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WEIGHTED CASELOAD STUDY FOR  
THE STATE OF MINNESOTA BOARD OF PUBLIC DEFENSE

DRAFT

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## CHAPTER I

### INTRODUCTION

#### 1.1 History of the Minnesota Public Defender System

The foundation of Minnesota's system for the delivery of indigent criminal defense services to the poor was established in the mid-1960's. In 1967, the Judicial Council of Minnesota was created by the Minnesota Legislature. One of the purposes of the Council was to direct the State Supreme Court to oversee the public defender system in operation at that time. In 1978, the Judicial Council was empowered by the Legislature to prepare funding proposals and to distribute appropriated money for non-profit criminal and juvenile defense corporations primarily to serve minority populations, located throughout the State. During those years the Court became concerned about conflicts between its role in overseeing public defender services and its judicial function.

In 1981, the Judicial Council recommended to the Legislature that it create a Board of Public Defense to supervise and review public defense operations throughout the State. During that year, legislation was enacted creating the Board of Public Defense and charging it with the responsibility of appointing the Chief Public Defender of the State, and six of its ten Judicial Districts. It also mandated that the Board approve and certify budgets for each Judicial District Public Defender office under its jurisdiction.

In 1987, the Minnesota Legislature expanded the Board of Public Defense's statutory authority (M.S. 611.215 - 611.27). The legislation modified its membership, created an administrative office, instituted greater oversight in regard to the State Public Defender's Office, created two new Judicial District Public Defender positions and offices (Third and Eighth), mandated new standards regulating the offices and conduct of all public defender organizations and established new reporting, budgeting and funding processes. These legislative changes created greater

administrative oversight over public defender activities, and significantly expanded the role of the Board in governing public defender organizations in Minnesota.

The act creating the Public Defender Board states in part:

Sec. 4., Subd. 2. Duties and Responsibilities

(a) The state board of public defense shall appoint the state public defender, who serves full-time for a term of four years. The board must prepare an annual report to the Governor, the legislature, and the Supreme Court on the operation of the state public defender's office, district defender systems, and appointed counsel systems. The board shall approve and recommend to the legislature a budget for the board, the office of state public defender, and the public defender corporations. The board shall establish procedures for distribution of state funding under this chapter to the state and district public defenders, including Hennepin and Ramsey county public defenders, and to the public defender corporations.

(b) The board shall establish standards for the offices of the state and district public defenders and for the conduct of all appointed counsel systems. The standards must include, but are not limited to:

1. standards needed to maintain and operate an office of public defender including requirements regarding the qualifications, training, and size of the legal and supporting staff for a public defender or appointed counsel system;
2. standards for public defender caseloads;
3. standards and procedures for the eligibility for appointment, assessment and collection of the costs for legal representation provided by public



- defenders or appointed counsel;
4. standards for contracts between a board of county commissioners and a county public defender system for the legal representation of indigent persons;
  5. standards prescribing minimum qualifications of counsel appointed under the board's authority or by the courts; and
  6. standards ensuring the economical and efficient delivery of legal services, including alternatives to the present geographic boundaries of the public defender districts.

The board may require the reporting of statistical data, budget information, and other cost factors by the state and district public defenders and appointed counsel systems.

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A second step was taken by the legislature in 1987 with the appropriation of \$700-800 thousand of state funds to assist those counties that were in "a distressed situation."

Finally in May of 1989, the state legislature took a most important step forward by appropriating approximately \$17,000,000 of state funds to the Board of Public Defense to provide representation in all judicial districts for felony and gross misdemeanor cases. These funds became available for distribution to the judicial districts on July 1, 1990. With the exception of one pilot district (Eighth) and Ramsey (Second) and Hennepin (Fourth), the responsibility for misdemeanor, juvenile and other cases requiring appointment of counsel remained with the individual counties in each judicial district. This responsibility included the type of indigent defense system to be established for these cases and the funding of such a system.

In order to properly administer the statewide system, the legislature in 1989 also appropriated funds to the Board of Public

Defense to conduct a weighted caseload study. It was recognized by the legislature that such a study was necessary to develop reliable caseload standards throughout the state to substantiate further appropriations to the statewide system. A similar caseweightings study had previously been conducted for the judicial branch in Minnesota in 1986 to determine judicial needs in the state.

The ~~Chief Administrator~~ and the Board of Public Defense contracted with The Spangenberg Group of Newton, Massachusetts to conduct the weighted caseload study for public defense in October of 1989.

The Spangenberg Group is a nationally recognized private law and justice research firm that has conducted similar studies in the past two years for the California State Public Defender, the New York Legal Aid Society's Criminal Division and the Wisconsin State Public Defender. Members of The Spangenberg Group have spent a majority of their time during the past decade conducting research and providing technical assistance in the area of indigent defense delivery in virtually every state in the country.

## 1.2 Factors Affecting Public Defender Caseloads Nationally

Prior to the U.S. Supreme Court's decision in Gideon v. Wainwright in 1963, there were only a handful of public defender offices in operation throughout the country. These early public defender programs were established in some jurisdictions because lawyers and leading laypersons were concerned about the appropriate functioning of the criminal justice system and in others as a response to state constitutions or statutes creating the right to counsel. For the most part, these early public defender organizations were relatively small in size, and most staff attorneys were employed on a part-time basis.

The situation changed after Gideon. The court in Gideon required the appointment of counsel in "all serious cases,"

although the meaning of this language was not spelled out with precision. Some states interpreted the words to require counsel in only serious felonies, other states for all felonies, and a few states for all cases in which a jail or prison sentence might be imposed. Gideon placed a heavy caseload burden on existing public defenders and also resulted in the creation of many new public defender programs in the late 1960's and early 1970's.

During this period, most public defenders found themselves increasingly overworked and insufficiently funded to hire the staff necessary to manage the caseload. Matters grew even worse after the U.S. Supreme Court decided Argersinger v. Hamlin in 1973, mandating the appointment of counsel in misdemeanor cases, since most public defender agencies were then required to represent all criminal defendants facing a jail or prison sentence.

The problem did not end there, however. Many additional factors have developed in the last couple of years that have added dramatically to the problem of managing public defender caseloads. They include:

- o increases in the crime rate, case filings, and court appointments (particularly in the area of drug offenses);
- o changes in the economic picture, resulting in increased claims of indigency;
- o changes in statutes, case law, or court rules in individual states that increase the types of cases or proceedings for which counsel is required;
- o changes in public or office policy requiring the performance of additional tasks, e.g., preparation of sentencing reports and diversion recommendations, indigency screening, and appellate review;
- o changes in prosecutorial practices such as the institution of career criminal prosecution programs or policies limiting plea bargaining in certain types of cases;
- o loss of support staff positions or other adverse alterations in staffing patterns;
- o changes in the method of case disposition or the stage at which cases are disposed, e.g., increase in trials, more

frequent use of juries, fewer dismissals, less plea bargaining at early stages of the case;

- o changes in the case mix for public defenders with an increased percentage of more serious felony cases;
- o changes in sentencing law and procedure including the institution of mandatory sentences and sentencing guidelines;
- o reductions in court processing time or other increases in court efficiency; and,
- o changes in statutes or court rules mandating procedural alterations such as speedier trials or preliminary hearings for certain classes of offenses.

As a result of these and other factors, public defender caseloads have grown to be overwhelming in many jurisdictions and the ability to provide "effective representation" has been stretched to the limit.

Throughout the seventies and into the eighties, public defenders began to respond to this problem by developing methods to control their caseloads. These efforts were aided by several attempts to develop national caseload standards and by reference to ethical standards developed by the American Bar Association.

### 1.3 National Standards/Legal Requirements

Ethical codes governing the professional conduct of all attorneys must be the starting point of any discussion regarding public defender caseload management. Canon 6 of the American Bar Association (ABA) Model Code of Professional Responsibility states that, "All lawyers should represent a client competently." The disciplinary rules established by the ABA provide insight into what is meant by "competently." Rule 6-101 states:

A Lawyer shall not:

1. handle a legal matter of which he knows or should know that he is not competent to handle, without associating

- with him a lawyer who is competent to handle it;
2. handle a legal matter without preparation adequate to the circumstances; or
  3. neglect a legal matter entrusted to him.<sup>1</sup>

While the model ABA code does not govern the ethical standards of lawyers practicing law in the various states, it has carried considerable weight when the professional code of conduct has been developed in each state. In fact, a number of states have modeled their code around the ABA rules.

In response to the rising crime rate and change in constitutional requirements within the criminal justice system in the last two decades, the ABA has also taken a leadership role in developing a set of standards and goals for each component of the criminal justice system. These may be found in the ABA's Standards Relating to the Administration of Criminal Justice. Two of its chapters address the subject of indigent defense. Chapter 4 is devoted to the prosecution and defense functions and Chapter 5 is concerned with the provision of defense services.

Standard 4-1.2 of Chapter 4 deals with the ethical considerations regarding the defense lawyer. It states:

A lawyer should not accept more employment than the lawyer can discharge within the spirit of the constitutional mandate for speedy trial and the limits of the lawyer's capacity to give each client effective representation.<sup>2</sup>

Chapter 5 provides a blueprint and set of standards for delivering defense services. It spells out in some detail the requirements for both public defenders and privately appointed

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<sup>1</sup>American Bar Association Model Code of Professional Responsibility, Disciplinary Rule 6-101.

<sup>2</sup>American Bar Association Standards Relating to the Administration of Criminal Justice, Prosecution and Defense Function (1979).

counsel in meeting their constitutional and ethical requirements. Standard 5-4.3 provides:

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

While these statements, guidelines, and standards are extremely important, they do not provide detailed guidance as to what is an excessive workload or what lawyers should do when they have reached the workload limit. More specific detail can be found by examining the work of two other national bodies which have attempted to deal with the problem: the National Study Commission on Defense Services and the National Advisory Commission on Criminal Justice Standards and Goals.

Under a grant from the U.S. Department of Justice, a two-year study was undertaken by the National Legal Aid and Defender Association through the National Study Commission, which resulted in the publication in 1976 of the Guidelines for Legal Defense Systems in the United States. Chapter 5 of that report addresses the maximum criminal caseload for a defense attorney. Section 5.1 states:

- a. In order to achieve the prime objective of effective assistance of counsel to all defender clients, which cannot be accomplished by even the ablest, most industrious attorneys in the face of excessive workloads, every defender system should establish maximum caseloads for individual attorneys in the system.

- b. Caseloads should reflect national standards and guidelines. The determination by the defender office as to whether or not the workloads of defenders in the office are excessive should take into consideration the following factors:
1. objective statistical data;
  2. factors related to local practice; and
  3. an evaluation and comparison of the workload of experienced, competent, private defense practitioners.<sup>3</sup>

Section 5.3, which deals with the elimination of excessive caseloads, is also instructive. It states:

- a. Defender office caseloads and individual defender attorney workloads should be continuously monitored, assessed, and predicted so that, whenever possible, caseload problems can be anticipated in time for preventive action.
- b. Whenever the Defender Director, in light of the system's established workload standards, determines that the assumption of additional cases by the system might reasonably result in inadequate representation for some or all of the system's clients, the defender system should decline any additional cases until the situation is altered.
- c. When faced with an excessive caseload the defender system should diligently pursue all reasonable means of alleviating the problem including:
1. declining additional cases and, as appropriate, seeking leave of court to withdraw from cases already assigned;
  2. actively seeking the support of the judiciary, the defender commission, the private bar, and the community in the resolution of the caseload problem;
  3. seeking evaluative measures from the appropriate national organization as a means of independent documentation of the problem;
  4. hiring assigned counsel to handle the additional cases; and

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<sup>3</sup>National Legal Aid and Defender Association, Guidelines for Legal Defense Systems in the United States, Report of the National Study Commission on Defense Services (Washington, D.C.: NLADA, 1976), p. 411.

5. initiating legal causes of action.
- d. An individual staff attorney has the duty not to accept more clients than he can effectively handle and should keep the Defender Director advised of his workload in order to prevent an excessive workload situation. If such a situation arises, the staff attorney should inform the court and his client of his resulting inability to render effective assistance of counsel.<sup>4</sup>

The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC), which published its standards in 1973. In that report standard 13.12 on Courts states:

The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.<sup>5</sup>

It is important to note that each of the above categories is exclusive of each other. Thus, under these standards, one full-time public defender should handle no more than 150 felony cases per year or 200 juvenile cases per year, etc. Also, these standards were developed 17 years ago, before the increased complexity of criminal practice and procedure was developed.

