AN ANALYSIS OF PROGRAMMATIC
AND POLICY CONCERNS RELATING TO
THE DELIVERY OF INDIGENT DEFENSE
SERVICES IN THE
STATE OF RHODE ISLAND

THE AMERICAN UNIVERSITY
CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
Institute for Advanced Studies in Justice
The American University Law School
Washington, D.C.

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AN ANALYSIS OF PROGRAMMATIC
AND POLICY CONCERNS RELATING TO
THE DELIVERY OF INDIGENT DEFENSE
SERVICES IN THE
STATE OF RHODE ISLAND

WASHINGTON COLLEGE OF LAW
The American University

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I. INTRODUCTION

In December of 1978, Walter J. Kane, the Director of the Administrative Office of the Rhode Island Courts, requested technical assistance from L.E.A.A. to examine certain aspects of the state's indigent defense delivery system. Gregory C. Brady of L.E.A.A.'s adjudication division discussed the request with Howard Eisenberg, director of the National Center for Defense Management of the National Legal Aid and Defender Association and Courts Technical Assistance Project staff of American University. Because NCDM's technical assistance resources were already fully committed, it was determined that Mr. Kane's request would be handled by the Courts Technical Assistance Project.

This request as originally submitted asked for assistance in two major areas: 1.) the development of a method for measuring the present and future demands for indigent defense services in the state, which would be used for planning and resource allocation purposes, and 2.) the development of alternatives for improving present services and assuring adequate future services to indigent defendants. Implicit in this second aspect of technical assistance need was an evaluation of the existing public and private indigent defense system.

Because of the range of issues inherent in above-mentioned areas, and because of a conviction that the scope of assistance envisioned by the requestor would have to be scaled down to be compatible with the project resources, a problem definition visit was scheduled for early February 1979. The purposes of this visit were to clarify problems and objectives involved in the assignment and to formulate an approach and timetable for providing the assistance.
A three member consulting team was formed to conduct the problem definition visit: Marshall Hartman and Nancy Goldberg of the National Defender Institute in Chicago, both of whom possess extensive experience in all facets of defense services; and Professor Timothy Hennessey of the Political Science Department at the University of Rhode Island, who has worked extensively with component agencies of the state's criminal justice system. A project staff member accompanied the consultants on the February visit.

Following the February work, the consultants prepared a report with their findings and recommendations. They endorsed the notion of an evaluative assessment of the public/private indigent defense system and laid out a suggested methodology to accomplish the tasks involved. It was very apparent that the areas involved came under the respective authority of the Public Defender and the Administrative Office of the Courts. It was felt to be essential that, prior to providing additional assistance, these two agencies reach a consensus on the focus of subsequent technical assistance efforts and on who would bear ultimate responsibility in the different areas for implementing any resultant recommendations for action.

While this consensus was being reached, interviewing budgetary action by the State legislature, which increased the attorney staff of the Public Defender's Office, decreased the priority for conducting a detailed analysis of the Public Defender's Office. As a result, in May the Administrative Office of the Courts asked the project to provide a second phase of technical assistance with emphasis on some refined areas which came within the Supreme Court and the A.O.C.'s authority to implement. While a projection of present and future demands for indigent defense services was still desired, a general
assessment of the overall indigent defense system was requested, along with a more detailed examination of the existing method for appointing counsel in the state's trial courts.

Professor Hennessey was joined on the second phase site work by Messrs. Bruce D. Beaudin and Thomas Guidoboni. Mr. Beaudin, Director of the District of Columbia Pretial Services Agency, formerly served as a public defender and has extensive experience in all facets of the criminal justice system. Mr. Guidoboni recently returned to the private practice of law after seven years with the District of Columbia's Public Defender Service where he had administrative as well as extensive trial responsibilities.

The consultants spent three days on site in Rhode Island, June 6-8, 1979. During this time, they interviewed a number of officials connected with the state court system. (A list of those interviewed is included as Appendix A of this report.)

In addition, court proceedings were attended and a number of background documents previously submitted were examined. These documents included internal memoranda of the Public Defender's Office relating to appointment of counsel, a description of the court system in the State of Rhode Island, statistics prepared by various courts and the Administrative Office of the Courts, budget and annual reports of the Public Defender's Office, and other memoranda concerning technical assistance requests. The consultants analyzed the documents individually and collectively in connection with the on-site observations.
Based upon their observations and discussions during the site visit, the consulting team submitted the following report which contains their analysis and recommendations. Although the recommendations were not completely formulated until completion of the site visit, some of the notions contained in them were discussed with various officials of the system and received general support. Some of the recommendations will require follow-up assistance of a technical assistance or contractual nature if they are to be implemented. Finally, some of the recommendations will require the concerted effort and commitment of all involved agencies if they are to be implemented.
II. ANALYSIS OF THE EXISTING SITUATION

The State of Rhode Island contains a mixture of cultures that provides a rich environment. In the City of Providence alone the Rhode Island School of Design, Brown University, the University of Rhode Island, and other such institutions provide an atmosphere that is charged with reform and intellectualism. At the same time, a "leave things as they be" attitude provides a check and balance for the reform-minded.

The court system in Rhode Island is at once unified yet separate, distinct, and often fragmented. Funded entirely with state funds, individual courts operate almost autonomously. Recent acceptance of the principles behind effective court administration have motivated all the courts to examine their business and the manner in which they perform. As a result of this introspection, a healthy approach has evolved toward analyzing such problems as congestion and the reasons for it in an attempt to reach that elusive quality "justice." It is precisely because of this approach that the consultant team, whose task it was to look at the single problem of the representation of indigents charged with crimes at the arraignment, trial, and appellate levels, deemed it necessary to explore the entire "legal culture" in which the criminal justice system operated. Therefore, the team, as it conducted its on-site interviews observed some activities that were beyond the formal scope of the assignment. These activities, since they are part
and parcel of the issue of adequate justice, will be mentioned in passing.

