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The Indigent Defense System In Nebraska: An Update

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A Report of the
Nebraska Minority and Justice Task Force/ Implementation Committee

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INTRODUCTION

The Nebraska Minority and Justice Task Force was created as the joint initiative of the Nebraska State Bar Association and the Nebraska Supreme Court in October of 1999 to examine issues of racial and ethnic fairness within the Nebraska court and legal systems. The Task Force focused on four priority areas: Access to Justice, Court Personnel, Criminal and Juvenile Justice, and the Legal Profession. The results of the Task Force's investigation, along with recommendations, were published in a report in January of 2003 (available on-line at www.nebar.com and www.unl.edu/ppc).

The major recommendation of the *Final Report* was to establish a standing committee to implement the Task Force's recommendations. The Minority and Justice Implementation Committee, consisting of a racially and ethnically diverse group of judges, lawyers and community leaders, has been formed, has critically reviewed the recommendations made in the *Final Report*, and has developed action steps for implementing the recommendations made in the *Final Report*.

One of the recommendations made in the Task Force's *Final Report* relates to Nebraska's system for providing counsel to indigent individuals with a constitutional right to counsel. The recommendation is that:

> **Nebraska should adopt and enforce mandatory standards for the operation of county indigent defense systems that comply with the American Bar Association's "Ten Principles of a Public Defense Delivery System."**

The Committee's Criminal and Juvenile Subcommittee developed the following action steps to implement the recommendation:

- Analyze the current operation and prevailing standards of indigent defense systems in Nebraska.
- Review the Nebraska statutes and rules pertaining to indigent defense, including the legislation passed in 2002 to develop such standards and other model guidelines or standards.
- Develop a pilot project in an urban and rural environment to determine the effect of the proposed standards on the availability, quality, and cost of indigent defense.
- Evaluate the pilot project and recommend a means for the implementation of statewide standards on indigent defense.

A working group was formed to address this recommendation and implement the action steps outlined above. This document is designed to fulfill the first action step, to "analyze

the current operation and prevailing standards of indigent defense systems in Nebraska." The analysis begins with a report card for Nebraska which assesses Nebraska's compliance with the "ABA Ten Principles of A Public Defense Delivery System." Second, we 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 conducted by the Spangenberg Group, "The Indigent Defense System in Nebraska." 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, national experts on the issue of indigent defense and the authors of the original 1993 study, offer their assessment of Nebraska's progress.

A REPORT CARD FOR NEBRASKA'S INDIGENT DEFENSE SYSTEM

In February of 2002, the ABA House of Delegates passed a resolution adopting "The Ten Principles of a Public Defense Delivery System," which that organization said constituted the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney. The resolution also recommended that each jurisdiction use the "The Ten Principles of a Public Defense Delivery System" to assess the needs of its public defense delivery system and clearly communicate those needs to policy makers. A copy of the full ABA resolution and report is attached to this report as Appendix A. The ten principles are presented in bold, followed by a letter grade and narrative assessment of Nebraska's practices.

1. **The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.**

   Nebraska's indigent defense systems are organized at the county level. There are 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, nor 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.

2. **Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled**

assigned counsel plan, or contracts for services. The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.

According to a recent survey by the Nebraska Commission on Public Advocacy, 38 of Nebraska's 93 counties have some form of a public defender system as their primary indigent defense mechanism. Twenty-three of the 38 counties, including most of the largest counties, have an elected public defender system (some are part-time) and 15 have some form of contract public defender (all are part-time). The remaining counties appear to use assigned counsel on a case-by-case basis. There is no evidence that any county, including the larger counties who use assigned counsel for conflicts, have anything but an ad hoc system of assigned counsel in which individual judges make appointments.

The only state funds that go to indigent defense are those appropriated to the Nebraska Commission on Public Advocacy, an agency that represents individuals in some homicide cases and other drug and violent crime felonies. There is no statewide structure for ensuring uniform quality across the state.

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. Counsel should be furnished upon arrest, detention or request, and usually within 24 hours thereafter.**

By statute, public defenders are allowed to represent individuals who "are under arrest for investigation or on suspicion," and the public defender may make an initial assessment of the indigency of such individuals. Otherwise, screening for eligibility is the statutory duty of the judge at the first court appearance. With the exception of a pilot project in Lancaster County, there are no uniform standards or guidelines for determining who is eligible and who is not eligible. While the state's two largest counties have public defender "duty" lawyers who visit potential felony clients who have been booked into the jail on weekends and holidays, we are unaware of any other counties that provide counsel upon arrest, detention or request. It is uncertain to what extent counsel is "usually" provided within 24 hours of arrest, detention or request.

4. **Defense counsel is provided sufficient time and a confidential space in which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client. To ensure confidential**

communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.

It is uncertain whether appointed counsel interviews the client as soon as practicable before the preliminary hearing or trial. It would appear that this is a standard that is generally followed but there have been anecdotal reports of some contract public defenders who do not attempt to contact the client until the misdemeanor trial date. It is also uncertain to what extent private meeting spaces are provided in jails and courthouses.

5. **Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.**

   The Nebraska Commission on Public Advocacy and the Lancaster County Public Defender's Office have written and adopted caseload/workload standards. Although there is evidence of other public defender offices declining cases based upon work overload and the courts appointing outside counsel, we are not aware of any other written standards.

6. **Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high-quality representation.**

   In the largest counties, public defender managers assign cases based upon experience and training. Appointment of private assigned counsel, because it is on an ad hoc basis with no standards or uniform procedures, is more problematic, as are the contract public defenders who may not have the necessary experience and training.

7. **The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.**

   With only minor exceptions, this appears to be the practice in most parts of the state.

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. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.**

   It appears that there has been some improvement in parity of salaries over the past few years, at least for full-time public defender offices in the larger counties. Salary parity is less likely in the medium size and smaller counties with or without full-time public defenders. Assigned counsel fees vary from judge to judge and county to county. Some hourly rates appear to be relatively good but not at the level recommended in the standards adopted by the Nebraska Commission on Public Advocacy. Douglas County appears to have very low hourly rates for assigned counsel even in serious cases and there is some information that some judges have established arbitrary caps. Parity of other resources remains a problem. It is our assessment that the overall contract systems, with only certain exceptions, have primarily been established based on cost, with little or no consideration given to the quality of services that are to be provided. It is also our assessment that the inter-relationship of the various segments of the justice system is still not well understood by policy makers at the state or local level. For example, rarely, if ever, do state or local officials consider the impact to the overall justice system from adding law enforcement officers or prosecutors.

9. **Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.**

   There is no mandatory CLE for any attorneys in Nebraska. Opportunities for training exist on both the local and national level for the relevant types of cases that involve indigent defense attorneys. However, there is nothing mandating that attorneys who are appointed to these cases attend training. In the larger public

defender offices it is left up to the discretion of the individual managers. Many of the local training programs are well attended but there are also individuals who do considerable indigent defense work who never attend.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.

Defender offices are supervised by the head of the office and, in the case of larger offices, by managing attorneys, but it is uncertain the extent to which staff are evaluated for competence and efficiency on a regular basis. With only rare exceptions, there does not appear to be any supervision or evaluation of assigned counsel or contractors.

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

ABA Ten Principles of a Public Defense Delivery System	Nebraska's Compliance
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 defense 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**

NEBRASKA'S INDIGENT DEFENSE SYSTEM

In the 1993 report entitled "The Indigent Defense System In Nebraska" (hereinafter "Spangenberg Report"), researchers sought to answer three important questions: (1) What type of system did the counties use to provide indigent defense services?; (2) How much money was spent on indigent defense?; and (3) How large was the indigent defense caseload? Although the Minority and Justice Implementation Committee could not and did not replicate this study, we were able to obtain data on what types of systems counties use and their indigent defense expenditures from the Nebraska Commission on Public Advocacy (NCPA). We were unable to obtain information on counties' caseloads, as there is no central repository for this information. Our comments regarding indigent defense caseloads are based on several counties' current criminal case filings. A table presenting Nebraska's indigent defense systems, expenditures, and case filings by county is available in Appendix C.

Types of Systems

In the 1993 Spangenberg Report, counties were asked to describe their "primary" type of indigent defense system as either an elected public defender system, a contract public defender system, or an assigned counsel system. Sixty-six counties reported that their primary system was an assigned counsel system, 22 counties reported that their primary system was an elected public defender system, and five counties reported that their primary system was a contract public defender system (actually, nine counties said their primary system was contract but four of the nine listed both contract and elected public defender as their primary system). To show the change over time, we have classified those four counties as having an elected public defender as their primary system).

According to the NCPA, in 2004, 55 counties have an assigned counsel system as their primary system, 23 Nebraska counties have an elected public defender system as their primary system, and 15 have a contract public defender system as their primary system. Results show growth of the contract public defender system at the expense of assigned counsel systems (see Table 2).

Table 2: Comparison of Nebraska Counties' Primary Indigent Defense System 1992 and 2004

Primary System	1992	2004
Elected Public Defender	22 (24%)	23 (25%)
Assigned Counsel	66 (71%)	55 (59%)
Contract Public Defender	5 (5%)	15 (16%)

Expenditures For Indigent Defense

In the 1993 Spangenberg Report, counties were surveyed regarding the amount of money spent on indigent defense services. The authors noted that the expenditures reported were not exact figures because the methods for tracking expenditures as well as what information was tracked varied by county.

In 2004, the NCPA examined each county's budget to determine actual amounts spent and amounts budgeted for FY 2004. The NCPA faced the same limitations as the Spangenberg Report; not all counties budget for indigent defense costs in the same way. We are, however, able to report the following:

The average annual increase in indigent defense expenditures appears to have declined only slightly over the past 11 years. The 1993 Spangenberg Report noted that Nebraska counties spent $7.5 million on indigent defense in FY 1992. This amount represented a 75% increase (12.5% per year) in funds spent for indigent defense since 1986 when the U. S. Department of Justice Bureau of Justice Statistics reported state by state indigent defense expenditures.

The NCPA reports in FY03 that Nebraska counties spent $16.1 million on indigent defense. This figure represents an average annual increase of 10.5% from FY92 to FY03.

As confirmed by the type of system information presented in Table 1, an increasing number of Nebraska counties are moving away from an assigned counsel system and toward a contract public defender system as their primary method of indigent defense delivery. It remains true, however, that most counties have more than one system in place.

Table 3 compares indigent defense expenditures by type of system. Expenditures for elected public defender programs increased from 45% in FY92 to 49% in FY03. Expenditures on contract public defender programs increased from 4% in FY 92 to 10% in FY03. Assigned counsel expenditures decreased from 51% in FY92 to 41% in FY03. The budgeted amounts for FY04 are as follows: 49% for elected public defender programs, 11% for contract public defender programs, and 40% for assigned counsel programs.

