Executive Summary Status of Indigent Defense in Georgia: A Study for the Chief Justice's Commission on Indigent Defense, Part I At the request of the Chief Justice's Commission on Indigent Defense, in December 2001, the Georgia Administrative Office of the Courts contracted with The Spangenberg Group (TSG) to conduct a comprehensive study of indigent defense that the Commission would use to assist in completing its task of studying the status of indigent defense in Georgia and developing a strategic plan to improve the system.Formed in 1985, TSG is a nationally and internationally recognized criminal justice research and consulting firm that specializes in indigent defense services. TSG has conducted research in all 50 states and provides consultative services to developing and developed countries which are reforming their legal aid delivery programs. TSG has conducted comprehensive statewide studies of indigent defense systems in more than half of the states. In addition, The Spangenberg Group has conducted several prior studies of indigent defense in Georgia; thus, TSG already had familiarity with Georgia's indigent defense system before undertaking the statewide study.The methodology for the study included: review of reports and data on Georgia's indigent defense system from numerous sources, including the Georgia Indigent Defense Council, the Southern Center for Human Rights, the Georgia State Bar, the Administrative Office of Courts, and the American Bar Association's Juvenile Justice Center; on-site assessments of the indigent defense systems in 19 counties; and collection and analysis of comparison information from other states' indigent defense systems. The 19 counties were selected to be representative of Georgia's 10 judicial administrative districts, geography and population, and to reflect a diversity of indigent defense system types (contract, assigned counsel, public defender). The combined population in the 19 counties represents 45% of the state's population. In each county visited, we met with people who participate in or are involved with indigent defense services, including superior court judges, state court judges, juvenile court judges, magistrate court judges, the district attorneys and/or staff, public defenders, panel and contract attorneys, tripartite committee members, indigent defense administrators, county commissioners, and sheriffs or jailers familiar with indigent defense procedures. In addition to meeting with these individuals, we observed criminal court sessions in most counties. In a number of counties, we met with court administrators, solicitors general and probation staff. We also met with indigent defendants awaiting trial to obtain their impressions of how well the local indigent defense systems functioned. In total, we spent over 100 days in Georgia conducting interviews with hundreds of individuals. **FINDINGS**The Spangenberg Group's findings reflect our overall impressions of Georgia's indigent defense system. These impressions are based primarily upon our site work in the 19 sample counties, including our interviews with hundreds of individuals whose work involves the handling of cases of indigent criminal defendants, juveniles accused of delinquency, and deprivation matters. Additionally, in making the findings, we used quantitative data, such as caseload and budget figures, assigned counsel fee schedules, Administrative Office of the Courts caseload data, and other secondary information such as court orders from litigation concerning systemic deficiencies of indigent defense in Georgia, various reports and press clips. We also relied on information and testimony presented at the monthly meetings of the Chief Justice's Commission on Indigent Defense. Finally, the findings are based on the

perspective and experience TSG has gained by working in Georgia over the years. The black letter findings appear below: the full findings with explanation appear at the end of the report.**BLACK LETTER FINDINGS**A lack of program oversight and insufficient funding are the two chief problems underlying a complete absence of uniformity in the administration of and quality of indigent defense services throughout the 19 Georgia counties we studied. State funds constitute a very low percentage of total funding for indigent defense in Georgia. While most people interviewed in our site work support increased state funds for indigent defense, some people, especially judges, continue to oppose increased centralized oversight of indigent defense in Georgia. Two of the biggest problems facing indigent defense in Georgia and efforts to improve it are its lack of independence from the judiciary, and a steadfast unwillingness on the part of some judges in the state to support a system that grants this independence. Under Georgia law, judges have inherent power to appoint counsel to represent indigent defendants and to order compensation and reimbursement from county funds in individual cases as the proper administration of justice may require. However, the wide discretion given to judges in some counties over attorney selection at the very least creates the potential for conflicts of interest and the appearance of conflicts of interest. In most of Georgia's local indigent defense programs, there are few mechanisms in place to guarantee that defense lawyers are consistently held accountable for the quality of representation they provide to indigent defendants. Lack of consistency and accountability have a deleterious impact on the consistency and quality of representation provided to indigent defendants from county to county and often result from wide variations in local criminal justice system practice. 8. The model of the tripartite committee, while seemingly laudatory on paper, has, in practice, failed to effectively monitor or administer indigent defense in many counties. **The model of state grant-making and local control has not worked.9**. **There is no effective statewide advocate for indigent defense in Georgia. 10. Georgia counties are not accountable for the quality or structure of their indigent defense systems. In addition, just as there is no effective statewide advocate for indigent defense in Georgia, in many counties, there is no effective advocate for indigent defense at the county level. 11. There is a common viewpoint among some judges, prosecutors, jail personnel and even some defense lawyers that indigent defendants facing minor charges do not need or want lawyers, even when they are entitled to appointed counsel by law. 12. Georgia's large number of counties and its multi-layered court system make improvements to indigent defense a particularly daunting task. 13. Major problems were found surrounding requests for investigators or expert witnesses. 14. There are continuing problems concerning the availability of qualified interpreters to assist indigent defendants and their lawyers, despite a recent Supreme Court initiative designed to correct these problems. Many indigent defendants in Georgia do not speak English; thus, access to trained, professional interpreters who speak various languages and dialects is crucial. 15. Georgia lacks a systematic approach to identifying and assisting indigent defendants who suffer from mental illness. 16. Based upon data from GIDC, the cost per capita for indigent defense in Georgia for FY 2001 was approximately $5.68, ranking Georgia eighth out of 11 states for which we have comparison information in per capita state and county expenditures. 17. None of the 19 counties we visited provide sufficient funds to assure quality representation to all indigent defendants. 18.**

There is an imbalance of resources between prosecution and indigent defense in Georgia. 19. The public defender system is used by far fewer counties than appointed or contract attorneys. 20. In most of the counties we visited, there are no minimum eligibility criteria for attorneys who wish to accept court-appointed cases. 21. In the majority of counties we visited, there are no requirements that attorneys taking court-appointed cases participate in continuing legal education programs in criminal law. 22. Individuals who make use of GIDC's special divisions praised their effectiveness. 23. Georgia is the only state in the country that does not provide a right to counsel in capital post-conviction (habeas corpus) cases. 24. Superior courts in several counties visited mandate that all practicing attorneys participate on the courts' assigned counsel panels, regardless of the attorneys' interest in or aptitude for criminal defense. 25. Early representation is uneven and problematic in some areas: sometimes there is no involvement of counsel until arraignment, even in counties where indictment can take up to one year from arrest. 26. Delay in early involvement of counsel is attributed to various factors.27. Some of the more alarming problems in Georgia's indigent defense system are found in the treatment of juveniles accused of delinquent offenses. 28. There is inconsistency among counties in the way in which deprivation cases are handled. 29. There is a lack of reliable and comprehensive statewide data on indigent defense in Georgia.30. There is a perception by some that State Grants to Counties distributed by GIDC are used to supplant, not to supplement, county funding for indigent defense. 31. In considering improvements to indigent defense in Georgia, it is important to recognize that some problems facing the indigent defense systems in predominantly rural counties differ from those in predominantly metropolitan counties. 32. While we found many indigent defense practices that concern us, we found a number of practices that deserve favorable mention. Most of these practices were developed to address problems in the local indigent defense or criminal case processing systems.33. Few of the counties we visited had Pre-Trial Services Offices helping eligible indigent defendants who cannot afford their bonds to get out of jail pre-trial, thus easing pre-trial jail population overcrowding. 34. A few judges told us they felt under pressure from counties to contain or reduce indigent defense expenditure. 35. Jail overcrowding is a problem for jails in Georgia. Prologue vi

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Executive Summary
Status of Indigent Defense in Georgia:
A Study for the Chief Justice's Commission on Indigent Defense, Part I

At the request of the Chief Justice's Commission on Indigent Defense, in December 2001, the Georgia Administrative Office of the Courts contracted with The Spangenberg Group (TSG) to conduct a comprehensive study of indigent defense that the Commission would use to assist in completing its task of studying the status of indigent defense in Georgia and developing a strategic plan to improve the system.

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The methodology for the study included:

- review of reports and data on Georgia's indigent defense system from numerous sources, including the Georgia Indigent Defense Council, the Southern Center for Human Rights, the Georgia State Bar, the Administrative Office of Courts, and the American Bar Association's Juvenile Justice Center;
- on-site assessments of the indigent defense systems in 19 counties; and
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In addition to meeting with these individuals, we observed criminal court sessions in most counties. In a number of counties, we met with court administrators, solicitors general and probation staff. We also met with indigent defendants awaiting trial to obtain their impressions of how well the local indigent defense systems functioned. In total, we spent over 100 days in Georgia conducting interviews with hundreds of individuals.

FINDINGS

The Spangenberg Group's findings reflect our overall impressions of Georgia's indigent defense system. These impressions are based primarily upon our site work in the 19 sample counties, including our interviews with hundreds of individuals whose work involves the handling of cases of indigent criminal defendants, juveniles accused of delinquency, and deprivation matters. Additionally, in making the findings, we used quantitative data, such as caseload and budget figures, assigned counsel fee schedules, Administrative Office of the Courts caseload data, and other secondary information such as court orders from litigation concerning systemic deficiencies of indigent defense in Georgia, various reports and press clips. We also relied on information and testimony presented at the monthly meetings of the Chief Justice's Commission on Indigent Defense. Finally, the findings are based on the perspective and experience TSG has gained by working in Georgia over the years. The black letter findings appear below: the full findings with explanation appear at the end of the report.

BLACK LETTER FINDINGS

1. A lack of program oversight and insufficient funding are the two chief problems underlying a complete absence of uniformity in the administration of and quality of indigent defense services throughout the 19 Georgia counties we studied.

2. State funds constitute a very low percentage of total funding for indigent defense in Georgia.

3. While most people interviewed in our site work support increased state funds for indigent defense, some people, especially judges, continue to oppose increased centralized oversight of indigent defense in Georgia.

4. Two of the biggest problems facing indigent defense in Georgia and efforts to improve it are its lack of independence from the judiciary, and a steadfast unwillingness on the part of some judges in the state to support a system that grants this independence.

5. Under Georgia law, judges have inherent power to appoint counsel to represent indigent defendants and to order compensation and reimbursement from county funds in individual cases as the proper administration of justice may require. However, the wide discretion given to judges in some counties over attorney selection at the very least creates the potential for conflicts of interest and the appearance of conflicts of interest.

6. In most of Georgia's local indigent defense programs, there are few mechanisms in place to guarantee that defense lawyers are consistently held accountable for the quality of representation they provide to indigent defendants.

7. Lack of consistency and accountability have a deleterious impact on the consistency and

quality of representation provided to indigent defendants from county to county and often result from wide variations in local criminal justice system practice.

8. The model of the tripartite committee, while seemingly laudatory on paper, has, in practice, failed to effectively monitor or administer indigent defense in many counties. **The model of state grant-making and local control has not worked.**

9. **There is no effective statewide advocate for indigent defense in Georgia.**

10. Georgia counties are not accountable for the quality or structure of their indigent defense systems. In addition, just as there is no effective statewide advocate for indigent defense in Georgia, in many counties, there is no effective advocate for indigent defense at the county level.

11. There is a common viewpoint among some judges, prosecutors, jail personnel and even some defense lawyers that indigent defendants facing minor charges do not need or want lawyers, even when they are entitled to appointed counsel by law.

12. Georgia's large number of counties and its multi-layered court system make improvements to indigent defense a particularly daunting task.

13. Major problems were found surrounding requests for investigators or expert witnesses.

14. There are continuing problems concerning the availability of qualified interpreters to assist indigent defendants and their lawyers, despite a recent Supreme Court initiative designed to correct these problems. Many indigent defendants in Georgia do not speak English; thus, access to trained, professional interpreters who speak various languages and dialects is crucial.

15. Georgia lacks a systematic approach to identifying and assisting indigent defendants who suffer from mental illness.

16. Based upon data from GIDC, the cost per capita for indigent defense in Georgia for FY 2001 was approximately $5.68, ranking Georgia eighth out of 11 states for which we have comparison information in per capita state and county expenditures.

17. None of the 19 counties we visited provide sufficient funds to assure quality representation to all indigent defendants.

18. There is an imbalance of resources between prosecution and indigent defense in Georgia.

19. The public defender system is used by far fewer counties than appointed or contract attorneys.

20. In most of the counties we visited, there are no minimum eligibility criteria for attorneys who wish to accept court-appointed cases.

21. In the majority of counties we visited, there are no requirements that attorneys taking court-appointed cases participate in continuing legal education programs in criminal law.

22. Individuals who make use of GIDC's special divisions praised their effectiveness.

23. Georgia is the only state in the country that does not provide a right to counsel in capital post-conviction (habeas corpus) cases.

24. Superior courts in several counties visited mandate that all practicing attorneys participate on the courts' assigned counsel panels, regardless of the attorneys' interest in or aptitude for criminal defense.

25. Early representation is uneven and problematic in some areas: sometimes there is no involvement of counsel until arraignment, even in counties where indictment can take up to one year from arrest.

26. Delay in early involvement of counsel is attributed to various factors.

27. Some of the more alarming problems in Georgia's indigent defense system are found in the treatment of juveniles accused of delinquent offenses.

28. There is inconsistency among counties in the way in which deprivation cases are handled.

29. There is a lack of reliable and comprehensive statewide data on indigent defense in Georgia.

30. There is a perception by some that State Grants to Counties distributed by GIDC are used to supplant, not to supplement, county funding for indigent defense.

31. In considering improvements to indigent defense in Georgia, it is important to recognize that some problems facing the indigent defense systems in predominantly rural counties differ from those in predominantly metropolitan counties.

32. While we found many indigent defense practices that concern us, we found a number of practices that deserve favorable mention. Most of these practices were developed to address problems in the local indigent defense or criminal case processing systems.

33. Few of the counties we visited had Pre-Trial Services Offices helping eligible

indigent defendants who cannot afford their bonds to get out of jail pre-trial, thus easing pre-trial jail population overcrowding.

34. A few judges told us they felt under pressure from counties to contain or reduce indigent defense expenditure.

35. Jail overcrowding is a problem for jails in Georgia.

Prologue

On May 20, 2002, the U.S. Supreme Court declared that the Sixth Amendment's guarantee of the assistance of counsel forbids imposition of a suspended sentence of imprisonment upon an indigent defendant who has neither been offered a court-appointed lawyer nor properly waived the right to counsel. *Alabama v. Shelton*, 122 S. Ct. 1764 (2002). In *Shelton*, indigent defendant LeReed Shelton was tried in an Alabama court on a third-degree assault charge, was not offered state-paid counsel and represented himself. He was convicted and sentenced to 30 days in jail, but the judge immediately suspended the sentence and placed him on probation. Shelton appealed his conviction on Sixth Amendment grounds.

Looking at current practices around the country, the majority declared that its rule should not be unduly burdensome to states. The court noted that in many states, a defendant in Shelton's situation would have been entitled to counsel at trial, even without the Supreme Court so requiring.

The site work for the following report was conducted before the Supreme Court issued its *Shelton* opinion, thus the issue of whether counsel is appointed to indigent defendants facing minor misdemeanor charges in Georgia was not fully explored in the research. The types of cases that *Alabama v. Shelton* addresses are tried primarily in municipal, magistrate, recorder's, probate and state courts. With the exception of state courts, these lower courts were not a focus of the site work for this report. However, even though the practices of lower courts were not thoroughly investigated, it became apparent during the site work that indigent misdemeanor defendants often are not offered counsel in these courts, many of which are not courts of record. This practice has more serious implications than it did before *Shelton* was issued.

Recognizing that *Alabama v. Shelton*'s expansion of the right to counsel will require change and exert financial strain in Georgia, the Chief Justice's Commission on Indigent Defense requested that The Spangenberg Group conduct a review of the practices in Georgia's lower courts after work on this initial report had been completed. The forthcoming "*Shelton*" report will help the Commission complete its recommendations on improving indigent defense in Georgia.

CHAPTER 1
INTRODUCTION

In December 2000, former Chief Justice Robert Benham and the Justices of the Supreme Court of Georgia appointed a commission to review indigent defense in the State of Georgia. Major impetus for creation of the Chief Justice's Commission on Indigent Defense came from a January 2000 resolution of the State Bar of Georgia endorsing the formation of such an entity to "investigate the current system of providing indigent legal defense in Georgia, including its funding, structure and administration, and recommend any changes to the current system as the commission might propose." In July, 2000, the Council of Superior Court Judges adopted a resolution supporting creation of a study committee on indigent defense and seeking superior court judge involvement. In the order creating the commission, the Chief Justice's charge to commission members was to "study the status of indigent defense in Georgia, to develop a strategic plan and to set a timetable for its implementation." Charles R. Morgan, Executive Vice President and General Counsel of BellSouth Corporation, was named the Chairperson of the broadly based commission.[1]

[1] Other members include: University of Georgia School of Law Associate Dean Paul Kurtz (Commission Reporter); State Court Judge A. Harris Adams; 11th Circuit Court of Appeals Judge Stanley F. Birch, Jr.; Senate Judiciary Committee Member Michael Meyer von Bremen; Senate Judiciary Committee Secretary Robert Brown; Clay, Wilson & Rodgers, P.C. Attorney Charles C. Clay; House Appropriations Committee Chairperson Terry Coleman; Georgia Indigent Defense Council Chairperson Flora Devine; State Bar of Georgia Indigent Defense Committee Chairperson Wilson DuBose; Superior Court Judge C. Andrew Fuller; Association of County Commissioners of Georgia Executive Director Jerry Griffin; House Judiciary Committee Member Allen Hammontree; Director of Georgia Legal Services Phyllis Holmen; Life of the South Insurance Company Vice Chairman Paul Holmes; Emory University School of Law Executive Vice President for Academic Affairs and Provost Howard O. Hunter; McKenna, Long & Aldrige, P.C. Attorney R. William Ide, III; House Special Judiciary Committee Chairperson Curtis Jenkins; Clayton Judicial Circuit District Attorney Robert Keller; Lawson & Thornton, P.C. Attorney George Lawson; Sutherlan, Asbill & Brennan, P.C. Attorney Charles T. Lester; Powel, Goldstein, Frazier & Murphy, L.L.P Attorney Aasia Mustakeem; Page, Scronton, Sprouse, Tucker & Ford, P.C. Attorney Miller Peterson ("Pete") Robinson; Superior Court Judge Billy Ray; Superior Court Judge Lawton Stephens; and Superior Court Judge A. Blenn Taylor.

The commission met monthly in an open public forum, inviting various individuals to provide their firsthand impressions of their experience with Georgia's indigent defense system. Individuals appearing before the commission included lawyers providing legal representation to indigent defendants in Georgia, representatives of civil rights groups in Georgia, administrators of the Georgia Indigent Defense Council, administrators of local indigent defense systems in the state, judges, district attorneys and sheriffs. The commission also invited representatives from other states to discuss their states' indigent defense delivery systems as well as the various national standards and guidelines on indigent defense. Guests included members of The Spangenberg Group (TSG), a research and consulting firm specializing in the study of indigent defense systems in the United States.

Initial participation by TSG was provided on behalf of a joint project between the American Bar Association and the U.S. Department of Justice Bureau of Justice Assistance. The State Commissions Project was a two-year effort to provide technical assistance to states that had formed study commissions such as the Chief Justice's Commission on Indigent Defense to review and make recommendations for improvement to indigent defense systems.[2] The project's funding period ended before the Georgia commission's work was completed. Through its monthly meetings, the commission gained a great deal of knowledge of how indigent defense is administered in Georgia. However, the commission members are all extremely busy people, and lacked the time to undertake an in-depth, on-site evaluation of indigent defense in the state. Thus, at the request of the commission, in December 2001, the Administrative Office of the Courts contracted with The Spangenberg Group to conduct a comprehensive study of indigent defense that the commission would use to assist in completing its task of studying the status of indigent defense in Georgia and developing a strategic plan to improve the system.

Formed in 1985, TSG is a nationally and internationally recognized criminal justice research and consulting firm that specializes in indigent defense services. TSG has conducted research in all 50 states and provides consultative services to developing and developed countries which are reforming their legal aid delivery programs. For over 15 years, TSG has been under contract with the American Bar Association's Bar Information Program (BIP), which provides support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems. TSG has conducted comprehensive statewide studies of indigent defense systems in more than half of the states.[3]

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[2] **In addition to Georgia, assistance under the State Commissions Project was provided to study groups in Alabama, Illinois, North Carolina, Nevada, Oregon, Texas and Vermont. In three of these states - North Carolina, Oregon and Texas - the study efforts led to significant legislative improvements to the local indigent defense systems.**

[3] **TSG has conducted statewide indigent defense studies in the following states: Alabama, Alaska, Arkansas, Arizona, Connecticut, Delaware, Florida, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia and Wisconsin.**

In addition, The Spangenberg Group has conducted several prior studies of indigent defense in Georgia, including:

- *Overview of the Fulton County, Georgia Indigent Defense System* (1990);
- *A Review of the Fulton County Conflict Defender* (1998);
- *Comparative Analysis of Indigent Defense Expenditures and Caseloads in States with Mixed State & County Funding* (1997-98); and
- *A Review of the Legal Aid and Defender Clinic at the University of Georgia, Athens, Georgia* (1999).

All of these studies were conducted by The Spangenberg Group under its contract with the American Bar Association's Bar Information Program.

1.1 METHODOLOGY

The methodology for this study included:

- review of reports and data on Georgia's indigent defense system from numerous sources, including the Georgia Indigent Defense Council, the Southern Center for Human Rights, the Georgia State Bar, the Administrative Office of the Courts, and the American Bar Association's Juvenile Justice Center;
- on-site assessments of the indigent defense systems in 19 counties; and
- collection and analysis of comparison information from other states' indigent defense systems.

The 19 counties were selected to be representative of Georgia's 10 judicial administrative districts, geography and population, and to reflect a diversity of system types (contract, assigned counsel, public defender). A listing of the counties appears in Table 1-1. In each of the 19 counties visited, we met with people who participate in or are involved with indigent defense services, including:

- Superior court judges
- State court judges
- Juvenile court judges
- Magistrate court judges
- District Attorney and/or staff
- Public defender, panel and contract attorneys
- Tripartite committee members
- Indigent defense administrators
- County commissioners
- Sheriff or a jailer familiar with indigent defense procedures.

In addition to meeting with these individuals, we observed criminal court sessions in most counties (in some of the smaller counties criminal court was not sitting when we were visiting). In a number of counties, we met with court administrators, city solicitors and probation staff. We also met with indigent defendants awaiting trial to get their impressions of how well the local indigent defense systems functioned. In total, we spent over 100 days in Georgia conducting interviews with hundreds of individuals.

The combined population in the counties visited represents 45% of the state's population. In addition, many of the people interviewed in our sample counties were able to give us additional information about indigent defense in surrounding counties. Superior court judges and district attorneys in Georgia serve on a circuit-wide basis, and most judicial circuits contain more than one county. Many indigent defense lawyers accept appointments or contracts in multiple counties.

The task of scheduling appointments to meet with individuals in 19 counties over a three-month period was a daunting one. TSG is greatly appreciative of the assistance provided by the Administrative Office of the Courts and the District Court Administrators who assisted with scheduling interviews in several counties. Cynthia Hinrichs Clanton, General Counsel and Assistant Director for Grants and Special Projects with the Administrative Office of the Courts and Kendall Butterworth, Senior Litigation Counsel of BellSouth, provided superb contract and logistical assistance to TSG. In addition, we are appreciative of the warm reception given to us in all of the counties visited. People willingly gave of their time and spoke candidly with us about indigent defense in Georgia. In every county visited, we were greatly impressed with the graciousness of the people we interviewed.

Table 1-1
Georgia Supreme Court Indigent Defense Commission
Sample Counties

County	Population	Judicial District	Principal City	Type of System
0-25,000 25-50,000 50-20,000 200-500,000 500,000+ Fulton	816,006	5	Atlanta	Public Defender
DeKalb	665,865	4	Decatur	Public Defender
Cobb	607,751	7	Marietta	Panel, Contract
Clayton	236,517	6	Jonesboro	Panel
Chatham	232,048	1	Savannah	Panel
Richmond	199,775	10	Augusta	Panel, Public Defender
Bibb	153,887	3	Macon	Panel, Contract
Hall	139,277	9	Gainesville	Panel
Dougherty	96,065	2	Albany	Contract
Lowndes	92,115	2	Valdosta	Panel
Floyd	90,565	7	Rome	Contract
Houston	110,756	3	Perry	Public Defender, Panel
Spalding	58,417	6	Griffin	Contract
Bulloch	55,983	1	Statesboro	Panel
Baldwin	44,700	8	Milledgeville	Panel
Habersham	35,902	9	Clarkesville	Public Defender
Toombs	26,067	8	Lyons	Contract
McDuffie	21,231	10	Thomson	Contract

Dodge	19,171	8	Eastman	Contract

CHAPTER 2
THE GEORGIA COURT SYSTEM

The Georgia court system is divided into 10 judicial districts and includes more than 800 individual courts, over 860 judges and over 500 magistrates. As of July 2002, there were 7 Supreme Court justices; 12 Court of Appeals judges; 188 superior court judges serving 49 circuits; 105 state court judges (62 full-time and 43 part-time) in 70 courts; 93 judges and 30 associate juvenile court judges in 159 juvenile courts; 159 probate judges in 159 courts; and 159 chief magistrates and 346 magistrates in 159 courts.[4] In addition, there are approximately 415 judges serving 375 municipal courts plus 10 special courts in the state. Under Georgia's right to counsel mandates, indigent defendants should be eligible for appointed counsel in all of these courts.

2.1 Jurisdiction

The Georgia Supreme Court has appellate jurisdiction over cases involving constitutional issues, title to land, validity and construction of wills, habeas corpus, extraordinary remedies, convictions of capital felonies, equity, divorce, alimony and election contest. It also accepts certified questions and certiorari from the Court of Appeals.

The Georgia Court of Appeals has appellate jurisdiction over cases from lower courts in which the Supreme Court has no exclusive appellate jurisdiction.

Superior court hears jury trials and has general jurisdiction in civil law actions, misdemeanors and other cases. The superior court has exclusive felony jurisdiction. It also has exclusive jurisdiction over cases involving divorce, title to land and equity.

State court hears jury trials and has limited jurisdiction over misdemeanors and traffic cases. It holds preliminary hearings in felony cases and has unlimited jurisdiction over civil actions except those cases within the exclusive jurisdiction of superior court.

Juvenile court has limited jurisdiction over deprived, unruly and delinquent juveniles,

[4] *See Your Guide to the Georgia Courts*, prepared by the Administrative Office of the Courts.

and hears termination of parental rights cases. It also hears juvenile traffic cases. There are no jury trials in juvenile court, and in some counties, superior court judges also serve as judges of the juvenile court.

Probate Court has limited jurisdiction in traffic and truancy cases in some counties and exclusive jurisdiction in probate of wills, administration of estates, appointment of guardians, cases involving issues of mental illness, involuntary hospitalization and marriage licenses. It issues search and arrest warrants in certain cases and holds courts of inquiry. It also hears miscellaneous misdemeanors. Jury trials are authorized in civil matters where the county population exceeds 96,000 and the judge is an attorney.

Magistrate court, which does not have jury trials, has limited jurisdiction in search and arrest warrants, felony preliminary hearings, misdemeanors, county ordinance violations, civil claims of $15,000 or less, dispossessories and distress warrants.

Municipal Court hears traffic-related misdemeanors, city ordinance violations and holds preliminary hearings in traffic-related felony cases. Most municipal courts do not have jury trials. Recorder's Court has the same jurisdiction as Municipal Court.

CHAPTER 3
THE RIGHT TO COUNSEL AND INDIGENT DEFENSE IN GEORGIA

3.1 THE RIGHT TO COUNSEL IN GEORGIA

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right. . . to have the Assistance of Counsel for his defence."[5] A body of U.S. Supreme Court case law, with *Gideon v. Wainwright*[6] as its centerpiece, clarifies that the federal constitutional right to counsel applies to state criminal prosecutions through the Fourteenth Amendment's due process clause and requires government appointment of an attorney to represent a person who cannot afford legal representation in a broad array of cases and proceedings.[7]

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[5] U.S. CONST., amend. VI.