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<sup>4</sup>Ibid., p. 413.

<sup>5</sup>National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts (Washington, D.C., 1973), p. 186.



CHAPTER II  
MEASURES EMPLOYED BY PUBLIC DEFENDERS  
TO ADDRESS CASELOAD PROBLEMS

In a study developed for the United States Department of Justice, National Institute of Justice in 1983 entitled "Maximizing Public Defender Resources: A Management Report," conducted by members of The Spangenberg Group, an effort was made to report on a series of innovative methods developed by public defenders to maximize their resources with limited funding. Part of that report was devoted to public defender caseload problems; it described caseload/workload standards developed by public defenders in Portland, Oregon, West Palm Beach, Florida, Colorado, and Vermont.

As part of that research effort, a national survey was conducted among the largest public defender programs in the country seeking information on formal or informal methods used by these programs to control caseload. Results of that survey disclosed that, "Clearly, the state of the art is extremely low. Where standards do exist, many appear to be informal and based upon the guesswork of the chief public defender."

In the period since 1982, progress has been made as state and county public defenders have found it difficult to justify increases in budget and staffing without reliable data and detailed caseload standards.

A second national survey of large trial and appellate public defender programs was conducted by Robert Spangenberg for the National Legal Aid and Defender Association in 1986 to examine the then-current state-of-the-art of public defender caseload/workload standards. The results were more encouraging than in 1983. Over 80 programs responded to the survey, and more than 75% indicated that they had either formal or informal standards in effect. Fifty percent of the programs reported having formal, written standards. Many of these programs had been successful in incorporating their standards into their regular budget process. Over half of the

programs reporting formal, written standards indicated that attorneys in the program were required to keep time records, including hours spent on individual cases on either a daily or weekly basis. The majority of these latter programs had developed a computerized management information system for statistical and docketing purposes. Several of the programs indicated that they had developed their caseload standards as a result of an internal time study.

The last question set out in the survey asked for a description of any problems that inhibit the program from developing specific caseload limitations. The most frequent response to this question was lack of credible data to support caseload numbers. Programs that have successfully addressed the problem share a common set of characteristics. They include:

- o a sound management information system based upon reliable and empirical data;
- o a statistical reporting procedure which has basically been accepted by the funding sources;
- o a sound management system;
- o the ability to tie their caseload standards to their budget request; and
- o the ability to mobilize strong local support for their program.

The results of this survey showed that many statewide and local public defender agencies had in fact recognized the importance of developing accurate and reliable caseload standards, in large measure because the funding source, state or local, demanded that the program become more accountable as requests for increased funding were made from year to year. Many funding sources became frustrated by the fact that public defenders were unable to justify their funding requests through reliable, quantitative measures. Such measures are absolutely necessary not

only to justify funding requests but to permit funders to plan for reasonable year to year appropriations. It is apparent that the Minnesota Legislature has recognized this problem by mandating a weighted caseload study in last year's appropriation.

There are several reasons why such a study was felt to be necessary at this time. They include:

1. The need to accurately report to the legislature the staffing necessary to provide representation district by district for proposed caseload projections.
2. To provide reliable data for the Board of Public Defense in properly allocating resources district by district.
3. To provide reliable data for each district public defender to allocate his/her resources properly to each court in the district.
4. To provide overall accountability for the State of Minnesota Board of Public Defense program.
5. To provide the legislature with detailed information that will permit proper budget planning for the public defense program from year to year.

All of these goals have been achieved in other jurisdictions, including several in which The Spangenberg Group has been directly involved.

## 2.1 Measurement Methods Employed by Public Defenders to Develop Caseload Standards

In a paper entitled "Public Defender Caseloads and Common Sense," Professor Richard J. Wilson of CUNY Law School described three basic methods used by public defender offices to develop caseload standards. This paper was based on a joint study that he and the Jefferson Institute carried out for the National Institute of Justice entitled, "Case Weighting Systems: A Handbook for Budget

Preparation." Professor Wilson identified the three systems as unit-based, time-based and open file.

The unit-based system is an attempt to establish a maximum number of cases that one public defender attorney can reasonably be expected to handle in a given year. The best example, of course, is the standards developed by the National Advisory Commission on Criminal Justice Standards and goals, discussed earlier in this report. Some 17 years later, the NAC standards are still the only nationally promulgated numeric standards governing the limitation of defender office trial and appellate caseloads. It is significant to note that these standards were developed exclusively by attorney estimates.

The second system identified is the time-based system. Under this method, public defender attorneys report the amount of time that it takes them to perform specific tasks on various kinds of cases from intake to disposition. Public defender offices have conducted studies to measure these activities both through attorney estimates alone and through a more extensive case weighting process which involves filling out contemporaneous time records.

The third method that public defenders have used to control caseload is to establish a total number of open cases to be handled by any public defender attorney at any one time.

Based upon almost a decade of work in the field of public defender caseload/workload measures, we feel that any reliable caseload study must be empirically based in order to assure reliability both for public defender management and the funding source. There are two acceptable methods to achieve these results: the Delphi Method and the Caseweighting Method. The most reliable method which is the one chosen for the Minnesota study is the caseweighting method using contemporaneous time records.

## 2.2 The Caseweighting Methods

A caseweighting study is one in which time records are kept by public defender attorneys, over a given period of time. The time records provide a means by which caseload (the number of cases a lawyer handles) can be translated to workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). In the broadest context, weights can be given to the total annual caseload of an office to project the next year's anticipated volume of cases.

Assuming that time records are kept of attorney time expended in each case, the translation of projected caseload into projected workload can be accomplished with some assurance of precision.

The Spangenberg Group has had extensive experience in conducting caseload/workload studies for public defenders around the country using both the Delphi and Caseweighting methods. This experience has led us to the conclusion that the caseweighting method is the most thorough and complete method to determine valid, empirical workload measures that can be translated into caseload standards for public defender programs. Chapter IV discusses in detail the methodology used to conduct the empirical portion of the caseweighting study in Minnesota. Chapter III, which follows, summarizes the extensive work performed on site by the research team which was critical in the design of the empirical time-keeping study.

The research team was aided substantially over the full term of the study by a Steering Committee made up of board members, administrative staff, all ten Chief Judicial District Public Defenders and other district public defender staff. The Steering Committee met on a number of occasions and provided valuable input into every aspect of the study's design and implementation. We are greatly appreciative of the extensive time and effort devoted to the project by all Steering Committee members.

### CHAPTER III

#### SITE WORK IN MINNESOTA

During the early part of 1990, members of The Spangenberg Group staff and selected expert consultants visited portions of all ten judicial districts in Minnesota. This field work was considered to be a critical part of our study for a number of reasons. First, it was designed to familiarize the research team with the methods and procedures of criminal law practice for public defenders throughout the state. It not only enabled us to view public defenders first-hand but it also permitted us to learn about variations in practice among districts. Second, it gave us an opportunity to learn about the specific factors that govern how public defenders are required to spend their time both on case specific and non-case specific tasks. Third, it was the beginning point for the design of the time sheet to be used in the time study.

All three goals were critical to the study and essential not only for the design of the time study itself, but also for modification of the time study results and the recommendations contained at the end of this report. Without the field work, we would not have been able to put the time study in perspective, based upon our on-site observations of how the system really works from district to district and how public defenders spend their time.

Members of The Spangenberg Group staff and expert consultants spent over 40 days in the field during the early part of 1990, visiting each district public defender office in the state.

Attempts were made to interview as many public defenders and support staff as possible in each district. We also interviewed judges, prosecutors, private attorneys, court administrators and other individuals familiar with the public defender system in Minnesota. Overall, we interviewed more than one-half of all the public defender attorneys employed in the system at the time of our

visits. In addition, wherever possible we observed public defenders in court handling various types of proceedings from intake to trial. Finally, where available, we gathered secondary data on caseload and other statistics from the courts and public defender offices around the state.

At the time of our visits, the following number of full-time (FT) and part-time (PT) attorneys were employed in the ten district offices

<u>District</u>	<u>Attorneys</u>		<u>Total Attys.</u>
	<u>FT Atty.</u>	<u>PT Atty.</u>	
First	0	17	17
Second	17	21	38
Third	0	31	31
Fourth	68	9	77
Fifth	2	16	18
Sixth	0	9	9
Seventh	2	19	21
Eighth	0	9	9
Ninth	0	19	21
Tenth	<u>0</u>	<u>22</u>	<u>22</u>
Total	89	172	261

Four members of The Spangenberg Group staff participated in the field work including the President, Robert Spangenberg, as well as Attorneys Elizabeth Walsh, William Rose, and Susan Dillard. In addition, the staff was joined by six expert public defender consultants including Ms. Kim Taylor, the Chief Public Defender in Washington, DC, Ms. Deborah Ezbitski, the Director of Training for the Criminal Division of the New York Legal Aid Society, Mr. Larry Landis, the Executive Director of the Indiana Public Defender Training Council, Mr. Ross Shepard, the Chief Public Defender of Eugene, Oregon, Mr. Walter Morris, the then Chief Public Defender for the State of Vermont and Mr. Benjamin Keehn, a trial attorney

with the state public defender program in Massachusetts.

The material that follows describing our assessment of the field work associated with the caseweighting study is a combined effort of these ten individuals, all who have had substantial experience in various public defender systems around the country both as trial attorneys and public defender administrators.

### 3.1 An Overview of the State Public Defender System

At the present time, criminal representation for indigent defendants in felony and gross misdemeanor cases throughout the state of Minnesota is provided by the State Board of Public Defense primarily through District Public Defender offices located in each of Minnesota's ten judicial districts. In addition, as of July 1990, representation is provided in the Second, Fourth and Eighth Judicial District Public Defender offices for misdemeanor, juvenile and some other required cases through the State Board of Public Defense. In the remaining seven judicial districts, these cases (misdemeanor, juvenile, other) are funded exclusively by the counties through various systems of representation. The representation may include the establishment of a county public defender program, or a private bar assigned counsel program. In some instances, the county will contract with the District Public Defender office for the handling of misdemeanor, juvenile and/or other cases for which the State Board of Public Defense does not now have responsibility.

The Board of Public Defense is responsible for the hiring of each District Chief Public Defender and also establishes the compensation level of each such person. The Chief District Public Defender is required to submit a proposed annual budget to the Chief Administrator and the Board of Public Defense on an annual basis. The Chief District Public Defender hires assistant public defenders and other support staff for his/her district in accordance with an approved budget. Outside of the Second and



Fourth Judicial District, virtually all assistant public defenders are employed on a part-time basis through arrangements agreed upon between the Chief District Public Defender and the Assistant Public Defender. Each assistant public defender serves at the pleasure of the Chief District Public Defender.

Without question, the strength of the public defender system in Minnesota can be found in the staff across each judicial district. Public defenders in Minnesota, with very few exceptions, are competent, committed and first-rate advocates.

They are among the most experienced criminal practitioners in the state and we were told that in many instances, they were the most experienced criminal practitioners in some of the counties where they practiced. Furthermore, public defenders are respected as competent, strong advocates by both judges and prosecutors.

Overall, strength can be found in the system among investigators and other support staff, but there simply are not enough of them to provide the support necessary for public defenders.

Outside Hennepin County and to a degree, Ramsey County, virtually all assistant public defenders are employed part-time as previously stated. They are increasingly required to expend substantially more hours than they may have originally contracted for or otherwise agreed upon. It is a tribute to the attorneys and their dedication that they continue to work under these circumstances. However, without caseload relief there are signs that this may not continue into the future and the public defender system faces a serious crisis if many of their experienced, part-time lawyers drop out of the program.

Another overall strength of the program has been the willingness of the Chief District Public Defenders to work together to strengthen the overall statewide program. While there have been some complaints about how specific districts have been dealt with, overall the cooperation has been noteworthy and is a credit to the entire system.

We were also impressed with the overall management of the program from the Chairman and members of the Board to the Chief Administrator and staff to the State Public Defender. Faced with an overwhelming list of priorities to get the full state program operational, they have set the priorities in what we believe to be the proper order, provided substantial input to all ten districts and made the right decisions when the time for decision arrived.

Furthermore, we received complete cooperation from all individuals both within and outside the public defender system in Minnesota during the course of our study. Without this cooperation, we would have had a much more difficult job completing the work. It is a credit to the administration of the program and the Chief District Public Defenders and their staff that the cooperation level was so high in the study.

