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2004

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Neeley, Elizabeth and Keefe, Dennis R., "Minority and Justice Implementation Committee Releases Update on Nebraska's Indigent Defense Systems" (2004). *Publications of Affiliated Faculty: Nebraska Public Policy Center*. 13.

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# Minority and Justice Implementation Committee Releases Update on Nebraska's Indigent Defense Systems

by Elizabeth Neeley, PhD and Dennis Keefe



## Dennis R. Keefe



**Dennis R. Keefe, J.D.**, is the elected Public Defender for Lancaster County, Nebraska. He is a member of the Bar Information Program of the ABA Standing Committee on Legal Aid and Indigent Defense, and a member of the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the Nebraska Criminal Defense Attorneys Association.

## Elizabeth Neeley, PhD



**Elizabeth M. Neeley, PhD** is the project director for the Minority and Justice Implementation Committee. As a doctoral student at the University of Nebraska-Lincoln she worked as the Research Coordinator for the Minority and Justice Task Force. Her efforts with the Task Force earned her the University of Nebraska-Lincoln Graduate Research Assistant of the Year

Award in 2002. She has written several articles examining race and gender discrimination in the courts.

In 1993, the Spangenberg Group, a national research consulting firm from west Newton MA, conducted an extensive statewide study of indigent defense systems in Nebraska at the request of Nebraska's Administrative Office of the Courts. Their report, *The Indigent Defense System in Nebraska* (December, 1993) includes numerous findings regarding Nebraska's various systems of indigent defense (elected public defenders, contract public defenders and assigned counsel), indigent defense caseloads, funding issues, a review of Nebraska's standards and guidelines for indigent defense, how counties handle capital cases, and more. The report also outlined numerous recommendations and steps that Nebraska should take to improve indigent defense.

Renewed interest in Nebraska's indigent defense system was raised in 2003. As part of their two-year investigation of racial and ethnic bias in Nebraska's justice system, the Minority and Justice Task Force traveled to communities across Nebraska, soliciting testimony from the public on perceptions and experiences of racial and ethnic bias in the courts. One of the main concerns voiced at these public hearings was the quality of indigent defense services across the state of Nebraska. Because a higher percentage of minorities than whites are poor and thus unable to afford a private attorney, minorities are more likely than whites to need the services of a public defender or assigned counsel. The quality of the legal services provided by public defenders and assigned counsel, thereby affects how minorities, new immigrants and refugees perceive and are treated in the criminal justice system.

This sentiment was strong enough that the Minority and Justice Implementation Committee, appointed a working

## INDIGENT DEFENSE

group to further examine and address the quality of indigent defense systems in Nebraska. The work of this group culminates in a new report entitled, "The Indigent Defense System in Nebraska: An Update"

The analysis begins with a report card for Nebraska which assesses Nebraska's compliance with the "ABA 10 Principles of a Public Defense Delivery System." Second, they update information about county indigent defense costs and cases by reporting the most recent data available and comparing it to the information reported in the 1993 study. Third, the findings and recommendations from the 1993 report are revisited noting which findings appear to still apply and which recommendations have been implemented. Finally, the Spangenberg Group, the original authors of the 1993 study, offer their assessment of Nebraska's progress.

According to the Report, there are several areas where Nebraska has made progress in indigent defense since 1993. For example, the Nebraska Legislature established the Nebraska Commission on Public Advocacy (NCPA) in 1995 to provide direct representation in capital and some drug and violent crime cases when requested by the court. However, the other responsibilities recommended by the 1993 Report

have not been given to the NCPA (i.e. ensuring adequate funding for county indigent defense systems; developing standards and guidelines, and overseeing statewide data collections).

In 2001, legislation was passed establishing the Nebraska Indigent Defense Standards Advisory Council, charged to develop standards and guidelines for the NCPA. Under this legislation, if counties voluntarily met the standards, they could be reimbursed for up to 25% of the costs of their felony indigent defense programs. The Council was created and appointed, standards for felony cases were developed, and they were officially adopted by the NCPA. Unfortunately, when the state experienced its recent budget crisis, the money, which had been budgeted to reimburse the counties, was taken away.