[6] **372 U.S. 335 (1963).**

[7] **The federal right to appointed counsel for indigent defendants, where so desired, was first mandated for defendants facing a sentence of death in trial cases. *Powell v. Alabama,* 287 U.S. 45 (1932). *Gideon* extended that right to indigent defendants charged with a _serious_** crime, and later opinions extended the right to additional cases and critical proceedings: any crime, including misdemeanor and petty offense cases, that actually leads to imprisonment - *Argersinger v. Hamlin*, 407 U.S. 25 (1972); any crime, including a minor misdemeanor, where defendant receives a suspended or probated sentence to imprisonment - *Alabama v. Shelton*, No. 00-1214 (May 20, 2002); direct appeals (in states that provide that process) - *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation - ***Miranda v. Arizona,* 384 U.S. 436 (1967); juvenile proceedings resulting in possible confinement - *In re Gault,* 387 U.S. 1 (1967); post-indictment lineups - *U.S. v. Wade,* 388 U.S. 218 (1967) and *Gilbert v. California,* 388 U.S. 263 (1967); critical stages of preliminary hearings - *Coleman v. Alabama,* 399 U.S. 483, (1969); certain probation and parole revocation hearings - *Gagnon v. Scarpelli,* 411 U.S. 778 (1973);**

The Georgia Constitution tracks the U.S. Constitution, providing that "[e][very person charged with an offense against the laws of this state shall have the privilege and benefit of counsel."[8] Likewise, Georgia case law on the right to counsel closely tracks *Gideon* and its progeny. Georgia case law exceeds federal mandates in some areas. For example, Georgia law provides for the right to counsel in terminations of parental rights proceedings, and deprivation and unruly cases.

3.2 INDIGENT DEFENSE IN GEORGIA

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collateral attack (in limited circumstances) - *Johnson v. Avery*, 393 U.S. 483 (1969). There is no federal constitutional right to counsel in state post conviction proceedings.

[8] GA. CONST., art. I sec. 1, ¶ XIV.

Five years after *Gideon*, Georgia legislators enacted the Georgia Criminal Justice Act, which placed the funding and operational responsibility for indigent defense on the shoulders of counties.[9] This approach to operating and funding indigent defense has led to substantial inconsistency in the way indigent defense is provided, overseen and implemented in Georgia's 159 counties.

In 1979, a decade after passing the Criminal Justice Act, the General Assembly enacted the Georgia Indigent Defense Act, which created the Georgia Indigent Defense Council as a separate agency within the judicial branch of state government.[10] The Georgia Indigent Defense Council was established to develop statewide indigent defense policy and promulgate proposed guidelines, to be approved by the Supreme Court, providing for the operation of local indigent defense systems. A major objective of creating such an entity was to do something the Georgia Criminal Justice Act had failed to accomplish: provide for greater uniformity and overall improvement in the provision of indigent defense services throughout the state.

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[9] **Local courts were given the responsibility for ensuring that counsel appointed to represent indigent defendants are competent. Georgia Laws 1968, p. 999** § 1 provides:

> [N]o person may be assigned the primary responsibility of representing an indigent person unless he is authorized to practice law in this state and is otherwise competent to counsel and defend a person charged with a crime. Competence shall be determined by the court concerned at the first court proceeding after the assignment of counsel. . . .

Section 1., at § 4 states: "**The county governing authority shall pay assigned attorneys the amounts prescribed in this Code section from public funds available for the operation of the courts in the county."**

[10] *See* Georgia Indigent Defense Act, O.C.G.A. §17-12-32.

Today, the Council has 15 members, all of whom are appointed by Georgia's Supreme Court. The Council's membership includes one active member of the State Bar of Georgia from each of the 10 judicial administrative districts, three non-lawyers selected from the state at-large, and two additional members, one who is a member of a metropolitan governing authority and the other who is a member of a non-metropolitan county governing authority.[11]

Several years ago GIDC established an Advisory Committee to (1) groom potential Council members and (2) forge high-level links between criminal justice agencies and GIDC. The Advisory Committee was created after GIDC consulted with the Attorney General's Office about its legality. The first member was former Chief Justice Harold Clarke, who continues to serve on the Committee.[12]

3.3 THE GEORGIA INDIGENT DEFENSE COUNCIL

As stated before, the Georgia Indigent Defense Council (GIDC) was established in 1979 as a separate agency within the judicial branch of State government to carry out the mandates of the Indigent Defense Act, including the right to counsel and equal protection under the laws throughout Georgia.

The journey leading to the creation and eventual funding of GIDC was lengthy and is told with great detail in *A Brief History of the Georgia Indigent Defense Council*, by Michael Mears. It is important to recap portions of the story here, as it illustrates how difficult it has been to effect change and improvement to indigent defense in Georgia.

The State Bar has been pushing for statewide improvements to indigent defense in Georgia for almost 40 years. In 1964, the Bar's Board of Governors created a Special Committee

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[11] ***See*** O.C.G.A. §17-12-32.

[12] In June, 2002, the Advisory Committee members were: Former First Lady Rosalynn Carter; former Chief Justice Harold Clarke; William A. ("Bill") Cooper, Director, Cobb County Chamber of Commerce; C. Andrew Fuller, Liaison for Council of Superior Court Judges, Chief Judge, Northeastern Judicial Circuit; Carol Hunstein, Liaison for Supreme Court of Georgia, Justice, Supreme Court of Georgia; Michael Light, Executive Assistant to the Commissioner Georgia Department of Corrections; Orlando Martinez, Commissioner, Department of Juvenile Justice; Marion T. Pope, Jr., Liaison for Georgia Court of Appeals, Presiding Judge, Georgia Court of Appeals; Lawton E. Stephens, Liaison for Council of Superior Court Judges, Superior Court Judge, Western Circuit; Charles J. Topetzes, Director of Paroles, State Board of Pardons and Paroles.

on Assistance to Indigent Criminal Defendants and instructed the Committee to study the feasibility of establishing a statewide indigent defense delivery system. The committee submitted its feasibility study to the Board in 1965, along with a draft of proposed legislation entitled "The Defense of Indigents Act." The Board of Governors promptly adopted a resolution approving the Defense of Indigents Act as a goal and urged its enactment by the Georgia General Assembly.

According to *A Brief History of the Georgia Indigent Defense Council*, the General Assembly was persuaded in part by lobbying by district attorneys and superior court judges not to pass the Defense of Indigents Act. However, pressure from the State Bar and the Younger Lawyers Section led to passage in 1968 of the Georgia Criminal Justice Act. Still, by 1972, with a substantially broadened mandate to provide counsel to indigent defendants having been recognized by the U.S. Supreme Court (see footnote 7), the State Bar was even more insistent that a statewide indigent defense system be created to ensure that effective representation was provided in all indigent cases.

In 1973, the Criminal Justice Committee of the State Bar conducted another feasability study on the need for appointed counsel in criminal cases throughout the State. This study, which was jointly funded by the State Planning Agency, a grant from the federal Law Enforcement Assistance Administration (LEAA) and by the State Crime Commission, was intended "[t]o develop a body of information which can be used by the legislature in its next session as it tries to find the best solution to this problem for the State of Georgia."[13] It is striking how similar the findings in that 1973 study are to findings from our study in 2002. For example: "Standards of indigency are not uniformly defined or applied throughout the State," . . . "very few counties are spending an adequate amount of money for provision of counsel," . . . and "such critical matters as when counsel is offered and how the issue of waiver is handled receive widely varying treatment."[14] The *Survey of Indigent Defense Needs in the State of Georgia* recommended that a statewide system be created to address the problems in the county-administered system.

Despite this extensive effort to review and document problems, the General Assembly continued to rely on the Criminal Justice Act of 1968, which left responsibility for funding and organizing indigent defense services solely with the counties. The State Bar was not discouraged by the lack of response by the state legislature. The Bar created a private, nonprofit organization called the Georgia Criminal Justice Council that would continue to pursue implementation of a statewide indigent defense system. Working at first with grants from the Department of Human Resources and State Crime Commission, the Criminal Justice Council worked on developing a framework for a statewide delivery system as well as a plan for funding such a system. Eventually, in order to qualify for state funding from the State Crime Commission, the agency, through issue of an Executive Order, became a quasi-state agency

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[13] *A Brief History of the Georgia Indigent Defense Council*, **p. 9**

[14] *A Brief History of the Georgia Indigent Defense Council*, **p. 10**

whose members were nominated by the State Bar and confirmed by the Georgia Judicial Council. The entity was to administer state and federal grants to assist counties and judicial circuits in carrying out the obligation of providing effective assistance of counsel to indigent defendants in all cases and other proceedings where there was a possibility of incarceration.

The Criminal Justice Council provided training to criminal defense lawyers and helped develop a number of local indigent defense programs. Initially funded with grant money from the State Crime Commission and the LEAA, state funding was progressively reduced. Also, its efforts to create a truly statewide system remained stymied by resistance from district attorneys and superior court judges who wanted to retain local control over indigent defense. The Georgia Criminal Justice Council ceased to exist after the Georgia Indigent Defense Council was created in 1979.

The creation of GIDC did not herald immediate improvement to indigent defense in Georgia. As soon as it was created, GIDC began drafting statewide guidelines. These guidelines were critically important because, under the Indigent Defense Act, local programs have to comply with the guidelines in order to qualify for state supplemental grants. Under the current system, county compliance with the guidelines is the key to greater uniformity in the provision of indigent defense services in Georgia. Before the Guidelines could be adopted by the Supreme Court, under the Indigent Defense Act, they had to be reviewed by the State Bar, Council of Superior Court Judges of Georgia, Council of Juvenile Court Judges, the State Court Judges and the Prosecuting Attorneys Council. The guidelines encountered protracted resistance over familiar territory: loss of local control replaced by "a central bureaucratic agency with dictatorial power and absolute control over indigent defense in Georgia."[15] They were not adopted by the Supreme Court until 1989.

GIDC's difficulties were not confined to getting its guidelines adopted by the Supreme Court. Its very livelihood was at risk for a decade due to inadequate funding. Funding for GIDC trickled to nothing by 1981, when the LEAA was de-funded and state funds for the agency were eliminated. The program closed its office from 1981 to 1989. When funding was restored, it was paltry: $1,000,000 in state funds to assist local indigent defense programs.

3.4 FUNDING FOR INDIGENT DEFENSE IN GEORGIA

Today GIDC is funded with three primary sources of revenue. The first and largest source is a state general fund appropriation, which is used to fund the Grants to Counties program. GIDC is permitted by statute to use 10% of the state Grants to Counties funding for overhead, although it has never done so. A separate state appropriation funds the Multi-County Public Defender. Since 1992, GIDC has received funds from a second revenue source, the State Bar's Interest on Lawyers Trust Account (IOLTA), to pay for staff and overhead: IOLTA funds

[15] *A Brief History of the Georgia Indigent Defense Council* **quoting a 1979 memorandum by Judge George A. Horkan to Judge Cloud Morgan, p. 35.**

are used as the organization's operating budget. A third revenue source is the Clerks and Sheriffs Fund. GIDC is the sole recipient of revenue from this fund, which consists of interest generated by accounts in which sheriffs are required to deposit all cash bonds and in which the clerks of state, superior, magistrate and probate courts are required to deposit all funds paid to the registry of the court. The Clerks and Sheriffs Fund revenue is allocated to counties in the same formula fashion as the state Grants to Counties (this formula is discussed in Section 3.6). GIDC is also authorized to keep 10% of this fund for overhead but has never done so. In addition, GIDC receives a state appropriation that partially funds its Improvement Grants program. In fiscal year 2002 the state legislature appropriated $237,935 for this program and GIDC supplemented this appropriation with funds from its operating budget.

Table 3-1 provides information on total indigent defense expenditure – state, county, IOLTA and Clerks and Sheriffs Fund – in Georgia between fiscal year 1992 and 2002 for the counties that applied for state grants. Table 3-2 provides information on total and average county expenditures for indigent defense made by the counties that applied for state grants in Georgia over the same period. (County expenditures for indigent defense are reported to GIDC on a calendar year basis. GIDC's funds for indigent defense are provided in a fiscal year format, thus Table 3-1 provides information in a combined calendar year/fiscal year format.) Table 3-1 shows that in FY 2001, state funds (Grants to Counties and Multi-County Public Defender) accounted for $5,893,227, or 11.6%, of total funding for indigent defense in Georgia.

The number of counties participating in the state grants program has fluctuated somewhat over the years. For example, 152 – all but seven – counties applied for FY 2002 funds. In the previous year, only 136 counties applied for State Grants to Counties funds. There are no data available on indigent defense expenditure from counties that do not apply for grant funds. Thus, overall indigent defense county expenditure information for calendar 2000 ($43,545,814) seems significantly higher than in calendar 1999 ($40,591,424). That is somewhat misleading, as the county expenditure data for 1999 omitted 16 counties that were included in 2000. Even more counterintuitive, according to Table 3-2, 140 counties spent less money on indigent defense in calendar 1998 ($36,880,228) than 136 counties spent in calendar 1999 ($40,591,424). In calendar 2000, 152 counties spent on average $286,486 on indigent defense. Table 3-1 shows that the best estimate of total expenditure on indigent defense in Georgia for fiscal year 2002 in the 152 counties for which expenditure information is available was $52,968,892.

Table 3-1
Total Indigent Defense Expenditure in Georgia

Year and Number of Counties		Local Funding		State Funding			Other Funding	*Total Indigent Defense Funding**
Year	*# of Counties Reporting*	*Total County Expenditure*[16]	*Clerks and Sheriffs Supplement*	*Grants to Counties*	*Multi-County Public Defender*	*Improvement Grants*	*GIDC Operating Funds (IOLTA)*	*Total*
CY90-FY92	119	$12,452,004	$0.00	$900,000	$0	$0	$335,620	**$13,687,624**
CY91-FY93	113	$15,627,010	$0.00	$1,004,700	$0	$0	$1,028,484	**$17,660,194**
CY92-FY94	110	$17,241,692	$393,876	$1,500,000	$0	$0	$1,140,624	**$20,276,192**
CY93-FY95	111	$21,068,244	$674,626	$2,500,000	$467,550	$0	$1,063,907	**$25,774,327**
CY94-FY96	117	$25,000,000	$929,857	$2,500,000	$500,000	$0	$1,276,625	**$30,206,482**
CY95-FY97	136	$30,209,299	$674,626	$2,500,000	$500,000	$0	$1,460,720	**$35,344,645**
CY96-FY98	141	$31,499,299	$1,183,158	$3,500,000	$784,487	$0	$1,625,893	**$38,592,837**
CY97-FY99	143	$33,790,717	$1,357,796	$4,000,000	$814,709	$0	$1,981,939	**$41,945,161**
CY98-FY00	140	$36,880,228	$1,420,637	$4,340,000	$900,000	$0	$1,854,679	**$45,395,544**
CY99-FY01	136	$40,591,424	$1,860,250	$4,890,000	$1,003,227	$0	$2,255,522	**$50,600,423**
CY00-FY02	152	$43,545,814	N/A	$5,990,000	$1,032,000	$237,935	$2,163,143	**$52,968,892**

***Total funding figures reflect data from the number of counties reporting for each year. So, for example, in FY 2002, total expenditure of $52,968,892 was spent in the 152 counties that reported expenditure information.**

[16] The indigent defense expenditure paid by the counties is recorded by calendar year. All other indigent defense expenditures are budgeted and paid on the fiscal year (June-July).

Table 3-2
Total and Average County Indigent Defense Funding for Counties Applying to GIDC Calender Year 1991-2000

Calender Year	*# of Counties Reporting*	*Total County Expenditure*	*Average County Expenditure*
1990	**119**	**$12,452,004**	**$104,639**
1991	**113**	**$15,627,010**	**$138,292**
1992	**110**	**$17,241,692**	**$156,743**
1993	**111**	**$21,068,244**	**$189,804**
1994	**117**	**$25,000,000**	**$213,675**
1995	**136**	**$30,209,299**	**$222,127**
1996	**141**	**$31,499,299**	**$223,299**
1997	**143**	**$33,790,717**	**$236,288**
1998	**140**	**$36,880,228**	**$263,430**
1999	**136**	**$40,591,424**	**$298,466**
2000	**152**	**$43,545,814**	$286,486

GIDC's mission is to "promote justice and fairness to all indigent persons charged with crimes or who are parties in a juvenile action, by providing fiscal and professional support that ensures effective indigent defense systems and high quality legal services in all courts, as mandated by the laws and constitutions of the United States and Georgia."[17] While the organization has a laudatory set of goals and takes on a number of activities and projects, its statutorily prescribed functions and duties are limited to four:

> 1. to administer funds provided by the state and federal governments to support local indigent defense programs;
> 2. to recommend uniform guidelines within which local indigent defense programs will operate;
> 3. to provide local programs and attorneys who represent indigent persons technical and research assistance, clinical and training programs, and other administrative services; and
> 4. to prepare budget reports and management information required for implementation of the Georgia Indigent Defense Act.[18]

Notably absent from this list is any express authority to intervene to improve indigent defense services at the local level.[19]

GIDC administers three grant programs: the Grants to Counties program, an Improvement Grants program, and a Discretionary Grant program. The Grants to Counties program is the Council's primary funding program, offering supplemental state funds to applicant counties based on a formula taking into consideration population, indigent defense caseloads and indigent defense expenditures. In FY 2001, GIDC made grants to 152 of Georgia's 159 counties with $4.89 million in state appropriated money and $1.86 million in interest gathered on Clerks and Sheriffs trust accounts. In other words, in FY 2001, roughly 11.6% of all funding for indigent defense came from funds distributed through formulae.

The Improvement Grants program offers "seed" money for new initiatives that are undertaken to make significant improvements to local indigent defense delivery systems. The program, which began in 2000, funds projects falling in seven program areas: early intervention,

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[17] The Georgia Indigent Defense Council 2001 Annual Report, p. 19.

[18] *See* O.C.G.A. §17-12-33.

[19] As discussed later, the Supreme Court guidelines do grant GIDC the power to terminate funding for local indigent defense programs that fail to comply with the guidelines.

caseload reduction, mental health speciality, public defender office enhancement, juvenile law, technology and a "catch-all" category. In 2001, $408,000 in state and private funding was shared among 43 counties.

The Discretionary Grant program, begun in 2001, offers counties a one-time grant of $20,000 for indigent defense. The funds are distributed to counties on a first come, first served basis, and counties must demonstrate an urgent need for additional indigent defense resources. There are no program area restrictions. Counties need not be receiving Grants to Counties funding to participate in the Improvement Grants and Discretionary Grant programs. In 2001 two counties shared the $20,000. Floyd County used its portion of the grant as part of the salary for a case manager in the county jail and Whitfield County used its portion to help fund a public defender in drug court.

Among other tasks, the Georgia Indigent Defense Council's Governmental Relations Division is responsible for administering the State Grants to Counties and Improvement Grants programs. It also serves as liaison between members of the Indigent Defense Council and members of the Georgia General Assembly on issues relating to funding for indigent defense and advocacy on issues of importance to indigent defense. The division has four staff members: a Division Director & Legislative Liaison, staff attorney, paralegal and an intern.

3.5 OTHER GIDC PROJECTS

The Georgia Indigent Defense Council has several divisions that perform functions other than administering grant funds to the counties.

3.5.1 Multi-County Public Defender

The Multi-County Public Defender was created as a division of GIDC by the General Assembly of Georgia in 1992 to serve as a resource center for trial attorneys representing indigent defendants facing a sentence of death. The program provides assistance in death penalty cases by 1) providing training and assistance to attorneys who have been appointed to represent defendants charged with capital offenses; 2) serving as co-counsel to assist local appointed lead counsel in the trial and direct appeal of death penalty cases; and 3) accepting appointment in a limited number of cases to provide direct representation as lead counsel to individuals in death penalty cases. In calendar year 2001, the Multi-County Public Defender provided direct representation or consultative services in 84 cases in 38 different counties. The Multi-County Public Defender is staffed by five attorneys, including the Multi-County Public Defender, four mitigation specialist/investigators, one mental health specialist, one clerk, one tracking/statistics worker and one administrative assistant.

3.5.2 Mental Health Advocacy Division

The Mental Health Advocacy Division monitors all cases in Georgia in which a defendant

has been found not guilty by reason of insanity. The Division consults with local attorneys who handled these cases at trial to monitor the individual's progress at the state hospital and to maintain contact with the treatment providers. When appropriate, the Division's attorneys will directly represent these individuals. The Division also works with local attorneys, mental health professionals, hospital staff, courts and others in cases where defendants are found incompetent to stand trial or where they have mental illness and are housed in penal institutions. Staff for the division consists of three attorneys, including the division director, one paralegal and two social workers.

3.5.3 Juvenile Advocacy Division

The three-person (director, staff attorney and paralegal) Juvenile Advocacy Division provides training, support and consultation to attorneys representing clients in juvenile court cases involving delinquency and unruliness, deprivation and termination of parental rights, and in superior court cases involving juveniles who are charged as adults. The division also compiles statistics and publishes a quarterly report on juveniles charged as adults under Senate Bill 440, the "School Safety and Juvenile Justice Reform Act of 1994," codified at §15-11-5(b)(2)(A).

3.5.4 Appellate Division

The very small appeals division (a director and an intern) provides advice, consultation and assistance for court-appointed trial attorneys who wish to preserve issues for appeal; assists court-appointed attorneys who are working on appeals; submits amicus curiae briefs in cases involving novel or interesting issues that are important to indigent defense; assists other GIDC divisions in appellate litigation; and assists the Professional Education Division in preparing appellate training programs.

3.5.5 Professional Education Division

In addition to housing the three case-specific divisions, each year GIDC provides dozens of seminars and workshops to indigent defense attorneys throughout Georgia. In addition to organizing and sponsoring these training sessions, the Professional Education Division publishes handbooks to assist indigent defense lawyers with specific issues relating to their practice. The division has four staff members: a director, a division coordinator, a publications coordinator and a communications coordinator.

3.6 PARTICIPATION IN GRANTS TO COUNTIES FUNDING

In FY 2002 (July 1, 2001-June 30, 2002), 152 of Georgia's 159 counties applied for and received state money under GIDC's Grants to Counties program for local indigent defense programs.[20] Of the 152 counties, 20 have full-time public defender programs and use a contract

[20] The seven counties that did not apply for FY 2002 GIDC Grants to Counties funding are Catoosa, Chattooga,

and/or panel program to handle conflict of interest and overflow cases. Fifty-nine counties use contract defender programs solely or as the primary provider with panel attorneys providing counsel for the remaining cases. Another 73 counties use panel attorneys as the primary provider of representation to indigent persons in criminal and/or juvenile proceedings, with smaller contract or public defender programs providing representation in the remaining cases.

The Georgia Constitution states that no person in Georgia shall be prosecuted without "the privilege and benefit of counsel."[21] Local indigent defense programs that receive state funds are expected to provide legal representation for indigents in all felony cases and in those misdemeanor cases in which indigents are guaranteed the right to counsel in the superior, state, and magistrate courts; all actions and proceedings resulting from a finding of not guilty by reason of insanity; and all actions and proceedings within the juvenile courts of Georgia in which a person is entitled to legal representation under the Constitution of the United States or the Constitution and laws of the State of Georgia, including but not limited to actions involving delinquency, unruliness, incorrigibility, deprivation, and termination of parental rights.[22]

A local indigent defense program may operate on behalf of a single county or in a combination of counties within a judicial circuit. In order to receive state grant money, a local indigent defense system must establish a tripartite committee, so-called for its membership representatives of three entities (the superior court, the county executive branch and the local bar association). Section 17-12-37 of the Georgia Code specifies the appointment process and

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Dade and Walker of the Lookout Mountain Circuit, Jones and Putnam of the Ocmulgee Circuit and Jackson County of the Piedmont Circuit. The number of counties applying for state funds varies from year to year. In FY 2001, for example, 23 counties did not apply for state funds.

[21] GA. CONST., art. I sec. 1, ¶ XIV.

[22] ***See*** **O.C.G.A.** §17-12-38.1. In Georgia, a felony is a crime punishable by death, imprisonment for life, or imprisonment for more than 12 months. O.C.G.A. §16-1-3. A misdemeanor is punishable by a fine not to exceed $1,000 and/or confinement in a county inmate facility (e.g., jail) for a term not to exceed 12 months. O.C.G.A. §17-10-3. There is also a misdemeanor category of a “high and aggravated nature” where punishment can consist of a fine up to $5,000 and/or confinement in a county inmate facility for up to 12 months. O.C.G.A. §17-10-4.

composition of tripartite committees:

> If the committee acts for one county alone, then that committee shall be composed of: (1) at least one person to represent the county governing authority, that person being appointed by the county commission chairman or sole commissioner, (2) at least one person to represent the superior court, that person being selected by the chief judge of the judicial circuit within which that county lies, and (3) at least one person to represent the county or local bar association (as listed in the most current records of the State Bar of Georgia), that person being appointed by the bar association president.
> If the committee acts for a combination of counties within a judicial circuit to propose the establishment of a state funded indigent defense program to operate in such a combination of counties, then: (1) a majority of the chairmen or sole commissioners shall appoint at least one person to represent the county governing authorities involved, (2) the chief judge of the superior court of that circuit shall appoint at least one person to represent the court; and (3) a majority of the presidents of the local bar associations involved shall appoint at least one person to represent the bar associations.

Judges, prosecutors and public defenders are forbidden from serving on the committee.[23] The committees may be larger than three members, as long as the bar, bench and county have equal numbers of representatives. In the counties we visited, the committees ranged in size from three to six to nine members.

To qualify for state grant funding, the tripartite committee must submit a proposal, or plan, to GIDC requesting state funds. The plan for the local indigent defense program must comply with the guidelines approved by the Supreme Court and must provide for:

> (1) The independence of counsel;
> (2) Reasonable early entry by counsel into a case;
> (3) A procedure to determine whether or not persons seeking assistance are eligible as indigents;
> (4) A procedure for determining that attorneys representing indigents are competent in the practice of criminal law; and
> (5) A rate of compensation and schedule of allowable expenses to be paid for indigent defense services.[24]

Although local indigent defense programs receiving state money are expected to establish tripartite committees and to administer indigent defense programs under these five guidelines, the

[23] *See* O.C.G.A. §17-12-37.

[24] *See* O.C.G.A. §17-12-38 (b) and (c).

Georgia Code expressly recognizes the inherent power of judges to appoint counsel to represent indigent defendants and to order compensation and reimbursement from county funds in individual cases as the proper administration of justice may require. O.C.G.A. §17-12-44.

The Guidelines of the Supreme Court of Georgia for the Operation of Local Indigent Defense Programs[25] are a laudable set of standards. They address many of the provisions found in the major national standards on indigent defense prepared by the American Bar Association and the National Legal Aid and Defender Association.[26] Unfortunately, we found that, for a number of reasons, the guidelines are seldom followed to any substantial degree.

3.7 TRIPARTITE COMMITTEES

The model of the tripartite committee seems like a sound structure for what many interviewees expressed they wanted: local control and input into indigent defense with state funding and standards. In practice, however, the operation of tripartite committees varies significantly from county to county and in many counties the model fails to assure that quality, uniform legal representation is provided to indigent defendants and juveniles. The model of state grant-making and local control has not worked in part because of the tolerated variability in the composition and roles of tripartite committees. In other cases, accountability and control don't exist due to a lack of interest and concern about indigent defense on behalf of the tripartite committee members.

We found that some of the requirements set out in the Georgia Indigent Defense Act go ignored or unfulfilled. For example, the tripartite committee's members are not supposed to include judges, prosecutors or public defenders. In one county we visited, the chief judge of the

[25] Approved and adopted by the Supreme Court of Georgia November 4, 1999, replacing guidelines adopted in 1980 and amended in 1985, 1989, 1998 and 1999.

[26] *See* ABA Standards for Criminal Justice (Chapter 4, Prosecution Function and Defense Function (3d ed. 1993) and Chapter 5, Providing Defense Services (3d ed. 1992) (program standards)), National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representation (1994) (attorney performance standards), the National Legal Aid and Defender Association Standards for the Administration of Assigned Counsel Systems (1989) (qualification standards), Institute of Judicial Administration-American Bar Association Juvenile Justice Standards Annotated: A Balanced Approach (1996) (standards relating to children charged as youthful offenders).

superior court is not simply on the committee, he serves as its chair. In another county, although the chief judge is not on the committee, we were told by multiple interviewees that he is the "invisible hand" behind indigent defense policy in the county: whatever he wants is what happens. The effect is to strip the tripartite committee of a policy-making role.