Finally, as the time study data will show, public defenders in Minnesota, with few exceptions, are working substantially above capacity with insufficient time to devote to their cases and their clients. Workload is too high in every district given the current level of staff (full-time and/or part-time). And things are getting worse in this regard. The following section sets out a number of factors that have recently combined to exacerbate this problem:

1. In recent years there has been a substantial increase in criminal and juvenile filings throughout the state.
2. In that same period, there has also been a substantial increase in the number of serious violent cases.
3. Again, in the same period, drug filings have increased around the state dramatically.
4. The most serious cases, homicides, have been on the rise in the last two to three years.
5. The state legislature has in recent years created more crimes resulting in more criminal filings and more public defender cases.

6. In 1980, the state legislature created the Minnesota Sentencing Guidelines.
7. Over the past few years, for reasons not totally explainable, the percentage of defendants found to be indigent and receiving appointed counsel has grown. We were repeatedly told around the state that the indigency rate has risen to 80% and above.
8. Public defenders are now required to meet requirements of speedy trial rules.
9. Throughout the state there is pressure on public defenders and other components of the criminal trial system to meet delay reduction requirements.
10. In many districts around the state, public defenders are required to provide representation in a number of courts within the district.
11. In urban courts, public defenders are frequently required to expend substantial time waiting in court for cases to be called. Rural public defenders frequently spend substantial periods of time in travel status.
12. In addition to the overall increase in filings for criminal cases, the number of committable felonies is on the increase requiring more time by public defenders.
13. Over the past couple of years, there has been a growing problem of jail overcrowding in Minnesota. This means that public defenders have added time to their schedule required by jail visits for clients held in custody pre-trial. As these numbers increase, so do the average time requirements of public defenders to handle these cases.

All of these factors, we believe, have combined to place the Minnesota Public Defender system in a serious caseload overload situation. Some of the specific results of these policies on public defenders in Minnesota are felt in the following ways:

1. Many public defender attorneys, both full-time and part-time, are now faced with a serious case overload problem.
2. The Minnesota District Public Defender Program is just beginning to feel a turnover problem and unless there is early caseload relief, the problem will only get worse.
3. In most district offices, the supervision available is not sufficient since most supervisors are required to handle a full or excessive caseload.
4. As the caseload rises, public defenders find that they are spending less time with their clients which makes the attorney-client relationship more difficult. As a result, in many cases defendants are more reluctant to engage in plea bargaining that will frequently result to their benefit.
5. The pressure of caseload has in many instances resulted in fewer and fewer cases going to trial as public defenders seek ways to dispose of cases without the extended time necessary for trial.
6. In fact, some public defenders reported to us that they felt that they were being punished by the system for going to trial since during the trial period they would not be able to work on other cases.
7. Most assistant public defenders in Minnesota handle a mixed caseload of felonies and gross misdemeanors. In Hennepin and Ramsey counties, the mix may include misdemeanors and/or juvenile cases. There are many problems relating to the handling of a mixed caseload, but the one most frequently mentioned on-site was the fact that with a mixed caseload, there are many more calendars and courts to cover.
8. Again, as the caseload has risen, many public defenders reported to us that they are now cutting corners, which they did not do in the past. This may be reflected in scheduling fewer investigations, doing less legal research, filing fewer motions, spending less time with clients and trying fewer cases. While these public defenders believe that they are

currently maintaining the constitutional requirements of effective assistance of counsel, they may not be able to maintain this standard in the future without caseload relief.

9. Many public defender attorneys told us that the caseload has now reached such proportions that not only are they spending less time with their clients, but they are beginning to make subjective judgments about which cases and which clients they will spend substantial time with. Some of these judgments are made based upon the seriousness of the case and what is at stake for the client. This process is typical for most public defender programs.

On the other hand, some public defenders are making choices on how they spend their time based upon the aggressiveness of the client, the particular facts of the case, whether or not there is a confession and whether or not the case can be easily disposed of. Within our experience, these judgments are clear signs of overload.

10. Finally, because of lack of available time, public defenders throughout the state are finding it increasingly more difficult to spend the time required for trial preparation in those cases that are tried. The preparation may well happen at a late date, one to two weeks before trial. This problem exists also in preparing for sentencing in many cases. There simply is not enough time to properly prepare each client's case for sentencing, particularly in the area of alternative sentencing.

These conditions, problems and issues were found in varying degrees throughout each of the ten public defender districts around the state. They are symptomatic of a statewide problem. Obviously the specific issues vary among the ten districts, although it was not our purpose or goal to report on the operation and workload problems in all ten districts individually. Rather, we will provide some additional information regarding what we found in our

field work, first for the eight multi-county districts as a whole and then for the two urban districts.

### 3.2 Outstate Offices - Site Work

We would like to re-state our belief that the multi-county offices, with few exceptions, employ dedicated, experienced advocates working under severe caseload conditions. What follows is intended therefore not to be a criticism of either the outstate office administration and staff, nor the central administration of the program. It is presented both as a back-drop to the serious caseload conditions that exist and to highlight issues that need to be addressed in the near future. In this regard, we believe that both district and central staff are aware of all of these issues and are systematically attempting to deal with them within the serious constraint of budget and staff resources.

We are also aware that the demography, politics and public defender practices vary among what we shall call the eight outstate offices. Not all of what follows will apply to each of the eight offices. Rather, the discussion is intended to provide a summary of the full range of issues and problems that we observed when we visited these eight districts.

1. Workload is high in all eight districts. In some, it is unacceptably high and growing. We identified a number of factors that have caused this problem. They were discussed earlier in this section.
2. At the time of our visits, there was not a sound, rational relationship among the districts in terms of the relationship between workload and budget. This has to do in large part with the history of the district and their individual ability to deal with the counties in the district before the state took over funding of the program. In large measure it is a grandfathering issue.

3. In most of the eight districts, scheduling problems exist. There are not enough assistant public defenders to handle all of the courts in the district. In many districts, several courts schedule criminal cases for the same hour and day of the week. There is a bigger problem trying to handle emergencies.
4. In several of the outstate districts, travel time is a big problem. This is particularly severe when there is no assistant public defender who either resides or has a law office in a particular county. In some districts, there is an additional travel problem getting to some jails to talk to detained pre-trial defendants. The problem is magnified when attorneys have to travel to the limited but geographically scattered detention facilities for females.
5. Early representation is a problem in most districts. In some cases, the defendant may not have an initial, full interview until the day of the Omnibus hearing. This may be two to three days after initial appearance. This problem obviously reduces the number of cases that could properly be disposed of early in the criminal proceeding. Some districts felt strongly that a duty attorney was necessary at least in the busy courts.
6. The trial rate is low in most of the outstate districts - in all cases, two to five percent. This problem is somewhat balanced when prosecutors offer unusually good pleas to avoid the time of trial.
7. The indigency rate in the outstate offices appears to be growing each year. Some public defenders are now quoting rates of 90-95% in felony cases. The problem is somewhat exacerbated by the lack of careful screening in many county courts. Some courts provide pro forma screening in court, which may consist only of the judge asking the defendant whether or not he/she has a lawyer, and if the answer is no, whether or not he/she wishes the court to appoint counsel.

8. Across the eight districts, judges seldom, if ever, order the defendant to pay all or a portion of the public defender cost at disposition. When it is ordered, it is seldom collected.
9. There is a substantial shortage of investigative resources in most of the eight outstate districts. This is particularly true for felony cases where the need will frequently be the greatest.
10. There is a substantial shortage of funds for expert witnesses throughout the outstate districts.
11. There appears to be a disparity in how much assistant public defenders make per hour among the outstate districts and occasionally within the same district. The problem is complicated by the fact that salary arrangements are made by the eight Chief District Public Defenders and we were not able to get a good handle on the problem.
12. There appears to be a clear trend in most outstate districts for assistant public defenders to put in more hours from year to year. Some are approaching what amounts to almost full-time - 1,500 hours and more, even though their original agreement was for far fewer hours.
13. In most districts, public defenders express a basic dissatisfaction with the pay level; in part, because of their perceived hourly rate; in part, because of their high degree of experience; and in part because of the increasing number of hours they are required to devote to public defender work, particularly when the additional hours are uncompensated and restrict their ability to provide representation for private clients.
14. Everyone is aware that the existing management information system is substantially limited and not reliable. Everyone agrees the current efforts must be maintained to make this a continuing high priority.
15. Some assistant public defenders in some outstate offices make more on county contracts for misdemeanor and juvenile cases



than they do under their state contract for felonies and gross misdemeanors. <sup>Some</sup> All get county fringe and overhead, while others do not. It seems that public defenders are on their own to cut the best deal they can with the county if they are interested in this additional work.

16. At the early stages of our study, there was little communication among the eight districts. This has now improved and should lessen the complaints that we heard from some assistant public defenders outstate about how much better their counterparts did in other districts. In some cases we learned that this perception was not true.
17. Access to law libraries is a particular problem in some of the outstate offices.
18. We heard a number of complaints from attorneys in several outstate offices regarding unnecessary overcharging by some local prosecutors. We were told in other cases that some prosecutors were unrealistic with their plea bargaining policies.
19. A few local courts were reported to have their own local rules, e.g. plea bargaining, scheduling, docketing, that made public defender practices more difficult. One of the biggest complaints was that two or more courts in the same district scheduled hearings in criminal cases on the same day of the week, many miles apart.
20. Public defenders in all outstate offices complained about the pressure placed upon them by the courts to dispose of cases quickly. This policy, we were told, adds to the problem of quality representation and makes public defender practice much more difficult.

Because of the relative size of the offices, the research team spent more time in the Ramsey County and Hennepin County district offices. Furthermore, because of the fact that both offices practice in an urban environment, some of the problems are

different than those experienced outstate. As stated earlier, all ten district public defender offices are suffering from high caseloads. While some are worse off than others, all are experiencing many problems endemic to these conditions. What follows is a brief outline of the issues, strengths and problems found separately in the Ramsey County and Hennepin County district offices.

### 3.3 Ramsey County Office - Site Work

There are a number of positive points that we observed during our site visit to the Ramsey County office. Among the most important are the following:

1. Overall, the public defender staff is experienced and competent. This is true both for the full-time and part-time attorneys.
2. While the space situation at the time of our visit in early 1990 appeared to be among the best among all public defender offices in Minnesota, we are told that with the recent addition of staff, space has become a problem and the program is negotiating for a new location to meet the needs of all staff.
3. There is a major emphasis in the office on the handling of felony cases. There is a further emphasis on assigning felony cases, for the most part, to the more experienced public defenders in the office.
4. The salaries for public defender attorneys in the office appear to be adequate at most levels. Part-time attorneys receive an overhead allocation designed to pay for a portion of their secretarial requirements under their public defender contract. They also receive the same health benefits as full-time attorneys.

5. Up to the time of our visit, there had been a low turnover of public defender attorneys. This is particularly important inasmuch as most members of the staff are experienced criminal lawyers.
6. The management and most of the staff was positive about the state takeover and believed that in the long run, state involvement would improve conditions and resources in the office.

Despite the number of strengths found in the Ramsey County office, we were alarmed by a number of problems that we observed. Among the problems or issues that we found are the following:

1. In some areas, the caseload that attorneys reported they were handling can only be described as "out of bounds." Misdemeanor attorneys reported handling almost 1,000 misdemeanors per year. This is far too high even with the assistance of law clerks at arraignment. Furthermore, almost 50% of the cases are disposed of at the initial arraignment. Juvenile attorneys reported handling 800 or more cases per year, again with some assistance from law clerks. These figures do not include probation violations which some of these attorneys were also required to handle.
2. The trial rate in the office is low - about two percent overall and five percent in felonies. Attorneys reported to us that many of the cases being tried were those where the defendant maintained innocence and demanded a trial.
3. Since the time of our visit, the program has initiated an important change in felony cases. All charged ~~felons~~ see a lawyer at the <sup>first</sup> final appearance and files are immediately available for the lawyers as they interview. Certified law students assist at this first appearance.
4. It was our view that the law clerks employed by the office have too many responsibilities given their available time and

experience. Their responsibilities included covering first appearances, doing legal research and investigation. In particular, law clerks should not be responsible for investigating serious felony cases. The office needs full-time professional investigators.