Table 3
Comparison of Indigent Defense Expenditures By Type of System

Type of System	FY92 Actual	FY03 Actual	FY04 Budgeted
Elected Public Defender	45%	49%	49%
Assigned Counsel	51%	41%	40%
Contract Public Defender	4%	10%	11%

In FY92 there was no state money expended for indigent defense services in Nebraska. In FY04, the NCPA's budget was $765,000 which represents only 4% of the total amount budgeted by both the counties and the state for indigent defense in Nebraska.

Nebraska's two largest counties, Douglas and Lancaster, appear to be spending a greater proportion of the indigent defense dollar. In FY92, the indigent defense expenditures in those two counties represented 41% of all county indigent defense expenditures. In FY03, these two counties' expenditures represented 48% of the total.

Indigent Defense Caseloads

The Minority and Justice Implementation Committee had neither the time nor the resources to thoroughly research indigent defense caseloads county by county. Even the 1993 Spangenberg Report noted the difficulty in obtaining accurate caseload figures by county especially with widely divergent definitions of "case." In order to provide some context for the change in indigent defense caseloads in the past 11 years, we present information on the number of cases filed in 1992 and 2003 as reported by the State Court Administrator's Office, supplemented with indigent defense caseload information from Lancaster County.

As Table 4 demonstrates, statewide, the number of felonies filed in the county courts increased by 43% from 1992 to 2003. Among the top five counties, Sarpy County showed the largest increase (116%) during that time period while Douglas County showed the smallest increase (16%).

While the number of felonies filed in Lancaster County Court during the same time period increased by 82%, the number of those felony cases requiring appointed counsel increased by 98% (from 697 cases in 1992 to 1,383 cases in 2003). In other words, the percentage of felonies filed in Lancaster County Court which required appointed counsel (indigency rate) grew from 73% in 1992 to 79% in 2003. It is difficult to estimate the statewide indigent defense caseload from these numbers because the increase in the number of filings varied significantly from county to county and we do not know whether the indigency rate would be consistent across the state.

Table 4: Comparison of Felonies Filed in the Nebraska County Courts 1992 and 2003

County	1992	2003	% change
Douglas	3,336	3,873	16%
Lancaster	954	1,741	82%
Sarpy	433	935	116%
Hall	506	666	32%
Buffalo	165	318	93%
All Others	3,472	5,163	49%
Total	**8,866**	**12,696**	**43%**

Next, we examine non-traffic misdemeanor offenses. According to the State Court Administrator's Office, this category includes most types of misdemeanor offenses which might require appointed counsel, including driving while intoxicated and driving under suspension. Unfortunately, the category also includes a number of offenses under both state statute and city or village ordinances that would not normally qualify for appointed counsel based upon the nature of the offense. Nonetheless, Table 5 shows that the number of non-traffic misdemeanors filed statewide increased by 49% from 1992 to 2003. Again, among the 5 largest counties, the biggest increase (130%) occurred in Sarpy County and the smallest increase was in Buffalo County (16%). Douglas County reported a 112% increase.

Non-traffic misdemeanor filings in Lancaster County Court increased by 21% while the percentage of these cases requiring appointed counsel increased by 29% (from 2,133 cases in 1992 to 2,749 cases in 2003). It is difficult to estimate the statewide indigent defense caseload from these numbers because the increase in the number of filings varied significantly from county to county and we do not know whether the indigency rate would be consistent across the state.

Table 5: Comparison of Non-Traffic Misdemeanors Filed in the Nebraska County Courts: 1992 and 2003

County	1992	2003	% change
Douglas	18,757	39,851	112%
Lancaster	17,158	20,969	21%
Sarpy	3,261	7,510	130%
Hall	4,120	4,829	17%
Buffalo	2,616	3,047	16%
All Others	8,141	48,886	28%
Total	**84,053**	**124,819**	**49%**

Juvenile indigent defense caseloads are particularly difficult to estimate based upon filing information for a couple of reasons. First, we only have the raw number of filings (instead of a breakdown by abuse/neglect, law violation, and status cases) for 1992 and for all counties without a separate juvenile court in 2003. Second, appointments of counsel and guardian ad litems in juvenile cases can occur without a determination of indigency and multiple appointments are sometimes made within the same case. That having been said, we present Table 6 which shows juvenile cases filed in the separate juvenile courts and the county courts in 1992 and 2003. The statewide increase in juvenile filings was 35%, with Lancaster County showing the largest increase (192%) and Douglas County showing the smallest increase (10%).

At the same time that the Lancaster County Juvenile Court filings increased by 192%, the Lancaster County Public Defender reported a 139% increase in juvenile cases (from 479

cases in 1992 to 1,145 cases in 2003). This latter figure does not reflect the contracts and private attorney appointments made in a large number of these cases.

Table 6: Comparison of Juvenile Case Filings in the Separate Juvenile Courts and the County Courts: 1992 and 2003

County	1992	2003	% change
Douglas	1,839	2,206	10%
Lancaster	593	1,729	192%
Sarpy	632	717	13%
Hall	314	382	22%
Buffalo	199	308	55%
All Others	4,482	5,747	28%
Total	**8,059**	**10,909**	**35%**

UPDATE OF THE FINDINGS FROM THE 1993 INDIGENT DEFENSE STUDY

The Minority and Justice Implementation Committee has reviewed the findings and recommendations made in the Spangenberg Report (1993). The original finding or recommendation is listed in bold type, followed by a discussion of the issues identified in that finding as it relates to current practice.

Findings

The following findings are those of the researchers based on their in-depth study of Nebraska and their years of experience studying indigent defense programs throughout the country.

1. **There is a lack of consistency and uniformity in the delivery of indigent defense services throughout Nebraska. Specifically, there is no consistency from county to county in the quality of representation provided, the availability of litigation resources for defense counsel, and availability of counsel qualified to adequately handle appointed cases, the investigation into and verification of eligibility to receive court-appointed counsel, compensation for court-appointed counsel, public defender salaries, staffing and overload of cases, and in other aspects.**

   Funding for indigent defense in Nebraska, now provided entirely by the counties, is inconsistent and inadequate in most parts of the state. In spite of enabling statutory authority for state support of public defender systems, Nebraska remains one of only six states in which the cost of indigent defense is borne entirely by the counties, with no assistance from the state.

   The Minority and Justice Implementation Committee believes that there continues to be a lack of consistency and uniformity in the delivery of indigent defense services throughout Nebraska. Additionally, although the legislature provided the first state money for indigent defense by establishing the Commission on Public Advocacy in 1995, thereby improving the quality of legal services in a number of serious cases, the funding of indigent defense at the county level is still inconsistent and inadequate in many parts of the state. An attempt was made by the legislature in 2001 to try to deal with some of the inconsistencies and inadequacies identified through the use of a standards project that would have rewarded counties for meeting certain standards. In fact, under that legislation, the Indigent Defense Standards Advisory Council was created and appointed and standards for capital and other felony cases were developed and adopted by the Nebraska Commission on Public Advocacy. However, due to a severe budget crisis, the state funds to reimburse the counties were eliminated in a special legislative session in 2002.

2. **Currently, the laws governing the provision of indigent defense services and the right to counsel are scattered throughout several non-sequential sections of the Revised Statutes of Nebraska, causing confusion and contributing to inconsistency in the manner in which programs around the state are administered and services provided.**

   While there has been some attempt to consolidate statutes relating to public defender systems into one section, there is still room for improvement, especially in defining the duties of the public defender, outlining indigent defense system options for counties, and in defining the overall right to counsel.

3. **There are no uniform standards or guidelines for the operation of indigent defense programs among the various systems and counties throughout Nebraska. As a result, there is no assurance that only those who are truly indigent will be given free counsel. Standards and guidelines that are lacking include:**

   a. **Written eligibility standards to determine whether defendants are indigent and no verification of information provided at screening.**

   b. **Effective implementation of cost recovery or recoupment programs to ensure that those who are able to pay all or a portion of their counsel are required to do so.**

   c. **Caseload limitation standards to prevent overburdening defense counsel.**

   d. **Designated funds to support the employment of investigators and expert witnesses.**

   e. **A plan for early and continuous representation of clients through all phases of a case.**

   f. **A consistent policy for determining when conflicts of interest exist.**

   g. **Standards for the qualification and compensation of court-appointed counsel.**

   h. **A system for gathering data on indigent defense statewide, resulting in a reliable source or method to measure the need for resources.**

   i. **A system to assure that there is no conflict of interest resulting from part-time public defenders' private criminal law practices and**

guarantees that part-time public defenders will devote equal responsibility to their indigent clients.

j. Standards governing adequate supervisory and clerical staff levels and law library access.

k. Standards requiring initial and regular training for public defenders and court-appointed attorneys.

With regard to the eligibility standards and guidelines, Chief Justice Hendry and the Nebraska Supreme Court approved a rule for Lancaster County in 2000 as part of a pilot project that included funding of a screener position. In a Report for the Lancaster County Board of Commissioners and the Nebraska State Court Administrator's Office, the University of Nebraska Public Policy Center (2003) concluded that (1) access to an attorney has been improved somewhat by the project; (2) there seems to be a slight increase in fairness as a result of the rule change; (3) there seems to be a marked increase in efficiency and fairness by using the standardized form to determine indigency; but, (4) there is no clear evidence that the use of a screener to assist in determining indigency is cost effective. The authors of the report therefore recommended amending the current Nebraska statute in order to adopt the Lancaster County court rule regarding eligibility determinations and retaining the use of the standardized form.

However, as of the date of this report, Nebraska still does not have a uniform statewide rule or procedure for determining eligibility. Furthermore, no county to our knowledge has implemented a program for recoupment of costs or contributions.

Before the legislature eliminated the standards funding in a 2002 special session, the Indigent Defense Standards Advisory Council was appointed and established standards for capital and other felony cases. Those standards were adopted by the Nebraska Commission on Public Advocacy. Standards included: qualifications of appointed counsel; the number of attorneys assigned or appointed in first degree murder cases; compensation for assigned counsel; public defender salaries; reimbursement for expenses including services of investigators, experts, and other necessary services; standards for continuing legal education; and a caseload/workload standard that includes a mandated procedure for declining cases over the maximum.

At best, these standards would have been voluntary on the part of any county that wished to seek reimbursement. In that sense, there still would not have been uniform standards statewide. Probably the only way to accomplish statewide standards would be through a Nebraska Supreme Court Rule.

4. **Throughout the state, public defenders lack sufficient staff, leaving many attorneys saddled with tasks more appropriately handled by paralegals, investigators and support staff.**

   The Implementation Committee has no way of knowing if and to what extent this condition still exists.