Supreme Court Guidelines 3.1 and 3.2 require that a tripartite committee satisfy itself that the public defender, contract attorney and/or members of the local panel program are competent, and that committee members should observe the performance of the indigent defense attorneys.[27] Despite these standards, tripartite committee members in most counties we visited do not engage in effective monitoring of the contract, panel or public defender system in their county. Their role is often seen as one limited to reviewing vouchers and reviewing attorney grievances. Members of tripartite committees are professionals who volunteer their time. They are not given resources to hire staff. Without assistance from staff it would be difficult for tripartite committee members to evaluate indigent defense attorneys' performances.

In Dodge, Hall and Toombs counties, the indigent defense administrators are on the tripartite committees (in fact, they serve as the chairperson). While not a violation of the Indigent Defense Act, this practice raises questions of independence, as a prime role of tripartite committees seems to be to review and cut vouchers when they exceed a certain threshold. (In Cobb County, current panel members serve on the tripartite committee, but recuse themselves from decisions regarding their vouchers when caps are exceeded.)

In Baldwin County, there is no indigent defense administrator. Day-to-day management

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[27] **3.1 The Public Defender or Contract Lawyer Selected shall be Competent and Effective in His/Her Role**
In selecting a public defender or contract lawyer the local committee should satisfy itself that the lawyer selected is competent, meaning:
(a) Has an adequate educational background;
(b) Has demonstrated ability to perform competent trial work and the administration of an office;
(c) He or she conducts their professional work in an ethical manner;
(d) Is a member in good standing of the State Bar of Georgia.
The committee shall observe the performance of the public defender or contract lawyer in order to be assured that he/she is performing the role effectively.

Indicators of performance are:
(a) Early entry into representation of indigents;
(b) Vigorous and independent representation of the client;
(c) Participation in training activities and continuing legal education;
(d) Effective and reasonable use of time and resources.

3.2 Competence and Effectiveness of Attorneys in a Local Panel Program
The local committee shall select only competent attorneys as panel attorneys and their effectiveness on the job should be monitored and assessed. Indicators of performance are:
(a) Early entry into representation of indigents;
(b) Vigorous and independent representation of the client;
(c) Participation in training activities and continuing legal education;
(d) Effective and reasonable use of time and resources.

of the program is done by the clerk of the superior court. As already mentioned on the preceding page, the superior court judge is on the tripartite committee, in direct violation of O.C.G.A. §17-12-37. Tripartite committees are required to meet monthly or semi-annually. We were told the tripartite committee in Baldwin County seldom if ever meets. Oversight of indigent defense, including determination of attorney pay in individual cases, is done by the judges.

There is no requirement that tripartite committee members all be lawyers, and the committees in many counties include non-lawyers. The county's representative on the committee in Cobb County, for example, has always been its budget analyst who handles indigent defense, which, as a budget item, falls under the judiciary. Having a committee member who is familiar with the county budget process has reportedly worked well, particularly in making budget requests. Similarly in Fulton County, the county's representatives on the 6-member committee are the Assistant County Manager and the Director of Finance. However, panel attorneys in a couple of counties complained that since the tripartite committee members were not all lawyers, and sometimes the committee included no defense attorneys, the committees had very little understanding of what it meant to represent criminal defendants. Some attorneys felt the committees often drastically cut vouchers with little understanding of the nature of criminal defense work. Certainly one of the roles of the tripartite committee members - to observe and evaluate attorney performance - is inappropriate for laypeople, as they cannot effectively determine if a lawyer is legally competent or evaluate the quality of representation provided.

Finally, as a general rule, we found that tripartite committees typically do not serve as voices or advocates for local indigent defense programs.

3.8 PERCEPTIONS OF GIDC

Outlined below are a number of themes and perceptions of GIDC that emerged in our site work.

Supplement or Supplant?

In some counties interviewees suspected that GIDC money supplants, rather than supplements, county funds for indigent defense. That is, the counties do not use the state funds to enhance indigent defense services beyond the county’s expenditures, but rather use the state funds to “repay” the county for already expended funds. The funds go to the counties without any requirement that they be placed in a special account, and there is no requirement that the funds be used in a particular way.

Acknowledging this practice, the chief public defender in Houston County has developed a way to call to the county’s attention the fact that the state money is intended to be used for indigent defense. She has asked that GIDC mail the grant checks to her rather than the county. This way she can hand deliver the check to the Chair of the County Board of Commissioners and personally remind him of any promised budgetary items, such as a new computer.

Role of the Executive Director

The perceived effectiveness of the current Executive Director[28] varied widely amongst interviewees. Some people, particularly those who favor local control over a statewide system, criticized him for "telling the counties what to do" when the state grant funds comprise such a small percentage of overall funding for indigent defense. Some people criticized the personal style of the current director in pressing issues and advocating for improvements as too brusque. Still others praised him for making strides in a most difficult job.

Frustration Over Application Process

People in a number of counties told us they feel the application process for state funds is overly burdensome, given the relatively small percentage of funds for indigent defense provided through the state grants. Applicants must complete a form requesting information on caseload, funding and a description of the local indigent defense system. If contract attorneys are used, applicants are asked to attach a copy of the contracts.

Some of this frustration in small rural counties was related to resistance to GIDC "interference" in local practices. "We are a small rural community and we do things differently from Atlanta" was an oft-heard comment.

Makeup of the Council

Many people we spoke with felt that the composition of the Council is not optimally situated for effectiveness with the General Assembly. We heard several suggestions on possible changes to the makeup of the Council to increase its effectiveness. It was suggested that the Council include state legislators, criminal defense lawyers from different sections of the state and county government officials.

State Grants to Counties Funding Formula

[28] At the time of our study, the Executive Director was Michael Shapiro.

A number of people expressed doubts about the fairness of the formula used by GIDC to distribute state grant funds. The actual formula is found in Section 17-12-36(b): "At least 90% of all state appropriated funds shall be distributed by the council to participating counties on an equitable basis, based on judicial administrative district and judicial circuit population, indigent criminal caseloads, and previous year expenditures for the provision of defense services at the local level."[29] Despite this requirement, some interviewees felt the formula was not transparent: it may be administered equitably, or it may not.

Certainly a look at GIDC's own county-by-county data on the percentage of state funds for local indigent defense programs can prompt questions. While on average state Grants To Counties money comprised 10% of the total expenditure for local indigent defense programs in FY 2002, the figures range from single-digit percentages to percentages as high as 35% - 121% of total expenditures on indigent defense.[30] (*See* Georgia Indigent Defense Council Grants to Counties Subsidy Program Award of State Funds to County for Fiscal Year 2002 (July 1, 2001 - June 30, 2002) in the GIDC 2001 Annual Report, p. 77, in Appendix A.) Part of the explanation for the disparity is found in the same table, which displays average cost per resident figures. The average indigent defense cost per resident in the counties with high state funding is much lower than in other counties where the percentage of state funding for indigent defense is closer to the statewide average.

The funding approach raises other questions. For example, the formula does not take into consideration how well local programs are complying with the Supreme Court Guidelines. Should GIDC be heavily subsidizing indigent defense in a county such as Dodge County, where state funds constituted 46% of total funding for indigent defense in fiscal year 2002? A recent series by the *Atlanta Journal Constitution* exposed years of indigent defense services that did not comply with the letter or spirit of the Guidelines. (*See* Chapter 7, Who is the Voice for Indigent Defense in Georgia? below.)

"No Teeth"

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[29] Guideline 4.2 expresses the same formula: "A minimum of ninety per cent of the funds provided the Council by the State Legislature will be distributed equitably among all participating programs based . . . on a three-part formula giving equal weight to the county's population, the county's indigent defense case load, and the county's most recent (fiscal or calendar) year expenditures for indigent defense."

[30] For example, in Marion County, the FY 2002 award of state funds is listed as $1,894.31 while the total CY 2000 indigent defense expenditure is listed as $1,561.00.

Under Guideline 5.3, GIDC has the power to terminate funding for local indigent defense programs that it finds are failing to comply with the guidelines or to fulfill the duties of its agreement with GIDC. Before termination can be completed, the local tripartite committee may request to appear before the Council, and the Supreme Court of Georgia has final authority over a decision to terminate.

Despite this power, in recent years, GIDC has not turned down any county that applies for funds. We repeatedly were told GIDC "has no teeth;" it does not de-fund counties it finds are not providing adequate indigent defense services. GIDC continues to authorize state grant funding for counties it feels are not adequately performing. GIDC has on occasion called attention to what it perceives as inadequate performance by writing letters to administrators of the local programs. The result in some instances has been strained relations between GIDC and the local administrators rather than constructive steps to address the situation. GIDC, we were told, is reluctant to terminate state funding of local programs in part because it fears political fallout or possible complaints from judges and other local people to the General Assembly. It is also reluctant to refuse funding to counties that submit applications that fail to substantially meet the guidelines, as GIDC's primary goal is to improve indigent defense. Withholding supplemental state funds is not seen as furthering that goal.

Case Counting and Definition of a Case

Case counting, as reported to GIDC, is totally unreliable. The total number of state and superior court cases (indigent and non-indigent) reported to GIDC frequently includes traffic cases, most of which are not eligible for court-appointed counsel. There is no centralized source of data in Georgia on the total percentage of criminal defendants who get appointed counsel. Because there is no reliable source of data on indigent defense caseload in Georgia, there is no way to validate what is being reported (or omitted) by the counties in their applications for state grant money.

Further, there is no uniform definition of "case" used by courts, counties or indigent defense programs in Georgia. The primary source of data on indigent defense caseload in Georgia is the collection of applications GIDC receives for its Grants to Counties program. The application asks for indigent case counts. Applicants are told a case is "a single defendant charged with one or more COUNTS arising out of a single event or a series of related events and which is disposed of as a single unit." The form requests data on the number of cases where counsel was provided in state, superior, probate, magistrate, or juvenile court, by type of case and by provider: public defender, appointed attorney and contract defender. In addition, the form requests the total number (indigent and non-indigent) of state and superior court cases for the same period, and the total number of juvenile cases.

In theory, the total number of state, superior and juvenile cases provided in the GIDC application should be the same as the total number of cases reported by the Georgia Administrative Office of the Courts. However, some courts in Georgia use a different definition

of a case than GIDC uses. In addition, various courts use different definitions of a case, making it virtually impossible to analyze the accuracy of caseload data reported by any source.[31]

Some data reported to GIDC by local indigent defense programs are incomplete, including case appointment data only for certain case categories while excluding other categories. The reasons for this problem vary. In some counties, for example, indigent defense case data was provided for superior court cases but not for state court cases either because the person responsible for completing the application had no contact with indigent defense in state court or because they did not track the numbers at all or accurately enough. In some counties, such as Bibb and Toombs, the tripartite committees do not oversee indigent defense representation in state court, thus have no misdemeanor data to report. It is impossible to get an accurate percentage of the number of adult criminal and juvenile court cases in which counsel is appointed in Georgia as the data that exists is not reliable and some data is simply not available.

No Monitoring

While local indigent defense programs are expected to comply with the Guidelines adopted by the Supreme Court to receive state grant money, there is no effective monitoring of this compliance done at the local level, by GIDC or by the Supreme Court. GIDC lacks the resources to effectively monitor indigent defense programs or to verify data reported by the administrators in 159 counties. Presumably, such a process would require staff who are able to travel to each county. Whatever is submitted in the applications is accepted at face value.

Likewise, as mentioned previously, there is very little programmatic or attorney performance monitoring done by tripartite committees.

[31] For example, in Volume 3, Issue 1 of the Research Review of the Administrative Office of the Courts, which contains caseload data from Georgia courts for 2002, some state courts' caseload counts are for defendants, while others are for charges. Likewise, most juvenile court data represents the number of children, but some courts provide data on number of charges. In Fulton County, no caseload data on state court misdemeanors were reported to the AOC.

CHAPTER 4
CHARACTERISTICS OF DIFFERENT DELIVERY SYSTEMS

As already mentioned, in order to participate in the state Grants to Counties program, the Supreme Court guidelines require tripartite committees to develop a local plan for providing representation to indigent defendants in felony and misdemeanor cases.[32] Tripartite committees may establish "a public defender system, a panel of private attorneys, a legal aid and defender society, a contract system or a combination of the above" as the delivery system.[33]

In four of the 19 counties we visited (Fulton, DeKalb, Habersham and Houston), a full-time public defender program is the primary provider of indigent defense services. In six counties (Dodge, Dougherty, Floyd, McDuffie, Spalding and Toombs), contract defenders are the primary providers of indigent defense services and in another six counties (Clayton, Chatham, Hall, Lowndes, Bulloch and Baldwin) these services are provided by panel lawyers. The other three counties have mixed delivery systems. In Cobb County, panel attorneys represent indigent defendants in adult criminal proceedings while contract attorneys represent children in juvenile court. In Richmond County, panel attorneys represent indigent defendants in felony proceedings while so-called “public defenders” represent defendants in state court and juvenile court. (The attorneys work for a fixed annual figure but without support staff, such as investigators or secretaries, so they should more appropriately be called "contract" defenders.) We were told that the "public defenders" are used in state and juvenile court because they are less expensive than panel attorneys. The attorneys "move cases," and the cases are not complex. In Bibb County, contract defenders are used for drug court, probation revocations, juvenile court, appeals, bond hearings and preliminary hearings, and panel attorneys cover all other cases.

Most of the indigent defense systems we reviewed had an indigent defense administrator who was responsible for the day-to-day functioning of the local program, such as seeing that screening is conducted and appointments of cases are made to panel attorneys, and completing the

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[32] The guidelines do not expressly mention juvenile cases but we understand the intent is that the guidelines also cover juvenile cases.

[33] Guideline 2.2 Method of Providing Counsel

> The local governing committee shall propose to the Council a plan for a local indigent defense program, either -- a public defender system, a panel of private attorneys, a legal aid and defender society, a contract system or a combination of the above to provide adequate legal defense for indigents accused of felonies, or misdemeanors.

GIDC Grants to Counties application each year. There was a wide range of different types of individuals who filled this role. In one judicial district visited, the district court administrator – who serves as the chairman of the tripartite committee in most of the district's counties – is the indigent defense administrator. In another county, the public defender is the indigent defense administrator. In several counties, the court administrator or his delegate filled the role. In one county an office manager with the public defender program was the administrator. And in still other counties indigent defense administrators were individuals hired by the county to oversee indigent defense. Sometimes the indigent defense administrator oversaw a staff of people who interviewed defendants for indigency.

The following section discusses our observations of the various programs visited.

4.1 PANELS

As of fiscal year 2001, 73 of the 152 counties receiving state grant money use panel attorneys as the primary provider of representation to indigent persons in criminal and/or juvenile proceedings, with smaller contract or public defender programs providing representation in the remaining cases. In addition, counties that use a contract or public defender system as their primary means of representing indigent defendants also use panel attorneys to handle conflict of interest or overflow cases.

4.1.1 Composition

4.1.1.1 Mandatory Participation

Several counties we visited required all attorneys in the county (with some exceptions) to accept court appointments to represent indigent defendants.

Under the local plan in the Northeastern Judicial Circuit, which includes Hall and Dawson counties (we visited Hall County), all active lawyers (with certain exceptions) must serve on the superior court panel every other year. Practicing attorneys who have a conflict (e.g., they are a prosecutor) are exempted. All other attorneys in Hall County are expected to participate until age 65.

In Lowndes County, all lawyers must serve a mandatory five years on the superior court panel. Thereafter, if the attorney wants to practice criminal law, he or she must stay on the panel. If an attorney wants to practice only civil law, he or she can withdraw from the panel after the mandatory five year period. However, if the civil law practice includes any in-court appearances, the attorneys must participate on the panel in order to appear in court.

Likewise in Bibb County, all practicing attorneys must serve on the panel system for at least 5 years. Brand new attorneys, with no criminal experience, are appointed to felony cases. Many of these attorneys have little interest in practicing criminal law. (One panel attorney who has a criminal practice in Bibb County told us that because of the mandatory nature of the panel

system, personal injury attorneys are forced to take cases which are outside of their areas of experience and they just plead these cases.)

In Baldwin County, participation on the panel system is mandatory for all attorneys who have been practicing in the county for less than ten years, whether they practice criminal law or not. Only after the mandatory time period or on reaching one's 62nd birthday can an attorney resign from the list. In Baldwin County, as in other counties, the mandatory nature of the service has caused much bitterness among attorneys who feel they have been forced into an area of work they know nothing about and in which they are not interested. One attorney interviewed, for example, described himself as a real estate lawyer three years out of law school. The extent of his criminal law experience was a criminal law course in law school. Despite this level of experience, he was appointed to represent a defendant in a rape case. The attorney told us that "Philosophically, I would be on the other side," but he was forced to accept the case. The attorney went to the judge to express concerns that he did not have sufficient experience to try the case, and the judge appointed an attorney with more criminal practice experience to assist him.

A review of Georgia law reveals that the practice of requiring all attorneys in the county to accept court-appointed cases is permitted. In *Sacandy v. Walther*,[34] an attorney in Floyd County, Georgia sought a declaratory judgment that the program by which superior court judges then appointed attorneys to represent indigent defendants was unlawful and sought an injunction prohibiting the judges from requiring her to represent any individual or incarcerating her for refusal to participate in the program. (At the time, Floyd County had a mandatory panel program; it now has a contract program.) Attorney Sacandy declined an appointment to represent a criminal defendant, stating she was unqualified to do so as she was not experienced or interested in criminal law. In addition, she said she could not afford to serve as uncompensated co-counsel. The Georgia Supreme Court held that superior court judges had authority to appoint counsel to represent indigent defendants. The court held that lawyers may be appointed to represent indigent defendants only if those lawyers are competent but an attorney's lack of experience or interest in criminal matters does not render her incompetent or otherwise exclude her from participation. However, the court held that the program could not authorize appointment of counsel without compensation, even under limited circumstances.

Although mandatory panel membership offends no law, there is a real possibility that mandatory court appointments will result in civil practice attorneys providing substandard legal assistance to indigent defendants due to their inexperience and lack of interest in criminal law. In our work studying indigent defense systems around the country, we have not encountered other mandatory indigent defense panel programs where there is no mechanism for attorneys to opt out. Texas is the only other state where we have encountered several counties using mandatory panels. Under so-called "buy-out" plans, instead of accepting court-appointed cases, Texas attorneys may fulfill their obligation by making an annual contribution to the local indigent defense program.

[34] 413 S.E. 2d 727 (1992).

4.1.1.2 Voluntary Panel

Indigent defense for felony cases in Clayton, Cobb, Chatham and Richmond counties is provided by attorneys who volunteer to participate on the court-appointed case panels. Cobb County uses panel attorneys for misdemeanor cases, but uses a contract system for juvenile court cases. As previously mentioned, Richmond County uses panel attorneys for adult felony cases and what it calls "public defender" programs for misdemeanor and juvenile cases representation, but the "public defenders" should more appropriately be called "contract" defenders. All representation -- felony, misdemeanor and juvenile court -- in Chatham and Clayton counties is provided by panel attorneys.

The panel program in Cobb County stood out from the others we encountered for a number of reasons. Officials in this relatively wealthy county understand the function and value of a well-run indigent defense system and provide substantial funding for it. Judges strongly support the system. Experienced attorneys participate on the panel. The administrator of the program is highly respected and has good relations with the court, county, tripartite committee and panel attorneys.

4.1.2 Standards, Guidelines, Training to get on Panel

Among the counties visited, only one (Cobb County) has a panel in which attorneys must both have minimum levels of experience and attend criminal law training before being placed on various levels of the panel.[35] While there is no annual criminal CLE requirement, Chatham County also has several tiered lists that attorneys can join, based on their level of experience. In Fulton County, there are no formal experience requirements, but tripartite committee members

[35] **To be included on the various lists (misdemeanor, felony, capital and non-capital murder, direct appeal and juvenile) of the Cobb County panel, attorneys must attend annual criminal law CLE seminars and meet minimum levels of experience. For example, attorneys on the misdemeanor list must have engaged in the criminal practice of law for one year prior to joining and must have served as lead or assisting counsel in at least three misdemeanor trials. Felony attorneys must have five years experience in criminal defense or prosecution and must have practiced criminal law for three consecutive years before joining the panel. Further, they must have previously served as lead or assisting counsel in three felony trial cases. Attorneys may move up on the list (e.g., misdemeanor to felony, felony to murder) by submitting a letter to the Administrator that provides information regarding meeting the requirements for the desired list.**

approve attorneys for placement on the various panels: misdemeanor, non-capital felony, capital felony/death penalty and appeals. In most of the other counties, membership in the bar is all one needs to become a member of the panel. In Richmond County, for example, there are no minimum requirements to get onto the superior court panel. The indigent defense office assigns new attorneys to simpler cases, such as theft by taking. Clayton and Hall counties have no minimum experience levels for panel attorneys, but attorneys must have an office or live in the county.

While some interviewees in a couple of counties with panel programs felt strongly that indigent defendants received high quality representation because of the caliber of defense attorneys who serve on the panels, interviewees in many other counties raised questions about the quality of representation provided. The panel program in Clayton County was harshly criticized by judges, attorneys on the panel and a prosecutor for not having any quality controls. Nearly every judge interviewed complained about the quality of representation provided by attorneys on the panel. The most favorable judicial assessment of the quality of representation being provided by court-appointed attorneys was that “most of the time, it's acceptable.” Other descriptions by judges included: “C-,” “extremely low quality,” and “quality of representation overall stinks.” An attorney from the district attorney's office confirmed these opinions, stating that the quality of representation of indigent defendants was “piss poor,” and “not worth a damn.” One judge recalled a case where an attorney failed to contact his client or appear for trial in a misdemeanor after the defendant had sat in jail for 30 days. The judge complained to the indigent defense coordinator who apparently indicated that a “slap on the wrist” was the appropriate remedy. The judge did not agree. A common complaint among the judges was that defendants and judges frequently found it difficult to locate attorneys because many of them do not truly have an office in the county.

Under the panel system, when no qualifications, training or prior experience are required to get on the panel, attorneys can be ill-equipped to handle cases. In one county, a state court judge told us that she sometimes "coaches" the less experienced attorneys. In another county, the state court judge informed us that the panel attorneys have no training in how to handle cases where the client is incompetent to stand trial or in how to find alternative treatment for these clients.

4.1.3 Monitoring

Very little monitoring of panel attorney performance is done. Lowndes County has one of the more formal systems seen: the panel attorneys submit monthly and quarterly status reports to the indigent defense coordinator. Attorneys are also expected to return "client visitation cards" indicating the time when they first meet clients who are detained pre-trial (Cobb County has a similar program). Lowndes was one of the few counties visited where we heard that attorneys have been removed from the list due to unsatisfactory performance. A grievance procedure is used, whereby, after receiving complaints over an attorney's performance, the attorney is invited to appear at a hearing and, if desired, witnesses and evidence are presented. (Rather than go through a formal process of removing attorneys from the panel, we were told by a few judges in

other counties that they occasionally ask that certain attorneys no longer receive appointments to cases in their courts.) A panel attorney in Richmond County told us he was pleased overall with the panel system, but that there was a clear need for initial training of new panel members and ongoing oversight of all members.

4.1.4 Compensation

The Supreme Court of Georgia's Guidelines for the Operation of Local Indigent Defense Programs provide that panel attorneys should be paid no less than $45 per hour for out-of-court work and $60 per hour for in-court work (Guideline 2.6). The Guidelines no longer set out per-case caps: a November 1999 amendment eliminated suggested maximum per-case caps. The 1999 amendment also requires attorneys to submit itemized statements for payment and reimbursement.

The Guidelines require several factors to be taken into consideration when determining the hourly rates: attorneys' hourly overhead, hourly rates in fee-paying cases for attorneys handling similar work and practicing in the general geographic area where the appointment is made, and the rate of inflation.

Most of the counties that we visited that use a panel system have adopted the Supreme Court's recommended hourly rates. However, most of these counties also have per-case caps for various case types and/or events. For example, Chatham County pays counsel in felony, misdemeanor and juvenile cases at the recommended rates of $45 per hour for out-of-court work and $60 per hour for in-court work, but restricts per-case fees to an event-based schedule (plea, open plea, dismissal, trial, etc.).[36] Attorneys are paid based on the severity level of the case and the outcome: the pay is more for an open-ended plea than for a straight plea.[37] If an attorney submits a voucher that exceeds the per-case caps, either the Tripartite Committee or a judge can approve the payment.

Bibb County's rate schedule exceeds the Supreme Court minimum guideline, paying lawyers $50/hour for out-of-court work and $70/hour for in-court. However, the Bibb County Tripartite Committee meets every couple of months to review all vouchers that exceed $500,

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[36] Chatham County's panel is divided into five levels based on the severity of various crimes. Level 1 includes all misdemeanor cases. Level 2 includes auto theft, bad checks, criminal damage to property, credit card fraud/theft, escape, firearm violations, forged prescriptions, forgery, gambling, habitual violator, interference with government property, possession of tools, shoplifting, terroristic threats, theft by taking and VGSCA. Level 3 includes arson, burglary, cruelty to children, enticing a child, incest, robbery-no weapon, sodomy and vehicular homicide. Level 4 includes aggravated assault, aggravated battery, child molestation, statutory rape, sale of controlled substance and trafficking in controlled substance. Level 5 includes aggravated child molestation, aggravated sodomy, aggravated sexual battery, armed robbery, kidnaping, murder, rape and voluntary manslaughter. Per-case caps are set out for each of the various levels of the panel for plea, open-end plea, jury, appeal and revocations. For example, the cap in a misdemeanor plea is $265 while the cap in a misdemeanor open-end plea is $350. The same two per-case caps in a level 5 case are $1,050 and $1,200.

[37] In an open-end plea a defendant disagrees with the state but admits guilt and proceeds to a sentencing hearing.

which means that the processing for a significant number of felony case vouchers is held up waiting for the tripartite committee to meet. We were told that if there is no need for review, vouchers are processed in about two weeks. Court-appointed attorneys in Bibb County told us that a significant percentage of the vouchers undergoing this process are reduced. However, at the direction of the Tripartite Committee, the Indigent Defense Administrator conducted a study a couple of years ago and found that, at that time, less than two percent of all vouchers undergoing review were reduced.

Baldwin County reportedly adopted by court order the $45/$60 hourly rates simply in order to comply with GIDC requirements for state funding. In practice the hourly rates are largely ignored. Despite the county's hourly fee schedule, attorneys are paid flat fees for pleas or pre-sentence hearings that are separate from trials. For example, the fee for a felony plea is $200, unless life imprisonment is involved, and then the fee is $300. A flat fee of $130 is paid in misdemeanor cases resolved by guilty plea, dismissal or nolle prosequi. In some instances superior and juvenile court judges ask attorneys to submit blank vouchers which the judges complete themselves. We were told the tripartite committee in Baldwin County has never met and has therefore never considered any bill that would theoretically be submitted to it. Individual judges determine the compensation in the cases that come before them. Even in death penalty cases, attorneys are not paid hourly rates but are instead paid a flat fee at the end of a case determined by the judges based on the work performed.

In Clayton County state and superior courts, panel attorneys may choose between billing hourly or charging a flat fee. The hourly scheme pays $45/hour out of court, $60/hour in-court, up to $1,000 in a misdemeanor or $2,500 in a felony. Attorneys may bill a flat fee in state and superior court cases of $300. We were told that, as a convenience, many panel attorneys choose to charge the flat fees. We were told this is in part because every bill over $500 gets scrutinized, and not infrequently reduced, by the tripartite committee. In part this is because attorneys can charge $300 for a case which takes 15 minutes to plead.

In many counties we heard repeated complaints by panel attorneys that their vouchers are routinely reduced by the tripartite committee or the judges, often without explanation. Most counties offer some sort of mechanism to appeal a reduction in voucher payment. For example, an attorney can submit to the Tripartite Committee a detailed itemization of the time and expenses with a cover letter explaining why a case required an extraordinary amount of work. If this does not sway the Committee's decision, the attorney can make a personal appearance before the committee. The process can be tedious and many attorneys told us they simply do not bother to take the time.