5. There were an insufficient number of secretaries in the Ramsey County office. There were only four secretaries for 17 full-time and 24 part-time attorneys. The office also desperately needs computers and up-to-date word processing equipment which was virtually lacking at the time of our visit.
6. There are questions that need to be addressed regarding the office's policy on conflict cases. Currently, co-defendants are referred to part-time attorneys. While all part-time attorneys maintain separate private offices, they are still employed by the same personnel in charge of the Ramsey County office. Seldom, if ever, does the office refer a client in a conflict situation outside the office.
7. There are no sentencing alternative or social work resources in the office. There is a great need for these services particularly in felony and misdemeanor cases.
8. There is a serious problem in the office with an insufficient budget for expert witness services.
9. While we were highly impressed with the quality and competence of the part-time attorney staff, we were told that the quality level would suffer if these attorneys left the program and new part-time attorneys were recruited. There is a real danger that this may occur without caseload relief.
10. Most of the part-time attorneys put in substantially more time than they are compensated for and thus lose money since their private practice suffers proportionally. Most part-time attorneys told us that they were expected to work "about half time," but said they put in more time, particularly those handling felony cases.

11. Not only has the caseload risen sharply in the office in the past few years, but the percentage of serious cases has also risen substantially.
12. Public defender attorneys reported to us that the speedy trial requirements under which they practice mean that they have more cases for a shorter period of time and thus less time available to work on each case.
13. At the time of our visit, office morale seemed on the decline, particularly as a result of the rising caseload. There appears to be a potential for turnover in the near future unless caseload relief is found.
14. It was reported to us that virtually every defendant in the Ramsey County courts is found to be indigent - even in gross misdemeanor and misdemeanor cases.
15. Because of the enormous case overload, some public defender attorneys told us that they are beginning to make decisions on how much time they will give to a particular case based upon highly subjective factors. These include the aggressiveness of the client, the seriousness of the case, and the ability to dispose of the case early and without much time.
16. It was reported to us that there is a substantial disparity between the resources and staffing of the Ramsey County public defenders office and the county attorney. Salaries were reported to be higher in the county attorneys office. There were more attorneys with a smaller caseload. All county attorneys were reported to have computers in their offices and they were reported to have adequate investigative and expert witness resources.
17. All supervisors in the office handle a full and unreasonable caseload which makes supervision and monitoring extremely difficult. Despite the high level of experience among the lawyer staff, the office clearly needs to relieve supervisors of much of their caseload to concentrate on monitoring and

supervision.

18. Finally, there is a serious problem caused in part by the lack of secretarial services. Attorneys reported that they argue motions orally rather than filing written pleadings or briefs because of time constraints and lack of adequate secretarial assistance.

The Ramsey County office has suffered in recent years from the unwillingness of the county to provide necessary resources. The office has been denied these resources in each of the last several years. The quality of work has suffered and only the dedication of senior staff and the experienced level maintained in the office has kept the program operating at the current level.

#### 3.4 Hennepin County Office - Site Work

During our week-long visit to the Hennepin County Public Defenders office, we again found a number of strengths and a number of problems, as we did in all ten district public defender offices.

Among the strengths that we found were the following:

1. Overall a highly motivated and competent staff, although the turnover has been on the rise in recent years (approximately six attorneys per year or ten percent of the lawyer staff).
2. A competent and important Disposition Supervisor Unit.
3. A large legal research (law student) staff.
4. A nucleus of more than ten senior attorneys and team leaders.
5. A devotion and commitment to vertical representation.
6. A team approach to public defender representation.
7. Job-sharing.
8. A good winning record on the cases they do try.
9. Mostly high morale despite case overload.
10. The establishment of salary parity with the Hennepin County Prosecutor's office.

In recent years, for a large number of reasons, the Hennepin County Public Defender's office has experienced a number of problems, many of which have flowed from an increased caseload and lack of comparable resources to match the increased caseload. Among the issues or problems that we observed or that were reported to us during our visit were the following:

1. As with other districts in the state, the trial rate has fallen dramatically - now reported to be between three and four percent. Most of the trials involve defendants who maintain their innocence and demand a trial.
2. The Supervisors and Team Leaders have an excessive caseload - in some cases reported to be a full caseload. The result is that supervision suffers and was reported as almost non-existent in some instances.
3. At the time of our visit, we were told that there was only limited training for entry level or experienced attorneys. Since that time we are informed that positive steps have been taken to address this problem. A Training Team, staffed by two experienced attorneys is now responsible for providing training to entry level as well as experienced staff and in calendar year 1990 the office expended \$12,528.38 to provide staff training.
4. Team leaders observed that, within the constraints of the team arraignment schedule, they operated with substantial authority. Therefore, there was little uniformity in practice among the teams. The practices, for the most part, reflected the views and desires of each team leader and his/her subordinate staff.
5. Team leaders and supervisors not only maintained high caseloads, but many continued to have large misdemeanor or juvenile caseloads even though they were among the most experienced felony attorneys in the office.

6. There is a substantial need for the office to have access to the Criminal Justice System computer.
7. We were told that in part because of recent staff turnover, new attorneys were assigned felony cases too early in their career. This problem is exacerbated by the lack of time team leaders have to perform training functions.
8. Throughout the office, there is a serious case overload problem among the staff attorneys. Some attorneys reported having over 100 open cases at the time of our visit.
9. There is a growing problem with attorney-client contact. This problem now exists even for some in-custody defendants. Some attorneys reported not seeing in-custody clients for one week or longer.
10. Virtually all attorneys handling two or more types of cases reported serious calendaring problems. A few attorneys are responsible for three separate calendars (felony, misdemeanor, juvenile).
11. Waiting time in court is a serious problem for public defenders in Hennepin County.
12. We heard over and over that "the court completely controls the calendar and we are at their mercy." On the other hand, a number of public defenders reported to us that the trial judges were under the gun by the state Supreme Court to keep within certain time standards and the trial judges were simply transferring their frustration down to the public defender attorneys.
13. Again, as in Ramsey County, it was reported to us that virtually everyone in Hennepin County charged with a crime is found to be indigent, even in misdemeanor cases.
14. At the time of our visit, there were no formal caseload/workload standards in the office although the number of open cases for each attorney is calculated periodically. The result appeared to be a variation in total caseload per attorney, although all appeared to be overworked.



15. In Hennepin County, there appears to be an additional waiting time problem for public defender personnel attempting to gain access to their clients in the local jail. This problem adds waiting time to that experienced in court.
16. As in St. Paul, due in part to the high caseloads, juvenile cases seem to get the least attention in the Hennepin County office. The highest priority appears to be in felony cases. Several attorneys, however, felt strongly that more attention needs to be given to juvenile cases and that there was a need for reform in the juvenile justice system.
17. As in the Ramsey County office, most attorneys reported that due largely to lack of time, they make oral arguments rather than filing written pleadings and briefs.
18. While the issue of prioritizing time on cases was mentioned in virtually every district throughout the state, it was one of the themes most commonly raised during our interviews with public defender attorneys in Hennepin County. In terms of priorities on allocation of time, we heard all of the following factors set forth among staff:
  - a. Serious felonies come first in allocating time.
  - b. Misdemeanors get little attention.
  - c. Juveniles, for the most part, get little attention.
  - d. Some staff reported that discovery is not undertaken in all appropriate cases. However, this view is not shared by the management of the program.
  - e. The aggressive client is far more likely to get attention than a passive client.
  - f. In-custody clients, on the whole, get more attention than out-of-custody clients.
  - g. Non-confession cases get more time than confession cases.
  - h. Only selective investigations are ordered, many fewer than should be conducted.

- i. Client contact is fading. The old rule of one visit to jail per week ended in fact some time ago.
  - j. Fewer and fewer cases are being prepared for trial.
  - k. Some public defenders reported that in other ways, they are beginning to "cut corners" and are "looking for ways out of cases rather than ways to win cases."
  - l. A few public defenders reported that because of the crush of cases and lack of time, they were beginning to feel less and less like lawyers and more and more like "plea pushers."
- 21. A constant complaint heard in the office is that because of the excessive caseload and required court appearances, there is virtually no possibility of scheduling a free day in the office to catch up on paper work and to interview out-of-custody clients.
  - 22. All attorneys that we spoke to in the office complained that they have insufficient time to keep up on the law.
  - 23. Investigators also appeared to be substantially overworked and unable to keep up with their cases. The partial result is that in some appropriate cases, referrals for investigation are simply not made by the attorneys and in other cases the trial attorneys may conduct their own investigations.
  - 24. In a similar fashion, the dispositional advisors are also severely overworked. Appropriate referrals are not made in some cases and in others, the trial attorneys attempt to act as dispositional advisors.
  - 25. There is also a severe shortage of secretarial staff. At the time of our visit, there was, on average, less than one secretary for each trial team.

### 3.5 Summary

The ten attorneys who formed the research team that spent over 40 days in the ten districts in Minnesota earlier this year were

unanimous in their view of the current operation of the Minnesota Public Defender system. On the one hand, they praised the competency and dedication of public defenders throughout the entire state. They are among the most experienced we have seen across the county. On the other hand, they were extremely concerned about the serious problems of case overload experienced in every office throughout the state. All ten lawyers believe that caseload relief must be found statewide or the quality of representation will fall below even the minimum standards. Furthermore, unless there is relief soon, it is predictable that the emerging turnover will continue and escalate in the next few years.

It is to the great credit of public defenders throughout the state that they have been able to maintain the caseload that has grown so fast in the past few years. We believe, however, that they will not be able to maintain that level of quality for much longer. Their hours have grown longer and longer - nights and weekends - all without additional compensation. This cannot continue. As the saying goes, there are not any more hours in the day.

Finally, we wish to emphasize that this section of our report is a summary. Many more pages would be needed to spell out everything we observed and were told when we visited Chief District Public Defenders, members of their staff, judges, private attorneys, court administrators and others.

The problems are real and exist in every district, urban and rural. The format of this report reflects the time we spent in the various offices around the state, not the level of suffering in each district. The extensive discussion of Ramsey and Hennepin Counties is not intended to suggest that those districts deserve more relief than the others. While the ten districts share some problems, shortcomings in the public defender system vary from district to district. Each district must be examined and treated individually.

The Minnesota State Public Defender Program is fast approaching a crisis. Immediate relief is necessary in each district of the state. The following time study provides further evidence of the problem and the need for relief.

## CHAPTER IV

### DATA COLLECTION METHODOLOGY

This chapter will discuss the purpose of the data collection process, the sampling process utilized to choose the participating attorneys, the procedures used to process the data, and the process for grouping the data for analysis.

The unit of measurement used to determine the projected caseload with regard to each of the four case types; juvenile, misdemeanor, gross misdemeanor, and felony, is attorney time per disposition. It was first necessary to determine the amount of public defender time that each activity requires, for each case type. The sample attorneys recorded the time that they spent on each activity they performed for State Public Defender contract work.

The hours per disposition figure results from a simple calculation of the total number of hours attributed to representation provided in a case type divided by the number of dispositions for that case type during the study period. For this reason, it was essential that the sample of attorneys be representative of all public defenders in Minnesota, and that the times and dispositions recorded by the attorneys be reliable. We feel confident that each of these conditions has been met.

#### 4.1 Selecting the Sample

Once the pre-test was completed and the required changes had been made in the Daily Activity Log and Instructions, the sample of attorneys to participate in the time-keeping phase of the study was chosen.

Of the approximately 261 public defenders employed either on a full- or part-time basis in the State of Minnesota, a sample of 62 attorneys was chosen. The original sample of 62 attorneys (24% of the public defender population) was chosen in a random

stratified sampling procedure within each of the ten judicial districts, accounting for attorney experience and type of cases handled (juvenile, misdemeanor, gross misdemeanor, or felony). Additionally, some attorneys were deemed ineligible to participate in the study because they were taking extensive leave such as sick leave or maternity leave, or had announced their resignation. Two of the attorneys were later determined to be ineligible to participate in the time-keeping phase because they operated under county, and not state public defender contracts. The attorneys who were finally chosen numbered 60, or 23% of the total number of public defenders employed by the State of Minnesota.

The sample was stratified as follows: Within each district, geographic designation (urban, suburban, or rural), attorney experience level, and the type of cases handled by the attorney were determined. In this way, attorneys from all areas of the state were included and the variance in practice that occurs inter-district and intra-district was taken into account.