5. **Public defenders throughout the state receive salaries uniformly below those of county attorneys.**

   This situation seems to have improved in some counties but not all. There is no legitimate reason for salaries for full-time defenders to be different than salaries for full-time county attorneys.

6. **Most public defenders suffer from serious case overload, impairing their ability to deliver basic representation.**

   Because the Implementation Committee was not able to conduct proper research on indigent defense caseloads**,** we cannot accurately tell to what extent this is still a problem. We are aware of at least three instances in which county public defenders have refused to take cases in excess of their caseload limits, requiring the courts to assign the cases to the private bar.

7. **There is lack of clarity in statutory language concerning the provision of guardians <u>ad litem</u> in certain types of cases or whether guardians <u>ad litem</u> must be attorneys.**

   Guardians ad litem are routinely appointed in juvenile abuse/neglect cases. It has become more common for some judges to appoint a guardian ad litem and an attorney for some juveniles charged with law violations or status offenses. Most such guardians ad litem are attorneys. Standards for when such appointments should be made are needed.

8. **For some cases in which there is a statutory right to counsel in Nebraska there is no statutory provision requiring reasonable compensation to the attorneys appointed in these cases.**

   These statutes have not been changed.

9. **No statewide authority specifies compensation rates for court-appointed attorneys. The burden of determining compensation lies with judges whose discretion is subjective yet dependent, in part, on their county's resources.**

   This situation has not changed although it was one of the subjects of the standards for felony cases written by the Indigent Defense Standards Advisory Council and adopted by the Nebraska Commission on Public Advocacy.

10. **In capital cases, court-appointed attorneys have serious problems getting courts to authorize funds to cover experts, investigators and other necessary litigation expenses and in receiving adequate compensation for the work they perform.**

This problem no longer exists for counties whose courts utilize the services of the NCPA. The NCPA has its own funds for such resources.

11. **In some areas of the state there is a serious problem finding attorneys qualified and willing to handle appointments to capital cases. The problem is becoming particularly acute in Omaha and Lincoln, where capital cases are increasing.**

The NCPA has been involved in many capital cases and the quality of the services is excellent. Outside of the NCPA and the state's two largest county public defenders offices, the situation is less certain.

12. **Individuals who receive court-appointed counsel in Nebraska do not contribute to the cost of their representation, except in rare instances.**

This finding remains true today.

13. **County attorneys in some parts of Nebraska participate in decisions with respect to indigent defendants that are potentially damaging to the defendant's rights and can be conflicts of interest. Some county attorneys have: reviewed court-appointed counsel's fee vouchers; suggested to a county board whom it should select as contract public defender; participated in the process of determining indigency; persuaded a judge not to provide an expert to appointed counsel; and suggested limitations on the amount to compensate such experts. Some county attorneys contend that they are asked to perform some of these tasks at the request of local judges.**

The legislature recently amended Neb. Rev. Stat. § 29-3904 (Supp. 2003) to prohibit the involvement of the prosecuting attorney in having any role in the selection and appointment process for assigned counsel. It is uncertain to what extent other problems remain.

14. **Public defenders are generally responsible for handling their own appeals, while the Nebraska Attorney General handles appellate cases originating with county attorneys. This creates a disparate case and cost burden between public defenders and county attorneys. In addition, county attorneys have access to the Attorney General's Drug Prosecution Unit in their prosecution of felony drug cases at the trial level and the Child**

Protection Division in child sex abuse cases. Public defenders and assigned counsel have no comparable resource.

It is still true that public defenders are generally responsible for handling their own appeals, while county attorney appeals are handled by the attorney general. The founding of the NCPA and grant funds from the Commission on Law Enforcement and Criminal Justice has helped in trial and appellate defense of drug and violent crime cases.

15. **The contract public defense programs established throughout the state are not in compliance with statutory provisions forbidding contractors to be selected on the basis of bid alone and requiring establishment of an oversight and policy board.**

    This finding remains true**.**

16. **There is no consistent definition of what constitutes a "case" in Nebraska among the various components of the justice system, which makes it difficult to adequately compare the manner in which programs around the state are administered and services provided. It also contributes to difficulty in making cost comparisons.**

    This is still the situation in Nebraska.

17. **Inconsistency in funding for indigent defense services in Nebraska is due in large part to the broad variation from county to county in resources available for services. Rural counties, which depend on largely static property tax levels, are dangerously susceptible to financial crisis if a "big case," such as a complicated capital case, occurs in their county and requires appointment of defense counsel and a profusion of funds for investigation by both prosecutors and defense counsel.**

    The "big case" scenario is a lesser problem since the founding of the NCPA. However, there are still multiple defendant homicides where additional private attorneys have to be appointed and paid by the county, even when the NCPA is involved in one of the cases.

18. **The resources of public defenders are substantially outmatched by those of county attorneys who have access to resources such as law enforcement and investigative personnel and equipment, the state crime lab, and psychiatric services that are outside of their budgets. Also, almost without exception, county attorney employees receive larger salaries than public defender employees on both a full-and part-time basis. Data provided by the state indicate that, on average, a county attorney's budget is twice that of the local indigent defense budget, even without adjusting for the many other resources available (federal, state, county and local) not contained in the county**

attorney's budget. On a national basis, prosecutors receive three to four times the resources of public defenders who typically are responsible for 65-85% of the prosecutor's workload.

The Implementation Committee could not and did not research this issue. It is uncertain to what extent this problem still exists.

19. It is not well understood that the criminal justice system in Nebraska is composed of interrelated parts and that indigent defense programs do not independently generate workload for other components in the system. Instead, they respond to activity of law enforcement, prosecutorial and court programs.

This statement appears to hold true today, although some policymakers have a better understanding of the interrelationships.

20. In some parts of the state, judges consistently reduce the vouchers of court-appointed counsel arbitrarily and without the ability of counsel to contest these actions.

It is uncertain to what extent this remains a problem.

21. Indigent defense over the past few years has received only a very small share of federal funds made available for the state's criminal justice system, particularly through the Federal Anti-Drug Formula Grant Program.

With the founding of the NCPA, access to some of these federal funds increased. However, changes in the federal grants programs make it unlikely that indigent defense will get any more than the very minimal amount of federal funds they currently receive compared to law enforcement, prosecution, courts and corrections.

22. Part-time elected public defenders in counties with populations over 35,000 must perform an ongoing balancing act in order to adequately tend to both their private clientele and their public defender clients.

This is a problem in all part-time public defender offices and does not appear to have improved.

23. Indigent defense in Nebraska fares poorly in comparison with its neighbor states and other comparable states around the country. Of 23 states surveyed, only Connecticut has a lower cost per indigent case.

The Implementation Committee has no way of knowing whether this remains true or not.

THE INDIGENT DEFENSE TASK FORCE RECOMMENDATIONS: AN UPDATE

The Spangenberg Report contained a number of recommendations from the statewide indigent defense task force to improve the overall system of indigent defense. These recommendations are attached to this document as Appendix B. Progress has been made on a number of the recommendations over the years but few of the recommendations have been enacted and those that have been enacted do not necessarily follow the recommendations' full intent.

The establishment of a Commission on Public Advocacy was one of three major recommendations made in the 1993 report. The Nebraska Legislature did create the Nebraska Commission on Public Advocacy (NCPA) in 1995 and that agency continues to this date (its FY 2004 budget is $750,000). While this is positive news, the main function of the NCPA is to provide direct representation in capital and some drug and violent crime cases when requested by the court. The other functions recommended by the 1993 task force 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 collection).

In 2001, legislation was passed creating the Nebraska Indigent Defense Standards Advisory Council that was to recommend standards and guidelines to 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. Then the state experienced a serious budget crisis and the money, which had been budgeted to reimburse the counties, was taken away.

Another major recommendation dealing with funding has not been implemented. That recommendation was to have the state become a partner with the counties in funding indigent defense, including general fund revenue, civil case filing fees, a surcharge on court costs, a $40 administrative fee to be imposed on clients, and collection from those who are indigent but able to contribute. To date the first and only state money dedicated to indigent defense is through the funding of the Nebraska Commission on Public Advocacy. The source of the commission's funding has shifted to the surcharge on court costs and away from general fund revenue. It still represents slightly less than 4% of all funds spent on indigent defense statewide.

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 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 (see the previous section regarding Finding 2 (a) of the Spangenberg Report).

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Review of 2004 Update to
"The Indigent Defense System in Nebraska"
by the Minority & Justice Implementation Committee

September 15, 2004

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This publication has been prepared by The Spangenberg Group on behalf of the American Bar Association's Bar Information Program. The views expressed herein, unless otherwise noted, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

In 1993, The Spangenberg Group (TSG) conducted an extensive statewide study of indigent defense in Nebraska at the request of Nebraska's Administrative Office of the Courts/Probation. Our report, *The Indigent Defense System in Nebraska* (December, 1993) contained many findings and recommendations for improvement. Ten years later, in January 2003, the Nebraska Minority and Justice Task Force, which was created in 1999 by the Nebraska State Bar Association and the Nebraska Supreme Court to examine issues of racial and ethnic bias in Nebraska's justice system, issued a report that, among other issues, voiced a concern with indigent defense. The major recommendation of the *Final Report* of the Task Force in 2003 was to establish a standing committee to implement the Task Force's recommendations. The Minority and Justice Implementation Committee, consisting of a racially and ethnically diverse group of judges, lawyers and community leaders, was formed and has critically reviewed the recommendations made in the *Final Report* and developed action steps for implementing them. A working group was specifically appointed to implement the Task Force's recommendations regarding indigent defense systems in Nebraska. The first task for this working group was to "[a]nalyze the current operation and prevailing standards of the indigent defense systems in Nebraska".

As a result, the Indigent Defense working group of the Minority and Justice Implementation Committee has written a draft update to TSG's 1993 report. The Implementation Committee then asked that we, as authors of the original study, submit our own assessment of indigent defense in Nebraska based on the working group's draft report. What follows is an assessment of the issues still facing Nebraska in 2004, many of which have not changed from over ten years ago. We focus on the issues that we feel are the most important for Nebraska to address, as well as those that we feel are quite possible to achieve.

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

In 1993, our number one major finding was that there was a lack of consistency among the counties in many areas of indigent defense, including the quality of representation, availability of counsel qualified to sufficiently handle appointed cases, availability of resources, and level of attorney compensation. Unfortunately, this still appears to be true. Although Nebraska made great strides in creating the Nebraska Indigent Defense Standards Advisory Council, and the Nebraska Commission on Public Advocacy (NCPA) adopted Standards for Indigent Defense Systems for capital and felony cases in May 2002, funding for the implementation of the standards within the counties was repealed due to fiscal problems in September 2002. The standards were to apply to any county who chose to comply in order to receive a contribution of state funds. As the standards are not mandatory, and there is no monetary incentive to comply, the standards are ineffective.