The 1999 amendment to Guideline 2.6 requires the administrator of the indigent defense program to indicate in writing the reasons(s) for a reduced payment. We repeatedly asked panel attorneys if this occurred. No attorney we asked ever received any written explanations for the reductions.

Arbitrary fee caps and voucher cutting are not the only problems with panel attorney

compensation. Many panel attorneys we met with said the rates paid are too low to do more than cover overhead; in some counties they do not even cover overhead. One panel attorney in Lowndes County, where counsel are paid $60 an hour in and out of court, told us he nets $18 per hour on panel appointments (after overhead and taxes.) According to reports released by the State Bar and the Georgia Association of Criminal Defense Lawyers, current law office overhead statewide averages more than $52 per hour. An attorney in Richmond County told us he continues to take occasional appointed cases because he likes the work, but he does it at a loss. With a secretary and an assistant, his overhead is $68-$72/hour. We heard repeatedly from panel attorneys and judges that compensation should be increased in order to attract experienced attorneys.

As one panel attorney concluded, fees should be commensurate with what's expected: a vigorous defense. "Otherwise, you'll get a habeas filed against you later, plus, it's your duty under your oath."

4.2 CONTRACT ATTORNEYS

As of 2001, 59 counties of the 152 that receive state indigent defense grant money in Georgia used contract defenders to provide legal representation to indigent defendants. In some of these counties, contract defenders were the sole providers of indigent defense services; other counties use contracts in addition to a public defender and/or panel program.

Guideline 2.7 of the Supreme Court Guidelines for the Operation of Local Indigent Defense Programs contains several important provisions. First, contract attorneys may only be removed for good cause, which is defined as "failure by the Contractor to comply with the terms of the contract to an extent that the delivery of services to clients by the Contractor is impaired or rendered impossible, or a willful disregard by the Contractor of the rights and best interest of clients under this contract such as leaves them impaired." Second, contracts must specify a maximum allowable caseload for contract attorneys, whether they work full-time or part-time. Third, contracts must authorize contract lawyers to decline to represent clients with no penalty if during the contract period:

> **a) the caseload assigned to the Contractor exceeds the allowable caseloads specified; or**
> **b) The Contractor is assigned more cases requiring an extraordinary amount of time and preparation than the Contractor can competently handle even with payment of extraordinary compensation; or**
> **c) The cases assigned to the Contractor exceed any number that the contract specified or that the Contractor and Contracting Authority reasonably anticipated at the time the contract was concluded.**

Fourth, 2.7 states that contracts should avoid creating conflicts of interest between the contract attorney and clients. Specifically:

a) expenses for investigations, expert witnesses, transcripts and other necessary services for the defense should not decrease the Contractor's income or compensation to attorneys; and
b) contracts should not, by their provisions or because of low fees or compensation to attorneys, induce an attorney to waive a client's rights for reasons not related to the client's best interest; and
c) contracts should not financially penalize the Contractor or individual attorneys for withdrawing from a case which poses a conflict of interest to the attorney.

Finally, capital cases in which the death penalty is sought may not be included in a regular felony contract.

In our sample, the counties with larger populations (over 100,000) did not use contract systems for adult indigent defendant representation. Cobb County (population 607,751) uses four contract defenders called "juvenile advocates" for juvenile court cases. Each is paid $5,000 per month and handles an unlimited caseload. In Bibb County (population 153,887), attorneys provide representation under contract in drug court cases, preliminary hearings, appeals, juvenile and probation revocation cases. Counsel are paid $1,000 per month under each of the contracts, and each contract states the "contemplated" monthly or annual case assignments. For example, the contemplated annual average yearly caseload for the preliminary hearings contract is 36 to 46 cases per month, while the probation contract contemplates 20 to 30 cases per month, the juvenile advocate contract contemplates 10 to 20 appointments per month and the drug court contract contemplates 325-350 cases per year. However, only in the appeals contract is there a cut-off mechanism if the cases assigned reach the contemplated cap.

The contract attorneys we interviewed in Bibb County felt that the flat fee contract system, together with high caseloads, has taken a toll on quality representation. Attorneys admitted that given their caseload and inadequate reimbursement it was impossible to put in adequate time on cases. One told us, "You try to handle as many cases while you are in the courtroom. You cannot prepare for trial." A juvenile contract attorney told us, "There is no way we can do a very good job given our current caseload. I barely have a chance to meet with kids, families or witnesses and the flat fee is a disincentive to try cases. Because of the volume of cases, we rely too much on the CASA (court appointed special advocate) program and [CASAs] are only volunteers and not professionals." One former administrator of the system expressed surprise at these sentiments, noting there were always more applicants for the juvenile contracts than there were contracts available.

Dougherty County (population 96,065) is the largest county in our sample that uses a contract system for felony representation. The county has what it refers to as a "panel" of 10 attorneys who work under contract, earning $75,000/year, and are appointed to felony cases in rotation. While Dougherty County calls this program a panel system, it is more appropriately categorized as a contract system. The county uses panel attorneys for representation in misdemeanor cases, supplemented by one contract attorney who is paid $2,000 a month to cover

court two days a week. A verbal contract is used by the juvenile court, paying two attorneys $2,000 each per month.

The felony contract in Dougherty County includes revocation proceedings precipitated by new felony charges, misdemeanors resulting from a reduction of an original felony charge, and cases that the juvenile court transfers to superior court for adult felony prosecution. Despite the prohibition in Guideline 2.7 of including capital cases where a death sentence is sought as part of a regular felony contract, the Dougherty County felony contract expressly requires inclusion of death penalty cases. Softening this noncompliance with the guideline, the contract states that the superior court has the discretion to approve a claim for additional compensation, outside of the contract amount, for representation of a defendant in a death penalty case. The contract itself does not provide caseload limits but the application for FY 2002 GIDC funds lists contract caseload caps of 150 felonies, four appeals, six probation/parole revocations and 200 juvenile offender cases.

In Dougherty County it was widely stated that the felony contract paid adequately but since pay was on an annual fixed fee, some interviewees speculated that attorneys could spend as much or as little time as they wished on individual cases. Judges in Dougherty County complained that good contract attorneys leave after two terms (four years), just as they become accomplished defense attorneys.

In both the Ogeechee Circuit (which includes Bulloch County) and the Middle Circuit (which includes Toombs County), a single attorney works under contract to provide early representation to defendants detained on felony charges. Additionally, in the Middle Circuit, contract attorneys are used for representation in felony cases beyond indictment/accusation, in state court cases, and in juvenile deprivation cases.

In the Middle Circuit, which covers a largely rural area, it is reportedly difficult to attract attorneys who are willing to take on the contracts, thus the way in which attorneys are selected is questionable. There are no set minimum levels of experience required for contracts in any of the counties. Bids are solicited in some, but not all of the counties. Typically contractors are either just beginning or at the end of their legal careers. The contract defender in one of the counties started out by taking cases that were conflicts for the contract defender. These were assigned to him, as the youngest attorney in the county, because no one else wanted them. He found he liked the work and eventually became the contract defender. There was no application process; no one else wanted the job.

We were told that in some counties, it is possible that no attorneys who meet the Supreme Court's minimum standards will be interested in becoming a contract attorney, so the county takes whoever is willing to do the work. When asked how he would go about hiring a new contract defender, one state court judge who selects the contract defenders for his court told us he would not advertise the position. Rather, it would be “a thought process” for him; then he would ask attorneys who he thinks would be willing to do the work.

The contracts in the Middle Circuit do not specify caseload limits. With no formal mechanism for determining when additional contract attorneys are needed, additional contracts are added after judges note increasing requests for continuances and contract defenders express concern over increased caseload.

In Floyd County, six lawyers provide representation to indigent defendants in adult felony, misdemeanor and magistrate cases under fixed fee contracts. Each of the adult criminal contract lawyers are paid $39,000 per year with no specific case limits. In the past year the county attempted to add a seventh contract lawyer at the same price but received no interest from other attorneys in the county. In addition to the contractors for adult criminal cases, there is one part-time juvenile contract attorney who contracts directly with the juvenile court judge. Conflicts are handled by a small panel. The contract says the lawyer "serves at the pleasure of the juvenile court judge and may be terminated by the juvenile court, with no appeal process."

The Floyd County contract attorneys are appointed by the chief judge of the superior court, who first consults with other superior court judges. The judges reportedly have the ability to terminate the contracts at will. There do not appear to be any qualification standards for contract attorneys, and few performance requirements.

In Bulloch County, indigent defense in conflict-free felony matters is provided by a three-lawyer firm. The three lawyers do the same work in the three other counties in the Ogeechee Circuit (Effingham, Jenkins and Screven). The attorneys are compensated at an hourly rate of $50 with no caps. In state court cases, one attorney provides representation in all cases not involving a conflict of interest at a flat fee of $60 per case. Conflict of interest cases in superior and state court are assigned to panel attorneys. There is no provision for increasing the fee in a complicated or time-consuming case.

Bulloch County only began receiving state Grants to Counties money in FY 2002, thus previously was under no obligation to adhere to the Supreme Court guidelines on the operation of local indigent defense programs. Clearly, steps are being taken to improve a program that previously had no reason to attempt to meet the guidelines. However, the program still has obstacles to overcome. With only three lawyers covering non-conflict cases in a four-county circuit, insufficient attorney-client contact with detained clients and heavy caseloads were cited as a serious problem. A contract attorney has been hired to handle the circuit's Early Intervention Program (discussed below), but this same attorney, who continues to have a private practice, is also responsible for all state court cases and all juvenile representation in superior court in Bulloch County.

Citing a lack of sufficient attorney time and resources in the current system for representing indigent defendants, the indigent defense administrator and two of the three judges interviewed in Bulloch County expressed strong support for a statewide public defender system. The District Attorney supported a local full-time public defender's office.

In McDuffie County (population 20,119), two part-time contract lawyers provide all

non-conflict representation in felony, misdemeanor, juvenile and appeals cases. The contracts are for one year, with options for two additional years, and each pays $40,000 a year. When there are conflict cases, counsel is appointed and paid on an hourly basis.

The nine-page contract in McDuffie County contains numerous important provisions. Of particular importance is a set of performance requirements concerning investigation, trial preparation, preparation and filing of motions, arguments of motions, personal counsel, referral to other agencies when appropriate, trial and post-trial motions, and motions briefing an argument in the Georgia Court of Appeals and the Georgia Supreme Court. Another clause requires initial interviews for all defendants in custody within 72 hours of the time the appointment is made and a statement that "initial contact should be made whenever possible prior to release of the defendant from custody."

There is a provision in the contract providing additional funds for expert witnesses, investigative services, transcripts and stenographer services, as well as psychiatric and medical examination when ordered by the court. There is a statement that the parties will comply with all the terms and provisions and guidelines of the Georgia Indigent Defense Council as approved by the Supreme Court of Georgia. There is also a requirement that the contract attorneys keep records of the date and times that they make contact with appointed defendants and maintain records of the hours they work on indigent cases.

These provisions are important to note, as McDuffie County's indigent defense system until 1999 was harshly criticized by the Southern Center for Human Rights, which had notified the county it was prepared to file a lawsuit over the poor quality of representation. Before the current contract lawyers were hired, McDuffie County's contract system consisted of one lawyer handling all of the felony, misdemeanor, juvenile and appeals cases for $26,000 a year. Individuals we interviewed in McDuffie County confirmed that the former contract attorney held the position for multiple years, and did a notoriously poor job of representing clients. The increased budget helped attract experienced, dedicated attorneys who would be willing to work under the conditions of the contract. During the course of our site visit we were told by most of the key actors in the system, including judges, the Chief Magistrate and the District Attorney, that the contract attorneys are performing as required by the contract.

In Spalding County, a contract system was adopted just over 10 years ago to replace a panel system. It was felt a contract system would be easier to administer than a panel program and it would give the county the benefit of knowing what its costs for indigent defense were going to be from year to year.

When the three-lawyer law firm that has the contract has a conflict of interest, it pays another attorney out of its contract money to take the case. This practice runs contrary to Guideline 2.7's caution that contracts should not financially penalize the contractor for disclosing a conflict of interest. There is no standard fee schedule or arrangement for this work; the pay is negotiated on a case-by-case basis. In another violation of Guideline 2.7, funds for experts' services also reportedly come out of the contract. In addition, the contract does not contain

caseload caps.

The Spalding County contract law firm conducts all of the eligibility screening for appointed counsel, a practice that at a minimum presents an appearance of a conflict of interest. Magistrate court and jail personnel interviewed reported that decisions on eligibility were not made within the required 72 hours from arrest. Instead, the determination was made in 1 to 3 business weeks after application for counsel forms were completed.

At the time of our visit, Dodge County had two law firms under contract: one providing representation in felony cases, and the other providing representation in misdemeanor cases. Representation in all felony cases in all of the counties in the Oconee Circuit, with the exception of Pulaski County, was provided by the law firm of Straughan and Straughan. A lawyer in another law firm provided all of the misdemeanor representation in all six counties in the circuit. Still another contract attorney handled the felony cases in Pulaski County, and also handled the conflict cases in the other counties in the circuit, including Dodge County. The Straughan law firm provided conflict case representation in Pulaski County.

Based upon our interviews and observations, the system used in Dodge County was the worst program we evaluated. We were told investigators are never requested. There was an alarming lack of regard for the fact that the criminal justice system is an adversarial system, where each defendant, regardless of income, has the right to a vigorous (or at least adequate) defense. We were told that indigent defendants routinely go straight to the assistant district attorney to try to get their cases resolved. This was seen as appropriate, because the district attorney's office was considered very reasonable, and there is an easy sharing of discovery materials. We were told that defendants get very reasonable bond, thus there is no reason to file bond reduction motions. Mark Straughan, contract attorney with Straughan & Straughan, agreed that there was no need to file bond reduction motions, characterizing them as "frivolous" in light of the reasonable bonds.

It is possible that improvements will be made in Dodge County given developments that occurred after our site visit there. In April 2002, *The Atlanta Journal Constitution* ran a series on indigent defense in Georgia. One of the counties featured was Dodge County. Contract attorney Mark Straughan told the reporter he spent "20 years in hell" defending the poor in Bleckley, Dodge, Montgomery, Telfair and Wheeler counties. In his interview with *The Atlanta Journal Constitution*, in testimony before the Chief Justice's Commission on Indigent Defense, and in an interview conducted by The Spangenberg Group, Straughan said he assumed his clients were guilty. "It would be a grave error for a defense attorney to assume innocence on his client," Straughan was quoted as saying. "It is better to look for the worst, and if it turns out the other way, so much the better."[38] The article also brought to the public's attention the meager level of resources provided to indigent defense in Dodge County. In 2000, according to *The Atlanta*

[38] ***See* Bill Rankin, *Justice Delayed: a Cheap Dose of Due Process in Dodge County, Atlanta Journal Constitution*, April 22, 2002.**

Journal Constitution article, Dodge County paid on average $49.86 per case to defend poor people accused of crimes. The article also said that according to GIDC, this was the lowest rate in the state: the state average for that period was $287 per case. Shortly after the article appeared, Straughan's firm's contract was terminated by the Oconee Circuit Indigent Defense Administrator.

As an interim measure, the court asked another lawyer who has handled indigent defense cases in the past to accept work in the three months remaining under the Straughan and Straughan contract. We were told the contract will then be advertised and re-let with a hope that attorneys from more than one of the five counties -- Bleckley, Dodge, Montgomery, Telfair and Wheeler -- will express interest in the work.

4.3 PUBLIC DEFENDERS

As of 2001, 20 of the 152 counties in Georgia that receive state grant money used full-time public defender programs as the primary means of providing legal representation to indigent defendants.

4.3.1 Houston County

The public defender office in Houston County has 10 attorneys, four secretaries and one investigator. There are no paralegals or social workers. Indigency screening in state court is done by the public defender's office, something considered a conflict of interest by national standards. In superior court, screening is done by the county's indigent defense coordinator. Conflict of interest cases are assigned to a list of attorneys maintained by the indigent defense coordinator. Any licensed attorney who wants to get on the list can ask the Chief Judge or the Coordinator to include his or her name on the list.

The public defender office is well organized and emphasizes client-centered advocacy. The chief public defender, who has been in that position for the last 14 years, carries a caseload and supervises the attorneys. The attorneys meet every Monday morning with the indigent defense coordinator and go over the jail list. An attorney assigned to do jail visits will either accompany or follow the indigent defense coordinator as she conducts the indigency screening soon after the meeting. That way the clients get to meet an attorney immediately after he or she is appointed as their attorney.

Attorneys in the Houston County public defender office commented on the high level of supervision and mentoring that goes on in their office. One attorney who used to be a contract attorney in Bibb County commented on what a refreshing difference it was to work in a public defender office after having held a contract. He felt there were distinct advantages both to him professionally and to the clients he represents. He told us, "A public defender system is infinitely better than a contract system. There is no supervision or quality control on a contract. [Also], it is such a relief to have an investigator on staff rather than beg for one."

Another young attorney told us that the chief public defender and the deputy chief public defender regularly brainstorm with attorneys about their cases and all attorneys mentioned that the open door policy in the office helps them better prepare for their case and results in quality representation of the client in court.

Public defenders, however, felt that more training would be welcome and both judges and public defenders felt that the lack of qualified/certified interpreters was a huge drawback in the system. In the words of one public defender, “It is intolerable that especially in state court, inmates are used as interpreters.” A conflict attorney told us, “I would be concerned about the fairness of the trial with a Spanish speaking defendant.”

Except for these systemic deficiencies, both the private bar and the judiciary were pleased with the quality of representation provided by the public defender's office. The Sheriff told us that the public defenders are relentless in their representation of indigents and that “in no single instance have I seen an inmate waiting to meet his lawyer in this county.”

One issue that concerns us in this county is a simmering conflict between the chief public defender and the District Attorney. Superior court judges expressed exasperation over the feuding going on in court between the two offices. Apparently the dispute centers around the District Attorney's view that his office is underfunded in comparison to the Public Defender's office. Last year a county grand jury charged with investigating efficiency in county government suggested cuts be made to the public defender office’s budget.

Both superior court judges told us that the efficient functioning of the court depends to a large measure on the public defender office and that the court will do anything to support the survival of the public defender system. The superior court judges wrote a letter to the County Commissioners in support of the public defender office, citing the benefits of a public defender system as opposed to a contract system. The letter states, in part:

> ... It has been suggested, for instance, that the county could contract with ten private attorneys, pay each one $50,000.00 a year to handle the indigent defense case load and still save a half million dollars a year. The truth is, however, that this is not what would happen; making such a change would not be economical over time for several reasons.
>
> Having a public defender system means having a group of lawyers who are obligated to handle the county's indigent defense work full time. They are required to work only in the Houston County court system, handling only defendants with pending charges from Houston County court system... The most obvious benefit to this arrangement is that defendants incarcerated in our jail are processed through the justice system much faster than occurs under a contract arrangement.... [P]rivate attorneys under a contract system ...would simply be operating with a lot of competing interests which a public defender does not have.

> ... Another problem with using a contract system is that the contract attorney will constantly be pressured by his or her competing office and client obligations. It is naive to think that any private attorney in this area would, or could, completely close their private practice and handle only the indigent contract cases. Expecting that attorney to neglect "paying" clients, or to make them a lower priority so that he or she may give first priority to indigent cases is equally implausible.
>
> ... Even if an attorney were able to give priority to indigent cases, he or she would still be limited in the number of cases which could be accepted under the contract arrangement. ... In determining these case limits, the rules say that an attorney must factor in the number of "private" cases he or she is handling. One very likely result would be that an attorney would have to either take fewer indigent cases, or require that you pay more under the contract to offset the decrease in the number of paying clients they could accept and remain within the mandated case count rules. Again, neither of these alternatives is economically advantageous for the county.
>
> ...In summary, from our personal experience, from discussing the issue with other judges operating under contract systems and from observing what is happening in the Georgia Supreme Court and the State Bar of Georgia, it is our opinion that it would not be wise to replace the current method for handling indigent defense in Houston County....[39]

4.3.2 Habersham County

Habersham County utilizes a public defender system to represent indigent adults, juveniles in delinquency and truancy cases, and parents in deprivation cases. The public defender office in Habersham County serves the entire Mountain Judicial Circuit, which includes Habersham, Rabun, and Stephens counties, however, the public defenders reportedly do not go to Rabun county, or know what's going on there. The public defender program has two attorneys, one concentrating on felonies and one concentrating on juvenile and deprivation cases, one investigator and an administrative assistant. We were told very few defendants in state court receive court-appointed counsel; many appear pro se. The public defender office occasionally represents misdemeanor defendants who walk into the office seeking counsel. The tripartite committee selects the chief public defender.

The Habersham County application for GIDC funds states that the county adheres to the GIDC caseload guidelines. However, high caseload was mentioned as a problem by both public defenders and prosecutors in the county. Caseload pressures were exacerbated by the need for two public defenders and one investigator to cover three counties, with three different court

[39] **January 29, 2002 letter to the Houston County Board of Commissioners from Superior Court Judges George F. Nunn and Edward D. Lukemire. Reprinted with permission of** the judges.

schedules.

The administrative assistant at the public defender's office completes the GIDC application for state funds. She includes data provided by the judges, who get it from the clerk's office. No one plays the role of a formal indigent defense administrator in Habersham County.

Conflict of interest cases are assigned to court-appointed attorneys by the superior court judge. In 2000, there were 18 attorneys on the conflict list, taking a reported average of five cases a year. However, it was reported by an attorney there are only five attorneys actively taking appointments. All attorneys practicing in Habersham are presumed to be available to take court appointments, although an attorney may be removed from the list if requested. Conflict counsel are compensated on an hourly basis, and fee vouchers are approved by the judge. Fee caps on cases follow the previous GIDC guidelines (March 4, 1999). There are very few if any appointments out of state court (when we visited, the county had used none of the $600 budgeted for this). We were told that indigent defense comprises one third of the county's budget.

4.3.3 Fulton County

The Fulton County public defender office has 74 attorneys, 20 investigators, and 17 administrative staff persons and one temporary social worker. The Fulton County Public Defender provides representation in non-capital felony cases through the various units or divisions within the office. Case assignments are made according to the stage of a case. For example, a pre-indictment unit represents defendants at hearings prior to indictment, but not thereafter. Attorneys at the jail file bond motions and provide representation on probation revocation matters. After indictment, representation is by one defender until disposition. Attorneys in the juvenile unit are assigned to courtrooms and provide representation in delinquency cases, unruly offenses when the interests of the child and parent are competing, and adult and juvenile probation violations. Conflict cases and death penalty cases are assigned to the Fulton County Conflict Defender and court-appointed counsel.

Superior court cases that are not assigned to the Public Defender or Conflict Defender are handled by panel attorneys. Each superior court judge has a list of panel attorneys from which s/he individually appoints attorneys. The judges appear to choose and run their own panels and appointment processes.

At the time of our study, the Public Defender's budget was $8.37 million, all of which was funded by Fulton County. No funds are provided to the Fulton County Public Defender by the Georgia Indigent Defense Council.

The public defender office utilizes an automated case-tracking system. The office reports a caseload limit of 70 open cases per attorney and 165 felonies per year. Caseloads are reportedly looked at on a case-by-case basis.

Indigency screening of detained felony inmates in Fulton County is done by Pre-Trial

Services staff, who are available 24 hours a day. As a result of the *Stinson* case (discussed in Chapter 5), Pre-Trial Services received a large number of additional staff. The Public Defender also staffs an office at the Fulton County Jail with attorneys, legal assistants, secretaries, and investigators. The public defender office is notified of felony appointments within 24 hours of defendants' screening, and defender staff at the jail interview defendants, file motions, and get bond hearings set. If a defendant appears in superior court without an attorney, the judge will inquire about the status of an attorney and, if told that the defendant cannot afford a lawyer, the judge will screen for indigency.

The public defender trial division is staffed with 34 attorneys, 32 assigned to each of the 16 courtrooms in superior court (two in each courtroom) and two floaters. There is a pre-indictment unit that covers the Complaint Room and the All-Purpose Hearing room in superior court, both of which are a type of fast-track for felony cases. Following *Stinson*, the public defender office received 15 new attorneys for pre-indictment representation. There is also an appeals division staffed with four attorneys. Representation in SB440 (§15-11-5(b)(2)(A)) cases is provided by three supervising attorneys.

The Public Defender's juvenile division is staffed by one permanent senior attorney and five junior attorneys who are rotated out after a period of six to twelve months. In juvenile court, Fulton County probation does the intake screening while a public defender attorney sits in the back of the courtroom and waits for probation to inform him or her which juveniles qualify for public defender attorneys.

The Public Defender reports to handle nearly all of the probation revocation hearings in the county. The hearings are normally held in a courtroom at the jail. There were complaints in Fulton County that many indigent defendants were sitting in jail waiting to be heard on these matters. It was reported that if a private attorney were retained, a defendant could suddenly jump to the top of the list to be heard.

The public defender investigators, like the superior court attorneys, are assigned to courtrooms. Additionally, there are three floating investigators. An investigation begins within the office when an attorney submits a written request. The chief investigator has been with the office since 1994, and he tracks all investigation reports submitted and subpoenas served. The resources for the investigators have been expanded, and the office appears to be equipped to perform quality investigations. Additionally, the investigators' salaries are competitive with investigators with the District Attorney's office, and there has not been a high turnover of positions. The public defender investigators do not have any in-house trainings, but do attend GIDC trainings.

One area of concern we have about the public defender office is the apparent lack of formal supervision and training. Supervising attorneys carry their own caseload, and while newer attorneys are assigned supervisors, there is little to no formal supervision done. Further, although there is a juvenile rotation, there is no other type of training ground within the office at which a new attorney can start other than representation at the jail. One attorney who had practiced law

before, although not much criminal law, interviewed clients at the jail for two weeks before he was assigned to a room at superior court. Another attorney, now in the trial division, informed us that, once in superior court, her caseload became manageable, but that when she was in juvenile court and assigned to the All Purpose Hearing room, the caseloads were overwhelming. A judge in the Fulton County Juvenile Court echoed this concern, saying that public defenders were overwhelmed and insufficiently trained.

In 1996, the Fulton County Conflict Defender was incorporated as a not-for-profit criminal defense organization. The program, which contracts with the county, represents indigent defendants charged with felony offenses whose cases pose a conflict of interest for the Fulton County Public Defender. Conflict defenders are also often assigned every third case out of the superior court courtrooms, as well as to complex cases and cases in which the judges see a need for social work involvement. In addition, the office handles juvenile cases which are subject to automatic transfer to superior court (SB 440 cases), a limited number of direct appeal cases, and up to two death penalty cases a year. The program has a policy of not turning down case appointments, and as a result, many of the superior court attorneys have very high caseloads. At the time we visited, the staff included the director, four attorneys in the major case division, eight attorneys in the superior court division, two paralegals not devoted to a division, an office administrator, a legal administrator, three investigators, and two social workers. The program has also added five attorneys, two paralegals and one social worker to begin representing misdemeanor defendants in state court as part of Fulton County's effort to comply with the directive in *Foster v. Fulton County* (discussed in Chapter 5).

4.3.4 DeKalb County

The DeKalb County Public Defender program was praised by numerous interviewees as one of the best indigent defense programs in Georgia. The chief public defender has held the position since 1984, and is credited with being a true advocate for indigent defense who works hard to implement important changes. One such improvement is salary parity between public defender and district attorney lawyers. Another is a shift from horizontal representation to vertical representation, where the lawyer represents a defendant from bail hearing in magistrate court through disposition in state or superior court. The chief public defender, who is selected by the tripartite committee, acts as the county's indigent defense administrator. While the current chief public defender is by all accounts a true advocate of indigent defense, we feel it is inappropriate for the position of indigent defense administrator to be held by the chief public defender. The practice is not a violation of the Supreme Court Guidelines for the Operation of Local Indigent Defense Programs or state bar ethical requirements, but it raises the appearance of a potential for a conflict of interest between the public defender and the appointed counsel program.