Attorneys with varying levels of experience were selected, to account for the effects of relatively inexperienced attorneys requiring significantly more time than their more experienced counterparts to provide representation to their clients. Attorneys with experience of less than one year were excluded from the sample. Attorneys were grouped into the following categories: one to three years experience; three plus years to five years experience; five plus years to 10 years experience; and over 10 years experience.

The sample of attorneys contained public defenders who provide representation within individual classifications of juvenile, misdemeanor, gross misdemeanor, and felony cases, or a mixed caseload of these types of cases.

In all, 60 attorneys were chosen to participate, representing the ten districts. Each attorney was assigned an attorney identification number to use on the daily time sheets.

Participating attorneys then attended a training session the week immediately preceding the beginning of the time-recording phase. Each attorney attended one training session, which lasted approximately four hours. At that time, the attorneys were instructed that if any situation arose which was not explained in the Daily Activity Log and Instructions or if they did not know how to code a specific activity, that a member of The Spangenberg Group would be available to assist them. The attorneys were encouraged to call with questions, to ensure that the recording of time was done in a systematic manner. For the first two weeks of the time-recording phase, the attorneys called with numerous well-thought-out questions and often, they themselves suggested ways to resolve the issues presented. This demonstrated the commitment of the attorneys to the project. As time went on and the attorneys became more comfortable with the Daily Log, the questions became fewer until they ceased altogether.

#### 4.2 Recording Time

Fifty-nine of the sixty attorneys filled out the time log. The time-keeping phase ran from May 7, 1990 through August 6, 1990. This allowed for 66 normal work days, Monday through Friday for 13 weeks, or 3,960 possible weekday time sheets. The time-study resulted in 3,740 weekday time sheets. Many attorneys devoted weekend time to their public defender caseload increasing the number of completed time sheets. In fact, 334 out of a possible 1,560 weekend time sheets were received. The rate of cooperation was outstanding and the attorneys who participated in the time-recording phase of the study should be congratulated for the high level of cooperation and professionalism they exhibited throughout.

The procedure for processing all of the time sheets was time-consuming. Each time sheet averaged 15 entries, for roughly 61,110 entries. The sample attorneys were requested to complete their time log daily, and on Monday of each week, they sent the daily

logs accumulated from the week prior to the Chief Public Defender. The Chief Public Defender collected all of them and forwarded them to The Spangenberg Group. The last of the time sheets was not received by The Spangenberg Group until the end of September 1990. In the beginning of September, a decision was made that because of the unusually high rate of completion and the need to finalize the data for analysis, only the first 12 weeks of the data (through July 28, 1990) would be used for analysis. In the first 12 weeks of the study, out of a possible 3600 time sheets for work performed Monday through Friday, 3,346 were actually received. Three hundred eleven weekend time sheets were received during the 12 weeks. The number of entries analyzed is approximately 54,855 (3,657 time sheets at approximately 15 entries per sheet).

#### 4.3 Processing the Data

As each time sheet was received, a member of The Spangenberg Group staff, Sara Barcan, reviewed each entry for completeness (attorney identification number, date, and missing entries) and legibility. These were then forwarded for data entry, where an additional internal validation program was run to check the raw data for recording errors, such as incompatible case type and activity codes, gaps in the stop and start times, or multiple case type or activity codes on one line.

In the initial stages of time-recording, several errors of this nature were observed. However, as the study progressed, the error rate was reduced considerably. If data were completely illegible or if errors occurred which could not be resolved the sample attorney was contacted and the error corrected. If the attorney could not be reached, the entire line of data was deleted from the dataset. Less than one percent of the entries included lines that had to be deleted.

When all of these procedures were completed, the data were in acceptable raw form. The data showed the aggregate number of hours



that were allotted to each of the activities under the specific case types, as well as General Case-Related, Non-Case-Related, Waiting Time and Travel Time. The number of dispositions that occurred during these twelve weeks were also calculated. Dispositions were attributed to a specific case type if occurring singly at a court appearance and were attributed in the aggregate to Non-Case-Related if occurring at Intake/Arraignment. The distribution of aggregate, Non-Case-Related dispositions will be discussed more full in Chapter V.

#### 4.4 Validation of the Data

Because the disposition data recorded by the attorneys determined the current caseload figures in this study, the research team needed to ensure the accuracy of these data. (For a more thorough description of caseload figures, see Chapter V. In order to test the accuracy of this critical data and to ensure that no errors occurred during the recording phase, the research team needed to obtain dispositional data from a source independent of the District Public Defenders.

Mr. Wayne Kobbervig, Director of Statistical Analysis for the Minnesota State Court Administration, agreed to gather disposition data from records maintained by the Minnesota Supreme Court. He supplied these figures to The Spangenberg Group. Without his assistance, validation from a source independent from the District Public Defender would not have been possible. His cooperation was greatly appreciated.

The dispositions recorded during the study period encompass a twelve-week period, and represent the number of dispositions for the sample attorneys only. The Supreme Court dispositions represent a 13 week period, and represent all public defenders in Minnesota. In order to compare the data, it was first necessary to express each set of dispositional data in common terms. Therefore, each set of data was converted to the number of

dispositions for all District public defenders for an entire year. The site team compared the data on felony, gross misdemeanor, and juvenile cases. The Court does not collect or report data on misdemeanor cases.

The Supreme Court data included all attorneys. These data were converted to an annual basis by applying a ratio of 13:48, (the period for which the data were collected: the number of "annual" hours) to these figures. With vacation and other leave time, approximately 4 weeks of District Public Defender time is spent away from the office. Therefore, 48 weeks is available annually to the attorney for District Public Defender caseload work.

The sample data required two calculations. The first calculation converted the sample attorney figures to population attorney figures, and the second converted the sample period numbers to annual numbers. To convert the sample period, 12 weeks, to an annual-based set of numbers, the ratio applied was 12:48. As the following explanation illustrates, the conversion of sample attorney dispositions to population attorney dispositions was somewhat more complicated.

As described earlier, the sample of attorneys was comprised of public defenders from each of the ten districts. In the Second and Fourth Districts, most of the attorneys are employed on a full-time basis. Full-time is considered as 40 hours per week, or 2080 hours annually. Part-time is approximately half of this, or 1044 hours.<sup>1</sup>

In the remainder of the judicial districts, the attorneys are hired on a part-time basis, and the number of hours worked by individual attorneys varies widely. A review of the District Public Defender time records for the first six months of 1990 shows

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<sup>1</sup>The number of part-time and full-time attorneys who participated in the study was determined and compared to the number of part-time and full-time attorneys employed by both districts. This ratio was employed to convert sample attorney dispositions to population dispositions in the Urban Region.

that part-time attorneys clocked as many as 1900 hours annually, or as few as 9. To convert the sample attorney dispositions for the entire population of district public defenders in the Suburban and Rural Regions, the research team first determined the number of hours worked by each public defender employed in these regions during the study period for the first half of 1990. This information was obtained from the Chief Public Defenders of each district or from the records filed by the attorneys with the Board of Public Defense. The time for all attorneys in each region was added together and the sample attorneys' time was calculated as well. The sample attorney time was then expressed as a ratio to population attorney time. This ratio was then applied to the number of dispositions that were recorded within the region during the time-recording phase of the study.

The data, now expressed in common terms, is detailed in Table 4-1. The data are compared by region and by case type.

The first column shows the number of sample dispositions for the 12 week period. Column two is the number of dispositions for the population of public defenders over the 12 week period. The third column is the recorded disposition for the population of public defenders for a one year period. Column four is the Supreme Court dispositions for a 13 week period. Column five is the Supreme Court data on an annual basis. The last column shows the percentage of difference between the recorded time study dispositions on an annual basis and a similar figure for the Supreme Court data.

TABLE 4-1

	<u>Disps/ 12 wks</u>	<u>Disps/ All</u>	<u>Disps/ All/Yr</u>	<u>S Ct 13 wks</u>	<u>S Ct/ Year</u>	<u>% Diff</u>
URBAN						
Felony	268	1008	4032	1019	3762	7
Gr. Misd	190	715	2858	752	2777	3
Juvenile	385	1154	4615	1140	4560	1
SUBURBAN						
Felony	171	456	1825	483	1783	2
Gr. Misd	260	692	2769	590	2178	27
RURAL						
Felony	297	1051	4204	1110	4440	6
Gr. Misd	239	846	3383	847	3388	.1

A review of Table 4-1 shows that, with the exception of Gross Misdemeanor cases in the Suburban Region, the dispositions recorded by the attorneys during the time-recording phase of the study are a fairly accurate picture of the overall number of public defender cases disposed. The differences between the sample dispositions and the Supreme Court data range from .1% to 7%. This is an acceptable rate of error, and we think that the data as reported are reliable.

The time study data are not validated by the Supreme Court data with regard to the Suburban Gross Misdemeanor cases. However, data obtained from The State Board of Public Defense for all attorneys in this region during the study period shows that 642 dispositions were recorded by the population of attorneys, or a difference of only 8% from the time study data.

One possible explanation for the discrepancy between the Supreme Court data and the District Public Defender data (both the time study data and the State Board of Public Defense data) is the difference in recording of probation violation dispositions. The Suburban Region recorded an unusually high number (24) of probation violation dispositions which are included in our dispositional data. The Supreme Court does not report probation violations. If

the 260 is reduced by 24 to 236, the difference between the two becomes approximately 14%. In spite of this one difference, we feel that because the time study numbers are validated by the State Board of Public Defense data, these data are reliable and are incorporated into the formula for calculating caseload.

The Supreme Court of Minnesota does not maintain records in misdemeanor cases. We are not aware that an independent source exists which would provide information to validate the data collected regarding misdemeanor dispositions. We do feel that the numbers of misdemeanor dispositions recorded by the attorneys in the sample are low, because we are aware that, in the Urban District, law clerks handle many of the intake/arraignment assignments. It is at intake/arraignment that a large number of the misdemeanor dispositions occur. Law clerks were not included in the sample of attorneys.

At this point in time, we cannot validate the misdemeanor disposition data. Regardless, the amount of time currently being spent on misdemeanor cases is very small. We feel, based upon our knowledge and prior experience, that misdemeanor cases require more time on the part of the public defender, and attorneys are forced to dispose of misdemeanor cases quickly because of the tremendous caseload.

#### 4.5 The Regions

As discussed earlier in Chapter Three, Site Work in Minnesota, the research team visited all ten of the judicial districts in Minnesota. It became apparent that certain characteristics were shared by certain districts. Members of the research team discussed the division of the judicial districts with the administrative staff of the State Board of Public Defense. A joint decision was made to divide the judicial districts into three regions, based upon population, number of public defenders employed, and type and mix of cases represented. Table 4-2 shows

the breakdown of districts into regions.

TABLE 4-2

<u>Region</u>	<u>Districts</u>
Urban	2,4
Suburban	1,10
Rural	3,5,6,7,8,9

The obvious choices for the Urban Region were the Second and Fourth Districts, which encompass Ramsey and Hennepin Counties, respectively. These districts are densely populated, with correspondingly high rates of arrest and prosecution. Each maintains full-time District Public Defender offices, which represent the entire spectrum of cases from juvenile through felony cases.

The Suburban Region incorporates the First and the Tenth Districts. Both of these districts have a large metropolitan area that shares some of the characteristics of Ramsey and Hennepin Counties. Here, dockets are crowded, many cases are serious, and waiting time is significant. The remainder of the district is rural, and shares characteristics of the Rural Region described below. The District Public Defender provides representation in gross misdemeanors and felonies in this Region.

By comparison, much of the remainder of the state is sparsely populated. The Third, Fifth, Sixth, Seventh, Eighth, and Ninth Districts make up the Rural Region. With the exception of the Eighth District, which is providing representation in juvenile and misdemeanor cases with state funds, in addition to gross misdemeanors and felonies, the public defenders in these districts represent only gross misdemeanor and felony clients. A great deal of the public defender's time in these districts is spent travelling, either to the court or to the jail.

## CHAPTER V

### ANALYSIS OF THE DATA

#### 5.1 Introduction

At the conclusion of the time-recording phase of the caseweight study, a significant amount of critical data had been accumulated on the time that public defenders in Minnesota are currently spending on juvenile, misdemeanor, gross misdemeanor, and felony cases. As described above, the data that was received was in raw form and adjustments were made to the time reported by the attorneys, based upon certain stated assumptions.