In 1993, we recommended a number of tasks for a statewide commission, including ensuring adequate funding for indigent defense programs, developing statewide standards and guidelines for all indigent defense delivery systems, and overseeing

statewide collection of reliable indigent defense data. We again emphasize the importance of each of these three tasks. Our 1993 report also specifically listed 12 areas where standards and guidelines were needed. TSG still believes that it is extremely important that Nebraska having meaningful and applicable standards and guidelines for all indigent defense cases addressing the following:

a. qualifications for court-appointed counsel;
b. determination of reasonable compensation;
c. standards for conflict representation;
d. caseload limitations;
e. adequate supervision and oversight;
f. minimum and regular training requirements; and
g. minimum performance standards for court-appointed counsel.

Nebraska still lacks such meaningful and applicable statewide standards and guidelines to ensure quality and consistent indigent defense representation among its 93 counties' indigent defense programs. While NCPA has its own internal standards for capital and serious felony cases which cover a number of the above areas, such standards apply to a small percentage of all indigent cases in the state. TSG feels that the above-listed standards are essential for all indigent cases to ensure adequate representation statewide. Setting these standards are all the more important given that Nebraska lacks effective rules and statutes governing CLE for practicing attorneys, compensation, and local policy boards (see further discussion in (5) below).

Additional standards could be set to help improve public defender systems in Nebraska, including salary, staffing, and full-time requirements. The Indiana Public Defender Commission, for example, has promulgated extensive indigent defense standards which include staffing ratios.1 The Implementation Committee was unable to assess whether Nebraska public defenders still lack sufficient support staff and suffer from high caseloads that impair their representation, as we found in 1993. However, if such conditions still exist, this would be a concern.

Further, with regard to workload, the Implementation Committee reports that part-time elected public defenders in counties with populations over 35,000 still must attempt to balance a private practice with their public defender practice. We recommended in 1993 that the statute requiring full-time work of a public defender be amended to apply to all counties with populations exceeding 35,000, excepting deputy public defenders who could still have part-time public defender practices. As the situation has not changed, the recommendation stands today.

In order to promulgate and implement statewide standards and to oversee the provision of indigent defense services statewide, states must create a commission or body with the authority and effective means to do so. Across the country, there has been

1 The complete set of Indiana Public Defender Commission standards in non-capital cases is available at http://www.in.gov/judiciary/admin/pub_def/standards.html.

significant movement towards the creation of statewide commissions. Since our 1993 Nebraska report, a number of states have created statewide commissions, including Arkansas, Georgia, Louisiana, North Carolina, Oregon, Texas, and Virginia. Today, the majority of states and the District of Columbia have some sort of statewide body or commission responsible for developing policy and providing oversight for indigent defense services.2 In addition, more states are close to creating such a commission or have experienced activity in this direction, including Alabama, Michigan, Montana, New York and North Dakota.

Although the Nebraska Commission on Public Advocacy was created in 1995, in 2004 NCPA still lacks most of the important functions and authority that were recommended for it in 1993. In most states, indigent defense commissions were created to provide independent oversight and accountability for indigent defense services, to develop uniform standards and guidelines for program operation, and to advocate for adequate resources in order to deliver indigent defense services.3 The Nebraska commission, however, has not been provided the adequate means to be an effective authority for the oversight and advocacy of indigent defense services statewide. Further, the statewide standards and procedures that were created in Nebraska in 2002, which cover felony cases only, are voluntary and have not been implemented.

2. Indigent defense funding needs greater state contribution and reform.

In 1993, TSG's second major finding was that funding for indigent defense in Nebraska was "inconsistent and inadequate in most parts of the state." At that time, indigent defense was 100 percent county-funded. Today, this has changed only slightly with approximately four percent of indigent defense funding coming from the state for NCPA. No longer funded with general revenue, NPCA is now funded entirely by a $2.75 increase in all filing fees and court costs in the state.

In 1993, we said that current indigent defense funds needed to be increased by 50 percent (from $7.5 million to $11 million in FY 1994) to improve the quality of representation, and that it was "absolutely critical that the state become a partner with the counties in providing state funds for indigent defense." Although state contributions to the counties of up to 25 percent of indigent defense costs were contemplated on the condition of compliance with indigent defense standards, and indeed legislation was passed on this, in the wake of a budget crisis, none of the state funding occurred. When funding lies completely on the backs of the counties, there is a great risk that rural, often

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2 In a few states, the indigent defense commission is only responsible for appellate cases. In some states with statewide public defender programs, the commission is only responsible for public defender offices, while another program or no program oversees assigned counsel programs. For a 50-state table on commissions, see Indigent Defense Systems, prepared by The Spangenberg Group for the ABA Bar Information Program, available at http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/statewideindigentdefensesystems2004.pdf. Although the Nebraska Commission on Public Advocacy is listed in this table, as discussed, its current authority is limited and far less than was originally intended.

3 For a discussion of the role of indigent defense commissions, *see* Kate Jones, *The Case for Commissions*, THE CHAMPION (June 2001) *at* http://www.nacdl.org/public.nsf/ChampionArticles/.

poorer, counties will be simply unable to sufficiently fund increasing caseloads and expenditure needs and to provide adequate indigent defense services. Similarly, although NCPA provides representation in capital and serious felony cases across the state, some counties could well be faced with bankruptcy in the event of a multiple-defendant homicide requiring conflict representation.

TSG understands, as we did in 1993, that the state faces serious fiscal concerns. However, we remain committed to the recommendation that some general fund revenue from the state is essential in developing appropriate funding for indigent defense. We also previously recommended several other additional sources of revenue that could be earmarked for indigent defense, including an amount withheld from 10 percent bail bond deposits, a small increase in civil case filing fees, a surcharge on court costs that was being used until 1997 to fund the criminal history information system, a $40 waivable administrative fee for all indigent defendants, and a category of defendants who are "indigent but able to contribute" towards the cost of their defense. None of these measures have been implemented. While the alternative sources of revenue suggested are not large and consistent funding sources, as many rely on indigent defendants themselves, they can help to fund at least some of the rising costs.4

Nebraska is in the minority of states in providing little to no state funding for indigent defense. In FY 2002, 22 states provided 100 percent of indigent defense expenditures, and another six states provided 75 percent or more.5 In addition to Nebraska, only seven other states and the District of Columbia provided ten percent or less of their indigent defense expenditures.

Georgia provides a promising example in the move towards state oversight and funding. In FY 2002, Georgia provided 17 percent of indigent defense funds to its 159 counties that each controlled their own local systems. However, in 2004, following a statewide indigent defense study (with the involvement of TSG), Georgia created a Public Defender Standards Council. The Council will adopt statewide standards and guidelines and, beginning on January 1, 2005, Georgia will move to a statewide, state-funded public defender system organized according to its 49 judicial circuits. The new circuit public defender offices will provide indigent representation in state felonies, misdemeanors, or juvenile delinquencies where the client faces confinement or probation. City, county or consolidated local governments must fund indigent defense services for those charged with violating city, county, or local ordinances, but may contract to use the services of the circuit public defender. Notwithstanding such a contract, local governments must comply with all standards adopted by the state Council. To help fund

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4 For a discussion of application fees used in other states, see *Public Defender Application Fees: 2001 Update*, prepared by The Spangenberg Group for the ABA Bar Information Program and available at http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-narrative.pdf.

5 See *State and County Expenditures for Indigent Defense Services in FY 2002*, prepared by The Spangenberg Group for the ABA Bar Information Program, available at http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/indigentdefexpend2003.pdf.

the new system, Georgia instituted the following: an additional $15 filing fee for civil actions; a $50 application fee for persons seeking indigent defense services (which can be waived); a 10 percent increase criminal and traffic fines; and a 10 percent increase in bail or bond amounts.

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

In 1993, we found that Nebraska lacked a comprehensive and centralized system for gathering indigent defense data statewide to ensure complete and reliable tracking of caseloads and expenditures. At that time, we collected data by surveying individual counties. However, even this data was limited for comparison purposes because of the numerous definitions of a case and different methods for tracking data among the counties.

In order to ensure accurate caseload data and to be able to make caseloads and costs-per-case comparisons, Nebraska counties must use a uniform definition of a case. In 1993, we found seven different definitions being used for a criminal case, and this was only among public defender programs (elected and contract) and county attorneys, and did not include assigned counsel systems. Without a uniform case definition, county comparisons and statewide figures cannot be entirely accurate and reliable. A uniform case definition is yet another standard that a statewide commission could promulgate. The preferred method for defining and counting a case recommended by the National Center for State Courts is by a single defendant and a single incident; that is, count each defendant and all the charges arising from a single incident as one case.[6]

A commission should also require the county programs to consistently and accurately track data. Tracking of accurate, reliable, and uniform data is necessary for Nebraska to understand and predict future indigent defense caseloads, expenditures, and resource needs.

From our reading of the Implementation Committee's draft report, in addition to lacking a common case definition, we find that Nebraska continues to have the following data problems:

a. Counties do not have a uniform method for tracking indigent defense expenditures;
b. Counties are not tracking indigent caseloads;
c. The filing data that exists:
    i. is not an accurate reflection of indigent cases;

[6] For example, if a defendant is arrested for driving under the influence and during the stop assaults the officer, both charges are counted as one case because they arise from one incident. With this method, the number of cases being counted is not dependent upon the number of filings (i.e. whether a prosecutor chooses to charge the case by separate filings for each charge or by one consolidated filing).

ii. does not break out juvenile cases by case type (e.g., law violation, abuse/neglect, and status cases); and

iii. does not break out misdemeanor offenses for which there is no right to counsel.

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

Our study in 1993 found that indigency screening in Nebraska was "cursory at best" and a result of a "haphazard and informal system with little uniformity across the state." The Nebraska statute that defines indigency states: "Indigent shall mean the inability to retain legal counsel without prejudicing one's financial ability to provide economic necessities for one's self or one's family." §29-3901(3). However, this statutory standard does not give sufficient guidance to the counties and courts in terms of how and when to decide whether a person is indigent. Rather, it allows for subjective determinations of indigency.

Our 1993 study found that over half of both county and district court judges used no written criteria or standards upon which to base a determination of indigency. Of those judges that reported to follow written standards, most simply referred to the statutory affidavit of indigency completed by defendants. Further, we found that some judges did not require a financial affidavit to be filed, but simply relied on oral testimony.

In 1993, written survey responses and comments received during our site visits also indicated inadequate screening procedures, including a lack of verification of screening information. Inadequate screening procedures translate into unnecessary appointments, increased indigent caseloads and added costs. We also found disparity across the state in indigency procedures. Survey responses during our study indicated that 40 percent of the time, persons other than those conducting the screening were making eligibility recommendations. Sometimes those making recommendations were county attorneys. This was alarming to us as it is a clear conflict of interest and is prohibited by ABA standards, and we hope but do not know whether this has changed.

