on.
**Notification Time:** Attorneys are typically notified of new clients when they log into their computer. The intake staff interviews every person who enters the office and is looking for an attorney. The information is entered into a database and cases are assigned on a rotating basis, unless it is a serious crime. At that point, more care is taken in the assignment of counsel and includes their level of experience. A similar approach is taken for those clients in custody. Intake staff is also present at the jails.

The policy of the Public Defender’s office states that attorneys should “see all persons in custody every 30 days” (Delaware Interview Notes, 2015). A contact report is produced monthly to ensure that the attorneys are interacting with their clients. Additionally, the initial contact must be within 10 days of receipt of the client’s file. More often than not, subsequent interaction occurs between the attorney and client via letter.

**Access to Counsel:** The office policy encourages interaction with the client. Communication varies between letter, phone (traditional or videophone), or in person meetings. Videophone meetings increase the ability of the public defender to interact with incarcerated clients. The Public Defender offices are located close to the courthouses, so they are fairly easy to find. In the larger counties, the public transportation system is helpful; however, it is much more rural and more difficult to get to the Public Defender’s office without a car in the smaller counties.

**Enforceable Standards:** There was no information pertaining to this topic.

**Funding:** Discussions surrounding funding were more positive than negative. Funding is received directly from the state. There is no additional funding from the counties. Grants are another source of additional funding available to Public Defender Offices. There are no caps on
how much money can be spent on a particular case. In some instances, additional funding was requested through the state OMB for supplemental funding.

**South Carolina**

South Carolina operates a Commission for Indigent Defense, which is comprised of 13 individuals, with one Director responsible for management of the statewide indigent defense system. The Commission oversees the public defenders; processes, audits, and pays vouchers to private contracted attorneys; runs the appellate division for indigent appeals; manages a capital trial division; and works with the legislature through budget proposals. There are 16 judicial circuits that cover the entire state. Prosecutors and Circuit Defenders are elected and serve a four-year term. There are no limits on the number of terms they can serve. The Commission selects the public defenders after a comprehensive application process.

The mission of the South Carolina Commission on Indigent Defense is to “set and enforce standards, to ensure that the standards are uniform across the state, and to maintain accountability of those persons entrusted with the life and liberty of poor persons charged with crimes” (South Carolina Commission on Indigent Defense, Accessed January 12, 2015). Salaries for new assistant public defenders typically start at $38,864.

**Independence:** The South Carolina Commission on Indigent Defense is a Commission made up of 13 individuals: 9 Governor Appointees, 2 retired judges appointed by the Chief Justice of the South Carolina Supreme Court, 1 representative of the House Judiciary Committee, and 1 representative of the Senate Judiciary Committee. A Chairman of the Commission is elected from this group and serves a two-year term. Circuit Defenders are elected to four-year terms.
**Coverage:** The South Carolina Commission on Indigent Defense provides criminal attorneys for indigent defendants across the entire state. The definition of indigent used by South Carolina is in the statute and in line with the federal poverty level and varies based on income level and household size.

**Workload:** The circuit defender monitors and distributes the caseload in an effort to ensure efficiency within the operation. Although there is oversight with the amount of cases, each public defender has the “autonomy to determine how the cases are handled (South Carolina Interview Notes, 2015).” There is no regulation or law that requires a limitation on the maximum number of cases a public defender can handle. However, the attorney’s proficiency is taken into account when case assignments are made. Typically, the less experienced attorneys are assigned misdemeanor cases first.

**Qualification:** Each County elects a representative to a circuit selection panel. The panel is responsible for interviewing all qualified applicants and then making a recommendation to the Commission, who can either accept or reject the nomination. Qualified applicants must be a resident of South Carolina, member of the bar, and have practiced law for several years.

In 1993, Act 164 was passed which created the South Carolina Commission on Indigent Defense. The law provided for additional assurance for the qualifications of attorneys who would handle indigent clients charged with murder where the death penalty is sought, in order to ensure appropriately trained and experienced legal counsel:

> the court, upon determining that such person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend such person in the trial of the action. One of the attorneys so appointed shall have at least five years’ experience as a licensed attorney and at least three years’ experience in the actual trial of felony cases, and only one of the attorneys so appointed shall be the Public Defender or a member of his staff.
**Support Services:** Although categorized as a traditional public defense system, South Carolina is a self-proclaimed novice in the practice of the holistic method of public defense. Although South Carolina was categorized as “traditional” upon the outset of this research project, it was only during the interviews that the shift from traditional to holistic methodology became clear. Three counties are quickly adopting this methodology, funded in part by a grant from the Bronx Defenders. The University Of South Carolina College Of Social Work has partnered with Richmond County in an effort to increase the number of social workers available to clients. Additionally, the College of Social Work is conducting a statewide study to determine how technology can be utilized in order to collect measurable outcomes. Lastly, the South Carolina Centers for Equal Justice provides legal counsel for civil court matters.

**Training:** According to SC Code § 17-3-310, the Commission is required to provide assistance to public defenders in a variety of ways:

(a) the preparation and distribution of a basic defense manual and other educational materials;

(b) the preparation and distribution of model forms and documents employed in indigent defense;

(c) the promotion of and assistance in the training of indigent defense attorneys;

(d) the provision of legal research assistance to public defenders; and

(e) the provision of other assistance to public defenders as may be authorized by law.

The South Carolina Bar requires 12-14 continuing legal education credits be completed annually, with at least two hours of education in the area of ethics. The Commission has sponsored a Best Practices Seminar that can satisfy a portion of the requirement. Additionally, the SC Public Defender Association holds a two-day conference. The Commission has started a
professional development and training seminar program for all public defenders and support staff. Training is provided to the Investigator Association to provide additional training to public defender investigators.

**Notification Time:** Applications for public defenders are processed through the magistrate. Once the application is processed, the clerk of the court makes the appointment of counsel on behalf of the judge. The application process can cause delays in notification of counsel appointments. The attorneys are expected to meet with their newly appointed clients within 48 hours. If the individual is in jail, the attorney will meet the client there. If the individual is out on bond, they are provided with instructions explaining how to contact their attorney.

**Access to Counsel:** The public defender offices are located within the county courthouse, or at least within a block of the courthouse. They are easily accessible in the larger cities through mass transit. The hours of operation have been greatly increased since 2007, and some have Saturday hours. Before 2007, the public defender’s office operated part-time out of a law office and was difficult to find.

**Enforceable Standards:** There was no discussion on this topic.

**Funding:** Responses related to funding was either positive or neutral. Although comments were made that additional funding would be appreciated, there were no comments that funding prevented the office from operating efficiently.

**Typically Considered Holistic Public Defender Offices**

**Washington, D.C.**

The Public Defender Service (PDS) is a federally funded office to provide indigent defense services to those charged with crimes in the District of Columbia. The office provides a
vast array of legal services for both criminal and civil matters. PDS is comprised of a trial, appellate, special litigation, parole, mental health, civil legal service, and community defender divisions as well as the investigations division, office of rehabilitation and development, the defender services office, and paralegal, language, and library services section.

The mission of the PDS is to “provide and promote quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia and thereby protects society's interest in the fair administration of justice (Public Defense Service, Accessed January 15, 2015).” The starting salary of a new assistant public defender is Washington, D.C. is typically around $63,000.

**Independence:** A Board of Trustees manages the PDS. The Board is comprised of seven members who are appointed by the chief judge of the United States Court of Appeals for the District of Columbia Circuit; the Chief Judge of the United States District Court for the District of Columbia; the Chief Judge of the District of Columbia Court of Appeals; the Chief Judge of the Superior Court of the District of Columbia; and the Commissioner of the District of Columbia. Each trustee’s term is for three years. No trustee can serve more than two consecutive terms. All vacant seats on the Board of Trustees are appointed through the same panel. No employee is a political appointee. The Board reviews applications and selects public defenders. It is explicitly written into law that the “power of the Service shall be vested in a Board of Trustees…[who] shall establish general policy for the Service but shall not direct the conduct of particular cases (P.L. 91-358).”

**Coverage:** Anyone charged with a crime in the District of Columbia that does not have the financial means to pay for an attorney and who meets the criteria of indigent as set forth by federal poverty guidelines may utilize the services of the D.C. Public Defender Service. The PDS
determines financial eligibility for every arrested child and adult based on the federal guidelines for poverty.