First, the data were recorded by the sample attorneys as specifically related to a case, generally related to a case, or unrelated to a case. The data recorded as case-related was not modified in any way. Similarly, the data that was recorded as unrelated to public defender caseload, such as the time devoted to private practice and lunchbreaks, was not modified, but was deleted from the database. The data that were recorded as generally case-related were, by definition, not assigned to specific case types. These data were distributed across case types in accordance with the assumptions outlined below.

#### 5.2 Assumptions About the Data

##### 1. The Case Type Codes

The cases handled by the State Public Defender vary by district. In the Second and Fourth Judicial Districts, the Public Defender Offices are fully state-funded. These offices handle a full-range of cases, including juvenile, misdemeanor, gross misdemeanor and felony cases. The remainder of the districts are served by part-time public defenders. (A more detailed explanation of the various offices within the districts is contained in Chapter III. The public defenders in these districts,

with the exception of the Eighth Judicial District which is currently providing representation in juvenile and misdemeanor cases as part of a Pilot Project, provide representation in gross misdemeanor and felony cases only under the state program.

To ensure that the complete picture of public defender representation in the state during the time-recording phase would be recorded, every conceivable case type was provided for on the daily log, or time sheet. It was not sufficient, however, to break out the case types into the broad categories of juvenile, misdemeanor, gross misdemeanor or felony case types. The amount of time required to provide representation in some categories of cases varies greatly, and to account for these variations, it was necessary to create subclassifications within the broad categories.

The juvenile cases were divided into three subclassifications: welfare cases, delinquency cases and certification/waiver cases. With the information received from the attorneys providing representation in juvenile cases, we concluded that these types of juvenile cases differed in the kind of representation required and that concomitantly, the attorney time would differ as well.

It was determined that the time required to provide representation among various misdemeanor and various gross misdemeanor cases does not vary significantly and therefore, it was not necessary to break down the misdemeanor and gross misdemeanor categories further.

The felony category required more subclassifications because of the wide spectrum of felony case types and severity levels and the substantial variation in time required to provide representation in felony cases. For example, the time required to represent a client on a first degree murder charge and that required for a minor assault will be vastly different. It was necessary, therefore, to separate the felony classification into subcategories of cases. Logically, these classifications would be made where the time investment by the public defender would be similar to each other. It was important to develop a system that



made sense in terms of the time required to provide representation and also one that could be easily recorded by the attorneys participating in the study.

In some states, such as New York and Wisconsin, felonies are statutorily categorized on a scale, Class A through E, the most serious through the least serious. However, Minnesota does not legislatively categorize types of felony cases. However, Minnesota adopted the Minnesota Sentencing Guidelines for felonies committed on or after May 1, 1980. The Guidelines provide for a presumptive sentence for an offender, using a grid which takes into account the offense severity and the criminal history of the offender.

The classifications of felonies in this study were therefore obtained by following the Minnesota Sentencing Guidelines, effective August 1, 1989. Felonies were classified according to the seriousness of the charge and the nature of the charge. For example, murder cases were included as one category, case type code 56. Although first degree murder is excluded from the sentencing guidelines because the penalty for this offense is mandatory life imprisonment, first degree murder was included. It was determined that, although first degree murder cases occur rarely, they are extremely time-consuming to defend when they do occur. Second and third degree murder, severity levels 9 and 10 in the Minnesota Sentencing Guidelines, were also included in this category because of the substantial time necessary to defend.

Criminal Sexual Conduct was assigned case type code 57. Any criminal sexual conduct charge would be coded as case type 57, regardless of the severity level of the charge. Because criminal sexual conduct cases require a substantial amount of time to defend, these cases were determined to require their own category (with the exception of a murder charge) contained in the same charging document. Thus, if two charges were contained in one complaint, and one was a criminal sexual conduct charge and the other was an assault, the case type code would be 57, regardless of the relative severity of the criminal sexual conduct charge and

the assault charge.

The remainder of the felony case type codes were separated into drug and non-drug felonies. In some states, many drug cases are so routine that they require significantly less time than non-drug felonies. In other states, drug cases may require significantly more time based in part on prosecutorial or court policies. What is consistent in most states, however, is that there is a difference in the time required to represent a drug and a non-drug felony. From our discussions with the Steering Committee, the Chief Public Defenders and the staff attorneys, it was clear that this difference existed in Minnesota. For this reason, non-drug felonies severity levels 7 and 8 were given case type code 58, non-drug felonies severity levels 5 and 6 were given case type code 59, and non-drug felony levels 1 through 4 were given case type code 60. Correspondingly, the drug felonies severity levels 7 and 8, 5 and 6, and 1 through 4, were given case type codes 61, 62, and 63, respectively.

When multiple activities occurred which could not be recorded individually because of their short duration, a general case type code, 64, was assigned. Additionally, if activities occurred which were in no way related to the defense of juvenile, misdemeanor, gross misdemeanor or felony State Public Defender cases, case type code 65, Non-Case Related, was utilized.

## 2. Distribution of Time

In providing representation in any criminal case, there are many activities which are directly related and attributable to a specific case. If all of the State Public Defenders' time were allocated to a specific case type, the task of determining the number of hours per disposition would be a fairly simple one. Since this is not the case, a number of assumptions were required to be made by the research team regarding how time would be distributed in the caseweightings study.

Many times activities occur in such rapid succession, it is difficult to distinguish when one ends and another begins. Additionally, it is sometimes difficult to determine how much waiting or travel time should be allocated to one case because the attorney may wait for several cases to begin, or travel to the jail to see several clients on one visit. In the same manner, dispositions which occurred at intake or arraignment happened so rapidly that they were reported in the aggregate, and not attributed to a specific case type. Thus, certain decisions had to be made regarding the treatment of time allotted to certain activities and the distribution of the aggregate time and dispositions across case types.

As shown in the Daily Activity Log and Instructions, beginning on page 40, the activities were categorized in accordance with their direct or indirect relation to a case. Some of the activities performed by a public defender are directly related to work on a particular case in accordance with duties under a District Public Defender contract, some activities are generally related to State public defender responsibilities, and some tasks are unrelated to State public defender contract work.

For example, investigation that takes place immediately following the Rule 8 appearance on a gross misdemeanor driving while intoxicated charge is directly related to that case. It would thus be considered a case-related activity, and it would be attributed to that case type by giving it a Case Type Code 55 and an Activity Code of 1. The time recorded is automatically allocated to that case type and activity.

Conversely, a public defender may make several telephone calls which are related to several different case types all at the trial preparation stage, but all less than six minutes long. This time is actually related to the public defender's caseload, but is difficult to apportion to one case type. This entry would be given a Case Type Code of 64, General Case-Related and an Activity Code of 9. This time, because it is time which is actually related to

specific case types, must be allocated in some way across case types.

Finally, if a public defender also has a private practice and devotes part of one day to that private practice, it is not related to public defender case work, and must be excluded altogether from the caseload/workload calculations.

Time that is given a specific case type code, 51 through 63, with a corresponding activity code of 1 through 22 is already properly categorized. However, case type codes 64 through 67 and activity codes 23 through 34 are not allocated to a specific case type or activity and must be apportioned in some way across case types. In like manner, dispositions that correspond to these "general" case type and activity codes must be allocated across case types as well.

### 3. Case Specific Time

All attorney time that has been coded by the sample attorneys as related to a specific case type, Codes 51 through 63 and a corresponding Activity Code, 1 through 22, remains categorized as such. This time is case-specific time.

### 4. Non-Case-Related Time

Time that was coded by the sample attorneys as Activity Code 31, Lunch Breaks, and Activity Code 32, Time Away From Work has been deleted from the database because this time is not State Public Defender workload related. This time is not considered to be part of the State Public Defender caseload/workload.

### 5. Time Distributed Across Case Types

A number of case types and activities are not specifically case-related, but are part of the public defender workload and should therefore be taken into account when calculating the time that the public defender devotes to his or her caseload. The following categories of case types or activities were distributed

across case types:

- o Waiting Time
- o Travel Time
- o Institutional Assignment/Intake
- o Professional Development Activities
- o Administrative Activities
- o On-Call Time
- o General Case-Related
- o Other Activities
- o Other

For example, waiting time is part of the State Public Defender workload, but because it would have been difficult for the attorneys to ascertain how much waiting time to ascribe to each case type, it was felt that waiting time could be coded as a separate Case Type, Code 66 and Activity, Code 23. This block of waiting time was then distributed across all case types in the proportion in which the case types were represented within the overall caseload. For example, gross misdemeanor cases represented 15.9% of all case-related time recorded by the attorneys. Therefore, 15.9% of the total waiting time was attributed to gross misdemeanors.

Each of these activities are similar to waiting time, in that the time devoted on each is related to the public defender workload, but is difficult to impute to one specific case or case type. Accordingly, the case-types or activities were treated exactly the same as waiting time, distributed across all case types in their respective proportions within the caseload.

#### 6. Distribution of Dispositions Across Case Types

During the course of the time-recording period, the attorneys recorded dispositions as they occurred, noting the type of disposition and at what point in the process the disposition

occurred. The attorneys were given the following list of disposition choices:

- Code 41: Acquitted
- Code 42: Dismissed
- Code 43: Plea/Sentenced
- Code 44: Convicted/Sentenced
- Code 45: Continued for Dismissal
- Code 46: Closed Following Bench Warrant
- Code 47: Probation Revoked/Reinstated
- Code 48: Other Findings

Over the course of the twelve week time recording phase, 3045 dispositions were recorded by the attorneys in the sample. 1209 of these occurred at the intake/arraignment stage, and 1836 occurred at other stages in the process. The 1836 dispositions that occurred at a specific time during the criminal justice process, other than the arraignment stage were recorded in conjunction with a specific case type and activity code. These dispositions are properly recorded as relating to a specific case type.

However, the dispositions which were recorded at the intake/arraignment stage were not associated with a particular case type, and therefore, a decision had to be made as to the distribution of these dispositions across case types. It would seem that because the time for intake/arraignment was distributed proportionally across case types that the dispositions themselves should be treated similarly. This is, however, not the case.

All of the cases that proceeded through the intake/arraignment stage required the public defender's time, and it is assumed that the more serious the charge, the more time would be required to explain the nature of the charges, the nature of the client's rights, etc. It is not logical, however, to assume that cases would be disposed in these same proportions. Because of the

serious nature of gross misdemeanors and felonies, the fact that law clerks represent the public defender at some intake proceedings, and the prosecutor is sometimes not even present, these cases are most often set for further hearing after intake.

To ascertain how best to distribute these dispositions, the site notes were reviewed and follow-up telephone calls were made to attorneys in each of the ten judicial districts. Based upon this information, it was determined that in most of the districts it would be very rare for felony cases to be disposed at intake. In the few districts where felony dispositions did occur at intake, at most only 10% of the felony cases were disposed. Gross misdemeanors were disposed at this stage in nearly identical proportions. In most cases, it was reported that the public defender may not even have a copy of the police report at this stage and may not have had much of an opportunity to speak to his or her client. Having so little information, it is appropriate, in most cases, for the public defender not to plead the client at this stage.

In the Second, Fourth, and Eighth Judicial Districts, juvenile and misdemeanor cases are represented by attorneys under District Public Defender contracts. Attorneys in the Second District stated that Juvenile cases are frequently disposed at intake, while in the Fourth and Eighth, dispositions at this stage are rare. Most of the dispositions that occurred at intake were misdemeanor cases. The charges and penalties are less severe and the client is more likely to wish to plead at the initial stage of a misdemeanor.

Thus, the dispositions were distributed in varying proportions, according to what occurs in each region.

### 5.3 Analysis

#### 1. Direct Case-Related and Indirect Case-Related Time

During the course of the twelve weeks of the study, the sample attorneys conscientiously chronicled their time as it related

directly to cases and the time that was indirectly related to cases, such as waiting time, etc. The attorneys also kept track of how much time was spent in activities which were unrelated to their public defender caseload.

## 2. Determining the Caseload

Tables 5-1 through 5-3 present the data that were used to calculate the projected caseload figures for each of the three Regions; Urban, Suburban, and Rural. The first column in each of these tables notes the case type: juvenile, misdemeanor, gross misdemeanor, and felony. The second column shows the total time that the sample attorneys in that region reported for that case type. Column three is the number of dispositions recorded by the sample attorneys for that case type, including the intake/arraignment dispositions which the research team allocated to that case type. Column four shows the weighted time per disposition.