While we cannot report on current standards and procedures being used in the counties, the updated draft report of the Implementation Committee reports little progress in this area. With the exception of Lancaster County, which began a pilot project in 2000 with approval of the Chief Justice, all counties continue to lack indigency standards and guidelines.

Added costs, increased caseloads, and a need for uniformity and fairness prescribe the need for Nebraska to promulgate statewide indigency standards and procedures.

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.

As the Implementation Committee's draft report states, the first of the ABA's "Ten Principles of a Public Defense Delivery System" is that "[t]he public defense function, including the selection, funding, and payment of defense counsel, is independent." This issue relates further to the need for statewide structure and standards, as discussed above.

In addition to the Ten Principles, the American Bar Association (ABA) has promulgated a number of standards for providing indigent defense services, including one regarding professional independence which guards against judicial conflict. The standard states that a jurisdiction's legal representation "plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice."7 This ABA standard and NLADA guidelines also recommend a policy board to ensure the independence of the contractor and the defender services program. Under NLADA guidelines, the policy board should be capable of providing the contract administrator with expertise and support and should advise the administrator on minimum contract attorney requirements and fee schedules, and should "supervise the contract bidding and award process…[and] select the contract defender to whom a contract will be let, if not retained by the Contracting Authority".8

Contrary to such standards, in Nebraska, the assigned counsel system is controlled by the judiciary, including the selection, oversight, and payment of counsel. In 1993, we found that appointment of assigned counsel was made on an ad hoc basis by the judiciary, and the Implementation Committee reported that this continues to be the case. Additionally, with regard to contract programs, we found in 1993 that local policy boards, which are required by statute in counties with contract programs, failed to determine standards and provide independence and oversight of contract systems. The Implementation Committee has reported no change in these problems with the assigned counsel and contract systems.

We further found in 1993 that in some parts of Nebraska, county attorneys suggested to county boards who should be selected as a contract defender, were involved in the court's decision-making regarding expert fees, and participated in reviewing appointed counsel's fee vouchers. With the exception of a recent statutory amendment prohibiting county attorney involvement in the selection of assigned counsel, the Implementation Committee does not know to what extent these other situations continue to exist. As a result, TSG remains seriously concerned that such conflict of interest problems remain.

On the specific issue of attorney compensation, Nebraska continues to lack a statewide authority for specifying compensation rates for court-appointed attorneys. In

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7 Standard 5-1.3., *ABA Standards for Criminal Justice, Providing Defense Services*, 3rd Ed. (1992). See also Standard 5-3.2. For a link to the standards, see http://www.abanet.org/crimjust/standards/defsvcs_toc.html

8 Guidelines II-1and II-3, *National Legal Aid and Defender Association, Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services* (1984).

indigent felony cases, §29-3905 gives the courts full discretion to determine "reasonable expenses and fees" for payment to counsel. Although the Implementation Committee reports that this was a topic of one of the felony standards created by the Indigent Defense Standards Advisory Council and adopted by NCPA, the situation remains the same. In our experience, reasonable compensation statutes such as this can actually be a hindrance to a state addressing court-appointed counsel compensation because, while there appears to be a "standard" in place, such standard is essentially subjective and discretionary, allowing wide variations and potential unfairness in fee determinations. Further, as we found in 1993, Nebraska continues to lack a statewide authority that ensures reasonable compensation for court-appointed counsel in a number of case types requiring representation. This issue is emphasized by a lack of salary parity. In 1993, we found that public defenders routinely received salaries below those of county attorneys, and the Implementation Committee reports that this has changed only in some counties.

A number of states have adopted clear and specific standards on court-appointed counsel compensation. Such standards can be set via statute, administrative, procedural or court rule, or commission guidelines. The following states are among those with such statewide compensation standards: Alabama, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Nevada, New Hampshire, New York, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, and Wyoming, and the District of Columbia.

Clear compensation standards would prevent a number of problems in Nebraska. We previously found that in some counties, judges were consistently reducing court-appointed attorneys' vouchers without sufficient explanation and counsel were unable to contest such reductions. Although the Implementation Committee does not know whether or to what extent this still exists, it remains a strong concern. In addition, in 1993 we found that some contract public defense programs selected contractors solely on the basis of cost, in violation of Nebraska statutes. This remains a concern today.

In capital cases, we previously found that court-appointed attorneys experienced serious difficulty in getting both adequate compensation and necessary litigation expenses (e.g., expert services) approved by the court. Although this is no longer a problem in counties where NCPA services are used (as NPCA provides salaried attorneys and funds its own litigation expenses), TSG received reports that requests for experts in capital cases are still not adequately funded by the court in other counties. TSG remains deeply concerned about this problem, especially in death penalty cases. While limited county budgets are certainly a reality, decisions concerning the selection and compensation of court-appointed counsel and approval of litigation services should never be based solely on costs without regard to an indigent person's right to quality representation.

This problem of under-resourcing indigent defense services is underlined by an existing resource disparity. In 1993, we found that on average, a county attorney's budget was twice that of the local indigent defense budget. While we do not know

whether this budget comparison has changed, we do know that, as in 1993, the in-kind resources of a county attorney, on average, continue to outweigh the resources available to a public defender. Such resources include access to local, state, and federal law enforcement personnel, services, and equipment.

Whether the selection, oversight and determination of compensation and resources provided to court-appointed counsel is performed directly by a county or by a court, an inherent potential conflict of interest exists in either situation. A county is understandably concerned about its budget and expenditures, and a court is similarly concerned about efficient functioning of the court. These concerns often compete with the concerns of providing quality indigent defense services.

Again, the creation of meaningful standards and procedures that would ensure independence and quality in the selection, oversight, and compensation of court-appointed counsel statewide, as discussed above in (1), would not only eliminate the need for local policy boards (which have proven to be ineffective in a number of counties), but would also alleviate the conflict of interest concerns in both the cost-driven contract and the ad hoc assigned counsel systems.

While TSG remains concerned about a number of issues still facing Nebraska's indigent defense system, we are encouraged by the work of the Minority and Justice Task Force and its Implementation Committee and remain available to further assist in implementing positive change.

Appendix A

Adopted by ABA House of Delegates

February 5, 2002

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
CRIMINAL JUSTICE SECTION
COMMISSION ON RACIAL & ETHICS DIVERSITY
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
COMMISSION ON HOMELESSNESS AND POVERTY

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association recognizes that THE TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, dated February 2002, constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.

FURTHER RESOLVED, That the American Bar Association recommends that each jurisdiction use THE TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, dated February 2002, to assess promptly the needs of its public defense delivery system and clearly communicate those needs to policy makers.

THE TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM
February 2002

1. The public defense function, including the selection, funding, and payment of defense counsel,[1] is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.[2] To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.[3] Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.[4] The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.[5]

2. Where the caseload is sufficiently high,[6] the public defense delivery system consists of both a defender office[7] and the active participation of the private bar. The private bar participation may include part time defenders, a controlled assigned counsel plan, or contracts for services.[8] The appointment process should never be ad hoc,[9] but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the

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[1] "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney or an attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

[2] National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (NLADA 1984, ABA 1985) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1 (D).

[3] NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judical Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

[4] Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

[5] ABA, *supra* note 2, Standard 5-4.1

[6] "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase can generally be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

[7] NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

[8] ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

[9] NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

varied requirements of practice in the jurisdiction.[10] Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.[11]

3. Clients are screened for eligibility,[12] and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request,[13] and usually within 24 hours thereafter.[14]

4. Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.[15] Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client.[16] To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.[17]

5. Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.[18] National caseload standards should in no event be exceeded,[19] but the concept of workload (i.e., caseload

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[10] ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Code of Professional Conduct).

[11] NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

[12] For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

[13] NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4 (A).

[14] NSC, *supra* note 2, Guideline 1.3.

[15] American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

[16] NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-2.3, 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

[17] ABA Defense Function, *supra* note 15, Standard 4-3.1.

[18] NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1,4.1.2; ABA Model Code of Professional Responsibility DR 6-101 (lawyers' obligation not to take on more cases than they have competence and time to handle); ABA Counsel for Private Parties, *supra* note 2, Standard 2.2 (B) (iv).

[19] Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost*

adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.[20]

6. Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.[21]

7. The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.[22] The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

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. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.[23] Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.[24] Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases,[25] and separately fund expert, investigative and other litigation support services.[26] No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.[27] This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

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and Quality of Defense Representation (Judicial Conference of the United States, 1998). *See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (1989) [hereinafter "Death Penalty"].

[20] ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

[21] Performance Guidelines, *supra* note 11, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 15, Guideline 5.1.

[22] NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4 (B) (i).

[23] NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1 (B) (iv). *See* NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g., there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

[24] ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

[25] NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

[26] ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

[27] ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.[20]

6. Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.[21]

7. The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.[22] The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

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and Quality of Defense Representation (Judicial Conference of the United States, 1998). *See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (1989) [hereinafter "Death Penalty"].

[20] ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

[21] Performance Guidelines, *supra* note 11, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 15, Guideline 5.1.

[22] NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4 (B) (i).

[23] NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1 (B) (iv). *See* NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g., there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

[24] ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

[25] NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

[26] ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

[27] ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

9. Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.[28]

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.[29]

[28] NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1 (A).

[29] NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

REPORT

"The Ten Principles of a Public Defense Delivery System" were originally developed by James R. Neuhard, Director of the Michigan State Appellate Defender Office and former member of the ABA Standing Committee on Indigent Defendants (SCLAID), and Scott Wallace, Director of Defender Legal Services for the National Legal Aid and Defender Association. Mr. Neuhard and Mr. Wallace conceived of these principles with one goal in mind: to provide experts and non-experts alike with a quick and easy way to assess a public defense delivery system and communicate its needs to policy makers. These ten principles are consistent with existing ABA standards and embody, in condensed form, the major national standards regarding the responsibility of government to provide criminal defense services for those unable to afford legal representation.

History of Public Defense Standards

The recognition of the need for national standards concerning the provision of public defense services began in 1967 with the American Bar Association's *Standards for Criminal Justice, Providing Defense Services,* now in its 3rd edition. This was followed in 1973 by the President's National Advisory Commission on Criminal Justice Standards and Goals, Chapter 13, *The Defense*, and then by the National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States.* The American Bar Association and the National Legal Aid and Defender Association also produced a series of standards covering the areas of appeals, juvenile defense, death penalty, contract defender systems, assigned counsel systems, and defender training. The national standards have also been implemented by a variety of means at the state and local level, including legislation, court rule or decision, incorporation into indigent defense services contracts, adoption by state or local defender program or bar association, and program audit or evaluation according to the standards.