The office attracts experienced and dedicated lawyers. Despite the fact that the office has high caseload, the chief public defender feels the office can keep up due to a combination of experienced lawyers, low turnover, good pay, cooperative assistant district attorneys, a reciprocal open file policy, and attorney specialization. The approved budget for the DeKalb County Public

Defender in 2002 was $4,632,509.

In addition to the chief public defender (who does not carry a caseload), the office has three supervisory attorneys, 21 superior court attorneys, six state court attorneys, six juvenile division attorneys, 10 adult case investigators, one social worker, two juvenile case investigators, and seven administrative staff.

Office policy requires attorneys to meet with clients within 48 hours of appointment. Each pod in the jail has a direct phone line to the public defender's office, which greatly facilitates contact with detained clients.

Cases in which the DeKalb County Public Defender has a conflict of interest are handled by court-appointed attorneys who are paid on an hourly or flat fee per case basis. Attorneys are paid on an hourly basis ($45 out of court, $60 in court) for cases that go to trial while flat fees are paid for cases resolved with a plea, no matter how much time is put into the cases.

Two aspects of the public defender's office were criticized: its lack of formal training and its tendency to de-emphasize the importance of misdemeanor representation. Some people felt the public defender's office used misdemeanors as a training ground.

4.3.5 Public Defender Salary

There is disparity in salaries paid to prosecutors and defenders around the state. According to GIDC, the average salary paid to chief public defenders is just over $70,000 while the current state salary for elected district attorneys is $97,326. Public defender salaries are paid entirely with county funds, while counties may and do supplement the minimum state salary for district attorneys, who are elected to serve a judicial circuit. One of the reasons cited for the high quality of the Houston and DeKalb county public defender programs is that public defender staff have salary parity with the local district attorneys' staff. Effective July 1, 2002, starting state pay for an entry level assistant district attorney is $37,000, and as of October 2002, the figure will be $38,124.[40] Assistant district attorneys may earn up to 90% of the District Attorney's pay. The Habersham County public defender program does not have salary parity with the local district attorney's office. In Fulton County, public defender investigators have parity with investigators in the district attorney's office, but there is not salary parity for attorneys in the two offices.

4.4 THE 72-HOUR RULE AND EARLY REPRESENTATION

[40] While assistant district attorneys tend to be better paid than public defenders in Georgia, assistant district attorneys have lower entry level salaries than Executive Branch's Department of Law attorneys, whose starting pay is $47,000.

Under the Guidelines 1.2 and 1.3 of the Supreme Court of Georgia for the Operation of Local Indigent Defense Programs, indigent defendants must be apprised of their right to counsel and appointed counsel, if so desired, within 72 hours from detention or arrest. In addition, counsel is expected to make contact with new clients promptly after receiving notice of appointment.[41]

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[41] **GUIDELINES OF THE SUPREME COURT OF GEORGIA FOR THE OPERATION OF LOCAL INDIGENT DEFENSE PROGRAMS**

> **1.2 Time of Entry**
> **Counsel shall be appointed for every eligible person in custody within 72 hours of arrest or detention. Counsel shall make contact with the person promptly after actual notice of appointment.**
>
> **A person released from custody within 72 hours who has not been appointed counsel shall be notified at least ten (10) days prior to the next critical stage of the proceedings against him/her of the right to receive court-appointed counsel and the procedure to be followed to have eligibility determined and counsel appointed.**
>
> **1.3 Appointment of Counsel**
> **The Administrator of the indigent defense program or designee shall within 72 hours of detention:**
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> **(a) Appoint counsel for those who are indigent and without counsel;**
> **(b) Clearly advise detained persons of their right to have counsel and that if they cannot afford a lawyer, one will be appointed to represent them;**
> **(c) Allow or assist a person claiming to be indigent and without counsel to immediately complete an**

In our site work, we did not find that the rules regarding timely appointment of counsel and notification of counsel of new appointments are routinely or consistently monitored. Even though interviewees in many counties we visited stated that they try to appoint counsel within 72 hours of arrest, this goal frequently was not achieved. In addition, many attorneys reportedly did not meet promptly with newly assigned clients. In fact, in one county where the contract attorneys conduct the determination of indigency,[42] we were told by jail staff that the contract attorneys have told jail staff that they do not want the requests for counsel delivered to them daily. Jail staff have been told to wait until they have a week's worth of requests before delivering them.

The systems in a few counties visited did a good job of screening for eligibility, appointing counsel and requiring attorneys to meet promptly with new clients. Houston County's public defender system, the panel systems in Cobb and Chatham counties, and the contract system in McDuffie County stand out in this regard. The panel programs in Cobb and Lowndes request that attorneys representing detained clients send notices signed by their clients attesting to the time when they first met the client. This helps monitor compliance with local rules that panel attorneys visit their clients promptly following notice of appointment. (In Lowndes County, counsel are expected to meet with clients within 72 hours from notice of appointment. In Cobb County, counsel are expected to promptly visit all incarcerated clients, "but in no case shall that initial visit be later than five days from assignment.") Chatham County requires panel attorneys to make contact with clients within 48 hours of receiving new assignments.

Even if a county has a good policy pertaining to early entry of counsel, it is sometimes difficult to determine if the policy is strictly followed. According to indigent pre-trial detainees we met with in Lowndes County, the earliest the defendants had met with their court-appointed lawyer was approximately three weeks after arrest. Some defendants told us that counsel was met with for the first time seven to eight weeks after arrest. We were told by panel lawyers and the indigent defense coordinator that counsel generally meets with incarcerated clients within one week of appointment.

In Baldwin County, court-appointed attorneys are expected to make initial contact with new clients who are detained within 48 hours of appointment. For clients who are not in custody,

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Application for Appointment of Attorney and Certificate of Financial Resources for a determination of indigency or not.

[42] **This practice violates the requirement of Guideline 1.4 which stipulates that the indigency determination should be made by the Administrator of the indigent defense program or designee.**

counsel is expected to make a good faith effort to arrange an interview within 72 hours of the time of service of the notice of appointment. Some panel attorneys admitted they are not always successful in meeting detained clients within 48 hours of appointment. Inmates we interviewed described a delay of one week to two months between arrest and their first contact with their court-appointed attorneys. One attorney interviewed estimated a delay of between four weeks and two months in his own cases.

Just as there is no single reason for the delay in appointing counsel within the proscribed time frame, there is no single reason why counsel, once appointed, do not uniformly meet promptly with their clients. Problems contributing to the late involvement of counsel with their clients include:

- Some police officers fail to file incident reports in a timely manner.
- Some district attorneys and solicitors can be late in filing accusations or indictments and late in providing counsel with discovery. Without discovery, some defense counsel feel there is very little they can do on a case so hold off on meeting with clients until they have the discovery.
- Some courts are not prompt in appointing counsel.
- Sometimes in-custody defendants are not placed on the court docket in a timely fashion.
- Some court-appointed counsel are late in contacting clients and no monitoring is done to correct this problem. As mentioned above, we heard of serious problems in some counties where court-appointed counsel do not go to the jail to meet with clients.

We found that early representation of indigent defendants is uneven throughout the state and problematic in many areas: sometimes there is no involvement of counsel until arraignment, and in some counties, we were told felony indictments can take up to one year.[43] One DeKalb County conflict case attorney told us that if a defendant is out on bond, no appointment of counsel is made until indictment, which can take up to a year. The attorney commented that when he is not appointed until arraignment, compared with a retained case, he loses 6-12 months of investigation.

In the counties visited, some attempts have been made to provide counsel to pre-trial detainee felony defendants prior to arraignment in superior court. In Fulton County, this was the focus of the settlement agreement in *Stinson v. Fulton County Board of Commissioners* (discussed in Chapter 5).

In the Middle Circuit (Candler, Emanuel, Jefferson, Toombs and Washington counties), a lawyer known as the Early Intervention Coordinator provides representation from arrest to indictment/accusation for defendants being detained in the jail on new felony charges. One of the

[43] **We were told this is the case in Habersham and Spalding counties.**

roles of the Early Intervention Coordinator (ETC) is to evaluate whether a case is appropriate for early disposition, in which case the District Attorney will be contacted. Another role is to determine whether a preliminary investigative hearing is appropriate (for example, a defendant needs to get discovery prior to arraignment). If so, the EIC schedules the hearing, subpoenas witnesses, and represents the defendant at the hearing. One shortcoming of this system is that there is no continuity of counsel post-arraignment: not only is new counsel appointed, but there is no sharing of information between the EIC and the new attorney.

The EIC program in the Middle Circuit was initially funded by an open solicitation grant awarded by the U.S. Department of Justice, Bureau of Justice Assistance (of 101 proposals from all over the country, the EIC program was one of only seven programs funded). The contract pays $50,000 for work in five counties. The lawyer in this position feels stretched to properly visit inmates detained in five counties, plus make contact with probation and parole staff, the district attorney's office, police officers, and family members, plus appear in court. He thought that a contract paying $50,000 for work in three counties would be more reasonable.

The Ogeechee Circuit (Bulloch, Effingham, Jenkins and Screven counties) also has an Early Intervention Program (EIP) for felony cases. As in the Middle Circuit, the goal of the program is to dispose of cases at the earliest possible procedural juncture and to ensure that defendants meet promptly with a lawyer.

The EIP attorney meets with defendants held in the circuit's four county detention facilities and determines whether they want to enter guilty pleas in their cases. If a defendant wants to plead guilty, the EIP attorney will schedule the case for a plea. The EIP attorney is also responsible for seeking bond in cases where the defendant does not plead guilty. As in the Middle Circuit, if a defendant elects to proceed to trial on his or her charges, the EIP attorney's involvement on the case ends, and the case is assigned to another lawyer.

A single attorney working under contract handles the EIP work in all four counties for a flat fee of $65,000 per year. The same attorney is also responsible for all state court representation and all juvenile representation in superior court in Bulloch County, and also maintains a private practice. While the EIP was created with the best of intentions, it appears to us that the workload of this one attorney was excessive. Detained defendants we interviewed (who were selected by the indigent defense administrator) complained bitterly about the level of contact they had with the EIP attorney, stating the total time spent with them ranged from two to three to ten minutes total.

4.5 ISSUES REGARDING REPRESENTATION IN VARIOUS CASE TYPES

We observed several factors that affect the quality of representation provided to indigent defendants in various types of cases. Below we discuss some observations of representation of indigent defendants in felony, misdemeanor, juvenile and capital cases.

4.5.1 Felony Cases

One of the biggest problems with representation of indigent defendants facing felony charges is the delay in appointment of counsel, especially in less populous areas. In some parts of the state, judges and district attorneys cover multiple counties and there may be as few as two terms of court a year. Despite the Supreme Court's guideline that counsel be appointed within 72 hours of arrest, the mechanism triggering appointment of counsel in some counties is arraignment following accusation or indictment. Indigent felony defendants who cannot post bond sometimes sit in jail for three, five, six months or even one year waiting to be arraigned, all the while with no contact with counsel. In other counties, counsel may be appointed in a timely fashion, but no work is done by defense attorneys because they are not provided arrest records, charges and discovery by prosecuting officials or police until after arraignment.

4.5.2 Misdemeanor Cases

While indigent felony defendants typically have appointed counsel, in many counties, many misdemeanor defendants proceed *pro se*.

One state court judge reported that 75% to 85% of the defendants making pleas before him go unrepresented. He estimated that 5% of his jury trials are *pro se* and approximately 50% of bench trials are conducted with no defense counsel.

Many misdemeanor defendants in Georgia are initially apprised of the charges against them in magistrate court, which are not courts of record. At this appearance, defendants should be read their rights, including their right to appointed counsel if they are eligible. We observed the initial appearances of defendants in magistrate court in Clayton County. The magistrate did not read defendants their rights. Instead, defendants were asked: what do you want to do about an attorney? Because magistrate courts are not courts of record, there is no way to check whether waivers of counsel in misdemeanor cases are made knowingly, voluntarily and intelligently.

An oft-heard comment in our site work is that people don't want counsel in misdemeanor cases. This may well occur in some traffic cases, which can make up a significant portion of a state court docket. In Georgia, *every* moving traffic violation (not parking tickets) is a misdemeanor, which can carry 12 months in jail plus a fine. We were told that many people know it is unlikely they will get prison time for a routine traffic violation, so they do not bother to request counsel.

In Richmond County, where two part-time public defenders represent indigent defendants in state court, a judge whom we interviewed opined that approximately 90% of misdemeanor bench trials currently proceed without a defense attorney. It was estimated that 25% of all state court jury trials are conducted with no defense attorney. Indeed, during court observation of a misdemeanor trial calendar, neither public defender was present. More than ten pleas were entered -- one of which resulted in sentences of probation -- and a bench trial commenced with no defense attorney. Judges stated that whenever a defendant was "obviously going to jail," they

would attempt to secure counsel.

A number of interviewees noted that a substantial number of people who proceed without representation in state court plead to offenses without fully understanding the consequences. For example, not all laypeople know that pleading to a domestic violence simple battery means that a person can no longer carry a gun, or that a second domestic violence offense is a felony.

At the time of our visit in Fulton County, we found that a number of eligible misdemeanor defendants did not receive appointed counsel in Municipal Courts, Traffic Court, and North Annex and South Annex Magistrate Courts. The Fulton County Public Defender's Office suspects this is attributable to forced waivers of counsel. Additionally, until recently there has been serious delay in appointing counsel in misdemeanor cases in state court (see chapter 5 for more discussion).

In Habersham County, we were told that the policy of state court is to only appoint counsel where there is "significant" jail time involved and the case is sufficiently complex that an attorney is needed to assist the client. (This was said to be Georgia law, but no case or statute was cited.) The court reportedly views significant jail time as anything over 30 days. In addition, counsel are not appointed for probation violations, whether they are new charges or technical violations. Some interviewees felt the Solicitor and state court judge do not feel that substantial rights are at stake in state court.

In Hall County, the indigent defense administrator appoints an attorney of the day for state court arraignment. The duty attorney does not become counsel of record for these defendants: he or she just advises defendants appearing that day. Pro se defendants talk with solicitors about their cases. We were told the indigent defense administrator sometimes asks misdemeanor defendants to talk to the prosecutor three times to try to resolve the case before appointing counsel.

The indigent defense plan for the Indigent Defense Committee of the Macon Judicial Circuit, which includes Bibb County, states that it provides for representation in felony cases. No other case types are mentioned. We were told by numerous interviewees that counsel is not appointed in misdemeanor cases. Indeed, the FY 2002 application for state-grants-to-counties funds provides no figure for appointed counsel in misdemeanor cases. Data is provided, however, on delinquency cases, which are not mentioned in the program description. The allegation that counsel are not appointed to indigent defendants in misdemeanor cases was not confirmed by a state court judge, as we were unable to meet with one during our visit.

Our site work was concluded before the Supreme Court released its opinion in *Alabama v. Shelton*, requiring counsel to be appointed when requested by indigent misdemeanor defendants when they face a potential suspended or probated sentence to imprisonment. 122 S. Ct. 1764 (May 20, 2002). *Shelton* has the potential to significantly change the practice of appointing counsel for misdemeanor defendants in Georgia. Prior Georgia law tracked federal law, which required appointment of counsel to indigent defendants, when requested, in any crime that may

lead to imprisonment. *Argersinger v. Hamlin*, 470 U.S. 25 (1972). While a number of states expanded the federal right to counsel to include cases where defendants faced but were not sentenced to imprisonment, Georgia law required that counsel be appointed only when the defendant was sentenced to actual imprisonment. *See Brawner v. State*, 296 S.E.2d 551 (1982), *Houser v. State*, 214 S.E.2d 893 (1975), *Stillwell v. State*, 288 S.E.2d 295 (1982).

4.5.3 Juvenile Cases

Some of the more disturbing problems in Georgia's indigent defense system are found in the treatment of juveniles accused of delinquent offenses.

Too many juveniles in Georgia appear in juvenile court without counsel, typically because they are poorly informed of their right to counsel or because they are discouraged from exercising that right. In a number of counties we visited, the indigent defense administrator has little or nothing to do with the administration of the juvenile indigent defense program. The juvenile judges make appointments to attorneys off of their own lists (Chatham and Clayton counties), or select contract attorneys (Cobb County).

In Clayton County, accused juveniles are reportedly asked to admit or deny the charges against them before being offered the opportunity to consult with court-appointed counsel. The practice of judges in Clayton County is to appoint attorneys to indigent juveniles in any designated felony. If the charge is not a designated felony, however, judges will generally appoint counsel only in cases where the juvenile denies the charges. A prosecutor estimated that between 10% and 20% of contested fact-finding hearings are conducted *pro se* in juvenile court.

The juvenile court administrator makes appointments in juvenile cases from a list on a rotational basis but reportedly has a great deal of trouble contacting most of the attorneys on the list. The result is that a small number of attorneys handle the vast majority of the juvenile caseload in Clayton County. For example, two such appointed attorneys pick up between 5 to 12 cases each week. (Clayton County has a sizable population: at 236,517, it is the fourth largest county we visited.) All attorneys representing juveniles are compensated at a rate of $45 per hour for out-of-court work and $60 an hour for in-court, however, there is a $250 per case cap. One judge noted that this cap is "probably out-dated."

The juvenile court judge in Baldwin County told us he had a very hard time getting attorneys to participate on the juvenile panel and lamented that the very worst attorneys remain on the juvenile list. We were told attorneys on the juvenile panel rarely subpoena witnesses, present evidence, move for a directed verdict, file motions for discovery, talk to witnesses, know names of witnesses, or look at school records. Attorneys typically meet with their juvenile clients for the first time at the courthouse steps.

In Habersham County, juveniles are reportedly only assigned counsel in cases requiring detention hearings. These are more serious cases where the police or prosecutor seeks to detain

the child pre-trial because of public safety issues or because the child might fail to appear at a susbsequent court appearance.

In Chatham County, attorneys are appointed to represent children in delinquency and unruly cases. They are also appointed to represent parents in deprivation and termination of parental rights cases. Many juvenile cases in Chatham County are resolved without appointed counsel. Despite repeated inquiries as to what accounted for the low level of appointed counsel, no one interviewed seemed to know the reason. One suggestion was that many delinquency cases are handled informally, without a hearing. A juvenile court judge acknowledged that of those juvenile cases that make it to court, less than one-half have an appointed or retained attorney.

In Richmond County, a single part-time public defender is responsible for juvenile court representation. The attorney, who handles approximately 1,200 cases per year, also has a private practice. The juvenile court public defender work represents less than 40% of his practice.

4.5.4 Capital Cases

Representation of capital defendants in DeKalb and Houston counties is provided by the public defender office and panel attorneys. In Fulton County, the Conflict Defender takes up to two death penalty cases a year, and panel attorneys handle the balance. In counties with panel systems, we found that typically appointments in capital cases are not made to the same attorneys who are part of the usual felony panel. Cases are appointed off a separate list of attorneys deemed to be qualified to handle capital cases. The Supreme Court guidelines concerning contract programs forbid capital felonies where the death penalty is sought from being included as part of a contract for indigent defense services (see Guideline 2.7). However, contract attorneys can be and are appointed to the cases outside the contract.

Under the Indigent Defense Guidelines and the Revised Unified Appeal, compensation for panel attorneys appointed to capital cases must be set at a higher rate than the rate in non-death penalty cases, in consideration of the seriousness, complexity and longevity of death penalty cases. In Dougherty County, attorneys handling death penalty cases are paid $65 an hour for out-of-court work and $90 an hour for in-court work. In Cobb County, the county's fee schedule calls for appointed counsel to be paid $75/hour in-court and $65/hour out-of-court with no maximum. When appropriate, judges will pay up to $100/hour in death penalty cases. One superior court judge in Fulton County said he pays lawyers in death penalty cases $100 an hour for out-of-court work and $120 an hour for in-court work.

Under the Revised Unified Appeal, in trial cases for which notice that the state intends to seek a sentence of death is given, two qualified attorneys must be appointed.[44] In homicide cases, district attorneys have a great deal of discretion over when they will serve notice to defense counsel that a sentence of death will be sought. Until that time, which can range from two

[44] *See* http://www2.state.ga.us/Courts/Supreme/ for a listing of the qualifications.

months to one year, a county is under no obligation to appoint two attorneys to the case, or even, for that matter, to appoint an attorney who is qualified to handle capital cases. So sometimes a lawyer will be appointed who does not meet the minimum qualifications to represent defendants in capital cases and once the district attorney's office announces that the case will be tried as a death penalty case, two entirely new counsel must be appointed.

Representation of indigent defendants in death penalty cases was not an area of close scrutiny in our site work, as a detailed study of a system in a state that has a very large death row[45] was beyond the scope of our general review of indigent defense in Georgia. However, in our site work, we heard universal praise for the work of the Multi-County Public Defender among prosecutors, judges, and attorneys. Interviewees commented that the level of capital defense has been raised in Georgia because of the work of the Multi-County Public Defender.

4.5.5 Habeas Corpus Actions

[45] The NAACP's report, *Death Row U.S.A. Fall 2001* lists Georgia's death row population as 131 as of October 1, 2001. *See* http://www.naacpldf.org/pdfdocs/DRUSA-Fall01.pdf p. 21.

Georgia provides no right to counsel in habeas corpus actions.[46] Thus, even if an attorney takes on a habeas corpus case, there is no authority for compensation by the court; all work is performed pro bono. Reenforcing this point, the Chatham County Indigent Defense Guidelines expressly state that habeas corpus actions are not compensable under the local indigent defense system. There is no system in Georgia for providing counsel to indigent defendants in habeas corpus cases. The small Georgia Appellate Practice & Education Resource Center, which is funded with state funds, handles a number of capital habeas corpus cases and seeks pro bono counsel to handle cases that are beyond its capacity to take on. The Center for Prisoners' Legal Assistance in Alpharetta, Georgia is funded with a contract from the state Department of Corrections and handles a limited number of non-capital habeas corpus cases.

4.6 WAIVERS OF COUNSEL

Under the Sixth Amendment of the United States and the Georgia Constitutions, to be valid, waiver of counsel must be knowing, intelligent[47] and voluntary.[48] Waiver will not be presumed from a silent record.[49] The record must establish that the defendant knows what he or she is doing in choosing self-representation.[50] Waiver of the right to counsel requires more than showing of knowledge of the right to counsel; there must be evidence of relinquishment of that right.[51] Despite these strict requirements, we were told there are many instances of waiver of counsel in juvenile, misdemeanor and felony cases in Georgia courts.

We were told that in Baldwin County, defendants come to meet with the assistant district attorney and ask, "Do I need a lawyer?" The district attorney tells them, "It is up to you, if you feel you need a lawyer get a lawyer." Noting that the community has a small town mentality, the assistant district attorney told us it is not uncommon for defendants to try to work things out with the district attorney's office.

In Cobb County, although counsel are appointed to represent defendants in state court, there are still a significant number of defendants who choose to proceed *pro se*. One judge

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[46] *See Gibson v Turpin*, 513 S.E.2d 186 (1999).

[47] *Jones v. State*, 212 Ga. App. 676 (1994).

[48] *Faretta v. California*, 422 US 806 (1975), *Callaway v. State*, 197 Ga. App. 606 (1990).

[49] *Jones v. Wharton*, 253 Ga. 82 (1984), *Blaylock v. Hopper*, 233 Ga. 504 (1975), *Kirkland v. State*, 202 Ga. App. 356 (1991).

[50] *See* U.S. Const. Amend. 6, and *Hamilton v. State*, 233 Ga. App. 463 (1998). The choice must be made "with eyes wide open."

[51] *Rutledge v. State*, 224 Ga. App. 666 (1997).

suspected this was because defendants felt that getting a lawyer appointed would slow things down.

In Dodge County, many defendants negotiate pleas on their own with the district attorney's staff. The judges felt this was not an ethical or legal problem as long as the defendants had waived counsel. When asked if he was concerned that defendants may not be able to present all mitigating circumstances in an effective manner, the superior court judge said he felt it was not a problem, because it was a small county, and the judge and district attorney staff know the circumstances of the people who appear before the court. We were also told that 10-15% of defendants decline the services of the contract defender despite being eligible.

While waiver of counsel by indigent defendants in felony cases was not common in the counties we visited, we were told by the District Attorney in rural Toombs County that it is relatively common for felony defendants in less serious cases to waive counsel. At arraignment, judges tell defendants they do not have to ask for an appointed attorney, but that they have the right to apply for one. Then defendants are told they may choose to talk with the District Attorney's representative that day to hear what he or she is offering. A number plead out at arraignment without benefit of counsel after hearing the offer from the assistant district attorney.

Many misdemeanors are resolved in municipal, magistrate and probate courts. Municipal and probate courts were not courts that we visited as part of this study. As we understand it, with the exception of Atlanta City Court and Atlanta Municipal Court, indigent defense counsel do not usually appear in municipal, probate or magistrate courts. Municipal courts are established by charter legislation, and some are courts of record while others are not. Probate courts are courts of record by case law but not by statute. Magistrate courts are not courts of record. As previously discussed, *Alabama v. Shelton* expands the right to counsel for misdemeanor defendants in Georgia. Of course, if valid waiver of counsel is made, counsel need not be appointed. However, it may be difficult to track compliance with *Shelton* when waivers are made in those courts which are not courts of record.

4.7 ATTORNEY-CLIENT CONTACT

We heard repeated comments from attorneys, judges, jail staff and inmates that appointed attorneys do not meet with their clients enough.

One of the factors contributing to infrequent contact between attorneys and their clients is that some counties in Georgia do not have their own jail; inmates are transferred and held in jails in other counties. Another contributing factor to infrequent attorney-client contact is jail overcrowding. In Houston County, for example, because of jail overcrowding, defendants are sometimes taken to other county jails. When an attorney wants to meet with such a client he or she has to file an application with the other county's jail to have the client brought to Houston County. The jail has to make complicated arrangements to do so, such as sending another defendant out to free bed space, etc. There is little flexibility in scheduling when such

arrangements have to be made, and the lack of scheduling flexibility inhibits attorney-client visits. The county is building a new jail which will be ready in fall 2002.

In Floyd County, a new jail opened in 1999 which increased the county's inmate capacity from 250 to 800. Despite the significant increase in bed-size, at the time we visited, the new jail was slightly over capacity, at 813 inmates. We were told that 180 inmates in the Floyd County jail were from four other counties; one county was over a two-hour drive away. Some counties send defendants to Floyd County because they do not have a local jail while other counties were sending over-flow detainees to be held in Floyd County.

A major factor in jail overcrowding is the warehousing of pre-trial detainees who cannot post bail and must wait a long time before arraignment. This occurs in both misdemeanor and felony cases throughout Georgia. Misdemeanor defendants can wait weeks for action to be taken by local courts. Felony defendants can wait for months before being indicted.

Jail overcrowding is not the only reason for indigent defense lawyers failing to meet their clients. We were told that Floyd County contract defender attorneys frequently do not visit their clients in jail. The problem in Floyd County is probably due in part to a lack of monitoring of contract attorneys. It has been difficult for Floyd County to attract lawyers to take the indigent defense contracts. Other reasons for inadequate attorney-client contact include: inadequate compensation of indigent defense counsel, indifference by many appointed lawyers to their clients and a lack of monitoring of visits by court-appointed attorneys with in-custody clients.

Panel attorneys in Lowndes County admitted they do not visit clients as often as they should. One told us he will visit only "if there is something important." Several inmates in Lowndes County told us they wanted to enter a plea but they could not get in touch with their lawyers. Similarly, in Richmond County, jail staff told us that they were frequently contacted by inmates who want to plead guilty but could not get in touch with their attorneys. Their observation was that most appointed lawyers met their clients for 10 minutes either at arraignment or the day before that. Jail staff in Clayton County reported that inmates often complain about infrequency of attorney contact. Jail officers are frequently asked to point out attorneys at substantive court hearings because clients have never met them. In Baldwin, Lowndes, Dodge, Dougherty and Floyd counties, jail officers told us that the complaint they hear most frequently from clients is that they are trying to get in touch with their lawyer. Clients we spoke to in Clayton, Dodge, Dougherty, Lowndes, Bibb and Baldwin counties complained to us that they see their lawyer only at formal arraignment and at best a couple of days before formal arraignment. A juvenile court judge in Bibb County told us he thinks that appointed counsel initially meet their clients within 72 hours of appointment, but rarely have a second visit.