TABLE 5-1  
URBAN REGION

<u>Casetype</u>	<u>Total Time</u>	<u># Disps.</u>	<u>Weighted Time Per Disp.</u>
Juvenile	2,738.49	384.60	7.12
Misd.	931.84	1,118.80	0.83
Gr. Misd.	403.36	189.60	2.13
Murder	893.29	3.00	297.76
Felony	3,210.80	268.00	11.98



TABLE 5-2  
SUBURBAN REGION

<u>Casetype</u>	<u>Total Time</u>	<u># Disps.</u>	<u>Weighted Time Per Disp.</u>
Juvenile	N/A	-	-
Misd.	N/A	-	-
Gr. Misd.	909.47	259.65	3.50
Murder	-	-	-
Felony	1,869.43	171.35	10.91

TABLE 5-3  
RURAL REGION

<u>Casetype</u>	<u>Total Time</u>	<u># Disps.</u>	<u>Weighted Time Per Disp.</u>
Juvenile	N/A	-	-
Misd.	206.43	98.40	2.10
Gr. Misd.	1,403.90	238.64	5.88
Murder	577.03	1.00	577.03
Felony	3,703.05	297.32	12.45

a. Case Type

The juvenile case category consist of three juvenile case types: welfare case, delinquency cases, and certification and waiver cases. Only the Second, Fourth, and the Eighth Judicial Districts provide representation under the District Public Defender system in these cases. Therefore, the data reported for the Suburban Region contain no information for juvenile cases. Since the only district in the Rural Region (the Eighth Judicial District) handling juvenile cases was only partially operational at the time of our study, we did not receive sufficient data to be statistically significant and it is therefore not reported.

Misdemeanor cases are the second set of numbers reported. Representation is provided in misdemeanor cases in the same

districts that provide representation in juvenile cases, so misdemeanor data are reported for only the Second, Fourth, and Eighth Districts. Again, as in juvenile cases, in the Rural Region only, the Eighth Judicial District handles misdemeanor cases and thus the data reported for misdemeanor cases in Table 5-3 is only for the Eighth District. These data are not validated by an independent source and should not be used to establish a caseload figure. However, the data do demonstrate that, based upon our knowledge and experience, the number of hours that attorneys are currently able to devote to misdemeanors, on average, is too low.

Each of the judicial districts provides representation in gross misdemeanor cases and these data appear next.

The number of murder cases that were disposed during the period of the study was too small from which to draw conclusions with any statistical significance, and the numbers are reported here for informational purposes only. The murder case category will not be further analyzed in this section, but will be discussed in Chapter VII, Projected Caseload/Workload Standards and Recommendations.

The felony category was divided into seven case types: criminal sexual conduct; non-drug level 7&8; non-drug level 5&6; non-drug levels 1-4; drug level 7&8; drug level 5&6; and drug level 1-4. Data are reported in aggregate form for the seven felony levels.

b. Dispositions

The number of dispositions are reported in the second column, and show the adjusted number of dispositions for each of the case types. This number includes the total number of dispositions attributed to each case type. As explained above, in addition to the number of intake/arraignment case dispositions which were allocated to the specific case types by the attorneys, this number includes the proportion of intake/arraignment dispositions. For example, Table 5-2 shows that the number of dispositions in the

Suburban felony category allocated to the category by the sample attorneys is 171. Forty-seven dispositions resulted from intake/arraignment in the Suburban Region. This region handles only gross misdemeanor and felony cases and 5% of the 47 dispositions, or 2.35, were allocated to Suburban felony cases, and the remaining 95%, or 44.65 of the intake/arraignment dispositions were allocated to gross misdemeanor cases.

This procedure for allocating the intake/arraignment dispositions was followed in each of the regions, in the proportions designated above, in Section 6.2.5, at page 88. In all, there were 3045 dispositions recorded by the sample attorneys. Three dispositions were recorded in error and were deleted from the database. One juvenile case and two misdemeanor cases were attributed to the Suburban Region in error.

There were 1209 dispositions at intake/arraignment, 285 juvenile dispositions, 283 misdemeanors, 531 gross misdemeanors, 4 murders, and 733 felonies. After allocating the intake dispositions across case types in the proportions established for each region, the break down of cases is 396 juvenile cases, 1219 misdemeanors, 688 gross misdemeanors, and 737 felonies. Table 6-4 shows the breakdown of cases by region.

TABLE 5-4

	<u>Juv.</u>	<u>Misd.</u>	<u>Gr. Misd.</u>	<u>Felony</u>	<u>Total</u>
Urban	385*	1119	190	268	1965
	(97%)	(92%)	(28%)	(36%)	(65%)
Suburban	0	0	260	171	431
	( 0%)	( 0%)	(38%)	(23%)	(14%)
Rural	10	98	239	297	645
	( 3%)	( 8%)	(35%)	(40%)	(21%)
Total	395	1217	689	736	3041**

\*All numbers shown here have been rounded to the nearest whole number.

\*\*The total number of dispositions is 3045. 3041 as shown, 3 were ascribed in error and deleted from the data set, and the difference is due to rounding.

Of the 396 juvenile cases, 385 were allocated to the Urban Region and 10 to the Rural Region. The Urban Region accounted for 1,119 of the misdemeanor cases and the Rural Region accounted for 98. The gross misdemeanor cases were dispersed fairly evenly across all three regions: 190 to the Urban; 260 to the Suburban; and 239 to the Rural Region. The Urban Region reported 3 murder cases, the Suburban Region had none, and the Rural Region had 1. Felony cases were not as evenly dispersed. The Urban Region had 268, or 36% of all felonies. The Suburban Region reported 171, or 23% of the felony cases, and the Rural Region recorded slightly more than 40% of the felony cases, with 40%.

c. Weighted Time Per Disposition

The calculations of the number of hours per disposition in the misdemeanor and gross misdemeanor case type categories were fairly simple, because these categories were not further divided into sub-categories. In the Juvenile and Felony case type categories, however, more than one case type is included within the general category. In order to calculate the overall hours per disposition per category, it was first necessary to weight each case type within the category. The cases were weighted in accordance with their representation within the case type category. The percentage of caseload is merely the proportion that each case type makes up within the category.

Having obtained the proper percentages that each case type comprises, that percentage is then employed to calculate the weighted time per disposition. For example, there were 48.95 Welfare cases in the Urban Region, which account for 12.7% of the Juvenile cases in the region. Delinquency cases account for approximately 86% of the juvenile caseload, and Certification/Waiver cases are almost 1% of the total juvenile cases in the region.

The time per disposition for Welfare cases is 25.5 hours.

However, because these cases make up only 12.7% of the caseload, the time attributed to Welfare cases in the Urban Region is 12.7% of 25.5 hours, or 3.25 hours. Delinquency cases are shown to require 4.03 hours, and constitute 86% of the caseload, resulting in 3.47 hours per disposition. Certification/Waiver cases, following the same procedure are shown to require .40 hours per disposition ( $36.34 \times .01$ ). The total number of hours attributed to the juvenile case type category in the Urban Region is the total of the three weighted times per disposition, or 7.12 hours ( $3.25 + 3.47 + .40 = 7.12$ ).

Table 5-5 shows the number of hours per disposition for each of the case type categories in the Urban, Suburban and Rural Regions, which were obtained by using the weighting procedure outlined above.

Table 5-5

<u>Region</u>	<u>Juv</u>	<u>Misd</u>	<u>Gr. Misd.</u>	<u>Felony</u>
Urban	7.12	.83	2.13	11.98
Suburban	N/A	N/A	3.50	10.91
Rural	N/A	2.10	5.88	12.4

As can be seen from Table 5-5, the number of hours per disposition are on a scale from lowest to highest in the order of Urban, Suburban, and Rural Regions. This result is reasonable. The districts in the Urban Region have very high caseloads, but mechanisms are in place to process the cases quickly. Travel time here is minimal and the attorneys are responsible for only one courthouse.

Cases in the Rural Region require the largest amount of time per disposition across case types. The District Public Defenders within the districts in this Region provide service in many counties. As a result, the attorneys are required to travel extensively and are responsible to several courts. Although most

have mastered the art of "calendar juggling," the amount of "windshield time" has an effect on the caseload.

The Suburban Region is a unique blend of the heavy caseload in the centrally-located court and the attorney in the outlying areas who are responsible to numerous courts and are required to log a significant amount of travel time. The time per disposition in the Suburban is, quite logically, in the mid-range of the Urban and the Rural Regions.

#### Annual Billable Hours

Prior to the discussion of the projected current caseload, it is necessary to explain what is meant by "annual billable hours." Annual billable hours are the number of hours that the attorney has available to him or her to devote to the District Public Defender caseload in one year. Table 5-6 shows the calculation of annual billable hours.

TABLE 5-6

#### ANNUAL BILLABLE HOURS

Annual Hours - 40 hours workweek			2,080
<u>Days</u>	<u>Leave</u>	<u>Hours</u>	
10	Holidays	80	
1	Floating Holiday	8	
15	Vacation	120	
6.5	Sick Leave	52	
15	Training & Admin.	<u>120</u>	
Subtotal		380	
TOTAL ANNUAL BILLABLE HOURS			1,700

The Table shows the total annual hours for full-time attorneys, based upon a 40 hour work week, or 2080 hours (40 X 52). Time which is not spent on the District Public Defender caseload must be excluded from this figure. The research team considered the Hennepin County Personnel Policy Manual, the Ramsey County

Personnel Policy Manual, and the requirements for leave established by the State for its employees in estimating this figure.

All three sources granted 10 days, or 80 hours (10 X 8) of leave time for holidays. In addition, one "floating holiday" or leave with pay was awarded, for an additional 8 hours.

Vacation time accrues on the basis of a schedule which is calculated to take into account the length of service and the number of hours worked during the pay period. We examined the vacation records that were available in the Hennepin and Ramsey districts as well as that of the State Public Defender office and determined that the average vacation time taken by attorneys in 1990 was 15 days. This figure was for vacation time in Table 5-6.

The average number of sick days utilized by attorneys in the full-time offices on an annual basis is 6.5 days, or 52 hours. Several of the District Public Defender Offices do not maintain records of sick leave, because the attorneys within the District are employed solely on a part-time basis, and are not eligible for sick time. Although the accrual rate for sick time is 4 hours per pay period, which would allow the attorney 13 days per year, sick leave records examined for the full-time offices showed that, on average, sick leave time actually taken was only 6.5 days, or 52 hours.

Training and administration time is very important to the attorney. It is essential that a public defender remain current on all facets of criminal law and attend training sessions and professional development programs and seminars. We feel that 15 days, or 120 hours, is appropriate and necessary.

Overall, the total time allowed for attorneys in non-case related activities in Minnesota is 47 days, or 376 hours, for FTE attorneys. Subtracting the total leave time of 380 hours from the total available time of 2080 results in a figure of available time of 1700 hours. Given the tremendous amount of cases which the District Public Defender is required to provide representation throughout the state, we feel that this number is justified.

The 1700 hours recommended here is actually lower than the annual billable hours used by both the State Public Defender of Wisconsin and the Legal Aid Society in New York. Wisconsin's annual billable hours are set at 1765. New York's Legal Aid Society used an annual billable figure of 1550, but that was based upon a 35 hour work week. When projected for a 40 hour work week, the annual billable hours for New York would become 1810 hours.



## CHAPTER VI

### PROJECTED CASELOAD STANDARDS FOR THE MINNESOTA DISTRICT PUBLIC DEFENDER PROGRAM

The proposed caseload standards that we recommend in this chapter are based upon a number of factors. They include:

1. The time study just completed in Minnesota.
2. Our extensive site data obtained during this study.
3. National Standards.
4. Experience in many other public defender offices throughout the country and caseload standards that they are currently operating under.
5. Other recent caseweighting studies we have conducted for public defender programs in recent years.
6. Our professional experience in the public defender field for the past 15 years.

An examination of Table 5-5 shows beyond doubt that the attorneys participating in the time study are providing minimal time to their cases. The time reported for juvenile, misdemeanor and gross misdemeanor cases is substantially below those figures reported in our most recent caseweighting study for the Wisconsin State Public Defender. Furthermore the figures in Table 5-5 do not reflect the actual attorney time devoted directly to case work. This is because we applied across each of these categories the nine indirect time categories such as professional development, administrative activities, on-call, etc. While such indirect time as waiting and travel time should properly be assessed against case activity, administrative, professional development, on-call, etc. should not. Without attempting to distinguish between each category, it is fair to say that all categories in Table 5-5 should be reduced to determine the time that study attorneys devoted directly to their cases. The result is that the reported time in all categories falls below those of every other caseweighting study

we have conducted in the past three years.