Thus, for legislators and policy makers, there is a mix of mandatory and hortatory standards, guidelines, court rules, and regulations. Collectively they cover the wide diversity of areas where criminal defense systems provide counsel for people of low income facing criminal charges.

The Need for Standards: Problems in the Delivery of Public Defense Services

The introduction to each set of national standards details the reasons precipitating the establishment of those particular standards, including:

- the need for increased specialization in areas such as death penalty representation, appeals and juvenile practice;
- scandals in the selection and payment of attorneys;
- staggering caseloads;
- unduly low salaries (often half that of prosecutors);
- litigation by appointed counsel over fees not even covering the costs of overhead;
- the awarding of low-bid contracts for the provision of public defense services without concern for quality;

- high turnover of staff and appointed counsel;
- no training, investigation, expert witnesses, or sentencing specialists;
- inexperience, incompetence, and the conviction of innocent defendants;
- poor or non-existent basic library resources or research capabilities; and
- gross under-funding.

Traditional governmental funding processes and marketplace incentives have not operated effectively to improve or moderate these problems. Unlike the private sector, clients of public defense do not chose their attorney and cannot fire their attorney if the services they receive are unsatisfactory. The legislators who fund and choose the type of defense delivery system do not directly oversee, receive, or use the services the system provides. Further, the defendants who use the services lack the political influence to voice their concerns to the legislators.

Contributing to these problems are the many entities among which governance responsibilities may be diffused. Responsibility directly or indirectly for the quality of services provided resides in part with the funding authority, judiciary, boards or commissions, grievance processes, and executive branch. Yet, funders and executive officers are not in a position to judge the performance of the system. Meanwhile, clients have little or no say in deciding who their attorney will be and whether attorneys stay on the appointment list, are well paid, or have their fees cut.

In most jurisdictions that lack organized systems, with few exceptions, judges choose the attorneys and determine their pay. Judicial control over the process may create the perception of patronage or concerns that the assigned lawyer chosen and/or paid by a judge will not willingly confront that judge. Often, there are complaints from the bar about too low fees, the cutting of vouchers, or unfair denial of access to the work. Further, turnover is often high, training is almost non-existent, and the quality of representation is subjective to the judge. This power far exceeds any comparable power the judge has over the prosecutor or any other counsel who appears before the judge in the court.

The national standards were developed to address all of these problems and ensure that government provides competent representation for those who cannot afford an attorney of their own. The concept of using standards to address quality concerns is not unique to the criminal defense area. There are other areas of government where strong pressures of favoritism, greed, partisanship, or profits may threaten fundamental quality. Commissioners, county supervisors, and legislators long ago ceased taking the lowest bid to build a school or bridge, realizing that standards were necessary to compare bids with confidence. With standards, they can assume that contractors will comply with and the structures will be built in accord with accepted national standards and codes. Enforcement of standards, in the form of inspection and oversight, help assure the compliance of professionals with national norms in areas where the legislators themselves may lack any expertise.

The Ten Principles of A Public Defense Delivery System

The body of work involving criminal defense standards is impressive, extremely useful, and scholarly in its integration of the Rules of Professional Conduct into areas of practice that are often dissimilar. However, for the most part, the standards are written for lawyers who provide the service and are difficult to assimilate if unfamiliar with or uninvolved in the area.

Additionally, the problem of effectively communicating the needs of a public defense system to legislators will become more difficult as terms shorten and as the number of lawyers continues to decline in our legislatures. It is not that lawyers are a built-in constituency. Often, the strongest and most knowledgeable supporters of quality public defense systems are non-lawyers. However, the breadth and complexity of the body of work in this area naturally means that it will take more time for lawyers to explain the issues and problems to people who are unfamiliar with the area.

Thus, "The Ten Principles of a Public Defense Delivery System" is not a substitute for the national standards, but an effort to make the national standards more accessible so that they may be easily used by those unfamiliar with the national standards to assess promptly the current system, no matter what that system may be.

Conclusion

The American Bar Association recognizes that "The Ten Principles of a Public Defense Delivery System" capture the essence of a effective and efficient public defense delivery system, in accordance with the major national standards. As such, they represent the minimum requirements for systems. It should be noted that there are programs across the country that have reached beyond these minimum requirements to engage in additional activities that expand the role of the defense function and have direct benefits for the community in terms of health, safety, effective sentencing, and the strengthening of families. Such additional activities include: (1) collaborating with law schools, legal service providers, bar associations, community organizations, and civil rights groups; (2) locating defender offices within the communities they serve and working on legislative activities, crime prevention initiatives, and improving relations with clients; and (3) providing representation in collateral proceedings which may subject a defendant to serious liberty or other deprivations.

Through this resolution, the American Bar Association recommends that jurisdictions use "The Ten Principles of a Public Defense Delivery System" as a checklist to assess the strengths and weaknesses of public defense delivery systems and communicate needs to policy makers.

Respectfully submitted,

L. Jonathan Ross, Chair
Standing Committee on Legal Aid and Indigent Defendants

February 2002

Appendix B

Reprinted From "The Indigent Defense System In Nebraska," Spangenberg (1993), A Report on the Work of Nebraska's Indigent Defense Task Force

MAJOR RECOMMENDATIONS

In June 1993, the Chairman of the Task Force appointed a Drafting Committee to review the results of the study and the findings of the research team. Harold. Rock also chaired the Drafting Committee, which was broadly representative of the full Task Force. The Drafting Committee met five times over the summer and the fall to prepare a series of recommendations for the full Task Force. The Spangenberg Group provided staff support for the Drafting Committee during its deliberations.

The Drafting Committee determined and the Task Force concurred that in order to effectuate positive change in Nebraska's indigent defense system, the two most important issues were a restructuring of the system and increased funds. To achieve results in these and other areas, the Task Force believes that an Implementation Committee is absolutely necessary to carry on its work and to implement as many of its recommendations as possible.

These three major concerns are set out under the title, "Major Recommendations." They are followed by a number of other recommendations, all of which are important, but do not rise to the same level of significance of the first three.

1. Commission on Public Advocacy

The Task Force felt strongly that the system for indigent defense in Nebraska should be changed. However, after discussion, it was unanimously concluded that there was no support for a statewide public defender system.

The Task Force looked for a system that would provide a state presence to establish standards and guidelines for existing systems in the state, that would achieve a level of state funding and that would be a statewide advocate for necessary representation and funding. After considering various system models, there was again unanimous agreement that the best system in which Nebraska could achieve these goals would be a Commission on Public Advocacy, similar to ones existing in other states.

Therefore, the Task Force recommends the establishment in Nebraska of a statewide Commission on Public Advocacy to develop policy for and to lend statewide uniformity to the delivery of indigent defense services. The Commission should oversee and coordinate services provided by public defenders and court-appointed counsel throughout the state and be an advocate for improved

indigent defense services with the state legislature, judiciary, the bar and other organizations concerned about indigent defense.

The functions of the Commission should include:

1.a Ensuring adequate funding for indigent defense programs from year-to-year, including a percentage of state funds for distribution to local indigent defense programs.

1.b Developing standards and guidelines applicable to each type of delivery system (elected public defender, contract public defender, assigned counsel) with which each county should comply in order to be eligible for state funds. These additional funds should supplement, not supplant, any already existing county funds. The Commission should be given specific authority to approve state funding for those counties that meet the standards and guidelines, on an annual basis, following an application for such state funds and also to terminate state funding in instances where programs no longer meet the standards and guidelines approved.

1.c Overseeing statewide data collection for indigent defense on such things as caseload, use of resources and workload. Up-to-date and reliable data would enable the Commission and the state to monitor changes in the criminal justice system as well as to accurately predict the funding requirement on a year-to-year basis.

1.d Providing legal services, similar to those provided by the Attorney General to county attorneys, which should include:

appellate representation available upon the request of indigent defense programs in Nebraska.

a capital litigation resource center which would provide expert and investigative funds, back-up legal services and assist trial counsel upon request in court. The resource center should have a full-time staff with strict caseload limitations. There should be a separate state line item for experts, investigators and other costs of litigation that would be available upon the approval of the Commission in the most serious kinds of cases litigated throughout the state.

a major case resource center for back-up and support in serious cases such as child sexual abuse, etc.

The standards and guidelines established by the Commission for each type of indigent defense system should include, but not be limited to:

1.e qualifications and reasonable compensation of court-appointed counsel, with compensation rates based upon current average hourly overhead with a reasonable fee added. The Commission should make recommendations to the Supreme Court for reasonable compensation of court-appointed counsel and reasonable litigation expenses.

Counsel should be assured that they will be paid for all reasonable time expended on cases and paid promptly. Interim payments should be made in complex and extended cases;

1.f the development of a state definition of a "case" for all court appointments. The Commission should work with the Supreme Court, the State Court Administrator's Office and other criminal justice agencies to develop a common statewide definition of a case which would then allow for accurate comparisons of caseload and cost among all of the criminal justice agencies. The State Court Administrator's Office is currently working on such a definition and the Commission should work closely with it in this matter.

1.g representation in conflict of interest cases;

1.h caseload limitation for public defender programs;

1.i availability of resources and funds for expert witnesses, investigators and other services necessary to provide a quality defense for all types of system in Nebraska;

1.j adequate supervisory staff, clerical assistance, and law library access;

1.k adequate and ongoing training for all public defenders and court-appointed counsel throughout the state;

1.l attorney qualification and compensation in capital cases;

1.m early and continuous representation of indigent defendants through all phases of the case;

1.n minimum performance standards for public defenders, contract attorneys and private court-appointed counsel for all case types, e.g., capital, felony, juvenile, misdemeanor, appeals, etc;

1.o standards for removal of counsel from court-appointed lists where appropriate;

1.p a uniform, statewide process for determination and verification of indigency as well as for collection of any administrative fee or other costs assessed through cost recovery or recoupment programs. Attached to this report is a proposed statute that would address all of these issues which the Task Force recommends the state adopt by legislation.

Composition and selection of the Commission on Public Advocacy:

The Task Force agreed that the Commission should consist of nine members and it felt strongly that the state and local bar associations and the

specialized bar associations such as the Nebraska Criminal Defense Attorneys Association should have some input into the process of member selection. However, there is some disagreement among Task Force members about who should appoint the nine members. Although there was clear opposition to selection by the Governor, the Task Force agreed to pass on to the Implementation Committee the full issue of who should appoint the members.

The Task Force recommends that one Commission member be selected from each of the six Supreme Court judicial districts to provide geographic representation. The remaining three positions, including the Chair, should be at-large nominations. Board members should not be salaried, but should receive a per diem or be reimbursed for actual expenses incurred while performing the business of the Commission.