**Workload:** The office standard did not have limitations on the number of cases any one attorney could be responsible for at a particular time. Multiple levels of supervision and oversight by supervisors assisted in the redistribution of cases if an attorney was unable to effectively manage their workload. Workload is measured per case, not per client. If a client has five active cases, that is counted as five separate cases not one case.

**Qualification:** The Public Defender Service is quite discerning in their selection of attorneys. The application process is rigorous and those selected for employment have impressive resumes. Typically, graduates of the nation's top law schools, Supreme Court clerks, federal court clerks, and local clerks are hired as attorneys.

**Support Services:** The services offered by the Public Defender Service are robust. An interpreter is on the staff full-time and speaks several languages fluently. Juvenile, adult, and mentally impaired clients are assisted through this office for both criminal and civil legal issues.

The Duty Day program is a rotational assignment for PDS staff. The Duty Day officer handles telephone and walk-in requests from DC bar members as well as potential clients requesting assistance with legal, social, parole, and mental health issues.

Forensic social workers and forensic counselors are on staff to provide attorneys with a psychological assessment as needed. A Criminal Justice Act (CJA) website was built by the PDS to connect CJA attorneys with certified CJA investigators.

**Training:** The training available to attorneys within the Public Defender Service ensures all attorneys are able to meet and exceed their required continuing legal education credits each year. Additionally, attorneys at PDS can attend an annual forensic science conference sponsored
by PDS. Each supervisor is responsible for three to four attorneys, from offices supervision, trial supervision, and special hearings supervision. Each division is mooted, with openings, closings, and crosses practiced. Once the attorney has gathered sufficient experience, they are able to move up the ladder.

**Notification Time:** Each attorney is assigned to different days of the week, where they are required to attend court in order to “pick up” cases. As the attorney is physically present when the case is assigned, there is virtually no wait between case assignment and attorney-client contact. If an attorney receives a case assignment that is in an area they have not yet been trained, they typically will transfer the case to another, qualified attorney.

**Access to Counsel:** The Public Defender Service takes great care in meeting with clients in a timely fashion. The expectation for all attorneys is initial client meeting within 24 hours of assignment. The office is also located near public transportation, so clients have a variety of options to interact with their attorney.

**Enforceable Standards:** There was no mention of enforceable standards for public defenders within the Public Defender Service.

**Funding:** Discussion surrounding funding, amount of funding, and the source of funding was primarily neutral. Budgets are submitted to Congress for approval. Due to their funding source, the office is subject to furlough. While this may impact representation in the short term, it does not have too much of an impact on representation in the long term. As with any other federal agency whose funding is granted through Congress, furloughs typically last for short periods of time until the budget can be approved.
**Knox County, TN**

Tennessee has a statewide public defense system, broken down into 31 judicial districts. Knox County is in the 6th judicial district and operates what it terms a Community Law Office (CLO) that advocates a “client-centered, holistic representation model” that integrates criminal defense services with additional support services, typically based in the community.

The mission of the CLO is to use a “client-centered, holistic approach that offers quality, competent, zealous legal representation coupled with comprehensive social services and linkages to other community agencies, the CLO strives to prevent criminal activity, reduce recidivism, and enable individuals to move toward maximum self-sufficiency and contribute to their communities (Knox County Community Law Office, Accessed January 12, 2015).” A new public defender in Knox, TN has a beginning salary of approximately $42,625.

**Independence:** Tennessee does not elect all public defenders; however, the lead public defender for Tennessee is elected and has a fixed term of service. There is no limitation on the number of times the lead public defender can be re-elected. This individual appoints statewide public defenders who serve without term limits.

**Coverage:** The Knox County Community Law Office serves indigent individuals charged with crimes in Knox County, TN. Indigence is determined by judges, not the attorneys in the Community Law Office. Typically, the judge follows the letter of the law for indigency determinations. There are some cases when a judge might bend the requirements and allow individuals who were not covered under the definition of indigent to access public defenders for representation.

**Workload:** There are no maximum caseloads for each attorney. Each attorney, supervisory or non-supervisory, has his or her own caseload. Cases are weighted based on a variety of factors, such as complexity of the case, number of charges, type of court and are
monitored. If a single attorney’s workload appears to be out of line, case assignments are shifted around accordingly. It is the responsibility of the individual attorney to advise their supervisor if their workload increases to the point where they are unable to adequately handle their cases.

**Qualification:** Additional qualifications outside of passing the Tennessee Bar, such as a particular amount of experience handling criminal proceedings, were not mentioned.

**Support Services:** The CLO works with a variety of social support services, within and outside of the community, to address issues such as housing needs, employment assistance, and substance abuse problems. Action plans are individually created for each client that addresses their unique needs. The CLO focuses not only on the immediate criminal case at hand, but also seeks to assist their client improve their lives. Part of the CLO is a social service department, which is composed of nine Social Workers who work with the attorneys on an as needed basis.

There is a separate division of the CLO focused on the “design[ing] a life skills plan of action…[that] offers clients the opportunity to address individuals needs and to utilize their skills and talents to generate personal and community value.” (Knox County Community Law Office, Access January 12, 2015). Additional assessments are conducted to include physical needs, such as housing, food, transportation, clothing; drug and alcohol treatment; mental and behavioral health needs; valid identification; job counseling; life skills classes; and tutoring and literacy classes.

**Training:** All new hires are sent to ‘Gideon’s Promise’, a three-year program that trains new attorneys in all aspects of client-centered representation, that meets for 14 days at the beginning of the program and then one weekend every quarter for the remainder of the three-year period. 15 Continuing Legal Education (CLE) credits are required annually and are paid for by the CLO. Other training opportunities are fully supported, both professionally and financially, by
the CLO. New hires are also gradually introduced to each level of criminal defense, starting with misdemeanor court. The supervisor determines if the attorney has the ability to work independently. If so, then they move onto DUI court and then a felony rotation.

**Notification Time:** Attorneys are notified of new client assignments each day when they log into their computer.

**Access to Counsel:** The CLO provides free bus tickets to clients and is located on a bus route. The office has free parking, so those clients with access to cars do not have to pay to park. Frequent, face-to-face contact is expected, “the game plan is that you meet on a regular basis, but the attorney needs to determine what regular is” (Knox County Interview Notes, 2015). There are no requirements to interact with clients within a particular period of time; however, some cases require continual interaction, while others do not require frequent discussions. Typically, the first client interaction occurs within 24-48 hours of assignment.

**Enforceable Standards:** There was no discussion or information available on enforceable standards.

**Funding:** The Community Law Office identified several grants that are available to provide additional funding to public defense offices. State funding is the primary source for the office. Funding balances between the prosecution and the public defender are maintained through a ‘75% rule’ that requires local governments to provide the public defender’s office with seventy-five percent of the total sum of money given to the prosecutor’s office.

**Overall**

There is little difference among the different types of public defender offices with respect to independence. Each office appeared to operate independently. No office, traditional or holistic, was very similar with respect to the category of workload. All offices were either
somewhat similar or very similar with respect to the standard for attorney qualifications. All offices had some form of support services, whether internal or external. Training was a topic that all offices were involved in. Notification time varied widely across the four offices. All offices had some requirement or expectation, whether written or understood, for communication and contact with their clients. No office had any predetermined list of enforceable standards for attorney practice other than the law. However, all offices had a basic expectation for the public defender’s office and indigent representation. The holistic offices had more negative funding perspectives than the traditional offices.