Secondly, the extensive site work that we conducted, as reflected in part in Chapter III shows a public defender system in crisis in Minnesota. The bottom line is that public defender attorneys have far too few hours to devote to every category of case and every client. In addition, they are lacking resources in secretarial and investigative resources, in expert witness funds, in attorney staff and in the category of equipment needs.

All of these problems are taking place within a criminal justice environment that is creating more cases, more serious cases, increased complexity in criminal practice and procedure, increased sentencing severity and tougher prosecutorial standards. The response for public defenders in Minnesota must be both more resources and more time to work on individual cases.

As previously stated in this report, the only set of numerical caseload standards established by a nationally recognized organization are those of the National Advisory Commission on Criminal Justice Standards and Goals established in 1973. Those standards recommended an annual caseload for a full-time public defender to be no more than:

- 150 felony, or
- 400 misdemeanor, or
- 200 juvenile cases per year.

Based upon over a decade of work in the delivery of indigent defense services, we are convinced that these figures, in terms of the complexity of current criminal practice and procedure, are on the high side, assuming as we do that the goal of public defender representation is to provide quality legal services. Criminal law practice has clearly become more complex since 1973 and the percentage of criminal cases involving serious crime has grown substantially in the past 17 years.

It is also obvious that the criminal code varies from state to state and what is classified as a felony in one state may be classified as a misdemeanor in another state. For example, Minnesota classifies misdemeanor cases in terms of seriousness into gross misdemeanor and misdemeanor cases. Furthermore, some gross misdemeanors in Minnesota would be classified as felonies in other states. Thus, in developing a set of recommended caseload standards in Minnesota, it is necessary to develop somewhat different caseload standards than are found in the NAC report, both because the criminal code is different in Minnesota and because the complexity and seriousness of criminal practice has changed substantially since 1973.

As indicated earlier in this report, the research team has conducted several caseweighting studies for public defender programs in the past three years. They include the California State Public Defender conducted jointly with the National Center for State Courts, the New York Legal Aid Society, Criminal Division conducted jointly with Maximus Inc. and the Wisconsin State Public Defender. In addition, in the past five years, we have conducted other public defender studies around the country in which the issue of caseload/workload was an important issue. Some of these studies were conducted in California, New Mexico, Oregon, Washington, Ohio, Indiana, Georgia, South Carolina, Texas, Oklahoma, Virginia, Connecticut, Tennessee and Iowa. We also conducted a caseload/workload study of public defenders around the country for NLADA within this same time period.

Thus we have a unique perspective to bring to the Minnesota Caseweighting study based not only on our recent quantitative work on caseweighting, but also upon our vast national knowledge of caseload issues faced by public defender organizations across the country. This prior work and experience is one element built into our recommended standards for Minnesota.

While we wish to repeat for emphasis that it is not possible to compare specific caseload standards for types of cases from

state to state, overall the caseload standards that we will recommend for Minnesota are consistent with both those that we have recommended in prior caseweighting studies and standards developed by a number of other public defender systems around the country.

Finally, in recommending the standards that follow, we recognize that they will not measure up to the time that private attorneys devote to retained criminal clients with substantial resources. The goal in the proposed standards is rather to both increase the hours available to devote to each client and additional support staff and other resources necessary to improve representation. It is the absolute minimum that we feel is necessary to assure that the quality of legal work does not fall below effective assistance of counsel in Minnesota.

The caseload standards contained in Table 6-1 need to be read in conjunction with the series of written recommendations that follow on pages \_\_\_\_\_. Those recommendations must be implemented to assure that the recommended caseload levels are sufficient. The material that follows Table 6-1 provides justification for each separate standard.

TABLE 6-1  
MINNESOTA RECOMMENDED CASELOAD STANDARDS

<u>Type of Case</u>	<u>Full-Time</u>	<u>One-Half Time</u>
Homicides	3 per year	1.5 per year
Other Felony	100-120 per year	50-60 per year
Gross Misdemeanor	250-300 per year	125-150 per year
Misdemeanor	400 per year	200 per year
Child Welfare	80 per year	40 per year
Other Juvenile	175 per year	87.5 per year
Other Cases	200 per year	100 per year

Homicides - Homicide cases are by far the most time consuming cases undertaken by public defenders. Data available from other

public defender jurisdictions disclose that homicide cases, on average, require between 500-750 hours per case. These data are consistent with what we learned during our field visits in Minnesota. Thus, we have established a caseload recommendation of no more than three homicide cases per full-time public defender per year. Public defenders who are assigned these cases should have their caseload/workload reduced appropriately during the period they are handling these cases.

Other Felony Cases - Apart from child welfare cases, felony cases are the next most time-consuming cases for public defenders in Minnesota. These are the cases involving violent crime and serious drug cases. The volume and percentage of serious felony has increased substantially in the past few years and attorneys must be given more time to handle these cases. Thus we recommend that no full-time attorney in the Minnesota District Public Defender be required to handle more than 100-120 other felony cases per year. This standard should be read with the one on homicides and the one that follows regarding adjustment for felony cases that go to trial.

This standard is consistent with other public defender programs including those in Washington, the District of Columbia, New York and Massachusetts.

Gross Misdemeanors - In Minnesota, because of the penalties involved would be classified as felonies in some other states. They are clearly more serious and more time consuming than misdemeanors. Consistent with the study, standards in other states and our experience, we recommend that no full-time public defender in Minnesota be required to handle more than 250-300 gross misdemeanors per year.

Misdemeanors - While misdemeanor cases are less serious than gross misdemeanors, they are still time consuming and must be treated with greater priority and more time. In Minnesota, a traffic offense such as a speeding ticket or stop sign violation is a petty misdemeanor for which counsel is not required. The

traffic misdemeanors that public defenders do handle include drunk driving, driving without insurance and driving after revocation. Thus we recommend that no full-time public defender in Minnesota be required to handle more than 400 misdemeanors per year.

Child Welfare - By far the most time consuming cases that public defenders handle in Minnesota are child welfare cases. These cases require an inordinately high number of court appearances. Many of the cases in court have a high degree of animosity between parents and the child protection worker. This is also the area of juvenile court that is increasing at the greatest rate. Unlike felonies, these cases require more time after trial than before. There are only two ways to dispose of these cases: termination of parental rights and dismissal of court jurisdiction. These cases also go on for long periods of time, sometimes as much as two to three years.

Because of the substantial amount of time necessary to devote to these cases, we recommend that no full-time public defender handle more than 80 child welfare cases per year.

Other Juvenile - Other juvenile cases have become more serious in recent years. Cases involving violence are on the rise and drug cases are sharply on the rise. More time must be given to these cases to provide effective assistance of counsel. Therefore we recommend that no full-time public defender in Minnesota be required to handle more than 175 other juvenile cases per year. This standard is consistent with our recommendations in other studies and with the standard developed by other public defender offices in the country.

Other Cases - District Public Defender offices in Minnesota are all required to handle other cases not contained in our caseload standards thus far. They include probation violation and extradition cases. Some offices are required to handle other types of cases. It was reported to us that in some offices probation violation cases are sharply on the rise.

The caseload standards that we are recommending for Minnesota must each be treated separately to assure that proper representation is provided. Probation violation, extradition and other cases should not be considered a part of any of the previously enumerated caseload standards. They should be treated separately with their own caseload standard. Thus we recommend that no full-time public defender in Minnesota be required to handle more than 200 other cases per year. Virtually all of the public defender programs that have caseload standards treat this category of cases separately and have a separate standard for other cases. Our recommended figure is consistent with many of these offices.

Using these standards, one can develop an annual caseload standard for any part-time attorney based upon the number of hours contracted for per year divided by our recommended annual billable time of 1,700 hours.

There are a number of other recommendations that we feel are essential based upon our study. Some are directly related to these caseload standards and others relate to the overall Minnesota District Public Defender Program. They are contained in the following section.

1. There is a substantial need for additional supervision and administration in all public defender districts statewide. We recommend that in addition to the caseload standards set forth above, that all districts outside Hennepin and Ramsey be given the equivalent of one full-time attorney exclusively devoted to administration and supervision. Because of the nature of the part-time practice, we believe that this position could be shared among the experienced attorneys in the district.
2. In the larger urban offices in Hennepin and Ramsey there is also a substantial need for more administration and supervision. We recommend in the Hennepin office that all

team leaders have no more than a one-quarter caseload and that the balance of the time be devoted to supervision and administration.

We recommend a similar responsibility for at least three to four senior attorneys in the Ramsey County office - no more than one-quarter caseload with the balance of time devoted to supervision and administration.

3. Attorneys who are hired for the public defender program in Minnesota with less than one year of criminal law experience should be assigned a caseload during their first year of employment that does not exceed one-half of the recommended standards on a full-time or part-time basis.
4. The Minnesota Public Defender Program should employ at least one full-time attorney whose responsibilities are totally devoted to training.
5. The data collection period for the caseweightings study occurred shortly after the implementation of the pilot program in the eighth judicial district involving representation in juvenile and misdemeanor cases. Our assumption is that the pilot program is now operational and thus it will be necessary to adjust the staffing for this district for juvenile and misdemeanor cases based upon current caseload figures.
6. In order to apply the proposed caseload standards to part-time public defender attorneys across the state it is absolutely essential that the District Public Defender Program establish a basic billable hour year on a full-time basis. We recommend that this figure be 1,704 hours.

The program must then contract or employ each part-time attorney for a specific number of hours per year. This figure can then be divided into 1,704 hours to determine the specific annual caseload that the public defender attorney is responsible for. For example, if a part-time attorney contracts to provide 1,278 hours per year, he/she will be responsible for handling a 75% caseload based upon our full-



time standards. This 75% caseload can then be distributed between felony and gross misdemeanor cases based upon the appointments received in the district office.

In order for this system to work, all public defender attorneys in Minnesota should be required to fill out contemporaneous time sheets on a daily basis. The hours reported for each part-time attorney must be monitored on a monthly basis and appropriate adjustments made, perhaps on a quarterly basis, based upon the aggregate hours reported to date. Part-time public defenders should not be required to work beyond their agreed upon hours determined on an annual basis without some adjustment in their compensation.

7. Separate consideration should be given to public defenders for all trials that last more than three days. The additional time of trial should be credited to each public defender and his/her workload reduced accordingly. This standard is consistent with that recommended and adopted in Wisconsin.
8. Overall caseload requirements for the Minnesota District Public Defender program should be based upon the actual number of public defender trial attorneys employed at any given period of time and not the annual number of authorized positions.
9. The caseweight study that we conducted did not address the caseload/workload requirements of the Public Defender Corporations. In addition, the study did not address caseload/workload for cases on appeal. Thus, to the extent that District Public Defender offices handle their own appeals, this time should not be included in the caseload standards that we have recommended.
10. In conducting the caseload/workload study for the District Public Defender Program in Minnesota, we became acutely aware of the substantial lack of administrative staff in central state administrative office. We are aware of only three full-time administrative and one full-time support staff for a \$19

#40

million program. This is the smallest staff of all state public defender programs in the country. Despite inadequate staff, the central office has operated efficiently and accomplished a great deal. However, it is desperately in need of additional staff. This is particularly true if in fact caseload/workload standards are implemented in the state.

11. Throughout our study, we recognized a substantial lack of resources at the support and investigative level. In some cases, this need can only be described as acute. Because of the lack of adequate legal secretarial support, many public defenders type their own pleadings and discovery documents. Some even write them out long-hand. The result is that valuable public defender time is spent in secretarial tasks and not legal work. We therefore recommend that to properly implement the proposed caseload standards, that one legal secretary be employed for every four full-time attorneys.

The problem relating to investigative resources is of equal concern. Some offices have virtually no professional investigative resources. Again, the result is that in many cases the public defender conducts his/her own investigation which reduces sharply the time available for legal work. In other offices, law students are employed to conduct investigations which they are not trained to do and for which they are inappropriate, particularly in serious felony cases. Finally, we found that in some offices, because of the lack of professional investigators, there are cases in which no investigation is conducted in appropriate cases.

The greatest and most time consuming need can be found in felony cases, particularly serious felony cases. We therefore recommend that to implement our caseload standards that one full-time professional investigator be employed for every three full-time public defenders in felony cases. We further recommend that one full-time professional investigator be employed for every six full-time public defenders in all

non-felony cases.