Client contact was an issue cited by the District Attorney, the jail administrator, in-custody defendants and one of the three attorneys doing court-appointed work in Bulloch County. The District Attorney noted the court-appointed lawyers' office is at least 45 minutes away from the courts and felt that the attorneys were not visiting their jail clients. The jail administrator we spoke with said he sees the firm's attorneys at most twice a month. There are reportedly jury

selection days where indigent defendants have never met their attorney. The firm attorney admitted he doesn't go to jail as often as he needs to. Among the in-custody defendants we met, few had met with their attorney more than once, some had yet to meet their lawyer. A defendant detained on burglary charges had been held for 99 days. So far he had met "less than 2 minutes" with the Early Intervention Program (EIP) attorney and was asked if he wanted a plea or bond hearing. He asked for a bond hearing, but had no further contact with the lawyer. Another defendant had been detained on a murder charge 285 days and reportedly met with his appointed attorney for 10 minutes in jail plus at one court hearing. He could not make collect calls to the lawyer. Another defendant, in jail for 109 days on armed robbery charges, told us he met with an attorney once for less than 10 minutes. Other defendants did not know that they would not have the EIP attorney if they went to trial.

Inadequate client contact can be a symptom of too many cases and/or inadequate compensation. One attorney in Clayton County told us when he returns to his office and has two client phone messages -- one from an appointed client and one from a retained client -- "Of course, I will call the client who retained me first." Among several inmates interviewed in Clayton County, two reported that they met their court-appointed attorney within a week of their arrest. The others reported having to wait between three weeks and six months to meet with an attorney. Court-appointed attorneys reportedly spent an hour or considerably less with these clients over periods of pre-trial incarceration lasting up to seven months. Some of the inmates complained that their attorneys didn't have time to discuss the facts of their cases and refused to interview witnesses.

DeKalb County stood out in its ease of attorney-client contact between public defenders and clients who were detained pre-trial. As previously mentioned, each pod in the jail has a direct phone line to the public defender's office. In addition, access of public defenders to clients for in-person visits at the jail was considered excellent, and private conference rooms are available.

Infrequent attorney-client contact is not always due to a lack of effort on the attorney's part. In Toombs County, the District Attorney noticed that the contract defenders' out-of-custody clients often did not stay in contact with their lawyers. The District Attorney initiated a local practice whereby at arraignment defendants are given a written order to appear at court on a subsequent date, usually 2-4 weeks later, for a "pre-trial conference." The hearing is informal: the judge does not attend but the District Attorney staff does. The court can issue a warrant if a defendant fails to appear at the hearing but typically if that happens the defendant won't be incarcerated, but will be reminded to call his attorney. The orders are issued for both appointed and retained cases and the attorneys are under no obligation to appear. However, the contract attorneys routinely appear because they find it helpful.

In McDuffie County, we were told that the two contract defenders visit their in-custody defendants within 72 hours of appointment. This is particularly important in a small county where the superior court only has two criminal terms a year.

4.8 INDIGENCY DETERMINATION

Counties accepting state grant money must follow the Supreme Court's guidelines on determining whether defendants are eligible for court-appointed counsel. Guideline 1.5 reads:

> 1.5 Financial Eligibility
> Eligible accused persons include all applicants for an attorney with a net income below the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. The local committee may set and revise the eligibility standards in accordance with, but no lower than, the Poverty Guidelines.
>
> The following special needs of a family unit may be deducted from net income in determining eligibility:
> (1) child care expenses for working custodial parents,
> (2) legally required support payments to dependents, including alimony for the support of a child/children,
> (3) unusual, excessive, or extraordinary medical or other expenses.

The 2002 poverty guidelines are set out in the table below.

2002 HHS Poverty Guidelines

Size of Family Unit	**48 Contiguous States and D.C.***	**125% of Guideline Annual**	**125% of Guideline Monthly**
1	$8,860	$11,075	$925
2	$11,940	$14,925	$1,245
3	$15,020	$18,775	$1,565
4	$18,100	$22,625	$1,890
5	$21,180	$26,475	$2,210
6	$24,260	$30,325	$2,530
7	$27,340	$34,175	$2,850
8	$30,420	$38,025	$3,170
For each additional person, add	$3,080	$3,850	$325

* There are slightly higher thresholds for Alaska and Hawaii.

We found a great deal of variance in the process of determining whether defendants qualify for court-appointed counsel among the counties visited. Some counties stick closely to the federal poverty guidelines. Some counties have homegrown rules of thumb. Among counties that used the federal poverty guidelines, there was variability in practice in appointing counsel for people who were slightly over the guidelines: in some counties that would be routine while in others appointment of counsel would routinely be denied.

We heard from many people interviewed that the Hall County indigency determination process was too strict. One interviewee said it was "like pulling hen's teeth to get an attorney here." In determining indigency, the indigent defense administrator follows the Supreme Court poverty guidelines, along with "local guidelines." The "local guidelines" include a rule that a defendant cannot have more than $1,000 in assets to be eligible for counsel. In accordance with the Supreme Court guideline, child support payments are deducted if they are court-ordered and up-to-date and medical expenses are deducted from income upon proof that they exceed $5,000. Likewise, probation costs are deducted if they are up-to-date. Wages are verified. The indigent defense administrator admits that screening is stringent. If counsel is denied, defendants are told to keep a running budget/income record. At subsequent calendar calls, defendants can try to demonstrate they can't hire a lawyer. Usually they are appointed one if they fail to hire one by then. According to records kept by the administrator, in 2001, 772 of 1,449 defendants in superior, state, and magistrate courts received attorneys; 242 of 282 juveniles received attorneys.

In Houston County, the indigent defense coordinator uses the GIDC guidelines to determine indigency. The guidelines are very strictly applied. There is no discretion to appoint counsel to a person earning even a dollar above the guidelines.

In DeKalb County, we were told there is no uniform standard applied. Defendants who are in jail are presumed to be indigent. The federal poverty guidelines are used in misdemeanor cases. In juvenile cases, consideration is given to the guidelines, as well as to any debt of the child’s family and the complexity of the case.

In Baldwin County, defendants who have bonded out of jail and seek appointed counsel must obtain a form from the court and have this form authorized by three local defense attorneys vouching for their indigency. In other words, defendants who post bond must affirmatively demonstrate they cannot afford to pay the fees of three local lawyers before they can receive appointed counsel.

4.9 TRAINING

Overall, the indigent defense systems in the counties visited have very minimal - and often non-existent - criminal defense training requirements for public defenders, contract attorneys and

panel attorneys. In the Fulton County public defender office, for example, new attorneys shadow a senior attorney for two to three days and are then on their own with no further formal training. The panel program in Cobb County was the only one we reviewed that mandates participation in annual criminal law training. New panel attorneys must have attended at least one criminal law seminar within the two years before joining the panel. To remain on the panel, attorneys must attend at least one criminal law seminar each year.

With no criminal law training requirements in the majority of programs, many panel attorneys and contract attorneys do without training. While a lack of training is not acceptable for any lawyer, it is often more troubling in panel and contract systems where attorneys do not always have easy access to other criminal defense lawyers and supervisors who can offer advice and suggestions, as in a public defender program.

GIDC offers dozens of low-cost criminal law training sessions in Atlanta and in other locations around the state each year. Attorneys who participate in the trainings praised them. However, GIDC reports that overall participation is low; it has had to cancel some sessions scheduled outside of Atlanta due to too few participants. Many judges interviewed felt that mandatory attendance at specialized and targeted criminal law training programs by indigent defense lawyers would distinctly improve the quality of indigent defendant representation. Several judges felt that attorneys need training in specialized areas such as juvenile and mental health law, noting that lack of proper training in these areas was sorely evident in court. Some suggested that mandatory training coupled with greater availability of GIDC training at the local level would make it easier for younger attorneys to get proper training without cutting into law firms' billable hours requirements.

Judicial encouragement to attend training has impact. GIDC's juvenile case training sessions are well-attended. This is attributed to the fact that a number of juvenile court judges require that attorneys participate in juvenile training before accepting court appointments; the juvenile judges in Fulton County require attorneys to present a certificate proving they've attended the training. GIDC's capital case training is also well attended, due perhaps to the Supreme Court's requirement that attorneys attend annual capital case CLE in order to receive capital case appointments.

4.10 ANCILLARY SERVICES

Any effective criminal defense lawyer – whether representing retained or court-appointed clients – needs from time to time to make use of ancillary services, such as investigators, experts, interpreters, social workers, etc. in order to adequately represent his or her clients. In our site work we asked about the practices concerning indigent defendants' lawyers use of ancillary services.

4.10.1 Investigators

Adequate investigation of a case is the most basic of criminal defense requirements. Sometimes it is not necessary to enlist the assistance of an investigator, but often it is. For example, it is not proper for attorneys to interview witnesses who they suspect they may later need to impeach in court, because the lawyer may have to testify against the witness.

Numerous contract and appointed counsel admitted they rarely obtain the services of an investigator. Some attorneys told us they simply prefer conducting investigation themselves. Others candidly admitted they do little or no investigation at all. Reasons for this vary.

One attorney told us that independent investigation was unnecessary, because by looking at the discovery, "you can always see that the defendant did something. May not have committed the crime, but at least knows something about the crime." In Baldwin County attorneys freely admitted that unless a case goes to trial, the flat fee is a disincentive to do any investigation on cases. Further, superior court judges there informed us that they grant requests for investigators or experts only in death cases. In Bibb County attorneys told us that those who were appointed on murder cases had to do their own investigations. In many counties travel time and gas are not reimbursed so appointed attorneys are reluctant to visit witnesses or clients who are in jail. In Richmond, Clayton, Bibb and Baldwin counties we were told that even attorneys who feel that an investigator or expert would help in their cases are reluctant to file motions securing investigative help a) because it will be a waste of time, as such requests are routinely denied and/or b) because it might annoy judges. In Clayton County, attorneys told us that even in death penalty cases to get approval for investigators was akin to "pulling teeth." In Lowndes County, very few attorneys request investigators. The Coordinator is able to approve up to $500 for an investigator or expert.

In most counties visited, attorneys are able to make ex parte requests for experts and investigators, when appropriate. This was not the case in Bibb County where panel attorneys reported they have never been permitted to file investigator requests ex parte.

Both Cobb and Dougherty counties have designated investigators who are available to the panel attorneys. In Cobb County, the indigent defense administrator keeps a list of about 25 investigators for panel members to use. Investigators must be licensed by the state of Georgia and in good standing to get on the list. They are paid $30/hour. Attorneys seeking the services of an investigator must secure an order from a judge allowing the cost. The order is for a set amount, with an understanding that if more is needed, the attorney can ask for additional funds.

All four of the public defender programs we visited had investigators on staff.

4.10.2 Interpreters

We found the availability and use of interpreters to be a serious problem in many counties we visited.

In Lowndes, Dougherty, Houston, Bibb, Baldwin and Clayton counties, the lack of

available Spanish speaking interpreters was cited as a significant problem when dealing with the Spanish-speaking community. In Clayton County, the problem is so severe that we observed defendants bringing children to court to interpret for them. Clayton County has large Hispanic and immigrant populations. In Dodge County, inmates and jail guards are used by attorneys to interpret for clients. In other counties such as Lowndes and Dodge, probation officers are used to interpret in court. Clayton County was coping with an interpreter shortage in magistrate court by relying on AT&T language lines for first appearance hearings.

In Habersham County, we were told that about 10% of the jail population is Hispanic, and a significant percentage of that group speaks no English. There are also Laotian and Vietnamese populations in the county. On court days, there is a court interpreter. However, we were told it is rare for attorneys to visit Hispanic defendants in jail, because translators are not available there.

In October 2001, the Supreme Court of Georgia passed an order on the use of interpreters for non-English speaking persons that promulgates rules requiring certified and/or registered interpreters be available to assist non-English speakers in court proceedings. It also established the Georgia Commission on Interpreters for Non-English Speakers, which is to administer a statewide comprehensive interpreter program, oversee the development and ensure the quality of all interpreters, approve court interpreter programs, and develop guidelines for interpreter programs. The Commission is to establish programs for certification and registration of interpreters.[52] From what we could tell, these requirements have yet to be implemented in the counties we visited.

According to the Administrative Office of the Courts, on January 1, 2001, there were 55 Qualified Interpreters (meaning they had attended an orientation session and passed the written exam) and 14 Certified Interpreters (meaning they had attended orientation training and passed a written and oral exam). These numbers are steadily increasing. As of July 31, 2002 there were 148 Qualified Interpreters and 19 Certified Interpreters. Another 65 persons had attended orientation and taken the written test, and were awaiting test results. Training sessions and written tests scheduled for the remainder of 2002 may bring as many as an additional 140 persons into the qualified status.

4.10.3 Experts

The outcome of a case can hinge on examination of scientific evidence, such as DNA, or on a psychiatric examination of a client -- things for which defense lawyers must utilize an expert. As with investigators, lawyers will not need to use an expert on every case, however, when appropriate, the services of experts must be freely available to indigent defense lawyers. In Spalding County, the expense of experts apparently comes out of the flat-fee contract for indigent defense. Such an arrangement violates Supreme Court Guideline 2.7 and places contract

[52] ***See*** **http://www.legis.state.ga.us/Courts/Supreme/interpretersrule.htm.**

attorneys in the position of having to choose between using part of their contract payment for necessary experts or forgoing the experts.

In Baldwin County, we were told by attorneys, judges and the indigent defense administrator that funds for experts and investigators are granted only in death penalty cases.

A panel attorney in Bibb County told us that out of the 20 times he has applied for an expert he has never received an expert. "If there was more money for experts, by God, my clients would not be in jail."

A superior court judge in Fulton County told us, "I will deny an expert or investigator if I think the lawyer can do it." He puts an initial cap on the investigator expense. "As far as experts are concerned, I am as cheap as possible. This is a Chevy operation, not a Mercedes operation. We are under extreme pressure from the county to hold our expenses down."

4.10.4 Social Workers and Programs that Provide Alternatives to Incarceration

We found that overall there are limited options for defense attorneys who want to pursue treatment or other alternative placements to incarceration for adult and juvenile clients in Georgia. Panel attorneys, contract attorneys and juvenile court judges reported there are limited alternative placement programs available. Further, with relatively few public defender programs in Georgia, there is low usage of social workers. Social workers are used in criminal cases to assess clients and make recommendations and obtain placements in programs providing alternatives to incarceration. They are more commonly used by public defender programs rather than by panel attorneys or contract attorneys. Both the DeKalb and Fulton County public defender programs have one social worker.

4.10.5 Mental Health Services

Services for indigent defendants with mental health problems are virtually non-existent in many Georgia counties and consequently some defendants simply stay in jail for weeks or months without treatment or proper disposition of their cases.

An initiative in DeKalb County stands out in contrast to what occurs in other places we visited. The Chief Magistrate Judge created a mental health diversion calendar in May 2001. It is available to non-violent misdemeanor defendants with mental health problems. Their cases are diverted as opposed to receiving special sentencing conditions of treatment. The project is described as a major undertaking, and includes a mobile crisis unit, one psychologist and two on-call officers.

We were told the biggest problem relating to representation of indigent defendants with mental illness is a lack of resources to effectively assist these individuals. Georgia, like many other states in the country, has reduced the number of state hospital beds available for patients with mental illnesses in the past two decades. In counties where there are not enough resources to

assist people with mental illnesses, some people who could more appropriately be helped with medical or social services, if the services were available, end up in the criminal justice system. Those in the criminal justice system – including police, judges, prosecutors and defense attorneys – lack training in how to deal with people with mental illnesses who "act out" or commit crimes because they don't have medication or proper supervision. With inadequate community resources and alternatives to incarceration available, jails and prisons have become the nation's mental health facilities.

A Bureau of Justice Statistics report, *Mental Health and Treatment of Inmates and Probationers*, found that 16% of all inmates in state prisons and local jails have mental illnesses.[53] According to the National Alliance for the Mentally Ill, 5.4% of American adults have a serious mental illness.[54] The BJS report also found that state prison inmates with a mental illness were somewhat more likely than other inmates to be incarcerated for a serious offense and to be under the influence of alcohol or drugs at the time of arrest. They were more than twice as likely as other inmates to have been homeless in the 12 months prior to their arrest. Over three-quarters of mentally ill inmates had been sentenced to time in jail or prison or on probation at least once prior to the current sentence.[55]

4.10.6 Adequate Client Meeting Space

It is imperative that defense counsel is provided sufficient time and a confidential space with which to meet counsel. In many county court houses visited we noticed that contract and panel attorneys had no room or private area to talk to defendants. For some attorneys, the only time they meet their clients is at the courthouse. It is important that some kind of space is provided for panel and contract attorneys to meet with their clients in private.

In Habersham County, the public defender's office is poorly equipped to meet clients. For example, there is no hallway and no waiting area, so the staff walk through each other's offices all the time. There is no room in the office for files and it is impossible to have private conversations.

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[53] Paula M. Ditton, Bureau of Justice Statistics Special Report, *Mental Health and Treatment of Inmates and Probationers*, July 1999, p. 1.

[54] http://www.nami.org/helpline/factsandfigures.html.

[55] Paula M. Ditton, Bureau of Justice Statistics Special Report, *Mental Health and Treatment of Inmates and Probationers*, July 1999, p. 1.

Each office has a noise machine or a radio to provide some privacy.

In Fulton County, attorneys complained that the holding cells in which attorneys conduct interviews with clients are unsanitary, have little privacy, have no tables to write on and are very noisy.

4.11 CASELOAD

The GIDC Guidelines set forth recommended caseload figures for full-time public defenders.[56] Programs are instructed that if they regularly exceed the annual, per-attorney caseload standards they are to provide a detailed explanation of factors including local court and prosecutor practices, the number of lawyers assigned to indigent defense cases, the type and number of support staff assisting these lawyers, etc.

It is difficult to gauge indigent defender caseload throughout Georgia for several reasons. First, the caseload data reported to GIDC is not reliable. Second, most indigent defense programs in Georgia do not use full-time public defenders, but use panel attorneys, and in most panel programs there are enough participating lawyers that no single lawyer would exceed the recommended caseloads. Then again, most panel attorneys also have a private practice, and there is no way to determine what their overall workload levels are like. Many indigent defense programs use contract lawyers working under a fixed fee and accepting an unlimited number of cases a year. Typically contract attorneys, like panel attorneys, also have private practices, with no restriction on their private practice workload. We frankly do not have enough information to assess overall attorney workload of the attorneys in counties we reviewed. Attorneys from each of the four public defender programs told us they felt their caseload was excessive.

4.12 PROBLEMS UNIQUE TO RURAL AREAS

County populations in Georgia range from roughly 2,000 to over 816,000 inhabitants. Rural counties have the same obligations to provide representation, investigation and appropriate expenses of litigation to indigent defendants as do the large urban counties. However, there are several issues that can make it more difficult for smaller counties to meet their indigent defense obligations. One issue is the overall shortage of funds for county services in small counties. A chief superior court judge in a rural circuit told us that he feels acute pressure from the counties to cut back on expenditures on counsel, experts and investigators.

In rural circuits, superior court judges ride circuit to sit in multiple counties, district attorneys' offices cover an entire circuit, and law enforcement offices often have limited staff and resources. Criminal court terms occur as few as twice a year in some Georgia counties. Thus,

[56] **(Guideline 6.1) 150 felonies, 300 misdemeanors, 25 appeals, 250 juvenile offender, 60 juvenile dependency or 250 civil commitments a year. (These numbers are not aggregate. They are per attorney per year.)**

despite the fact the caseload is much lower, the processing of criminal cases can take longer in rural counties than in urban counties. For indigent defendants, this can mean lengthy waits before counsel is appointed to represent them, and if they cannot make bond, they often spend that entire time waiting behind bars.

In misdemeanor cases, some rural counties hold arraignments just once a month. Likewise, in felony cases, grand juries may only convene once every other month. In counties with a policy of only appointing counsel after indictment, defendants remain detained from three to six months (sometimes longer) before counsel is appointed. Another challenge in some small counties is finding enough lawyers who are willing and able to do indigent defense work.

A strong sentiment in our site work was that many people in rural areas are doubtful a statewide indigent defense program run from Atlanta will be sensitive to the different types of issues affecting rural areas. While many people in smaller counties agreed that there was a need to improve indigent defense in Georgia, they suggested alternative approaches to an Atlanta-centric statewide system, such as one that was organized on a judicial district basis with input from people working in the local criminal justice systems.

The District Attorney and jail administrator serving Bulloch County felt that the county needed a full-time public defender office in order to properly serve indigent defendants. Three lawyers in a law firm located 45 minutes from Statesboro represent indigent defendants in Bulloch County Superior Court.

4.13 INDEPENDENCE

Supreme Court Guideline 2.8 addresses the need for independence of court-appointed counsel, stating, “Independent counsel shall be politically autonomous and free from influence, guidance or control from any other authority in the discharge of his/her professional duties, within the bounds of the law and the Code of Professional Responsibility.”

We encountered several practices that call into question the independence of indigent defense counsel in Georgia. For example, in Dougherty County, the magistrate judge is on the Superior Court contract panel and the juvenile court judge accepts both juvenile court and state court appointments. In Baldwin County, the chief judge is chair of the tripartite committee. In a number of counties in the Eighth Judicial District, the indigent defense administrator also serves as chair of the tripartite committees. By his own accounts, the indigent defense administrator/tripartite committee chair works closely with the chief judges on indigent defense issues. Similarly, in Richmond County, we were told the chief judge is the force behind all indigent defense policy, despite the “structures” of an indigent defense office and a tripartite committee. In Floyd County, the juvenile court judge contracts with the juvenile contract attorney and, under the terms of the contract, can fire the attorney at will.

We do not believe that such practices are intended to undermine independence of indigent

defense counsel. In most cases, they likely arose out of a concern for getting the job done in the most efficient way possible. However, the practices raise questions about true independence.

One of the interesting things observed in our site work was the frequency with which individuals act as judge in one venue and have legal practices in another, all in the same county or circuit. For example, we met one panel attorney in Chatham County who took court appointments to indigent defendant cases in superior court and also served as a municipal court judge. The state court judge in Toombs County is also a municipal court judge and has a private practice. The chief part-time juvenile court judge in Dougherty County holds a part-time indigent defense contract in Dougherty County State Court and has a private practice; the other juvenile court judge, who is full-time, is also the full-time juvenile court administrator and has a private practice. The magistrate judge has an indigent defense contract in superior court. In Baldwin County, the 2001 panel list includes the county's juvenile court prosecutor as one of 10 superior court panel attorneys.

4.14 DELAY IN INDICTMENT/ACCUSATION & ITS EFFECT ON JAIL POPULATION

Jail overcrowding is a common problem for jails throughout the country. In many counties visited in Georgia, pre-trial detainees who could not make bond contributed to the overcrowding problem. Further compounding the problem in a number of counties was delay in indictment or filing of accusation. In Habersham County, for example, we were told the shortest time from arrest to indictment is three months, and the longest time is 1-1/2 years (this has reportedly happened about five times over the last eight years). The typical waiting period for an indictment is six to nine months. Statewide, as of April 4, 2002, 58% of inmates at county jails in Georgia were awaiting trial.[57]

Significant numbers of pre-trial detainees who sit for months prior to disposition of their cases add high and unnecessary jail costs to counties, particularly when the defendants are held on minor charges. Although no statewide data exists on the average daily cost for housing jail inmates, we were told by various local jailers that the cost is about $55/day. Early intervention and pre-trial services programs can effectively reduce the number of non-violent pre-trial detainees and save the counties money. Unfortunately, we found these sorts of programs were uncommon in the counties visited, with, as usual, some notable exceptions.

Chatham County, where it costs $54/day to house an inmate at the jail, has a pre-trial services program that interviewees confirmed saves the county in jail costs. Eligible defendants can get out of jail pre-trial on a judicial order. Defendants must check in two or three times a week with pretrial services to ensure they are complying with curfew, going to school and/or working. (A defendant has to be working or going to school to participate in the program. No

[57] **Georgia Department of Community Affairs County Jail Inmate Population Report, April 4, 2002.**

defendants charged with crimes against the person or serious felonies are considered.)

Cobb County has a similar pre-trial services program. **Eligible defendants can post 10% of their bail and get their money back at the conclusion of their case, less a 10% administrative fee. These so-called "10 percenters" are under supervision of the program, similar to probation supervision, which was described as a productive feature for defendants who are in school and need** encouragement to attend class regularly.

There are a couple of other initiatives of interest in Cobb County related to managing jail populations and expediting cases. **In Georgia, if a defendant has been in jail for 30 days with no bond, he is entitled to a bond hearing. Cobb County uses a contract attorney to assist all defendants without counsel on a bond hearing calendar. A contract attorney is also used as an early intervention public defender at first appearance. Superior court judges in Cobb County authorized a magistrate to take these special, early pleas, which are done two days a week. The calendar was described to us as a sort of defendant-directed fast track. There is no obligation on defendants to participate, but if they want to expedite their case and negotiate a plea, the court tells them the early intervention public defender will help them. The public defender meets with an assistant district attorney and reports back to the defendant with the assistant district attorney's recommendation. The defendant can accept or reject it. Care is taken to document the process, showing that the defendant is not being coerced to accept the offer. The contract attorney is paid for each defendant appointed in this court, not for each plea entered. There is some continuity of representation, too: if a plea sheet is drawn up and the defendant rejects the plea, that sheet will be given to the attorney who is appointed to handle the case.**

Finally, Cobb County has a special "indict or release" calendar that was created by the superior court judges. In Georgia, speedy trial rules do not apply until after a defendant is indicted. Thus, until an indictment is returned, a defense attorney is somewhat limited in what he or she can do. Per a local court rule, judges can get involved if a defendant has been detained more than 45 days without bond, or has not been indicted. The district attorney's office has a goal of indicting all felony defendants within 180 days from arrest but that does not always happen. Once a month, the presiding judge hears motions from defense lawyers alleging that the district attorney's office has failed to indict its clients within 45 days, thus bond should be reduced, or that indictment should be returned, or that the defendants should be released on personal recognizance. The judge will listen to the assistant district attorney's explanation for the delay, and if the judge doesn't think it's reasonable, he or she will modify bond, and sometimes release a defendant on personal recognizance. The calendar helps move the system along.[58]

[58] This local policy was adopted under authority of Rule 26.3 of the Uniform Superior Court Rules, which states that, "The district attorney shall notify the chief judge in writing of the name of any unindicted accused who has been in custody under criminal felony charges for 45 days within 2 business days after the said 45-day period has run. *The chief judge may take any action deemed necessary or appropriate under the circumstances.*" (emphasis added)

4.15 DISPARITY IN PROSECUTION AND DEFENSE RESOURCES

The District Attorney is the chief prosecuting officer for the State of Georgia within each of the State's 49 judicial circuits. Judicial circuits consist of one to eight counties.

Each District Attorney is an elected constitutional officer who is part of the judicial branch of state government. The District Attorney represents the State of Georgia in the trial and appeal of criminal cases in the superior court for the judicial circuit and delinquency cases in the juvenile courts.

Each District Attorney's office has a full-time staff of assistant district attorneys, investigators, victim assistance and administrative personnel who assist the District Attorney in carrying out the duties of the office. In each circuit, state funds pay the salaries of the elected district attorney, two secretaries, one investigator and a limited number of assistant district attorneys, based on the number of superior court judges in the circuit. For example, in 2002, state funds for the district attorney's office in Tallapoosa Circuit, which has two superior court judges, paid for three assistant district attorneys and an additional assistant district attorney who prosecutes drug cases.

The state FY 2003 budget for district attorneys in Georgia is $42,945,077, of which $3,719,573 goes to the Georgia Prosecuting Attorney's Council. The Council acts as an administrative arm for district attorneys. The majority of the remaining $39,225,504 goes toward payroll, but some is used for travel and training expenses. The state pays for annual district attorney CLE costs. County funds cover the remaining costs of district attorneys' offices, including rent, equipment and utilities. Counties may supplement district attorney's offices with additional personnel, too. There is no statewide data available on the additional funding going toward district attorneys from counties, but the Prosecuting Attorneys' Council suspects that the majority of funding for district attorneys' offices is paid by counties in Georgia.[59]

In 64 of Georgia's 159 counties, misdemeanor cases (cases where the maximum punishment cannot exceed 12 months in jail) are prosecuted by the Solicitor General. The Solicitor General is an elected county officer who represents the State of Georgia in the trial and appeal of misdemeanor criminal cases in the state courts and performs other duties as required by law.