All offices reported more positive than negative comment about funding. Each office had an expectation of behavior for the public defender. Independence, workload, and qualifications were somewhat similar to the NLADA and ESPD standards. Coverage and support services were somewhat to very similar to the NLADA and ESPD standards. Training was a topic that was consistently very similar to the framework standards.
Chapter 5

Discussion

“Life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.” – Earl Warren, U.S. Supreme Court

The two systems typically categorized as traditional, South Carolina and Delaware, are in fact quite similar when compared to the two holistic defense systems, Washington D.C. and Knox County, TN. One main difference can be found in the mission statements of the different public defenders offices. Holistic systems place significant importance in their mission statement on the whole person: the community partnerships, mental health and substance abuse counseling. Traditional systems also ensure there is sufficient attention paid to other reasons for why the individual is in need of their services, but the focus tends to be more heavily weighted on the provision of a vigorous criminal defense. The divisional line between what is typically thought of as traditional public defense versus holistic defense appears to be quite blurred. Literature has consistently depicted a hard divisional line between what has been thought of as traditional public defense systems, that focus solely on the indigent defendant, and an upcoming method of holistic defense that seeks to identify additional social problems that contributed to the criminal act the indigent defendant is charged with and strives to address the client as a whole in an effort to prevent the client from returning to the criminal justice system. However, in practice, there are many common services provided and the similar resources available to the clients in both systems. From the four offices researched, there was not one office that provided solely legal counsel for the criminal act the defendant is charged with; all offices were providing to some degree additional services and support to address the whole client.
Both methods of public defense strive to provide the best defense possible for their indigent clients. Both categories of public defender offices profess hard work in order to ensure the clients are provided with the best legal counsel available, on par with or surpassing the services available had they been able to afford their choice of counsel. Equally important is an integration of support services that supplement legal counsel. Both systems ensure attorneys are provided with training and support throughout their career. Gone are the days of the “urban legend” public defender, who sleeps during trial and cares little for their clients. Instead, highly professional, dedicated attorneys work tirelessly for their clients. The constant theme evident in both types of offices was the dedication to the criminal defense of indigent clients and an overwhelming caseload of clients requiring attention.

No office articulated any hard and fast standards that determining a maximum number of cases any one attorney could handle at a given time. Each office had some type of mechanism in place to shift the workload from attorney to attorney. The bottom line, however, remained constant- the cases continued to be assigned and clients continued to need representation. There is not an unlimited amount of funding, so cases must be handled in accordance with the resources necessary to provide a high quality defense within the budgetary confines of each office. Although the American Bar Association created recommended standards for maximum case limits each attorney can handle per year, as no office had a policy for a definitive maximum caseload, it appears that this standard may be appropriate in theory but does not seem reasonable in practice. All offices were aware of the recommended standards; however, no office appeared to be able to adhere to them. In Tennessee, the Public Defender indicated that he had requested to suspend the assignment of additional cases to his Community Law Office, as the attorneys were unable to manage their workload appropriately.
While there were some coverage differences between the traditional and holistic offices, much of the difference found appears to be attributed to the size of the office’s jurisdiction. When looking at coverage based on who within the state is eligible based on the most liberal application of indigency was found in Delaware. More than half of the offices adhere to the federal poverty guideline. Delaware, on the other hand, automatically determined those defendants incarcerated pending trial as indigent if they do not obtain their own counsel. Further, all children are automatically identified as indigent, regardless of the family’s household income.

Future office funding may be a strong driver of whether or not this standard is appropriate. If an office defines indigent in a manner that applies to an increasing number of people and the funding does not rise in accordance with this increase, this expectation will become an unattainable measure.

No state described any use or creation of enforceable standards. Further, there were no concrete parameters determining the attorney’s performance. Therefore, the two-prong \textit{Strickland} test, one that determines if counsel’s performance fell below an objective standard of reasonableness and if the result of the case would have been different but for the action of counsel, appears to be the only vehicle used to determine if counsel was effective (\textit{Strickland v. Washington}, 1984). To date, all four offices received at least one decision from a \textit{Strickland} appeal; only South Carolina’s case resulted in a finding of ineffective counsel. However, this case involved a 1961 crime that was reopened in 2001. During review of each state’s laws that created their respective public defender’s offices, South Carolina modified their public defense system in 2007. Therefore, one could argue that the possible failings of counsel identified in 2001 or prior were remedied through the revisions made to the public defense system as there were no additional \textit{Strickland} appeals resulting in findings of ineffective counsel.
No office described performance expectations of their attorneys. It appeared that each office hired professionals and expected their employees to operate in a fully independent, self-sufficient manner.

**Independence:** The ability of appointment and funding decisions impact public defenders vigorous defense. The extent to which fiscal and client selection pressure the defense counsel to defend their client less vigorously. The more independent manner in which the office is funded, as well as the identification of the selection of public defenders, the more the system will demonstrate similarity to the independence measure. If each defense case is given a flat dollar amount to cover expenses, regardless of experts needed to provide a vigorous defense, the less similar the system will be as compared to independence. The more expansive the budget for providing a robust defense, the more independent the public defense system.

Each office appeared to operate with little oversight and direction from political leaders. Some offices consisted of politically appointed Public Defenders. For example, the Public Defenders in each of the 16 circuits in South Carolina are appointed to four-year terms, with an unlimited number of appointments they can serve. Most offices had appointed Public Defenders, with the exception of Tennessee, who elected the Knox County Public Defender through a public election. District Attorneys, on the other hand, were almost always publicly elected. Most assistant public defenders are neither appointed nor elected; instead they are hired either through a Board or directly by the Public Defender. In this regard, politics has some say in the attorneys that are hired. However, there does not appear to be a direct link between the hiring processes and state politics. Most notable is the Public Defender Service in Washington D.C. that operates without any single political appointee. In a location that is bursting with political agendas and
partisan conflict, the Public Defender System is mostly immune from influence, save for the political process of Congressional budgetary approvals.

The individual attorneys appear to have wide latitude in their individual case handling. The attorneys in the Public Defender Service have the most oversight and supervision out of the offices researched. Each supervisor is responsible for three to four attorneys. Every new hire processes through a rigorous orientation, training, and oversight before they handle their first solo case. When questioned, no office operated with a fixed dollar amount per case; each was handled on a case-by-case basis, with supplemental services requested and utilized as needed. It was the opinion of most people interviewed that if a case called for more resources, as long as a particularized need could be articulated, the services and experts would be requisitioned.

**Coverage:** The population covered by the public defender office’s definition of indigent. The greater the population eligible for public defense representation, the more the system demonstrates similarity to the coverage measure.

With the exception of Delaware, all offices provided indigent defense services for their respective state or district based on the federal definition of poverty. The definition of indigent varied little from jurisdiction to jurisdiction. Most offices utilized the definition of indigent from the federal poverty guidelines. Although the other offices operated with the federal definition of poverty, Delaware determines indigent on a household income of $500 or less per week. If there are dependents, $80 dollars is subtracted from the total income; if there is a spouse, $80 dollars is added to the total income. No information was provided regarding whether this calculation changes based on whether or not a spouse is employed. Further, Delaware made an exception and provides attorneys for all juvenile clients as well as those that may not meet the definition of indigent but have not retained counsel by the time their court dates arrive. The other variation in
coverage was geographic: Washington, D.C. only covers the District and Knox County, TN, although part of a larger state system, only covers the Knox County, while South Carolina and Delaware each serve their entire state.

**Workload:** The maximum number of cases a public defense attorney is assigned to at any time, with some consideration given to the type of case assigned (i.e. felony, misdemeanor, etc.) The more parameters surrounding how an attorney is assigned cases, the more similar to the workload measure. If there is consideration for the number of cases versus the number of clients, the number of cases potentially pleading out versus going to trial, and whether the cases are felony versus misdemeanor, the more similar the system is in comparison to the workload indicator.

No office had a maximum number of cases that could be assigned to an individual attorney. Although some offices indicated that there were recommended maximum cases based on the ABA, no office was able to implement the maximums as a rule. Each office had a mechanism that would allow the caseload to be redistributed if any attorney was overloaded. Supervisors in each office also carried a full caseload in addition to their responsibilities of supervising attorneys. This indicator does not appear to be realistic in practical application.

**Qualification:** The required qualifications and experience for employment in the public defense office. The more education and experience required, the more similar the system is to the qualifications measure. Additionally, the office requires particular levels of experience in certain types of cases or with certain amount of trials before permitting the attorney to handle more complex cases.