Membership should be restricted to qualified attorneys who either have experience in criminal defense work or who have demonstrated a commitment to strong and adequately funded indigent defense services. No active prosecutors, law enforcement officials or judges should be members of the Commission. The appointment process should assure that all appointees are committed to the principle of providing defense services free from unwarranted judicial or political influence. The budget for the Commission should be a line item in the judicial budget but only for purposes of submitting the budget to the executive and legislative branches.

2. Funding

It is critical that indigent defense services receive additional funding in order to improve the quality of representation in the state. Nebraska's average cost per indigent case in FY 1992 was $160. The average cost per case for 22 states with a similar population, geographic region, or type of system was $235.50. This means that Nebraska at approximately $160 per case contributions fewer resources per case than virtually any other state that shares significant demographic characteristics. In fact, Table 3-11 shows that every state surrounding Nebraska (except South Dakota, where data were not available) provides more dollars per case than Nebraska.

Funding levels should ensure that in counties using public defender programs, budgets are based on established caseload standards and adequately provide for attorney, paralegal, support and investigative staff, as well as necessary experts or other litigation services, and that in counties using private, court-appointed counsel, funds adequately cover average hourly overhead plus a reasonable fee, as well as adequate investigative, expert and other necessary support services.

The current funding level of $7.5 million should be increased by 50% to reach $11 million for FY 1994. Eleven million dollars would bring Nebraska up to

the average cost per case level of the combined 22 states on which we were able to get cost information.

In order to achieve such a figure, it is absolutely critical that the state become a partner with the counties in providing state funds for indigent defense. We are mindful, however, of the funding problems that the state faces in many of its required services and therefore we have developed a package of revenue sources that could be developed in order to meet the $11 million figure. In performing this task, we began with the firm opinion that some General Fund revenue was absolutely essential in developing an appropriate funding package. We also understand that general fund revenue probably cannot afford the full 50% increase immediately and therefore we have developed a number of proposed alternative revenue sources.

The Task Force feels very strongly that each component of the criminal justice system in Nebraska should receive balanced and adequate funding to account for the proper role of each agency, including law enforcement, prosecution, courts, public defense, corrections, probation and parole. As stated elsewhere in this report, the policy and fiscal effects of one agency in the criminal justice system affect the need for additional resources and personnel in other agencies. For example, when federal funds are made available to state and local government for increased police officers, there will be a rippling effect through all other components of the criminal justice system requiring them to process the new cases. Thus, the Task Force is concerned not only with adequate and balanced funding throughout all components of the criminal justice system, but that there should specifically be adequate funds for indigent defense to meet all new policy decisions regarding criminal law.

In addition to the General Fund appropriation, the Task Force recommends the following funding package:

2.a The amount withheld from 10% bail bond deposits should go specifically to the Commission as part of the funding package.

2.b A small increase in civil case filing fees should be earmarked specifically for indigent defense.

2.c The $3 surcharge on court costs currently available to help fund the criminal history information system should be continued after the expiration date in 1997 and earmarked for indigent defense services.

2.d A $40 administrative cost be imposed on all indigent defendants with discretion given to the court to waive it when justice requires.

2.e A new category of defendants who are "indigent but able to contribute" could be asked to contribute additional funds when they are able and upon a schedule developed by the Advocacy Commission.

The Task Force further recommends that the Nebraska legislature by statute mandate that all portions of federal, state and local funds allocated for the prosecution of cases in any county, counties or judicial district, must be matched with funds for defense services totaling no less than 60% of that appropriated under any government source for the prosecution.

3. Implementation

A broadly based implementation committee, made up of representatives of the Nebraska State Bar Association, Nebraska Criminal Defense Attorneys Association, private attorneys, public defenders, county officials, state legislators, judges and representatives of the executive branch, should be formed to ensure that the recommendations in this report are acted upon and implemented without delay. The group should not only represent those who are directly involved with the delivery of indigent defense services, but also those who are familiar with the legislative process. Members should be selected on the basis of their demonstrated commitment to and interest in criminal defense services.

We cannot emphasize enough the importance of ensuring the formation and functioning of this implementation committee. Success in achieving significant improvements in Nebraska's indigent defense system will depend heavily on the energy and dedication of this group so it is critical that the committee be organized as soon as possible.

OTHER IMPORTANT RECOMMENDATIONS

1. All pertinent laws concerning the provision of court-appointed counsel for indigents in Nebraska should be brought together into one, comprehensive, recodified statute.

Appendix A contains a memo to the Task Force regarding several aspects of the law in Nebraska. In most cases, there is statutory authority for appointment of counsel but in other instances, state and federal interpretation of constitutional law has not been codified, e.g., in child support contempt or paternity cases. The Task Force recommends that, where appropriate statutory authority does not exist, it be created to assure that a lawyer be appointed in every case involving an indigent whose liberty interest is at stake (see Appendix B), including statutes which provide for the appointment of a guardian ad litem but do not indicate that the guardian ad litem must be a lawyer.

The Task Force also strongly recommends that when a judge in Nebraska determines that a person is indigent and the judge appoints counsel, that counsel, whether a private court-appointed lawyer or a public defender, receive sufficient resources to assure quality representation.

2. Efforts should be undertaken to reduce the number of minor misdemeanor cases for which counsel is currently being appointed by some county court judges in Nebraska. In addition to the recommendation that would establish by statute written eligibility standards, the Task Force further recommends the following measures:

a. That all misdemeanors in Nebraska be reclassified by sentence length with a category developed that would encompass misdemeanors that do not result in a jail sentence.

b. That all minor misdemeanors be examined and that those for which jail sentences are no longer being imposed be decriminalized.

c. That legislation be enacted which would permit county attorneys to treat certain minor misdemeanors as infractions which would result in no counsel being appointed.

d. That legislation be enacted to encourage pre-filing and pre-trial diversion in appropriate cases.

e. That all county attorneys be encouraged to screen more carefully in minor cases to avoid unnecessary court appointments and to reduce the volume of minor cases entering the court system in Nebraska.

3. All statutes concerning the assignment of guardians ad litem should be made uniform to specify that counsel be appointed in order to ensure that attorneys are provided to all sides in such cases.

4. By statute, county attorneys should be prohibited from engaging in activities that involve a conflict of interest or that are inappropriate and potentially damaging to indigent individuals' right to receive adequate representation by appointed counsel. They should not:

Participate in the process of determining indigency.
Participate in the process of selecting contract public defenders.
Participate in the process of determining whether a conflict exists in any particular case and which attorneys should be appointed as a result.
Review vouchers of court-appointed counsel for any purpose.
Participate in the process of determining whether appointed counsel is entitled to expert services, investigators, etc., or who the experts should be and how much they should be paid.

By statute, a fiscal impact statement should be required for all proposed legislation in Nebraska relating to the justice system and should address the fiscal impact of every component in the criminal justice system affected by each bill.

There should be a statute mandating salary parity between public defenders and county attorneys. Discrepancies in pay between the two offices implicitly suggest an order of importance. Lower salary unfairly deters some highly qualified lawyers from considering careers with the public defender's office. When the county public defender handles municipal ordinance cases, there should also be parity between that of the public defender and the city attorney.

Judges should not be permitted to reduce an attorney's reasonable fee request or additional expense request without explaining, on the record, the reason for taking such an action. The practice of undocumented voucher reduction or denials of requests or funds for experts and other necessary litigation expenses can lead to an arbitrary system that deters attorneys who require expert services or who must spend additional time on a case from taking such actions. This threatens to create a situation in which the quality of representation for a client can be sacrificed because all the necessary costs required by the case are not compensated for adequately.

The Task Force recommends that the statute pertaining to elected public defenders in Nebraska be revised to require that any elected public defender in a county with a population of 35,000 must be full-time and cannot engage in the private practice of law. However, it further recommends that where appropriate, deputy assistant public defenders should be permitted to work part-time.

As indicated throughout this report, the Task Force is concerned about the fact that counties relying on contract public defender programs are not meeting each of the standards and guidelines set out in the statute for such programs. The Task Force is particularly concerned about the appointment of local policy boards required by the statute. The study shows that these types of local boards simply are not working in Nebraska. The standards and guidelines set out in the statute to be monitored and enforced by the policy board are essential. We recommend a change in the statutory language where a contract public defender program exists. The judicial district policy board would be appointed by the district judges and should consist of not more than five members and should reflect geographical diversity. At least two of the members should be practicing attorneys familiar with criminal law and there should be no more than one member from each county.

> The judicial district policy board would have the same statutory responsibilities as that which now exist in each contracting county. No judge, prosecutor or law enforcement official should serve on the judicial district policy board. This is consistent with the current statute for policy boards at the county level.

Once in place, the Commission on Public Advocacy should encourage the establishment of a pilot judicial district public defender program currently authorized by state statute.

The Task Force strongly urges that training opportunities for public defenders and court-appointed counsel be expanded in Nebraska to include not only those lawyers who initially join a list but that there also be an ongoing program available each year to assure that attorneys already doing court-appointed work are able to keep up to date with all of the changes in the law and the manner of practice.

The Task Force recommends that each county responsible for funding indigent defense establish a single line item in its budget for all indigent defense costs including fees, expenses, experts, administration and other costs of litigation. This will make it much easier to collect data that are reliable and comprehensive.

The Task Force recommends that the Supreme Court of Nebraska promulgate written standards and guidelines to ensure that only the truly indigent receive court-appointed counsel. The guidelines should include uniform eligibility standards, verification of income and two categories of defendants eligible for court-appointed counsel. The Task Force requests that the court give serious consideration to the principles set forth in the draft enclosed to this report as Appendix A.