In 20 counties, the Solicitor General is a full-time official with a staff of assistants, investigators and administrative personnel; in 44 counties, Solicitors General are part-time

[59] **In Bulloch County, for example, the District Attorney (whose circuit includes four counties, among which Bulloch is the largest) reportedly received $271,735 from Bulloch County, in addition to the state appropriation. When we visited, the office was staffed by 8 full-time attorneys and one full-time investigator. In contrast, the line item budget for indigent defense in Bulloch County Superior Court was $170,000.**

officials who may maintain a private law practice.

In those areas without a state court, and in Chatham, Dougherty, Miller and Rockdale counties, misdemeanor cases are prosecuted by the District Attorney.[60] Deprivation and termination of parental rights cases are prosecuted by Special Assistant Attorney Generals, who are state funded.

Statewide budget information for solicitors general is not available.

[60] Information on the offices of District Attorneys and Solicitors General is from the Prosecuting Attorneys' Council of Georgia: *see* http://www.ganet.org/pacg/index.html.

The level of resources available for prosecution and indigent defense in Georgia is not balanced. While there is no data available on the exact percentage of defendants who are indigent and represented by court-appointed counsel in Georgia, it is well over 50% of all criminal defendants and juveniles accused of delinquency. The percentage is higher in felony cases and appeals than misdemeanors because it is more expensive to retain a lawyer in felonies and appeals than in misdemeanor cases. Similarly there is greater use of appointed counsel in juvenile delinquency cases, because children are unable to afford counsel and/or their parents or guardians are unwilling to pay for counsel.[61] The FY 2003 total state budget for district attorneys -- which only covers a portion of total funding for district attorneys and includes no funds for solicitors general or special assistant attorneys general -- is just 13% less than the total spent on indigent defense by the 152 counties that received state grant money in FY 2001 ($49,439,041). One superior court judge in Clayton County recommended that panel attorneys have access to the same resources – investigators and other personnel -- as do district attorneys. Similarly, a panel attorney in Bibb County noted that since the state paid for training of district attorneys, it should also pay for training of indigent defense counsel.

The figure for indigent defense encompasses *all* expenses, including public defender salaries, contract attorney and panel attorney payments, and ancillary services such as experts, investigators and transcripts. In contrast, the state appropriation for district attorneys is primarily for personnel costs. Simply looking at the total amount appropriated to prosecutors by state and/or county government underestimates the value of services provided to them by federal, state and local law enforcement and crime labs.

The prosecution typically has available the services of advanced state and federal crime laboratories, psychiatric and other mental health professionals employed by state and local government; sophisticated investigative equipment used by law enforcement; and extensive data banks that identify and locate individuals with criminal histories. In addition, prosecution often has available hundreds of local law enforcement officials for case investigation and preparation.

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[61] The only reliable national data on indigency rates dates back to 1986. The U.S. Department of Justice, Bureau of Justice Statistics' *National Criminal Defense Systems Study* (1986), prepared by Robert Spangenberg while working at Abt Associates, lists "generally accepted indigency rates" of 48% of felonies, 25% of misdemeanors, 80% of juvenile cases and 90% of appeals. *See* p. 33. **According to the November 2000 Bureau of Justice Statistics special report, "Defense Counsel in Criminal Cases," in 1992 and 1996 about 80% of defendants charged with a felony in the nation's 75 most populous counties reported having public defenders or assigned counsel. See p.5.**

The costs for prosecutors' use of these important services are embedded in the budgets of other federal, state and local agencies, making their monetary value extremely difficult to quantify. In contrast, for defense counsel, the use of investigative, forensics, psychiatric, and other such services either comes out of an indigent defense county operating budget or, in the case of a court-appointed attorney, through a motion to the presiding judge.

The prosecutor in most jurisdictions is responsible for screening all criminal cases brought by law enforcement agencies and private citizens. Many of these cases are never charged and thus there is no need for court-appointed counsel. However, while the prosecution typically assigns one case to a particular prosecutor, regardless of the number of defendants involved, when more than one defendant is involved in a particular case, multiple counsel must be appointed to represent the defendants.

Some necessary data are not available to do a thorough comparison of funding available to prosecution and indigent defense in Georgia. For example, the cornerstone of any thorough workload and budget comparison is a uniform method of counting cases. In other states we have frequently found that prosecutors and public defenders count cases differently, e.g., district attorneys may count cases by accusation, indictment, or warrant, while public defenders count by charge or by defendant, etc. Budget comparisons between criminal justice agencies simply cannot be accurately analyzed until the agencies are counting cases the same way. We do not have any way to provide comparative caseload of prosecutors and indigent defense programs in Georgia.

Finally, the effect of court policies should be considered when making a comparison of resources. Allocation of judicial resources, court policies regarding setting of pre-trial and trial dates, and policies regarding the docketing, processing and scheduling of cases each affect the operation of both prosecution and defense. These factors are very difficult to quantify.

One reason for mentioning these considerations is that we heard a common refrain in many counties visited. Many people – prosecutors, judges, defense attorneys and others – told us that they favor creation of either a local or regional or statewide public defender program, but they worried that it would be too costly/and or politically unfeasible if such a program were created “with parity” to the local district attorney’s office. The better approach to thinking about funding for prosecution and indigent defense is “adequate and balanced” funding; not parity. As things stand now, there is an imbalance of resources available to prosecution and indigent defense in Georgia.

CHAPTER 5
A SPECIAL LOOK AT FULTON COUNTY

With 816,006 residents,[62] Fulton County is Georgia's most populous county. According to the Administrative Office of the Courts of Georgia, 15% of all felony cases filed in Georgia in the 2000 calendar year were filed in Fulton County.[63] (The AOC does not have the number of misdemeanor filings in Fulton County for 2000.) Because of its size, and because of the complexity of its indigent defense system, we feel it is important to discuss Fulton County in a brief, yet separate chapter.

The indigent defense system is highly fragmented for misdemeanor cases and preliminary hearings in felony cases in Fulton County. Outside of Atlanta, there are eight smaller municipalities in the county which hear ordinance violations and misdemeanors that occur within the local city limits. They also have jurisdiction for preliminary hearings in felony cases. Some of the municipalities have local lock-ups and others do not, so some arrestees must be transported from a local police station to the Fulton County Jail.

There are two municipal courts in Atlanta. The City Court of Atlanta deals primarily with traffic cases. It holds preliminary hearings for traffic-related felony cases and ordinance violations and has jury trials in misdemeanor cases. The Atlanta Municipal Court handles non-traffic ordinance violations and misdemeanors that are punishable by less than 6 months in jail and that are charged within the city limits of Atlanta. It has no jury trials, but holds felony and misdemeanor preliminary hearings in cases originating within the city limits. Two separate public defender agencies – the City Court of Atlanta Public Defender and the Municipal Court Public Defender – serve the two courts. Panel attorneys are appointed in conflict cases. Felony cases where probable cause is found are bound over to superior court. Municipal public defenders are no longer involved with defendants in felony cases once their cases are bound over. This practice was at issue in the *Stinson* case, discussed below.

There are many smaller police departments throughout the county, both public and private, such as the MARTA Police Department, local college and university police departments, and other local police agencies, that arrest individuals and take them to the various courts and local jails. A number of people, including both state and superior court judges, reported there has been a problem in Fulton County of police bringing arrestees to jail without police reports or proper paperwork. Currently, there is a policy in effect in which the sheriff cannot receive a prisoner without an arrest report.

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[62] **Source: 2000 U.S. Census.**

[63] AOC Caseload of the Georgia Courts 2000, *Research Review*, Vol. 3, Issue 1, January 2002.

There are three magistrate courts in the county: one at the North Annex, one at the South Annex and one downtown at what is called the Justice Center or the Central Magistrate Court, which handles a very large volume of cases every day. Recently it was decided to eliminate the processing of criminal cases in both the North and South Annex and send them all to the Central Magistrate Court.

The problem of providing counsel to indigent defendants charged with ordinance violations carrying a jail sentence and misdemeanors is complicated in Fulton County because there is no single indigent defense system. Furthermore, depending on where the arrest is made, the defendant may be required to appear initially in one of the many different courts discussed above. (Yet additional problems with appointed counsel occur in state court, and are discussed below.) Despite the presence of the two municipal public defenders in the City of Atlanta, we received reports that there are still some indigent defendants in the municipal courts not receiving counsel.

Cases move on to state court if they are not either disposed of as a misdemeanor in the local court or bound over in the local court to the Grand Jury. In superior court, once felony cases are bound over and indicted, an indigent defendant at arraignment will be assigned to the Fulton County Public Defender, or, if there is a conflict of interest, to either the Fulton County Conflict Defender or a panel attorney. The Fulton County Public Defender handles adult felony cases, juvenile delinquency cases and cases where juveniles are charged as adults in superior court (SB 440 cases).

Indigent defense in Fulton County has been under a great deal of scrutiny since 1989, when GIDC first received state funding for Grants to Counties. While state funds have been provided to Fulton County for indigent defense programming, GIDC has never provided state funds for the Fulton County Public Defender. Initially this was because the program did not meet the GIDC Guidelines. At the request of GIDC, TSG conducted a review of the Fulton County Public Defender office in 1990. Our report, *Overview of the Fulton County Indigent Defense System*, described what we found to be a system on the verge of collapse, with public defender attorneys responsible for caseloads far in excess of national standards and with a paucity of necessary support services, such as investigators and paralegals. Following release of our report, a great deal of attention was placed on the public defender office, particularly by the Atlanta Bar Association and other local bar associations, the courts and county officials. Since that time, sizeable increases have been made to the public defender's budget, allowing for hiring of additional staff and leveling off of individual attorney workload. In addition, the Conflict Defender was established in 1996.

Despite an increase in resources for the Public Defender and creation of the Conflict Defender, problems remained with processing indigent felony defendants through the Fulton County criminal justice system in a timely manner. Jail overcrowding, driven in large part by the pressure of pre-trial detainees, was a problem that was finally addressed in litigation. In *Stinson*

v. Fulton County Board of Commissioners,[64] the plaintiffs brought a class action against defendants on behalf of "all persons charged with non-homicide felony offenses within Fulton County who are not released on bond but who, instead, are incarcerated at the Fulton County Jail, and who during the period up to, but not including, indictment or arraignment, are denied access to counsel." The issue presented was that indigent defendants charged with felonies in Fulton County were represented by the municipal public defender office up through the preliminary hearing, but if they were bound over for indictment in the superior court, representation by the municipal public defender ended. Felony defendants who were not able to post bond were forced to remain in jail without counsel for several months before arraignment in superior court, at which time the Fulton County Public Defender was finally appointed. The plaintiffs argued that they and others in their class were being denied the rights guaranteed by the Sixth Amendment, the Due Process Clause, the Equal Protection Clause and the Georgia Constitution.

As part of the settlement of the *Stinson* case, Fulton County was ordered to continue to maintain and adequately fund its Pre-Trial Services Program. In particular, Fulton County was to make good-faith efforts to ensure that by the close of the next business day following booking into the Fulton County jail, a Pre-Trial Services officer will evaluate all non-homicide felony defendants who are unable to make bond for pre-trial release purposes. Further, if a defendant has not retained a private attorney, the Pre-Trial Services officer must appoint the Public Defender or the Conflict Defender and immediately notify the assigned office in writing. The office will promptly assign an attorney to handle the defendant's case and notify the defendant of the assignment.

Fulton County was also ordered to provide the attorneys of the Fulton County Public Defender and Fulton County Conflict Defender with a level of resources sufficient to ensure that all indigent defendants receive a consultation within two business days following the appointment of counsel. All information obtained from the defendant and other applicable documents are to be immediately forwarded to the defense attorney assigned to the case.

Under the Consent Order, Fulton County agreed to make good faith efforts to ensure that the Fulton County Public Defender's Office and Fulton County Conflict Defender's Office achieve an average non-homicide felony caseload of no more than 195 cases per calendar year within one year of the order, 185 cases within two years of the order, and 175 cases within three years of the order**.**

During our site work in Fulton County, numerous interviewees praised the positive effect that the *Stinson* consent order has had on felony representation of indigent defendants in the county. One superior court judge told us he wished *Stinson* could be applied to the entire state. Because of *Stinson*, the Public Defender and Conflict Defender carefully track their superior court caseload. *Stinson* makes it clear that if the Public Defender reaches a certain case level, it can

[64] **Civil Action File No. 1-94-CV-240-GET (1999).**

request that further appointments not be made to the office, and instead go to the Conflict Defender or panel counsel.

Still, problems remain in Fulton County. One problem mentioned by several interviewees is that superior court judges continue to have control of appointment and payment of panel attorneys, which is viewed by some as a conflict. Appointments are reportedly not made on a strictly rotational basis; some favoritism remains. Surely, though, the biggest problems are in the State, Magistrate and Municipal Courts in Fulton County.

Among these, the most serious problem has developed in state court involving indigent defendants in misdemeanor cases who have been booked and held in custody at the Fulton County Jail after original proceedings took place in the Municipal and Magistrate Courts in Fulton County.

One of the issues in state court relates to the overload of criminal cases in superior court. Both superior and state court judges reported that because the superior court docket has become so heavy with criminal cases, the civil cases have been delayed.

For several reasons, hundreds of misdemeanor defendants, including those charged with very minor offenses, remained in jail for several weeks without a court appearance or the appointment of counsel. In the past, no public defender program has provided counsel in Fulton County's State Court. Indigent misdemeanor defendants did not get a court-appointed lawyer until they had been formally accused by the Solicitor General's office of the city of Atlanta. It was only after a formal accusation was filed that the defendant's case was put on a judge's docket in state court for review and appointment of a panel attorney. Further, we were told that if misdemeanor defendants do not request a preliminary hearing, they may not receive one.

Based upon data collected by the Southern Center for Human Rights (SCHR), many of these misdemeanor defendants remained in jail without counsel for periods longer than could have been imposed if they had been convicted and sentenced to the maximum penalty for the offense. While Pre-Trial Services has had an office in the Fulton County Jail for several years, their staff was available only to interview felony defendants booked into the jail and not misdemeanor defendants. In March 2002, SCHR wrote a letter to the Chief Judge of the Fulton County State Court and county officials setting out the problem in detail.

In 1999, SCHR sued the county and Sheriff Jacquelyn Barrett in federal court on behalf of Fulton County Jail inmates who were determined to be HIV-positive. The county settled the suit in January 2000 and, since then, SCHR attorneys have monitored the jail for compliance with the settlement agreement.[65]

Shortly after determining in March 2000 that the county was not complying with his

[65] *Foster v. Fulton County*, No. 1:99-cv-900 (N.D.GA; April 16, 2002) .

earlier order regarding treatment of HIV-positive inmates, Federal Judge Marvin H. Shoob expanded his concerns beyond the HIV-positive plaintiffs. Last year, Judge Shoob began addressing overcrowding as a root cause in the Fulton County Jail's chronic medical problems and staffing shortage.

On April 16, 2002, as part of the *Foster* case, Judge Shoob ordered Fulton County to provide counsel within 72 hours to all Fulton County Jail detainees accused of a minor offense who could not post bail. He also ordered the county to expand the authority of Pre-Trial Services to supervise people arrested for misdemeanor offenses and ensure that all people charged with misdemeanors are offered what the Judge termed was a reasonable bond. The judge also ordered the county to impose a reasonable restriction on the length of time a person may remain in jail without being accused, indicted or tried and, finally, to create an "all purpose" hearing calendar so that misdemeanor detainees could appear before a judge within 72 hours of arrest.

Under a new procedure that has been agreed to by all parties following the Federal Court order in *Foster v. Fulton County*, No. 1:99-cv-900 (N.D.GA; April 16, 2002), all misdemeanor and felony defendants who have not had their cases disposed of in one of the municipal or magistrate courts in the county and are still in custody are sent to the Fulton County Jail. Immediately after booking, each defendant is interviewed by Pre-Trial Services. Misdemeanor defendants then appear in an all purpose session of the state court which has recently been established. Although the ultimate goal is to have these hearings within 72 hours, we were informed that currently the average time from arrest to arraignment is approximately five days. Many defendants whose cases are not disposed of at the all purpose session are released from jail. Some defendants' cases are dismissed, others' are resolved in a bench trial, and still other defendants bond out for further procedings.

The new program in state court is being overseen by the deputy county coordinator for criminal justice. The Fulton County Conflict Defender contracted to provide representation for an initial period of 90 days. That time was extended until the end of 2002. The Conflict Defender initially received five new attorneys, two paralegals and one social worker for the state court work, which was limited to representation at the all purpose calendars. Under this program, by mid-April 2002, the conflict defender had already represented over 850 defendants. The hope was to increase the funding and staff in order to provide vertical representation on misdemeanors that are not disposed of at the all purpose calendar within the time set out by Judge Shoob.

CHAPTER 6
GEORGIA'S INDIGENT DEFENSE SYSTEM COMPARED WITH SIMILAR STATE SYSTEMS

6.1 Introduction

When assessing a state's indigent defense system, The Spangenberg Group seeks to identify other states with which to compare the system, in order to place the system in a broader context. Making comparisons between various indigent defense systems is an imperfect science, due to the wide number of variables that must be considered. Among the most important of these variables are the following:

- Whether the system is funded entirely by county funds, entirely by state funds or a mixture of the two,
- Whether the system is organized at the county, regional or state level,
- Whether the state has the death penalty,
- Whether the system has a centralized organization responsible for statewide data collection, oversight and/or policy making,
- The percentages of cases handled by various providers in the state,
- The rate of pay for court-appointed counsel in the state,
- The population of the state,
- The availability of complete, up-to-date and reliable data,
- The way in which programs define, and, therefore, count cases (for example, whether a case is counted by charge, indictment, by assignment or by disposition),
- The percentage of defendants found to be indigent.

This being the case, we chose ten states to compare to Georgia based on the following criteria:

- States with a large number of counties,
- States whose indigent defense system receives at least 10% of its funding from the state,
- States with some form of state-wide indigent defense oversight body,
- States that are adjacent or geographically proximate to Georgia,
- States where reliable budget data is available.

This is the methodology that we have used in other studies similar to the current one in Georgia. The states we chose to compare with Georgia are: Alabama, Arkansas, Florida, Indiana, Kansas, Kentucky, North Carolina, Ohio, Tennessee and Texas. Each of these states met several of our criteria, which are set out in Table 6-1.

Table 6-1
Comparison States

State	Population	Number of Counties	Death Row Population	State Wide Commission	Primary Indigent Defense System at Trial	Indigent Defense System at Trial Organized by
Texas	20,851,820	254	455	Yes	Assigned Counsel/ Contract	County
Florida*	15,982,378	67	386	No	Public Defender	Region
Ohio	11,353,140	88	204	Yes	Public Defender/ Assigned Counsel	County
Georgia	8,186,453	159	127	Yes	Assigned Counsel/ Contract	County
North Carolina	8,049,313	100	226	Yes	Assigned Counsel/ Public defender	State
Indiana	6,080,485	92	39	Yes	Public Defender/ Assigned Counsel/ Contract	County
Tennessee*	4,877,185	95	104	No	Public Defender	State
Alabama	4,040,587	67	188	No	Contract/ Assigned Counsel	County
Kentucky	4,041,769	120	41	Yes	Public Defender	Region/ State
Kansas	2,688,418	105	4	Yes	Public Defender	State/County
Arkansas	2,673,400	75	40	Yes	Public Defender	State

*Both Florida and Tennessee, unlike the other states in this comparison, publicly elect their public defenders.

6.2 Indigent Defense Expenditure

Table 6-2 displays the state and county indigent defense expenditure, the per-capita cost of indigent defense, and the percentage of state funds in each comparison state, as reported to us.

Table 6-2
State and County Indigent Defense Expenditure and Cost-Per-Capita in Selected States[66]

State	Population	State Expenditure	County Expenditure	Total Expenditure	Fiscal Year	Total Expenditure-per-Capita	Percentage of State Funds
Texas*	20,851,820	$303,987	$93,517,886	$93,821,873	2001	$4.50	0%
Florida	15,982,378	$141,308,564	$35,000,000	$176,308,564	2000-2001	$11.03	80.2%
Ohio	11,353,140	$47,090,219	$35,901,376	$82,991,595	2001	$7.31	56.7%
Georgia	*8,186,453*	*$5,893,227*[67]	*$42,451,674*[68]	*$50,600,423*[69]	*2001*	*$6.18*	*11.6%*
North Carolina	8,049,313	$68,411,000	$0.00	$68,411,000	2001	$8.49	100%
Indiana	6,080,485	$10,400,000	$24,000,000	$34,400,000	2001	$5.66	30.2%
Tennessee	5,689,283	$38,275,900	$5,684,260	$43,960,160	2001	$7.73	87%
Alabama	4,447,100	$32,900,000	$0.00	$32,900,000	2001	$7.40	100%
Kentucky	4,041,769	$25,380,000	$1,464,776	$26,844,767	2001	$6.64	83.4%

[66] The figures reported in this table do not include any funds that may have been spent by municipalities in these states.

[67] Includes Grants to Counties and Multi-County Public Defender funds.

[68] This figure represents the total expenditure of the 152 counties that applied for GIDC funding in 2001, plus Clerks and Sheriffs Fund contributions to these counties. The figure does not include indigent defense expenditure information for the seven counties that did not apply for GIDC funding.

[69] Includes $2,225,522 in State Bar IOLTA funds.

Kansas	2,688,418	$15,178,023	$8,539,545	$23,717,568	2001	$8.82	64%
Arkansas	2,673,400	$12,333,561	N/A	N/A	2001	N/A	N/A

*The county expenditure information for Texas is for the period 10/1/00-9/30/01 and includes information from 244 of the state's 254 counties. The state expenditure was for compensation of appointed counsel handling capital state habeas cases. State appropriations for trial-level indigent defense services began with passage of the Fair Defense Act in 2001. The Act created a statewide Task Force on indigent defense, which, like GIDC, awards state grant monies to counties that comply with its standards and guidelines. The Act appropriated $20,000,000 for state Grants to Counties for FY 2002-2003.

A variety of factors contribute to the differences in the cost-per-capita of indigent defense from state to state. Because of these variables it is not possible to make definitive comparisons of the total costs-per-capita of the states' indigent defense systems. Among the most important variables are the following:

- **Differences in the types of cases handled in a state**
  Some states have a large number of death penalty cases, which are extremely costly compared to other types of cases. Other states have a significantly higher number of indigent direct appeal and state post-conviction cases.
- **Differences in the demographics from one state to the next**
  The percentage of defendants found to be indigent may range significantly from state to state. Furthermore, the percentage of urban poor varies from state to state.
- **Differences in the statutory right to counsel from state to state**
  Some states have expanded the right to counsel substantially beyond the requirements of the U.S. Constitution as interpreted by the U.S. Supreme Court, creating more cases that require court-appointed counsel. In some of these states there is a practice of local judges not appointing counsel in less serious misdemeanor cases, notwithstanding the fact that it is required by law.
- **Differences in the cost of appointed counsel and public defender systems**
  There is great variation in the compensation rates paid to court-appointed counsel from state to state. Furthermore, some states impose compensation caps on individual cases. Similarly, a few states that are predominantly served by a public defender system have higher public defender salaries than other states. Often this is the result of statutory or other authority which requires salary parity with the local prosecutor. Finally, some states allocate a higher budget for expert witnesses and investigators.

As Table 6-2 indicates, Georgia has the smallest percentage (11.6%) of state funds of any of the comparison states with the exception of Texas. In 2001, legislation passed in Texas that has mandated a major overhaul of the state's indigent defense system. This will likely result in Texas spending a larger percentage of state funds than Georgia within the next year. It is also worth noting that 24 states in the country currently provide 100% of the funds for indigent defense services.

CHAPTER 7
WHO IS THE VOICE FOR INDIGENT DEFENSE IN GEORGIA?

There is disagreement in Georgia over whether the Georgia Indigent Defense Council should be the primary watchdog and advocate for indigent defense in Georgia. Under its statutory charge, it should be GIDC that monitors local indigent defense programs' compliance with Supreme Court guidelines in those jurisdictions that participate in its Grants to Counties program. The vast majority of counties (152 of 159) participate in this program. Certainly, among the counties receiving state money, GIDC should have the power to assist programs that are not in compliance, and, where necessary, bring the appropriate pressure to remedy programs that fail to meet Supreme Court guidelines. In reality, it has not been GIDC that plays this role. Nor do local indigent defense administrators play the role of advocate for indigent defense - their role is typically strictly administrative. Recent successful efforts to improve local indigent defense programs have been the result of pressure brought by the media and/or by litigation.

Litigation, or the threat of litigation, filed by the Southern Center for Human Rights (SCHR) and others has been the recent catalyst for change in several Georgia counties. In August 2001, SCHR filed a lawsuit in state court on behalf of 15 inmates in the Coweta County, Georgia jail alleging that poor defendants facing charges in Coweta County Superior Court are systematically and routinely denied their constitutional right to counsel, to due process and to equal protection of the law. *Bowling v. Lee* (Superior Court Coweta County Ga. filed Aug. 10, 2001). The lawsuit sought class action status and asked for declaratory and injunctive relief compelling sweeping changes in the way in which indigent defense services are provided in the county. The indigent defense system at the time consisted of two lawyers working under contract with the county.

Defendants included the chief judge in Coweta County, Governor Roy E. Barnes, Coweta County commissioners, members of Coweta County's Tripartite Indigent Defense Committee, the two contract defense lawyers and Coweta County prosecutors.

Plaintiff's counsel claimed that more than half of those convicted in Coweta County in the past two and one-half years were found guilty without benefit of counsel. Others allegedly languished in jail for months without seeing a lawyer. Representation for those who managed to talk to a lawyer was considered inadequate: lawyers did not investigate the cases or vigorously defend their clients.

The County responded to the claims by terminating the contract of the two contract defenders as of Dec. 31, 2001, and agreed to create a public defender office. The county hired a full-time Indigent Defense Administrator and a panel of 13 lawyers to take appointments until the public defender office is up and running, which was expected to occur in June 2002. SCHR opted to hold the litigation in abeyance until after June 2002, waiting to see if the public defender office is indeed created.

In McDuffie County, after investigating the indigent defense system, SCHR staff sent an

advocacy letter to county officials and threatened to file a lawsuit, absent any action to improve the system. The County fired the contract defender, and replaced him with two new contract lawyers. In Dodge County, as discussed earlier, a poor-performing contractor was terminated this year only after a scathing article detailing the problems ran in *The Atlanta Journal Constitution.*

The *Foster v. Fulton County* directive, concerning serious delay in providing counsel to indigent defendants in Fulton County's State Courts, was issued within the context of a 2-year-old settlement agreement in a case brought by the SCHR on health care for HIV-positive inmates at the Fulton County Jail. *Foster v. Fulton County*, No. 1:99-cv-900 (N.D. Ga. April 16, 2002). The SCHR convinced a federal judge to piggyback the issue of the county's treatment of indigent jail inmates onto the medical care settlement without being forced to litigate a new and separate suit.[70] The *Stinson* lawsuit, which concerned serious delay in appointment of counsel for felony defendants detained pre-trial in the Fulton County jail, was brought by private counsel. *Stinson v. Fulton County Board of Commissioners*, **Civil Action File No. 1-94-CV-240-GET (1999)**. There is no question that these systemic challenges were significant forces that brought about needed change to indigent defense programs in Georgia. The question is, why must change only come about when deficient indigent defense systems are sued or become publically pilloried in the press?

The State Bar of Georgia has been steadily pressing for improvement to indigent defense in Georgia since the 1960s. The Bar's early efforts are discussed in Chapter 3. In 2002 the State Bar's Committee on Indigent Defense promulgated and the Board of Governors adopted what it calls the "State Bar Proposal in Support of Supreme Court Commission on Indigent Defense." The document asks the Commission to consider six conclusions and recommendations as part of its evaluation of Georgia's indigent defense system. Two key provisions read as follows:

> Indigent defense is a state responsibility, and should be fully funded by the state at a level that adequately protects the constitutional right to effective assistance of counsel in criminal proceedings.
>
> In order to ensure a uniform quality of representation throughout the state, Georgia should adopt a public defender system, organized by judicial circuits, that relies upon appointed counsel for conflict and overflow work and is subject to discernible professional standards administered uniformly on a statewide basis by an independent oversight commission. The commission should be authorized to permit judicial circuits to implement alternative delivery systems if the

[70] The Southern Center sued the county and Sheriff Jacquelyn H. Barrett in 1999 on behalf of the jail's HIV-positive inmates. The county settled the suit in January 2000, and since then Southern Center attorneys have monitored the jail for compliance with the settlement agreement.