Every office required slightly different qualifications for the attorneys they would hire. Some offices had a rigorous application process and included a candidate pool made up of
mostly new law school graduates, while others appeared to hire attorneys with experience. Every office distributed case assignments according to the court from which they came. The less experienced attorneys would handle misdemeanor cases first; once they were more familiar with public defense and had some experience, they would be able to move into the more complex courts. The offices that hired new law school graduates also had a variety of training or hiring procedures: in-house continuing education courses; external training funded by the office, such as Gideon’s Promise; immediate placement in the misdemeanor court; or an intense hiring process that is very competitive. One office indicated their process for hiring began with requirements such as residency, passing the state bar, and a number of years of practice. Regardless of the experience level of attorneys being hired for public defense, each office was acutely aware of the limitations of new attorneys and ensured they were properly trained and introduced to the zealous representation required for indigent clients.

**Support Services:** The extent to which the public defender system has access to additional resources necessary to provide a thorough and vigorous defense, such as social workers, private investigators, psychologists, and other specialty groups. The more resources imbedded within the public defense office or available to the public defenders, the more similar the system is in comparison to the support services measure. The support services personnel ratio should be in proportion to the number of clients served.

Surprisingly, each office had some type of support service integration. While it was expected for the holistic offices to have on staff mental health social workers or investigators, it was quite surprising to see the “traditional” offices include similar type of in-house staff in their offices. Both Delaware and South Carolina utilize a host of support services, to include social workers, conflicts counsel, mitigation specialists, and investigators as part of their full time staff.
Although there was no data to support whether the ratio was in proportion to the number of clients utilizing the office, there was evidence supporting the movement of a traditional office transitioning into a holistic client centered approach. Knox County’s support services were paid for out of a separate operating budget.

Equally surprising was the comparison between the two holistic offices. If holistic defense is a spectrum, Knox County would be on one end, with a sparse offering of services but certainly more support services than solely criminal defense, and the Public Defender Service would be on the other, with a wide range of support services and resources. Lee (2004) noted that holistic defense is not an all or nothing option. Offices can integrate as much or as little holistic methodology as they are able. In the case of Knox County compared with the Public Defender Service, when assessed as a whole, both apply a client-centered approach to all cases handled. However, the Public Defender Service seems to be more appealing as they have a smaller employee-client ratio. Further, the funding for PDS appears to be sufficient to support the client base. On the other hand, Knox County continues to have excessive caseloads for each attorney. Attempts at litigation did not resolve the strain on the office. Funding appears to be the biggest dividing factor between these two offices. The difference in amount of holistic defense present in each office is visible through the additional services provided by the PDS, such as the legal services for special education clients through the civil legal services division. Knox County provides a robust client-centered defense, however, additional legal divisions, which are available at PDS, are not offered. Instead, there are community partnerships between the Community Law Office and youth groups that provide additional services through volunteerism. Knox County instead utilizes the community and integrates them into their method of holistic defense.
Training: The extent to which the public defender office provides education or training “in house” or the extent the public defender office subsidizes and encourages outside training opportunities. The more education the public defender office provides, the more similar the system is to the training measure. Alternatively, if a public defender office does not provide education, but the entity encourages and approves training opportunities, the more similar the system is to the training indicator. One is not more important than the other.

Although each office researched hired new law school graduates, they also had their own unique method of integrating the new attorney into the public defense culture. In Washington D.C., it was through a rigorous application process, which would culminate in selection of a candidate and an enormous amount of training before the attorney would handle their first case solo. In South Carolina, there was a similarly rigorous hiring process, with oversight and supervision. In Delaware, there was an expectation that the applicant demonstrated interest and even worked at the Public Defender’s Office during law school in an internship program before being hired into the office on a full time basis. Part-time positions were created as a way to try potential new hires before making the final decision. Further, a new position was created with the express purpose of ensuring the attorneys in the office were trained and provided with monthly refresher training courses. In Tennessee, the new attorneys would be sent to Gideon’s Promise training, at the expense of the office. Additional training opportunities were welcomed and approved. All offices encouraged training and educational opportunities, as each office operated in a jurisdiction that required yearly continuing education credits.

Notification Time: The duration of time that elapses between the attorney being assigned and the client being notified of the attorney assignment. The less time that elapses between the assignment of the attorney and the notification to the client, the more similar the system is to the
notification time measure. If clients are not notified at the same time the attorney is assigned, the less similar the system is when compared to the notification time measure.

The notification time among the offices researched varied. Some offices employed technology that would notify the attorneys as soon as they logged into their computer of a new assignment; other offices required the attorneys to go to court on rotating days to pick up new cases and would be notified while they were at court; still other offices wouldn’t be notified of the assignment until the Clerk of the Court made the determination of indigence and notified the office of the new clients. Overall, with the exception of South Carolina, client assignments were typically communicated in a timely fashion. South Carolina relied on another group to process paperwork, which resulted in inconsistent assignment of court cases. However, this office has made significant strides in advanced technologies and is currently partnering with a local university in an effort to streamline business processes and create a system where more metrics can be regularly obtained as this will serve as the basis for future requests, policy changes, and even budget increases. On the other hand, PDS requires attorneys to physically attend court in order to receive their new case assignments. This eliminates any delay in the attorney’s ability to meet with their client.

**Access to Counsel:** The extent to which the defendant has contact with their assigned attorney. The more availability the attorney has for each client, to include a requirement to meet each client at the jail as well as actual interaction with the client during court preparations, to include phone calls and additional visits at the jail, the more similar the system is to the access to counsel measure. This also includes the ability of the client to get to their attorney and/or office.

Each office is geographically accessible to the client population. Some offices are in areas where there is a well-established public transportation system, while others are located in
offices near bus stops or at easy to find buildings, such as the courthouse. While this was not part of the initial review, I included this information since access to counsel is not just the availability of the attorney; it also includes how easy the office is for the client to find.

The offices varied on their availability to their clients. Each office made it known that the amount of time spent with clients depends on the particular type of case. However, it was clear that across the board, the offices put client communication and contact as a priority.

Washington, D.C. PDS requires contact within 24 hours. South Carolina requires, by state code, a $40 application fee be collected from every potential client who applies for an attorney. There are cases where the judge will reduce this fee or even waive it in its entirety, but the state is required to assess the fee from each applicant. This may negate the numbers of potential clients, as they may be unaware that the fee could be reduced or waived if they cannot afford to pay.

**Enforceable Standards:** The extent to which the public defender’s office adheres to the goals provided by the Ten Principles of a Public Defense Delivery System (ABA, 2002): Client-centered practice; meet clients’ needs; partner with the community; fix systemic problems; educate the public; collaborate; address civil legal needs; pursue a multidisciplinary approach; seek necessary support; and engage with fellow community oriented defenders. Enforceable Standards will be determined by whether or not the public defender’s office has rules or expectations that are in line with the ABA’s ten principles. Inclusion of performance standards will also be considered indicative of enforceable standards.

Although there were no hard and fast guidance documents or office policies pertaining to the ten principles, it was evident that each office met some, if not all, of these principles through their practice and community involvement. Taken as a whole, the two public defense methods of the offices involved in the study met most of the standards. No traditional office met the standard
of addressing civil legal needs. One holistic office handles civil cases while the other partners
with the community to find resources to assist the client. Every office practiced at least some
aspect of client-centered representation; worked their hardest to meet their clients’ needs; and
utilized a multidisciplinary approach, reaching out for additional support or services if needed in
the particular case.

There was engagement with the community of holistic defenders within each office. Some offices created training programs and offered them free of charge to others in the field. Other offices were highly visible and present in committees and workgroups that covered a range of topics, from committees dealing with the management of sex offenders, juvenile justice, mental health task forces, school discipline task forces, and state advisory groups.

Absent from each office interviewed was the existence of hard and fast standards to which each attorney was required to adhere. Attorneys as a profession have an ethical code of conduct. However, as these attorneys are providing legal services to the indigent population, there were no additional standards or expectations found through my interviews that would ensure indigent clients are receiving adequate representation, and not lawyers who show up in court but do little else.