Finally, progress has been made in regards to the promulgation of written standards and guidelines to ensure that only the truly indigent receive court appointed counsel. In 2000, the Nebraska Supreme Court approved a court rule for the county and district courts in Lancaster County regarding how to determine if someone was eligible to receive court appointed counsel. This was part of a pilot project

**Table 1: Summary Report Card for Nebraska's Indigent Defense Systems**

<b>ABA 10 Principles of a Public Defense Delivery System</b>	<b>Nebraska's Compliance</b>
1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.	POOR
2. Where the caseload is sufficiently high, the public defender delivery system consists of both a defender office and the active participation of the private bar.	POOR
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.	POOR
4. Defense counsel is provided sufficient time and a confidential space in which to meet with the client.	FAIR
5. Defense counsel's workload is controlled to permit the rendering of quality representation.	FAIR
6. Defense counsel's ability, training, and experience match the complexity of the case.	FAIR
7. The same attorney continuously represents the client until completion of the case.	GOOD
8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.	FAIR
9. Defense counsel is provided with and required to attend continuing legal education.	POOR
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.	POOR

implemented by Lancaster County whereby the county hired an eligibility screener to fill out the forms and present them to the court. This program is still in existence in Lancaster County past the original three-year term of the pilot project. However, there still is no system, uniform rule or statewide procedure for determining indigence.

Despite these improvements, the new Report's overall assessment is bleak. Nebraska fails to meet many of the national standards for indigent defense systems (see table 1). Linda Crump, Co-chair of the Minority and Justice Implementation Committee emphasizes the importance of meeting the national standards developed by the ABA, "These standards were developed by the American Bar Association to ensure a just and equitable system of justice. Nebraska should use these standards to move towards that goal."

The Spangenberg Group (TSG), the original authors of the 1993 study, agrees with the Minority and Justice Implementation Committee's assessment and offered the following recommendations to the state:

**1. A statewide structure and standards are needed to ensure the consistency and quality of indigent defense services.**

There continues to be great variability in the quality and provision of indigent defense services across the state. This is in part due to the fact that Nebraska does not currently have standards and guidelines for: qualifications for court-appointed counsel, determination of reasonable compensation, standards for conflict representation, caseload limitations, adequate supervision and oversight, minimum regular training requirements and minimum performance standards for court-appointed counsel.

**2. Indigent defense funding needs greater state contributions and reform.**

Nebraska is one of only seven states that provides little to no state funding for indigent defense. As TSG explains in the report, "When funding lies completely on the back of the counties, there is a great risk that rural, often poorer counties, will be simply unable to sufficiently fund increasing caseloads and expenditure needs and to provide adequate indigent defense services."

**3. Data on indigent defense caseloads and expenditures needs to be uniform, complete and accurate statewide.**

Currently Nebraska lacks a comprehensive and centralized system for indigent defense data. Among its data problems, Nebraska does not have a uniform method for tracking expenditures and caseloads, and data do not differentiate between juvenile cases (e.g. law violation vs. abuse/neglect, and status cases) or misdemeanor cases (for which there is no right to counsel). As TSG explains in the report, "Tracking of

accurate, reliable, and uniform data is necessary for Nebraska to understand and predict future indigent defense caseloads, expenditures, and resource needs."

**4. Nebraska should adopt uniform standards and procedures for determining indigency.**

Nebraska's current statutes provide insufficient guidance to counties as to how and when to decide if a person is indigent, therefore, there is considerable variability in what qualifies a person as indigent across the state. Lancaster County is an exception. As part of a pilot project, Lancaster County developed a rule for determining indigence. A recent examination conducted by the University of Nebraska Public Policy Center (January, 2003) indicates that Lancaster county's indigency rule has in fact, resulted in greater uniformity and consistency in indigency appointments.

**5. There is a strong need for independence in systems where the courts and the counties select and oversee court-appointed counsel and make compensation and resource determinations.**

Nebraska's counties utilize three basic types of systems: the elected public defender system, the assigned counsel system, and the contract system. Some counties have all three types of systems operating at the same time, with one system considered the primary system. Elected public defenders would certainly not meet the standard of being independent from political influence, more could it be said that this system selects attorneys on the basis of merit. The assigned counsel system including the selection and payment of counsel, is completely controlled by the judiciary. While some of the contract public defenders have local "policy boards" that are supposed to provide independence for the program, there is anecdotal information indicating that these policy boards are ineffective in providing this independence. Moreover, there are many contracts for indigent defense services in Nebraska that are entered into directly between the county board and the contractor, with no attempt to provide independence. The selection, funding, and payment in most of these situations are influenced by considerations of costs rather than quality of services.

According to Lancaster County Public Defender, Dennis Keefe, "Nebraska has a long way to go to meet the national standards. It is my hope that the legislature and courts can use this report as a base from which to move forward and improve the system." The report has been disseminated to policy makers in the hopes of renewing a commitment to improving Nebraska's indigent defense systems and to highlight the areas where Nebraska needs the most improvement. The report is available on-line at: [www.nebar.com](http://www.nebar.com) or [www.unl.edu/ppc](http://www.unl.edu/ppc). 