> commission determines that the alternative system is designed to meet or exceed the quality of indigent defense representation provided by public defender systems and that the alternative system complies with all applicable uniform state standards relating to indigent defense representation.

We sense from our work reviewing indigent defense programs in 19 counties that there is an overall recognition that improvements can and should be made to Georgia's indigent defense system. There is disagreement, however, on how to structure an improved system, which leads to inertia and a lack of leadership pressing for change. Still, attention is clearly being paid to the issue, which makes the current climate and momentum for change ideal. We feel that the recent efforts of the State Bar, the Southern Center for Human Rights, reporters and editorial writers from local and national media, and private lawyers will assist the Chief Justice's Commission on Indigent Defense and also encourage the General Assembly to give serious attention to ths issue.

CHAPTER 8
FINDINGS

The findings below reflect The Spangenberg Group's overall impressions of Georgia's indigent defense system. These impressions are based primarily upon our site work in the 19 sample counties, including our interviews with hundreds of individuals whose work involves the handling of cases of indigent criminal defendants, juveniles accused of delinquency, and deprivation matters. Additionally, in making the findings below, we used quantitative data, such as caseload and budget figures, assigned counsel fee schedules, Administrative Office of the Courts caseload data, and other secondary information such as court orders from litigation concerning systemic deficiencies of indigent defense in Georgia, various reports and press clips. We also relied on information and testimony presented at the monthly meetings of the Chief Justice's Commission on Indigent Defense. Finally, the findings are based on the perspective and experience TSG has gained working in Georgia over the years.

3. A lack of program oversight and insufficient funding are the two chief problems underlying a complete absence of uniformity in the administration of and quality of indigent defense services throughout the 19 Georgia counties we studied. We suspect this is equally true statewide among all of the state's 159 counties. Despite what appears to be a structurally sound statutory scheme for administering indigent defense services in Georgia, in practice the administration of services and quality of representation vary widely from county to county and among circuits. In many counties we visited, there is little or no oversight of indigent defense attorney performance or qualifications. There is little or no enforcement of the Guidelines of the Supreme Court of Georgia for the Operation of Local Indigent Defense Programs ("the Supreme Court Guidelines").

   In comparison with other similarly situated states,[71] indigent defense is substantially under-funded in Georgia. Compared with the nine other states in our comparison for which state and county expenditure data is available, Georgia ranks 8 out of 10 in cost per capita expenditure (see Table 6-2). There is little likelihood of improvement to the system without a substantial increase in funding. However, increased funding alone will not substantially improve the quality and uniformity of indigent defense services; there must also be program oversight and accountability. Indigent defense services throughout Georgia are not adequately fulfilling the promise of effective indigent defense services, as mandated by the laws and constitutions of the United States and Georgia.

4. State funds constitute a very low percentage of total funding for indigent defense in Georgia. State funding only comprises about 11% of all funding for indigent defense in Georgia, and the availability of funding for indigent defense programs varies substantially among the state's 159 counties. (The state currently pays roughly 12% of the cost of

[71] Similar population, geographic region, and/or type of indigent defense delivery system.

indigent defense in the 152 counties that participate in the state Grants to Counties program. The other seven counties pay all of the local costs of indigent defense.) The increase in state funding for indigent defense since GIDC was created has been minimal (see Table 3-1). Compared to other states, the percentage of state funds for indigent defense is low (see Table 6-2). Because of their limited tax base, many counties in Georgia can't adequately fund indigent defense, even if they wanted to.

5. While most people interviewed in our site work support increased state funds for indigent defense, some people, especially judges, continue to oppose increased centralized oversight of indigent defense in Georgia. In our site work we heard repeated variations of a central theme. Judges, understandably, want to continue to have input into local indigent defense systems, particularly panel and contract systems, because they feel that they know the lawyers who come before them better than anyone else. Some judges feel that they alone can evaluate each attorney's level of experience and qualification to handle certain types of cases. Judges in rural areas, in particular, resist any attempt to improve centralized oversight for indigent defense. An oft-stated view is that judges in rural areas don't want "Atlanta" telling them what to do, referring to the prospect of a statewide indigent defense system that is administered from Atlanta. This viewpoint is well-intentioned, but can conflict with attempts to improve indigent defense in Georgia.

6. Two of the biggest problems facing indigent defense in Georgia and efforts to improve it are its lack of independence from the judiciary, and a steadfast unwillingness on the part of some judges in the state to support a system that grants this independence. For example, judges in some counties continue to influence the type of local indigent defense system(s) used, participate in review and reduction of panel attorneys' vouchers, and fail to approve or adequately compensate experts and investigators when appropriate.

7. Under Georgia law, judges have inherent power to appoint counsel to represent indigent defendants and to order compensation and reimbursement from county funds in individual cases as the proper administration of justice may require.[72] However, the wide discretion given to judges in some counties over attorney selection at the very least creates the potential for conflicts of interest and the appearance of conflicts of interest. Several court-appointed and contract attorneys expressed concern that if they were viewed by some judges as zealous advocates – e.g., they filed several motions in one case or demanded trials – they ran the risk of being removed from the ad hoc counsel appointment list or denied a future contract.

8. In most of Georgia's local indigent defense programs, there are few mechanisms in place to guarantee that defense lawyers are consistently held accountable for the quality of representation they provide to indigent defendants. In most counties there are no

[72] O.C.G.A. §17-12-44.

consistent standards, guidelines or oversight regarding training and experience, caseloads, performance or other facets of effective representation. A great many attorneys do work hard to provide high quality representation and many judges choose to exercise some discretionary oversight of attorneys in their courts. But in most counties this is entirely voluntary and there are no established procedures to guarantee that adequate representation is consistently provided in every case and in every court.

9. Lack of consistency and accountability have a deleterious impact on the consistency and quality of representation provided to indigent defendants from county to county and often result from wide variations in local criminal justice system practice. These differences include:

- Wide differences in how quickly defense counsel is appointed. Although the Supreme Court Guidelines require that indigent defendants be apprised of their right to counsel and appointed counsel if requested within 72 hours from detention or arrest, delay in appointing counsel soon after arrest is a pervasive and serious problem in a number of counties we visited, particularly in more rural counties. In some counties defendants can wait in jail from two weeks to more than six months before counsel is appointed. In worse case scenarios, we were told, defendants remain in custody for up to one year without appointment of counsel. This is a particular problem in a few counties in our sample where some felony courts do not appoint counsel until after indictment, even for defendants who are in custody. The problem, however, is not isolated to felony cases. Misdemeanor defendants who qualify for and seek appointed counsel can sit in jail for days, and even weeks, before counsel is appointed.

- Wide differences in the compensation paid to defense counsel and hence in the lawyers' incentive to fully represent their clients. Contract systems - used in more than a third of all counties - have widely divergent compensation schemes throughout the state that are not uniformly based on expected caseload, level of experience of counsel, whether the pay covers attorney overhead, etc. Most panel systems reviewed have the GIDC hourly compensation rates in place but also restrict pay to per-case caps (e.g., $250, $500, $900 or $1,500). Attorneys may only receive compensation above these caps with authorization of the local Tripartite Committee. At least one county - Chatham County - restricts the hourly rates to an event-based schedule (plea, open plea, dismissal, trial, etc.). And while public defenders have salary parity with district attorney staff in DeKalb and Houston counties, other public defender programs do not have salary parity.

- Wide variations in how courts determine whether a defendant is indigent – and hence whether the defendant receives appointed counsel at all. Some counties use the federal poverty guidelines to determine indigency, while others use homegrown rules of thumb.

- Wide variation among local indigent defense systems in the level of attention paid to ensuring that adequate counsel is provided to indigent individuals convicted of or facing felony and misdemeanor charges, accusations of juvenile delinquency and deprivation proceedings.

- Differences in the frequency of court proceedings: in some rural counties, there are as few as two terms of court a year.

8. The model of the tripartite committee, while seemingly laudatory on paper, has, in practice, failed to effectively monitor or administer indigent defense in many counties. The model of state grant-making and local control has not worked.

- The superior court has a duty to nominate a representative to the local tripartite committees. However, some judges continue to have too much influence over, and sometimes overt participation in, local tripartite committees. In one county visited, the superior court judge has appointed himself to the committee and serves as the chair. In four other counties visited, the indigent defense administrators are the court's representatives on the tripartite committees and serve as the chairperson.

- The role and duties of tripartite committees vary: some meet monthly and review/cut vouchers; some approve panel members; some meet just twice a year and do very little, leaving operation and oversight of indigent defense to the indigent defense administrator.

- The requirement of Supreme Court Guidelines 3.1 and 3.2 that the tripartite committee monitor and assess the effectiveness of public defenders, contract lawyers and panel attorneys is largely ignored.[73] Many tripartite committees engage in little or no monitoring of the quality of indigent defense representation.

[73] The two guidelines require tripartite committee members to monitor and observe attorney performance. Indicators of performance are listed as: a) early entry into representation of indigents; b) vigorous and independent representation of the client; c) participation in training activities and continuing legal education; and d) effective and reasonable use of time and resources.

9. **There is no effective statewide advocate for indigent defense in Georgia.** The Georgia Indigent Defense Council lacks the statutory mandate and political clout to serve in this role. The State Bar of Georgia has consistently pressed for improvement to indigent defense in Georgia[74] but its efforts have not resulted in significant legislative reform. Systemic litigation, such as *Stinson v. Fulton County Board of Commissioners* [75] and *Foster v. Fulton County*,[76] has resulted in important change for indigent defense in a few Georgia counties. Media coverage has brought to public attention some of the major problems of indigent defense in Georgia. But despite these efforts, there is no effective leadership for indigent defense in the state.

10. **Georgia counties are not accountable for the quality or structure of their indigent defense systems. In addition, just as there is no effective statewide advocate for indigent defense in Georgia, in many counties, there is no effective advocate for indigent defense at the county level.** In many of the counties visited, no one regularly airs concerns about the indigent defense system and budget with county officials. Cobb County is an exception to this rule. Its indigent defense administrator is very proactive in communicating with the county and courts about indigent defense budgetary and practice issues.

11. **There is a common viewpoint among some judges, prosecutors, jail personnel and even some defense lawyers that indigent defendants facing minor charges do not need or want lawyers, even when they are entitled to appointed counsel by law.** Especially in misdemeanor cases, there is a viewpoint by many people that waiver of counsel by indigent defendants is appropriate in certain instances. This is certainly true if waiver of counsel is knowing, intelligent and voluntary. However, there is a paternalistic perception in some counties that "we take care of defendants; we know the people in the community and their individual situations." As a result, some defendants are not properly informed of their right to counsel, or are encouraged to first speak about the charges against them with the district attorney or solicitor general before applying for counsel. Some defendants, especially in misdemeanor cases, who face possible jail time either are given no lawyer and/or are detained a lengthy time before getting a lawyer or getting to court.

    The perception that indigent defendants facing minor charges don't need or don't want lawyers will have to shift if Georgia courts that hear misdemeanor cases are to comply

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[74] Most recently, in 2000, the Bar adopted a resolution in support of the Chief Justice's Commission on Indigent Defense, and in 2002, adopted the "State Bar Proposal in Support of Supreme Court Commission on Indigent Defense." The document asks the Commission to consider six conclusions and recommendations as part of its evaluation of Georgia's indigent defense system.

[75] **Civil Action File No. 1-94-CV-240-GET (1999).**

[76] No. 1:99-cv-900 (N.D. Ga. April 16, 2002).

with *Alabama v. Shelton*, U.S. No.00-1214 (May 20, 2002). *Shelton* forbids imposition of a suspended sentence of imprisonment upon an indigent defendant who was neither given a court-appointed lawyer nor properly waived the right to counsel in the underlying proceeding.

12. **Georgia's large number of counties and its multi-layered court system make improvements to indigent defense a particularly daunting task.** Only one other state has more counties than Georgia: Texas has 254 counties and Georgia has 159 counties. Besides multiple counties, indigent defense programs operate in numerous courts: municipal, magistrate, recorder's, probate, state, superior, appeals and the Supreme Court. As criminal cases move from one court to another, there is little or no connection among the different courts. "Balkanized" is the apt adjective for courts and indigent defense systems in Georgia.

    Chatham County's indigent defense system presents an exception to this general rule. The county, which uses panel attorneys for indigent defense, has consolidated the adult case indigent defense functions of recorder's, state and superior court within the Administrative Office of the Superior Court. (The juvenile system is administered separately.) Chatham County's county-wide adult indigent defense program includes the municipalities. The court administrator generates a report from *all* of the jails in the county on who they are holding. All defendants are transferred to Chatham County jail and representation is vertical from appointment in recorder's court through disposition in state or superior court, depending on whether the case is a misdemeanor or felony. This approach seems to work well from an administrative standpoint.

13. **Major problems were found surrounding requests for investigators or expert witnesses.** Investigators and expert witnesses are not necessary in every criminal case. However, when defense counsel feel that they are necessary, they should be approved upon an ex parte showing and compensated adequately. Some court appointed lawyers once did but no longer ask for investigators or experts because their requests have been denied so often in the past. In one county we were told by defense lawyers and judges alike that experts or investigators will only be approved in death penalty cases. Attorneys in some counties told us they have never requested or used investigators or experts. A common practice is for judges to approve requests for investigators or experts, but only up to a cap of $300 or $500, which can prove to be inadequate in cases, for example, involving a great deal of scientific evidence. Many judges say they will pay more if the attorneys can justify the added expense.

14. **There are continuing problems concerning the availability of qualified interpreters to assist indigent defendants and their lawyers, despite a recent Supreme Court initiative designed to correct these problems.[77] Many indigent defendants in Georgia**

[77] ***See*** **http://www.legis.state.ga.us/Courts/Supreme/interpretersrule.htm**.

do not speak English; thus, access to trained, professional interpreters who speak various languages and dialects is crucial. Some counties have had court-based interpreter services available for indigent defendants appearing in court. Many, however, rely on a variety of non-professionals to come "pinch hit" when a non-English speaking defendant appears in court. In Clayton County, we observed defendants bringing children to court to interpret for them. In Dodge County, inmates and jail guards are used by attorneys to interpret for clients. In Lowndes and Dodge counties, probation officers are used to interpret in court. Clayton County was coping with an interpreter shortage in magistrate court by relying on AT&T language lines for first appearance hearings. In most if not all counties we visited, the Supreme Court requirement that certified and/or registered interpreters be available to assist non-English speakers in court proceedings of Georgia was not being fulfilled, despite progress being made by the Commission on Interpreters to train and approve people as certified and qualified interpreters.

15. **Georgia lacks a systematic approach to identifying and assisting indigent defendants who suffer from mental illness.** Indigent defendants with mental illness frequently spend long periods of time detained pre-trial without proper screening or treatment. Indigent defense lawyers are often not trained in how to deal with these clients. Mental health services – both public and private – either do not exist or are inadequate for defendants going through the criminal justice system.

16. **Based upon data from GIDC, the cost per capita for indigent defense in Georgia for FY 2001 was approximately $6.18, ranking Georgia eighth out of 11 states for which we have comparison information in per capita state and county expenditures.**[78] In FY 2002, the total expenditure for indigent defense in Georgia was estimated at $52,968,892, or $6.47 per capita expenditure.

17. **None of the 19 counties we visited provide sufficient funds to assure quality representation to all indigent defendants.** While some counties clearly are better off than others, we did not find any that were adequately funded. This funding shortfall manifests in a number of ways including:

    - Some counties pay flat fees for a particular type of case or event, e.g., $300 for a guilty plea in a felony case. Other programs compensate attorneys on the $45/$60 hourly basis but cap per-case payments, e.g., to $265 in a misdemeanor plea.

    - When authorized, counsel is frequently subject to a presumptive cap of $300 or $500 for investigators and/or expert witnesses. Some attorneys are forced to do their own investigation, which is particularly inappropriate when interviewing witnesses whose credibility may later have to be impeached in court, which can require the attorney to testify against the witness.

[78] See Table 6-2 for indigent defense expenditure data in 10 other states.

- Many attorneys told us that even when they submit itemized vouchers for the actual amount of work performed, their compensation claims are routinely reduced without explanation, usually by the tripartite committee but sometimes by the judge.

- Counsel who find that pay for indigent defense work barely covers their overhead have to make tough choices on how they handle their appointed cases: many admit they do not provide the same level of service that they do to retained clients; to do so would work a financial hardship on them. Often what suffers are client visits, either in or out of jail, investigation, legal research and zealous motions practice. The low compensation works as a disincentive for many attorneys to do the same level of work on appointed cases as they would in retained cases.

18. There is an imbalance of resources between prosecution and indigent defense in Georgia. The GIDC 2001 Annual Report found that in Fiscal Year 2001, state funding for prosecution costs was comparable to county funding for indigent defense, while state funding for prosecution costs was more than eight times state funding for indigent defense. Total funding – i.e., state and county expenditures, plus clerks and sheriffs fund revenue, plus State Bar IOLTA funds – on indigent defense by the 152 counties that received state grant money in FY 2001 was $50,600,423. The state FY 2003 budget for district attorneys in Georgia is $42,945,077, of which $3,719,573 goes to the Georgia Prosecuting Attorney's Council. This budget does not include supplemental county funds for district attorneys or county funds for solicitors general.

The imbalance of resources between prosecution and indigent defense is evident in available support services, such as investigators and expert witnesses. The imbalance in available support services limits defense counsel's ability to effectively represent clients. The imbalance is most prominent when evaluating in-kind resources available to the prosecution, such as the investigatory services of all local law enforcement agencies and resources made available by the state and federal government including analysis of forensic and scientific data.

19. The public defender system is used by far fewer counties than appointed or contract attorneys. Interestingly, we heard more support for a local or statewide public defender program than we expected. Although there is considerable interest in many parts of the state in greater use of public defender programs, there are reservations about the logistics and costs of creating additional public defender offices. Reservations include worry that counties will not be able to adequately fund a public defender office and fears that salaries would be too low and caseloads too high. Numerous interviewees worried that a public defender system could never be created because it would have to be funded on par with the local district attorney's office.

20. In most of the counties we visited, there are no minimum eligibility criteria for

attorneys who wish to accept court-appointed cases. In some counties, the only requirement to get on a court-appointed panel is bar membership. In a number of counties, it is relatively uncommon for lawyers to be appointed in misdemeanor cases unless the defendants are detained pre-trial. The result is that some new lawyers "cut their teeth" on felony cases, the only appointed cases that are available.

Cobb County presents an exception to this practice, as no lawyers are allowed to take even misdemeanor appointments unless they have at least one year of criminal law experience, have experience handling a minimum number of criminal trials, and participate in annual criminal law CLE. Also, in Chatham County, while there is no annual CLE requirement, the panel has several tiered lists that attorneys can join, based on their level of experience.

21. **In the majority of counties we visited, there are no requirements that attorneys taking court-appointed cases participate in continuing legal education programs in criminal law.** While there is an overall low participation rate in general skills training for defense lawyers, we found even fewer attorneys participate in training in specialty areas, such as working with defendants who have mental illnesses or on the immigration consequences of criminal convictions. Training is an expense, and counties do not cover the cost of criminal law CLE for indigent defense layers. GIDC offers various low-cost training sessions for indigent defense lawyers throughout the state but in less populous areas they are not well-attended. The juvenile and capital case training sessions are exceptions to this trend, as a number of juvenile court judges encourage or require attorneys to attend the training and the Georgia Supreme Court requires attorneys to take annual capital case CLE to remain eligible to accept capital case appointments.

22. **Individuals who make use of GIDC's special divisions praised their effectiveness.** We heard universal praise for the work of the Multi-County Public Defender among prosecutors, judges, and attorneys. Defense attorneys who attended training or received assistance from the juvenile and mental health division were complimentary of the services received.

23. **Georgia is the only state in the country that does not provide a right to counsel in capital post-conviction (habeas corpus) cases.** The small Georgia Appellate Practice and Education Resource Center handles as many capital habeas cases as possible; the rest are handled by pro bono counsel.

24. **Superior courts in several counties visited mandate that all practicing attorneys participate on the courts' assigned counsel panels, regardless of the attorneys' interest in or aptitude for criminal defense.** As a result, attorneys who are neither experienced or interested in criminal defense are required to take appointed cases. While counsel may strive to provide adequate representation, this arrangement works a disservice to indigent clients. In addition, it is an inefficient use of county resources to continuously pay counsel who must take the time to come up to speed in applicable

criminal law when representing their court-appointed clients.

25. Early representation is uneven and problematic in some areas: sometimes there is no involvement of counsel until arraignment, even in counties where indictment can take up to one year from arrest. In the counties visited, some attempts have been made to provide counsel to pre-trial detainee felony defendants prior to arraignment in superior court.

- The Middle Circuit (Candler, Emanuel, Jefferson, Toombs and Washington counties) and Ogeechee Circuit (Bulloch, Effingham, Jenkins and Screven counties) have developed early intervention programs for felony defendants whereby a lawyer provides representation from arrest to indictment/accusation for defendants being detained in the jail on new felony charges. The goal of the programs is to dispose of cases at the earliest possible procedural juncture and to ensure that defendants meet promptly with a lawyer. A shortcoming of the programs is that there is no continuity of counsel post-arraignment: not only is new counsel appointed, but there is no sharing of information between the early intervention lawyers and the new attorneys. Also, the attorney performing the early intervention job in the Ogeechee Circuit was overburdened: in addition to handling the early intervention clients, he was also responsible for all state court representation and all juvenile representation in Superior Court in Bulloch County, plus he maintains a private practice.

- In Clayton County, attorneys are expected to meet with incarcerated defendants within 48 hours of appointment. In Cobb and Lowndes counties, panel attorneys are provided with a form they are encouraged to complete and return to the Indigent Defense Administrators verifying the time when they first met with their incarcerated clients.

26. Delay in early involvement of counsel is attributed to various factors, including:

- Some police officers fail to file incident reports in a timely manner.
- Some district attorneys and solicitor generals can be late in filing accusations or indictments and late in providing counsel with discovery.
- Some courts are not prompt in appointing counsel.
- Sometimes in-custody defendants are not placed on the court docket in a timely fashion.
- Some court-appointed counsel are late in contacting clients and no monitoring is done to correct this problem.

27. Some of the more alarming problems in Georgia's indigent defense system are found in the treatment of juveniles accused of delinquent offenses. Many juveniles appearing in juvenile court go unrepresented, typically because they are poorly informed of their

right to counsel or because they are discouraged from exercising that right. Juvenile cases in many counties we visited do not receive the attention from tripartite committees that adult cases do. For example, Richmond and Cobb counties have panel programs to represent indigent adults in criminal cases, while contracts are used to represent juvenile case clients. The contract attorneys in both counties have very high caseloads: in Richmond County, a single part-time public defender handles approximately 1,200 juvenile cases per year and also has a private practice. In Cobb County, four contract lawyers represented clients in 3,500 juvenile cases in the year prior to our visit.

28. **There is inconsistency among counties in the way in which deprivation cases are handled.** In some counties, indigent parents are provided appointed counsel and children are provided with a guardian ad litem. In other counties children are represented by appointed counsel. In some counties indigent parents receive no representation at all.

29. **There is a lack of reliable and comprehensive statewide data on indigent defense in Georgia.** The only source of county-by-county data on indigent defense caseload in Georgia is the collection of applications GIDC receives for its Grants to Counties program. Some data reported to GIDC by local indigent defense programs is incomplete, including only case appointment data for certain case categories. Further, there is no uniform definition of "case" used by courts, counties or indigent defense programs in Georgia.

30. **There is a perception by some that state Grants to Counties distributed by GIDC are used to supplant, not to supplement, county funding for indigent defense.** The state grant money goes into a county's general fund rather than a special fund for indigent defense, so it is difficult to trace whether the money is used specifically for indigent defense or for general county purposes.

31. **In considering improvements to indigent defense in Georgia, it is important to recognize that some problems facing the indigent defense systems in predominantly rural counties differ from those in predominantly metropolitan counties.** For example, in general, delay in indictment and in appointment of counsel in indigent cases is more of a problem in smaller counties. Rural counties sometimes have a scarcity of attorneys who are qualified or willing to handle certain types of cases. There is no one-size-fits-all solution to the problems in Georgia indigent defense. However there is a great need for state assistance and technical support to help fashion solutions which are tailored to the needs of different-sized counties.

32. **While we found many indigent defense practices that concern us, we found a number of practices that deserve favorable mention**. These practices should be reviewed by other counties and by the state to determine whether they form an appropriate basis for improving indigent defense, locally or statewide. Most of these practices were developed to address problems in the local indigent defense or criminal case processing systems.

- A number of features of the Cobb County system stand out: outstanding panel

administration; requirements that panel attorneys possess minimum levels of experience and attend annual criminal CLE; support from the county, bar and the courts for indigent defense; innovative programs such as in-house probation and pre-trial services, the indict or release calendar, the contract attorney who handles the calendar for detained inmates who cannot afford bond and wish to have it reviewed after 30 days pre-trial detention, and the **contract attorney who is used as an early intervention public defender at first appearance**.

- Both the DeKalb and Houston county public defender programs were praised for providing high quality representation and strong leadership for indigent defense.

- Lowndes County's indigent defendant client evaluation survey is one of the few examples we saw of attorney performance monitoring.

- The Middle Circuit and Ogeechee Circuit Early Intervention contract defender programs are good models for rural areas which have few terms of court. (However, the workload of early intervention attorneys should be closely monitored.)

- The settlement agreement in *Stinson v. Fulton County Board of Commissioners* was identified as having a positive impact on felony representation of indigent defendants in Fulton County. Because of *Stinson*, the Public Defender and Conflict Defender carefully track their superior court caseload. *Stinson* makes it clear that if the public defender reaches a certain case level, it can request that further appointments not be made to the office, and instead go to the Conflict Defender or panel counsel.

- The combined effort and interest of key agencies and individuals led to improvement of indigent misdemeanor client case processing in Fulton County, per order of *Foster v. Fulton County*.

33. Few of the counties we visited had Pre-Trial Services Offices helping eligible indigent defendants who cannot afford their bonds to get out of jail pre-trial, thus easing pre-trial jail population overcrowding. Chatham, Cobb and McDuffie counties had such systems. The pre-trial services program in Chatham and Cobb counties operate as quasi-probation offices. **Under the Cobb County program, eligible defendants can post 10% of their bail and get their money back at the conclusion of their case, less a 10% administrative fee. These so-called "10 percenters" go under supervision of the program, similar to probation supervision, which was described as a productive feature for defendants who are in school and need** encouragement to attend class regularly. Pre-trial services can also be used for diversion or alternative placement prior to trial.

34. A few judges told us they felt under pressure from counties to contain or reduce indigent defense expenditure. A number of judges told us they feel responsible for county expenditures and try to be fiscally responsible. But one even mentioned that he feared the county funds he received as a supplement to his state salary were in jeopardy if he did not contain indigent defense costs.

35. Jail overcrowding is a problem for jails in Georgia. In many counties we visited, pre-trial detainees who could not make bond contributed to the overcrowding problem. Further compounding the problem in a number of counties was delay in indictment or filing of accusation. Statewide, as of April 4, 2002, 58% of inmates at county jails in Georgia were awaiting trial.[79] Significant numbers of pre-trial detainees who sit for months prior to disposition of their cases add high and unnecessary jail costs to counties, particularly when the defendants are held on minor charges. Another problem complicating representation of detained indigent defendants is that some counties do not have their own jails. Contact between an appointed attorney and a client detained out-of-county is difficult when the client must be transported to the county jail where the case is being heard.

[79] **Georgia Department of Community Affairs County Jail Inmate Population Report, April 4, 2002.**

APPENDIX A

Georgia Indigent Defense Council Grants to Counties Subsidy Program
Award of State Funds to County for Fiscal Year 2002 (July 1, 2001 - June 30, 2002)