**Funding:** Any mention of funding, funding source, lack of funds, and the associated context it was mentioned in.

Funding was a topic mentioned by each public defender office interviewed. Literature suggested that many public defenders face a daily struggle with insufficient funds. However, most offices indicated that while funding was a constant concern, and that budgetary issues were considered when additional resources were requested for defense, it was not a controlling factor. In fact, more often than not, the budgets provided to each office were sufficient and requests for
additional services were almost always approved, provided a particularized need could be articulated. There was one instance, in a holistic office’s twenty-five year history, where a request for additional services that required additional money, was denied. The emerging theme of funding resulted in information that did not appear consistent with recent literature; however, further research will be necessary in order to determine if funding is sufficient based on what offices have typically done or if funding is insufficient if the offices were held to higher standards. This factor would be most evident in future research into public defender offices effectiveness.
Chapter 6

Conclusion

“To be an effective criminal defense counsel, an attorney must be prepared to be demanding, outrageous, irreverent, blasphemous, a rogue, a renegade, and a hated, isolated, and lonely person - few love a spokesman for the despised and the damned.”

— Clarence Darrow

According to Mann (2010), there is no single indigent defense system; every individual jurisdiction creates an operation that addresses each variable unique to their locale and tailors the indigent system based on factors such as funding, political factors, clientele, and method of public counsel delivery. If the indigent defense system is so variant and dependent upon a multitude of factors, the American Bar Association would be premature in recommending standards for public defense delivery before identifying ways to ensure all public defense offices are (1) operating in a similar fashion; (2) determine indigent through the same definition; and (3) receive equitable funding based on an independent factor such as crime rate or number of arrests per year.

Instead, what resulted from my research is quite opposite. Rather than four different office operations, I found four offices with similar characteristics, challenges, and breadth of support services. The determination of indigence was most frequently based on federal poverty guidelines; however, each office determined whether the client was indigent through a different process. Ensuring a consistent manner to determine indigence, to include the responsible party for making such a determination would be (1) useful to ensure consistent application of a common definition and (2) ensure the population who is covered by the definition receives the benefit of counsel. As Mann (2010) noted, there is no data clearly identifying how many indigent clients are being represented annually. Through a more consistent approach in the determination
of indigent, it may be possible to (1) ensure the determination of indigent is consistent from state to state and (2) begin to create and monitor information that can assess the program’s use.

It is apparent, at least with respect to these four offices, that there is relatively little difference between the two systems. Purely traditional public defense systems no longer exist; instead, they have been replaced with systems that consider the defendant as a whole and seek to address the root case of the criminal act, such as obtaining employment and housing, rather than simply the criminal issue at hand.

Ensuring representation at the earliest stage possible may assist in a better outcome. According to Mann (2010), there are inconsistencies throughout the public defense system pertaining to when counsel is provided. Out of the four offices, the South Carolina Commission on Indigent Defense made a similar suggestion of earlier representation. If attorneys were provided at a bond hearing, there may be a better opportunity for the client to receive the treatment they need before their trial if their attorney can make a case for the client to receive bail.

The general public is not able to participate in the selection of most public defenders. They are only able to participate in the selection of the Governor, who then would appoint the public defender in some jurisdictions. Instead, the public is able to participate in the election of the District Attorneys. This perpetuates the “tough on crime” attitude and does not bring into light the ability of the justice process to have an active part in the rehabilitation and possible solution of recidivism.

Workload limitations can be enforced through mechanisms similar to Washington State, where attorneys are required to certify quarterly that they are abiding by the maximum caseloads as recommended by the ABA (Neil, 2012). However, this may result in other problems, with
public defender offices seeking alternatives, such as limiting the number of cases the office handles or implementing assigned counsel systems that select the cheapest attorney available.

**Policy Recommendations**

There is no one method that will assist with this social policy. Each state’s law creates the framework for the public defenders to operate within. In an effort to continue to align the systemic offerings with the clients’ needs, it will be essential to deploy an integrated consistent revision to the state, county, and district laws that provide the authority for the creation of the public defender office. To this end, my recommendations consist of addressing the areas of office funding, consistent definition use and notification processes, and further research will be essential to positively enhance the public defender office.

**Funding**

Sufficient funding would positively impact each office’s ability to ensure high-quality training programs are in place for inexperienced attorneys. Additional funds would also provide the necessary resources to hire additional attorneys, in an effort to meet the recommended workload levels. Although the public defenders interviewed indicated that additional funding is an ongoing goal, the likelihood of this occurring is relatively small. Policy change will be required at the federal level.

**Consistent Application: Definitions & Notification**

Although most offices appeared to be fairly independent from political pressures, in order to ensure the offices maintain the public defenders ability to address clients’ needs without rigid oversight from political leaders, it will be necessary to continue employing a separation of powers between the Public Defender and the Governor’s office. Modification of the state,
county, or district laws that govern the determination of indigent would be required to create a defining line that ensures equity of treatment throughout jurisdictions.

Ensuring the greatest coverage for legal services will require a consistent definition of who qualifies for public defenders. To this end, further refining the definition of indigence to include the minimal requirements listed in the federal poverty guidelines as well as aspects from South Carolina’s approach, where counsel is provided to anyone who remains in jail and does not elect to obtain their own counsel, would ensure broader, consistent coverage. Additionally, ensuring all offices employ a separate group to assess and determine whether or not a client is indigent would assist with the consistency of the application of the definition as well as to help streamline the notification process.

Consistent notification of new clients would assist in earlier legal intervention. Requiring indigence determinations to be made by one group immediately following arrest or arraignment could assist in ensuring public defenders are notified in a timely fashion.

**Future Research**

Additional research is required to determine if turnover of public defense attorneys contributes to the need for additional internal training programs, which impacts on an office’s overall budget. Further, utilizing more retired attorneys may be a more cost effective manner to (1) maintain the level of knowledge and (2) supplement training programs with highly experienced legal professionals. Lastly, additional research into performance measures for public defenders coupled with case outcomes would assist in determining appropriate standards for public attorneys and perhaps create enforceable standards in the field of indigent defense. Enforceable standards did not appear to be prevalent in any of the offices selected for research. Further study into performance measures that could be appropriate, attainable, and measurable
would result in the creation of enforceable standards for public defenders.

The use of external, neutral groups to conduct a full on-site assessment of the public defender office’s operation would also be beneficial. For example, at the request of the Delaware Public Defender, the Sixth Amendment Center conducted a grant-funded assessment of the state’s indigent defense system. A thorough report was created and addressed areas for improvement as well as any areas that were deficient, based upon the ABA Ten Principles. The findings indicated deficiencies in several areas: beginning work on a case far too late into the criminal justice process; continuous representation by the same attorney; insufficient time to meet with clients; lack of workload monitoring and control; insufficient performance standards for attorneys; and lack of training. As a result of the report, in less than a year, Delaware has implemented a few changes based on the Sixth Amendment Center’s report: a new Training Director has been hired, attorney-client contact has been streamlined through video-conferencing and other advances in technology, and the office has been modifying its approach to attorney assignment. Utilizing groups to independently assess the public defense system may result in positive changes to the indigent defense system.
References


Delaware Interview Notes (2015)


*Gideon v. Wainwright* 372 U.S. 335 (1963)


Knox County Interview Notes (2015).


Powell v. Alabama 287 US 45 (1932)

Pub. Law 91-358


SC Code § 17-3-310


Solum, Larry (2014). The Rule of Law (Legal Theory Blog)


South Carolina Interview Notes (2015)


Washington DC Interview Notes (2015)
Appendix A

For NU IRB use:

Date Received: 12/1/14 reviewed 12/14/14  
NU IRB No. CPS14-12-11

Review Category:  
Approval Date

Application for Approval for Use of Human Participants in Research

Before completing this application, please read the Application Instructions and Policies and Procedures for Human Research Protections to understand the responsibilities for which you are accountable as an investigator in conducting research with human participants. The document, Application Instructions, provides additional assistance in preparing this submission.

Incomplete applications will be returned to the investigator. You may complete this application online and save it as a Word document.

If this research is related to a grant, contract proposal or dissertation, a copy of the full grant/contract proposal/dissertation must accompany this application.

Please carefully edit and proof read before submitting the application. Applications that are not filled out completely and/or have any missing or incorrect information will be returned to the Principal Investigator.
REQUIRED TRAINING FOR RESEARCH INVOLVING HUMAN SUBJECTS

Under the direction of the Office of the Vice Provost for Research, Northeastern University is now requiring completion of the NIH Office of Extramural Research training for all human subject research, regardless of whether or not investigators have received funding to support their project.