Appendix C
Nebraska's Indigent Defense Systems, Expenditures and Case Filings by County
1992 and 2003

County	2003 Population	Primary System 1992	Primary System 2003	Total Actual Indigent Defense Expenditures FY92	Total Actual Indigent Defense Expenditures FY03	Increase/ Decrease Percent	Felonies Filed in County Court 1992	Felonies Filed in County Court 2003	Increase/ Decrease Percent	Juvenile/ Cases Filed in 1992	Juvenile Cases Filed in 2003	Increase Decrease Percent
Adams	31151	EPD	EPD	$85,941	$393,631	358%	136	229	68%	197	396	101%
Antelope	7452	AC	AC	$17,071	$51,058	199%	11	28	155%	16	37	131%
Arthur	444	AC	AC	$0	NA	NA	0	0	0%	0	0	0%
Banner	819	AC	AC	$3,465	$2,521	-27%	2	1	-50%	0	4	??
Blaine	593	AC	AC	$1,065	NA	NA	1	3	200%	0	0	0%
Boone	6259	AC	CPD	$18,715	$53,776	187%	12	12	0%	28	25	-11%
Boyd	2438	AC	AC	$0	$20,000	%	2	3	50%	11	7	-36%
Box Butte	12158	EPD	EPD	$77,441	$119,550	54%	79	87	10%	151	186	23%
Brown	3525	AC	AC	NA	NA	NA	11	11	0%	10	6	-40%
Buffalo	42259	EPD	EPD	$249,374	$491,608	97%	165	318	93%	199	308	55%
Burt	7791	AC	AC	$15,370	$56,326	266%	24	38	58%	21	35	67%
Butler	9767	AC	CPD	$31,798	$97,210	206%	12	41	242%	75	94	25%
Cass	24334	EPD	EPD	$77,358	$154,034	99%	76	193	154%	86	148	72%
Cedar	9615	AC	AC	$12,887	$44,225	243%	24	18	-25%	19	16	-16%
Chase	4068	AC	AC	$17,357	$13,427	-23%	9	27	200%	11	11	0%
Cherry	6148	AC	AC	$7,914	$81,261	927%	21	58	176%	33	11	-67%
Cheyenne	9830	AC	AC	$101,401	$150,743	49%	50	90	80%	24	41	71%
Clay	7039	AC	AC	$35,650	$26,000	-27%	17	45	165%	31	58	87%
Colfax	10441	AC	CPD	$33,613	$94,335	181%	23	42	83%	44	121	175%

County	2003 Population	Primary System 1992	Primary System 2003	Total Actual Indigent Defense Expenditures FY92	Total Actual Indigent Defense Expenditures FY03	Increase Decrease Percent	Felonies Filed in County Court 1992	Felonies Filed in County Court 2003	Increase Decrease Percent	Juvenile Cases Filed in 1992	Juvenile Cases Filed in 2003	Increase Decrease Percent
Cuming	10203	AC	AC	$27,482	$45,706	66%	29	24	-17%	27	15	-44%
Custer	11793	CPD	AC	$68,122	$68,944	1%	48	57	19%	57	84	47%
Dakota	20253	EPD	EPD	$311,312	$252,247	-19%	477	322	-32%	191	191	0%
Dawes	9060	EPD	EPD	$33,037	$63,720	93%	71	68	-4%	53	74	40%
Dawson	24365	EPD	EPD	$90,248	$160,783	78%	225	318	41%	347	309	-11%
Deule	2098	AC	AC	$13,072	$16,975	30%	13	20	54%	4	17	325%
Dixon	6339	AC	AC	$16,995	$35,394	108%	16	20	25%	25	19	-24%
Dodge	36160	AC	AC	$108,135	$306,295	183%	47	212	351%	161	263	63%
Douglas	463585	EPD	EPD	$1,529,321	$4,324,936	183%	3336	3873	16%	1,839	2,026	10%
Dundy	2292	AC	CPD	$13,028	$18,530	42%	10	2	-80%	9	4	-56%
Fillmore	6634	AC	CPD	$35,136	$72,457	106%	34	42	24%	38	74	95%
Franklin	3574	AC	AC	$12,964	$59,124	356%	11	20	82%	13	17	31%
Frontier	3099	AC	AC	$12,729	$NA	NA	5	14	180%	2	25	1150%
Furnas	5324	AC	AC	NA	NA	NA	16	27	69%	23	46	100%
Gage	22993	AC	CPD	$59,395	$128,391	116%	62	87	40%	134	146	9%
Garden	2292	AC	AC	$2,768	$20,555	643%	18	9	-50%	6	19	217%
Garfield	1902	AC	AC	$21,000	$11,407	-46%	0	4	??	7	8	14%
Gosper	2143	AC	AC	$3,621	$18,495	411%	2	16	700%	12	27	125%
Grant	747	AC	AC	$0	NA	NA	0	6	??	0	0	0%
Greeley	2714	AC	AC	NA	$51,278	NA	2	5	150%	21	11	-48%
Hall	53534	EPD	EPD	$266,073	$797,839	200%	506	666	32%	314	382	22%
Hamilton	9403	AC	AC	$33,944	$105,056	209%	23	91	296%	58	51	-12%
Harlan	3786	AC	AC	$15,901	$30,302	91%	17	26	53%	12	14	17%

County	2003 Population	Primary System 1992	Primary System 2003	Total Actual Indigent Defense Expenditures FY92	Total Actual Indigent Defense Expenditures FY03	Increase/ Decrease Percent	Felonies Filed in County Court 1992	Felonies Filed in County Court 2003	Increase/ Decrease Percent	Juvenile Cases Filed in 1992	Juvenile Cases Filed in 2003	Increase Decrease Percent
Hayes	1068	AC	AC	$0	NA	NA	4	3	-25%	2	1	-50%
Hitchcock	3111	AC	AC	$19,240	$16,815	-13%	7	16	129%	9	6	-33%
Holt	11551	EPD	EPD	$93,440	$48,507	-48%	43	79	84%	69	71	3%
Hooker	783	CPD	CPD	$1,605	$1,988	24%	1	0	-100%	1	5	400%
Howard	6567	AC	AC	$22,415	$62,530	179%	13	35	169%	24	43	79%
Jefferson	8333	AC	CPD	$36,128	$47,485	31%	20	54	170%	24	54	125%
Johnson	4488	AC	CPD	$22,070	$46,000	108%	6	48	700%	13	15	15%
Kearney	6882	EPD	EPD	$44,944	$72,572	61%	11	36	227%	28	49	75%
Keith	8875	CPD	CPD	$61,622	$103,401	68%	66	78	18%	79	57	-28%
Keya Paha	983	AC	AC	$0	$3,281	??	3	6	100%	2	0	-100%
Kimball	4089	AC	AC	$10,721	$65,073	507%	19	35	84%	25	44	76%
Knox	9374	AC	CPD	$36,565	$99,301	172%	38	37	-3%	32	14	-56%
Lancaster	250291	EPD	EPD	$1,497,242	$3,759,039	151%	954	1741	82%	593	1,729	192%
Lincoln	34632	EPD	EPD	$186,493	$430,549	131%	310	497	60%	358	425	19%
Logan	774	AC	AC	$0	$0	0%	0	1	??	0	1	??
Loup	712	AC	AC	$560	$2,433	334%	2	3	50%	1	0	-100%
Madison	35226	EPD	EPD	$269,781	$637,041	136%	182	294	62%	202	309	53%
McPherson	533	AC	AC	$0	$3,000	??	1	1	0%	0	3	??
Merrick	8204	AC	AC	$26,367	NA	NA	48	45	-6%	53	14	-74%
Morrill	5440	AC	AC	$31,570	$18,276	-42%	7	19	171%	40	37	-8%
Nance	4038	AC	AC	$8,450	$77,625	819%	9	50	456%	14	16	14%
Nemaha	7576	AC	AC	$15,506	$66,999	332%	35	45	29%	18	25	39%

County	2003 Population	Primary System 1992	Primary System 2003	Total Actual Indigent Defense Expenditures FY92	Total Actual Indigent Defense Expenditures FY03	Increase/ Decrease Percent	Felonies Filed in County Court 1992	Felonies Filed in County Court 2003	Increase/ Decrease Percent	Juvenile Cases Filed in 1992	Juvenile Cases Filed in 2003	Increase Decrease Percent
Nuckolls	5057	AC	AC	$24,178	$41,970	74%	21	18	-14%	25	29	16%
Otoe	15396	EPD	EPD	$71,157	$127,585	79%	50	74	48%	69	119	72%
Pawnee	3087	AC	AC	$26,195	$22,156	-15%	11	7	-36%	7	5	-29%
Perkins	3200	AC	AC	$19,280	$15,886	-18%	14	15	7%	4	9	125%
Phelps	9747	EPD	EPD	$60,947	$172,917	184%	35	63	80%	89	59	-34%
Pierce	7857	AC	CPD	$19,168	$52,895	176%	20	22	10%	12	26	117%
Platte	31662	AC	EPD	$189,790	$240,106	27%	70	196	180%	213	371	74%
Polk	5639	AC	CPD	$23,871	$31,248	31%	12	24	100%	29	38	31%
Red Willow	11448	AC	CPD	NA	$87,887	NA	32	43	34%	132	99	-25%
Richardson	9531	AC	CPD	$82,746	$66,527	-20%	39	42	8%	26	68	162%
Rock	1756	AC	AC	NA	$2,869	NA	3	5	67%	0	5	??
Saline	13843	CPD	AC	$68,595	$33,475	-51%	42	108	157%	30	110	267%
Sarpy	122595	EPD	EPD	$322,627	$668,017	107%	433	935	116%	632	717	13%
Saunders	19830	EPD	EPD	$73,842	$87,276	18%	53	88	66%	54	78	44%
Scotts Bluff	36951	EPD	EPD	$290,982	$441,049	52%	274	214	-22%	322	401	25%
Seward	16496	EPD	EPD	$75,384	$185,052	145%	79	77	-3%	79	118	49%
Sheridan	6198	EPD	EPD	$64,630	$87,091	35%	55	122	122%	115	97	-16%
Sherman	3318	AC	AC	$22,294	$25,133	13%	5	9	80%	10	7	-30%
Sioux	1475	AC	AC	$276	$2,537	819%	0	4	??	4	1	-75%
Stanton	6455	AC	AC	$22,519	$60,148	167%	20	32	60%	41	34	-17%
Thayer	6055	AC	AC	$42,972	$53,143	24%	22	8	-64%	26	22	-15%
Thomas	729	AC	AC	$0	NA	NA	0	1	??	0	1	??

County	2003 Population	Primary System 1992	Primary System 2003	Total Actual Indigent Defense Expenditures FY92	Total Actual Indigent Defense Expenditures FY03	Increase/ Decrease Percent	Felonies Filed in County Court 1992	Felonies Filed in County Court 2003	Increase/ Decrease Percent	Juvenile Cases Filed in 1992	Juvenile Cases Filed in 2003	Increase/ Decrease Percent
Thurston	7171	AC	AC	$4,830	$16,968	251%	5	20	300%	6	16	167%
Valley	4647	AC	AC	$31,722	NA	NA	12	20	67%	24	29	21%
Washington	18780	AC	AC	$50,410	$125,609	149%	46	108	135%	53	86	62%
Wayne	9851	AC	AC	$26,212	$67,127	156%	5	31	520%	27	14	-48%
Webster	4061	AC	AC	$3,750	$42,243	1026%	7	18	157%	19	31	63%
Wheeler	886	AC	AC	NA	$128	NA	2	1	-50%	5	0	-100%
York	14598	EPD	EPD	$59,697	$86,593	45%	77	95	23%	110	75	-32%
TOTAL	1,712,273			$7,523,505	$16,847,267	124%	8,866	12,696	43%	8,059	10,909	35%

AC= Assigned Counsel
CPD=Contract Public Defender
EPD= Elected Public Defender
NA= Not Available