The online course titled "Protecting Human Research Participants" can be accessed at the following url: http://phrp.nihtraining.com/users/login.php. This requirement will be effective as of November 15, 2008 for all new protocols.

Principal Investigators, student researchers and key personnel (participants who contribute substantively to the scientific development or execution of a project) must include a copy of their certificate of completion for this web-based tutorial with the protocol submission.

**************************************************************************
** □ Certificate(s) Attached
X  Certificate(s) submitted previously – on file with the NU’s Office of Human Subject Research Protection

A. Investigator Information

Principal Investigator (PI cannot be a student)  Ed Kammerer, PhD.

Investigator is: NU Faculty  X  NU Staff  ________  Other  ____________

College: College of Professional Studies

Department/Program  Law & Policy

Address

Office Phone  _____________  Email e.kammerer@neu.edu

Is this student research? YES  X  NO  ____  If yes, please provide the following information:

Student Name Rachel Sartini  ____________  Anticipated graduation date June 2015

Undergrad  ____  MA/MS  ____  PhD  ____  AuD  ____  EdD  ____  DLP  X  Other Degree Type  ____
College: College of Professional Studies

Department/Program   Doctor of Law & Policy

Full Mailing Address  110 Black Starr Rd. Mapleville, RI 02839

Telephone    401-580-1510 Primary Email  Sartini.r@husky.neu.edu

B. Protocol Information

Title  _Holistic Defense- A New Way Forward for the Right to Counsel?__

Projected # subjects _10___

Approx. begin date of project 01/01/2015  Approx. end date 06/30/2015

It is the policy of Northeastern University that no activity involving human subjects be undertaken until those activities have been reviewed and approved by the University's Institutional Review Board (IRB).

• Anticipated funding source for project (or none)  ___None__

Has/will this proposal been/be submitted through:

  • NU’s Office of Research Administration and Finance (RAF)  ___No__
  • Provost  ___No__
  • Corp & Foundations  ___No__

C.

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<th>Will Participants Be:</th>
<th>Yes</th>
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<td>Children (&lt;18)</td>
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<td>X</td>
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<td>Northeastern University Students?</td>
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<td>Institutionalized persons?</td>
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<td>Prisoners?</td>
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<th>Does the Project Involve:</th>
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<td>Blood Removal?</td>
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<td>Investigational drug/device?</td>
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<td>X</td>
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<td>Audiotapes/videotapes?</td>
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D. What are the goals of this research? Please state your research question(s) and related hypotheses.

The goal of this research project is to improve the public defense system for indigent defendants. My research question is, “Are holistic public defense groups more effective, based upon eight elements identified by the Executive Session on Public Defense, than traditional public defender methods?”

E. Provide a brief summary of the purpose of the research in non-technical language.

The purpose of the research project will be to determine which method, if any, is more effective in providing indigent (poor) defendants with representation. Large sums of money are used to ensure that indigent defendants are given the opportunity to be represented in criminal proceedings; however, there has been little to no research conducted on whether the current methods or the more recent holistic approach is truly effective. This study will begin data collection based on predetermined measures in an effort to identify if one method is more effective than another and provide subsequent recommendations on best practices.

F. Identify study personnel on this project. Include name, credentials, role, and organization affiliation.

Rachel Sartini, NU DLP Candidate, will conduct the interviews, take notes during said interviews, transcribe the interviews, and review and code the data.

The Principal Investigator on the project will be Ed Kammerer, PhD, advisor, Doctor of Law and Policy program.

G. Identify other organizations or institutions that are involved. Attach current Institutional Review Board (IRB) approvals or letters of permission as necessary.
H. Recruitment Procedures

Describe the participants you intend to recruit. Provide all inclusion and exclusion criteria. Include age range, number of subjects, gender, ethnicity/race, socio-economic level, literacy level and health (as applicable) and reasons for exempting any groups. Describe how/when/by whom inclusion/exclusion criteria will be determined.

Participants for this project will be recruited based on their employment at one of the four public defender offices being studied: South Carolina Commission on Indigent Defense (comprised of 46 county offices); Delaware Office of the Public Defender (comprised of 6 offices across the state); Washington D.C. Public Defender Service; and Knox County Tennessee Community Law Office. As such, their ages will range from 18 years of age and above. Their gender, ethnicity/race, socio-economic level, literacy level and health is unimportant for this study. The only inclusion criteria would be their employment- at one of the state organizations identified studied in this research. Primarily, office administrators, attorneys, or the main attorney for the particular office will be identified.

Exclusion criteria would be people who are not employed at the state organizations. The rationale for the inclusion and exclusion criteria is due to the fact that only employees of the state facilities noted would have access to information about the processes and procedures of the state office’s operations.

Describe the procedures that you will use to recruit these participants. Be specific. How will potential subjects be identified? Who will ask for participation? If you intend to recruit using letters, posters, fliers, ads, website, email etc., copies must be included as attachments for stamped approval. Include scripts for intended telephone recruitment.

Potential subjects will be identified through the organization’s websites. Telephone calls will be placed to obtain information pertaining to the systemic operations of the public defense system in each state or county from these participants. Information obtained will consist of systemic operational and quality measures: Independence/Lack of Independence; Coverage; Workload/Excessive Caseloads; Qualifications; Support Services/Underfunding; Training; Notification Time; Access to Counsel/No Counsel At All ; and Lack of Enforceable Standards.

In order to recruit participants, an email will be utilized to request participation. Follow up telephone calls will be made to each participant, requesting participation in a subsequent telephonic interview. The participants will have knowledge regarding the operation of the particular public defense office as well as basic information surrounding how the office is funded. Most likely participants will be public defense attorneys.
What remuneration, if any, is offered?

Not applicable.

I. Consent Process

Describe the process of obtaining informed consent*. Be specific. How will the project and the participants’ role be presented to potential participants? By whom? When? Where? Having the participant read and sign a consent statement is done only after the researcher provides a detailed oral explanation and answers all questions. Please attach a copy of informed consent statements that you intend to use, if applicable. Click here for consent form templates.

If your study population includes non-English speaking people, translations of consent information are necessary. Describe how information will be translated and by whom. You may wait until the consent is approved in English before having it translated.

An unsigned consent will be used because interviews will take place via telephone. Each person contacted for participation in the study will be contacted first by email, with the recruitment letter, and then by telephone for consent as well as the interview. The consent form will be sent to each participant via email along with the initial recruitment letter. A follow up telephone conversation will be scheduled to answer any questions the participant may have.

Consent will be obtained by the student researcher and will be recorded for all participants.

The informed consent statement that I intend to use is attached to this application in Appendix C.

If your population includes children, prisoners, people with limited mental capacity, language barriers, problems with reading or understanding, or other issues that may make them vulnerable or limit their ability to understand and provide consent, describe special procedures that you will institute to obtain consent appropriately. If participants are potentially decisionally impaired, how will you determine competency?

Not applicable.
*If incomplete disclosure during the initial consent process is essential to carrying out the proposed research, please provide a detailed description of the debriefing process. Be specific. When will full disclosure of the research goals be presented to subjects (e.g., immediately after the subject has completed the research task(s) or held off until the completion of the study’s data collection)? By whom? Please attach a copy of the written debriefing statement that will be given to subjects.

Not applicable.

J. Study Procedures

Provide a detailed description of all activities the participant will be asked to do and what will be done to the participants. Include the location, number of sessions, time for each session, and total time period anticipated for each participant, including long term follow up.

Each participant will be asked a series of questions (see Appendix B) in an effort to elicit information on eight variables with particular focus on the type of indigent defense system the participants work at: independence, coverage, workload, qualifications, support services, training, notification time, and access to counsel.

It is anticipated that each interview will consist of one, one hour session. Depending on the responses, the interview could be shorter or longer. Follow up questions may be used in addition to those listed within Appendix B, however, these questions will be within the same vein as the interview questions, should clarification be required.

Who will conduct the experimental procedures, questionnaires, etc? Where will this be done? Attach copies of all questionnaires, interview questions, tests, survey instruments, links to online surveys, etc.

Interview questions are provided in Appendix B. All questions will be asked by Rachel Sartini over the telephone using Uberconference, a free web-based service that allows the calls to be recorded. During the telephone interview, I will take notes of the answers to the questions. Should I need to return to previous interviews, I will be able to review the conversation. All interviews will be transcribed by Rachel Sartini.

K. Risks
Identify possible risks to the participant as a result of the research. Consider possible psychological harm, loss of confidentiality, financial, social, or legal damages as well as physical risks. What is the seriousness of these risks and what is the likelihood that they may occur?

Questions asked pertain to the system in particular and not to any specific person. Therefore, the risks for participants is minimal. All responses will be generalized to the particular state organization and not specific to any individual participant.

Describe in detail the safeguards that will be implemented to minimize risks. What follow-up procedures are in place if harm occurs? What special precautions will be instituted for vulnerable populations?

While personal information, such as name and title will be collected, they will not be included in the final research document. All information obtained through participants will be referred to as pertaining to the particular organization they are affiliated with. All information that has any identifiers will be kept confidential and maintained in a password protected file on the researcher’s desktop computer. There will be no identification by name or position in the final research paper. As the focus is on the systemic operations of the office, the information provided will be expressed in describing a public defender office as a whole.

**L. Confidentiality**

Describe in detail the procedures that will be used to maintain anonymity or confidentiality during collection and entry of data. Who will have access to data? How will the data be used, now and in the future?

The student researcher will have primary access to the data. The Principle Investigator will also have access to information, based on the need to sufficiently advise the student researcher. Information presented in any published work will be attributed to the state office and not a particular individual. Information contained within the qualitative database, the investigators notes, and interview transcripts will have identifications listed, such as name and contact number, in order to facilitate a call back if additional clarifying questions are required. The information will be kept in a password protected database on a desktop computer. The computer will not be access by anyone other than the student researcher.

How and where will data be stored? When will data, including audiotapes and videotapes, be destroyed? If data is to be retained, explain why. Will identifiers or links to identification be destroyed? When? Signed consent documents must be retained for 3 years following the end of the study. Where and how will they be maintained?
Data, to include copies of the audio recordings and unsigned consent forms, will be retained for a period of no longer than 5 years post completion of the research study, in order to ensure the student researcher has appropriate access to the data for completion of the degree program.

**M. If your research is HIPAA-protected, please complete the following:**

**Individual Access to PHI**

Describe the procedure that will be used for allowing individuals to access their PHI or, alternatively, advising them that they must wait until the end of the study to review their PHI.

Not applicable.

**N. Benefits**

What benefits can the participant reasonably expect from his/her involvement in the research? If none, state that. What are potential benefits to others?

There are no direct benefits for participants. The full research report will be offered to participants. This could be a benefit as they would be able to review the data collected and potentially implement best practices that were noted through the research. Additionally, the field of public defense, as well as those who use the public defender’s office, may benefit based on the best practices identified through the research.

**O. Attachments**

**Identify attachments that have been included and those that are not applicable (n/a).**

- [X] Copy of fliers, ads, posters, emails, web pages, letters for recruitment *
- [ ] Scripts of intended telephone conversations*
- [ ] Copies of IRB approvals or letters of permission from other sites
- [X] Informed Consent Form(s)* (see our templates for examples)
- [ ] Debriefing Statement*
- [X] Copies of all instruments, surveys, focus group or interview questions, tests, etc.
- [X] Signed Assurance of Principal Investigator Form *(required)*
On File
NIH Human Subject Training Certificate(s) *(required if not already on file at HSRP)*

*(Approved forms must be stamped by the IRB before use)*

P. Health Care Provision During Study

Please check the applicable line:

___X___ I have read the description of HIPAA “health care” within Section 4 of the Policies & Procedures for Human Research Protection. I am not a HIPAA-covered health care provider and no health care will be provided in connection with this study.

_____ I am a HIPAA-covered health care provider or I will provide health care in connection with this study as described in Section 4 of the Policies & Procedures for Human Research Protection. This health care is described above under “Study Procedures,” and the Informed Consent and Health Information Use and Disclosure Authorization form will be used with all prospective study participants.

If you have any questions about whether you are a HIPAA-covered health care provider, please contact Nan C. Regina, Director, Human Subject Research Protection at n.regina@neu.edu or (617) 373-4588.

**Completed applications should be submitted to Nan C. Regina, Director, Human Subject Research Protection with the exception of applications from faculty and students of the College of Professional Studies, which should be submitted to Kate Skophammer, IRB Coordinator for CPS.**

<table>
<thead>
<tr>
<th>Nan C. Regina, Director</th>
<th>CPS applications only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northeastern Univ., Human Subject Research Protection</td>
<td>Kate Skophammer, IRB Coordinator</td>
</tr>
<tr>
<td>360 Huntington Ave., Mailstop: 960 Renaissance Park</td>
<td>Northeastern Univ., College of Professional Studies</td>
</tr>
<tr>
<td>Boston, MA 02115-5000</td>
<td>Phone: 617.390.3450;</td>
</tr>
<tr>
<td>Phone: 617.373.4588; Fax: 617.373.4595</td>
<td><a href="mailto:k.skophammer@neu.edu">k.skophammer@neu.edu</a></td>
</tr>
<tr>
<td><a href="mailto:n.regina@neu.edu">n.regina@neu.edu</a></td>
<td></td>
</tr>
</tbody>
</table>

The application and accompanying materials may be sent as email attachments or in hard copy. A signed **Assurance of Principal Investigator Form** may be sent as a scan, via fax or in hard copy.
Notification of IRB Action

Date: December 22, 2014
IRB #: CPS14-12-11

Principal Investigator(s):
Ed Kammerer
Rachel Sartini

Department:
Doctor of Law and Policy
College of Professional Studies

Address:
20 Belvidere
Northeastern University

Title of Project:
Holistic Defense: A New Way Forward for the Right to Counsel?

Participating Sites:
N/A

Informed Consent:
One (1) unsigned consent

As per CFR 45.46.117(c)(2) signed consent is being waived as the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required.

DHHS Review Category:
Expedited #6, #7

Monitoring Interval:
12 months

Approval Expiration Date: DECEMBER 21, 2015

Investigator's Responsibilities:
1. Informed consent form bearing the IRB approval stamp must be used when recruiting participants into the study.
2. The investigator must notify IRB immediately of unexpected adverse reactions, or new information that may alter our perception of the benefit-risk ratio.
3. Study procedures and files are subject to audit any time.
4. Any modifications of the protocol or the informed consent as the study progresses must be reviewed and approved by this committee prior to being instituted.
5. Continuing Review Approval for the proposal should be requested at least one month prior to the expiration date above.
6. This approval applies to the protection of human subjects only. It does not apply to any other university approvals that may be necessary.

C. Randall Colvin, Ph.D., Chair
Northeastern University Institutional Review Board

Nan C. Regina, Director
Human Subject Research Protection

Northeastern University FWA #4630
ATTACHMENT A- Recruitment Email Message

DATE

Dear Sir or Ma’am:

I am a student at Northeastern University and am conducting a research project on the systemic analysis of public defense models currently used. I found your name by reviewing information on [enter state] public defender website.

The purpose of this research is to review the different types of public defense systems and compare them with themes identified through literature reviews in order to provide large scale recommendations for systemic operations improvement. As this study is focusing solely on the public defender’s office operations and systemic processes, additional information regarding [insert office name]’s operation is needed.

I am hoping to schedule a time with you to ask you a few questions regarding my topic. Please respond via email to Sartini.r@husky.neu.edu if you would be interested in assisting me with my research endeavor.

Regards,

Rachel M. Sartini
DLP Candidate, Northeastern University

Enclosure: Consent Form
ATTACHMENT B

Questions for Guided Telephone Interviews:

1. Please state your name, title, and role within the public defender’s office.
2. Based on your experience, are the attorneys within the office given wide latitude with respect to their assigned cases?
3. How much oversight, supervisory or otherwise, on each case is provided?
4. How is the office funded?
5. Are any people appointed to their positions by the governor (or other political official)?
6. What geographic area does the office cover?
7. What is the state’s definition of “indigent”?
8. How is this definition applied to cases in order to determine whether or not the client is “indigent”?
9. Who determines indigence?
10. Is there a maximum number of cases assigned to each attorney?
    a. If yes, what is this number and is it based on any factors (complexity of the case assigned, the number of cases per attorney, the number of clients per attorney, etc.)?
    b. If no, what ways are used to distribute the cases?
11. What qualifications do attorneys in this office need in order to be hired?
12. Are there additional services utilized for cases, such as experts?
    a. If so, who determines whether or not they will be used?
    b. If not, why not?
13. How are the attorneys notified of their cases?
14. Are there requirements that the attorneys reach out to their assigned clients within a particular timeframe of being assigned?
15. Are there requirements for the number of visits or interaction with each client?
    a. If yes, what are they?
    b. If not, why not?
16. How frequently do the attorneys make physical contact with their client?
17. How frequently do the attorneys make verbal contact with their client?
18. How accessible is the office for clients?
19. Is the office located within walking distance from a public transportation line (bus or train)?
20. How do clients get in contact with their attorneys?
ATTACHMENT C
Northeastern University, College of Professional Studies, Doctor of Law & Policy

Name of Investigators: Ed Kammerer, PhD., Rachel Sartini, DLP Candidate

Title of Project: Holistic Defense: A New Way Forward for the Right to Counsel?

We are inviting you to take part in a research study. This form will tell you about the study, but the researcher will explain it to you first. You may ask this person any questions that you have. When you are ready to make a decision, you may tell the researcher if you want to participate or not. You do not have to participate if you do not want to.

We are asking you to be in this study because you are employed at a public defense office selected by the researcher as important in determining the effectiveness of public defense systems. The study is being conducted in an effort to identify best practices and provide recommended improvements to the public defense system.

If you decide to take part in this study, we will ask you to answer a series of questions to the best of your ability. The questions that will be asked pertain to the public defense office where you are currently employed. The questions may ask you to provide an opinion based on your knowledge of how the public defense system operates. If you are unable to answer the question, you will be asked to provide a name of someone who may. The questions focus on the system itself and how it is structured. No questions will be asked about individual cases.

The interview will take place over the phone, on a time and date that is convenient to you, and should last about an hour. It may be necessary to schedule a follow up interview. Any follow up interviews will be scheduled by email and take place over the phone, on a time and date that is convenient to you, and should last about half an hour.

There are no anticipated risks to you for participating in this research study. There will be no direct benefit to you for taking part in the study. However, the information learned from this study may help to enhance the public defense system and those who use it. Additionally, we will be happy to provide you with a copy of the final research paper, upon request.

Your part in this study will be confidential. Only the researchers on this study will see the information about you. No reports or publications will use information that can identify you in any way or any individual as being part of this project. While your responses will be transcribed, they will be utilized in the final report as information received from public defense or holistic defense system. No personally identifiable information will be included in the final research report. The information will be maintained on a password protected file on a password protected computer.

Your participation in this research is completely voluntary. You do not have to participate if you do not want to and you can refuse to answer any question. Even if you begin the study, you may quit at any time. If you do not participate or if you decide to quit, you will not lose any rights, benefits, or services that you would otherwise have.
If you have any questions about this study, please feel free to contact Rachel Sartini at sartini.r@husky.neu.edu, the person mainly responsible for the research. You can also contact Ed Kammerer at e.kammerer@neu.edu, the Principal Investigator. If you have any questions about your rights in this research, you may contact Nan C. Regina, Director, Human Subject Research Protection, 960 Renaissance Park, Northeastern University, Boston, MA 02115. Tel: 617.373.4588, Email: n.regina@neu.edu. You may call anonymously if you wish.

Do you now consent to this interview?

You may keep this for your records.
ATTACHMENT D- Post Email Follow up Phone Call Script

Good Morning/Afternoon Sir or Ma’am-

My name is Rachel Sartini and I am a Doctoral Candidate at Northeastern University. I am conducting research on the operations of public defense offices, focusing primarily on comparisons between the traditional models of public defense and the holistic model of public defense.

I had previously sent an email message requesting your participation in my study. Do you have a few minutes to discuss my research with me?

If yes, reiterate the following:

The purpose of this research is to review the different types of public defense systems and compare them with themes identified through literature reviews in order to provide large scale recommendations for systemic operations improvement. As this study is focusing solely on the public defender’s office operations and systemic processes, additional information regarding [insert office name]’s operation is needed.

I am hoping to schedule a time with you to ask you a few questions regarding my topic. Would you be willing to participate?

If no, then:

Thank you for your time. Should you change your mind and wish to participate, please email me at Sartini.r@husky.neu.edu.
### Appendix B

<table>
<thead>
<tr>
<th>Measures</th>
<th>Definition</th>
<th>Indicators</th>
</tr>
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<tbody>
<tr>
<td><strong>Public Defense Systemic Measures</strong></td>
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<tr>
<td>Independence/Lack of Independence</td>
<td>The ability of appointment and funding decisions impact public defenders vigorous defense. The extent to which fiscal and client selection pressure the defense counsel to defend their client less vigorously.</td>
<td>The more independent the methods of office funding are as well as the identification of the selection of public defenders, the more the system will demonstrate similarity to the independence measure. If each defense case is given a flat dollar amount to cover expenses, regardless of experts needed to provide a vigorous defense, the less similar the system will be as compared to independence. The more expansive the budget for providing a robust defense, the more independent the system.</td>
</tr>
<tr>
<td>Coverage</td>
<td>The population covered by the public defender office’s definition of indigent.</td>
<td>The greater the population eligible for public defense representation, the more the system demonstrates similarity to the coverage measure.</td>
</tr>
<tr>
<td>Workload/Excessive Caseloads</td>
<td>The maximum number of cases a public defense attorney is assigned to at any time, with some consideration given to the type of case assigned (i.e. felony, misdemeanor, etc.)</td>
<td>The more parameters surrounding how an attorney is assigned cases, the more similar to the workload measure. If there is consideration for the number of cases versus the number of clients, the number of cases potentially pleading out versus going to trial, and whether the cases are felony versus misdemeanor, the more similar the system is in comparison to the workload indicator.</td>
</tr>
<tr>
<td>Qualifications</td>
<td>The required qualifications and experience for employment in the public defense office.</td>
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<tr>
<td>----------------</td>
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<tr>
<td></td>
<td>The more education and experience required, the more similar the system is to the qualifications measure. Additionally, the office requires particular levels of experience in certain types of cases or with certain amount of trials before permitting the attorney to handle more complex cases.</td>
<td></td>
</tr>
<tr>
<td>Support Services/Underfunding</td>
<td>The extent to which the public defender system has access to additional resources necessary to provide a thorough and vigorous defense, such as social workers, private investigators, psychologists, and other specialty groups.</td>
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<tr>
<td></td>
<td>The more resources imbedded within the public defense office or available to the public defenders, the more similar the system is in comparison to the support services measure. The support services personnel ratio should be in proportion based upon the number of clients served.</td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td>The extent to which the public defender office provides education or training “in house” or the extent the public defender office subsidizes and encourages outside training opportunities.</td>
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<td></td>
<td>The more education the public defender office provides, the more similarity the system is to the training measure. Alternatively, if a public defender office does not provide education, but the entity encourages and approves training opportunities, the more similar the system is to the training indicator. One is not more important than the other.</td>
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**Public Defense Quality Measures**

<table>
<thead>
<tr>
<th>Notification Time</th>
<th>The duration of time that elapses between the attorney being assigned and the client being notified of the attorney assignment.</th>
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<tr>
<td></td>
<td>The less time that elapses between the assignment of the attorney and the notification to the client, the more similar the system is to the notification time measure. If clients are not notified at the same time the attorney is assigned, the less similar the system is when compared to the notification time measure.</td>
</tr>
<tr>
<td>Access to Counsel/No Counsel At All</td>
<td>The extent to which the defendant has contact with their assigned attorney.</td>
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<td>------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Lack of Enforceable Standards</td>
<td>The extent to which the public defender’s office adheres to the goals provided by the Ten Principles of a Public Defense Delivery System (ABA, 2002): Client-centered practice; meet clients’ needs; partner with the community; fix systemic problems; educate the public; collaborate; address civil legal needs; pursue a multidisciplinary approach; seek necessary support; and engage with fellow community oriented defenders.</td>
</tr>
</tbody>
</table>
Appendix C

Questions for Guided Telephone Interviews:

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