Basically, this report can be divided into two main components: the operations of the State Public Defender's Office and its role in the determination of indigency; and, the operations of the Family, District, Superior and Supreme Courts as they deal with the appointment of counsel for indigents.

In approaching the problem of providing counsel for those charged with crime who have not retained or are unable to retain their own attorneys, it is necessary to note that in Rhode Island few private attorneys regularly practice criminal law and, until now, there has been little incentive for young lawyers to engage in the practice of criminal law. Also, since there are no nearby law schools, the availability of law student representation by way of clinical programs is nonexistent.

As in other jurisdictions, the need for counsel varies according to the level of crime charged. Juveniles charged with delinquency, adults charged with minor misdemeanors, adults charged with minor felonies, and adults charged with serious felonies do not all require the same level of representation, nor is the nature of representation furnished the same at the appellate level as is required at the trial level. It is with these notions in mind that the team approached its task.

We discovered that with respect to the individual courts the following situations existed:
A. **State Supreme Court.**

As of the date of our visit, approximately eighty criminal appeals assigned to the Public Defender were awaiting briefs and arguments. It was also reported that the Office of the Attorney General was, in many cases, unable to provide briefs more than one or two days in advance of oral argument and sometimes not until the actual day of the argument. Thus, the Supreme Court's ability to dispose of its cases in a timely manner was severely hampered by the lack of resources in both the Public Defender's and the Attorney General's offices.

B. **Superior Court.**

At the Superior Court level there seemed to be no real bottleneck although there was a growing need for the appointment of counsel other than the Public Defender in conflict of interest cases. At the same time, it was reported that most of the serious felony trials had been assigned to a small number of Public Defender staff attorneys. This situation has in the past resulted in the delay of some trials, and may have a similar result in the future.

C. **District Court.**

At the District Court level fewer than 50% of the defendants were represented by counsel at all and in very few instances were felony defendants represented at this level. In no case were defendants represented at initial presentment by appointed counsel.
D. Family Court.

At the Family Court level, as the result of innovative programs initiated by the Chief Judge (e.g., and the Guardian Ad Litem program) the need for "social services" representation as distinguished from the very real need for legal representation was being addressed. In light of recent Supreme Court decisions, and the paucity of available attorneys, the Family Court may well have to face soon the reality of a need for additional attorney services. It is apparent, however, that there was need to have the Public Defender present in the Family Court for criminal and quasi-criminal proceedings.

The team also observed that there was a lack of continuity between representation in felony cases at the District Court level and the Superior Court level. In addition, there was no means other than questioning by the judge at the time of initial presentment for determining adequate background investigation for purposes of setting bail. There also appeared to be no formal, or even informal, diversion programs of the type which might alleviate some of the present calendar congestion. Although there once existed a release program and a diversion program both had been discontinued due to a lack of state funding despite the general consensus that both were excellent.
As a final observation the team noted that, unlike in most other jurisdictions, every case initiated by police arrest was brought into court at the District Court level. There was no prosecutorial review until much later in the process (a minimum of 60 days in felony cases).

Given these circumstances the team formulated a number of recommendations that pertain not only to the development of standards for providing counsel but also for some limited systematic changes that should contribute to the enhancement of justice in the State of Rhode Island.
III. RECOMMENDATIONS AND COMMENTARY

A. Indigent Defense Services Generally

1. Recommendations

   The present system of providing representation for indigents should be revised to provide the following:

   a.) A redistribution of attorneys at the appellate level should be made so that more private lawyers and fewer Public Defender lawyers are appointed;

   b.) The development of a "bank" of competent trial counsel at the Superior Court (trial) level should be undertaken to accommodate the need for the appointment of counsel at the felony level in cases of conflict and to provide for a certain degree of "mixed" representation at this level with the understanding that the degree of trial expertise within the Public Defender's Office requires that the bulk of appointments be made to Public Defender attorneys;

   c.) Representation of indigents at the District Court level should be divided between private counsel and the Public Defender, with the Public Defender assuming appointments in felony cases which are targeted for Superior Court and private counsel, less experienced in trial work, being appointed for misdemeanants;

   d.) The Public Defender should continue to supply limited representation in Family Court and private counsel should be encouraged to assume the bulk of the representation there; and
e.) Uniform standards must be developed for the determination of indigency, the payment of appointed counsel fees, and for limited contribution by defendants in appointed cases.

2. Commentary:

a.) It was clear to the consultants that there was a need at the appellate level for additional assistance for both the defense and prosecution in order to assure that briefs are submitted in a timely fashion and arguments scheduled accordingly.

It was conceded by most people interviewed that the skills needed for the briefing and arguing of appellate cases were substantially different from those required for the trial of criminal cases. Thus, many lawyers who practice primarily civil law, but who are skilled in the preparation of trial briefs or briefs for administrative hearings could be called upon to provide representation at the appellate level. Since the trials of felony cases are generally conducted by experts (staff attorneys in the offices of the Public Defender and the Attorney General were described as being the best available) it would be a simple matter for those trial assistants to brief appellate counsel on the issues to be researched and argued. At the same time, the appointment of new counsel would permit a fresh evaluation of the conduct of the trial.

This recommendation and others that involve the development of a system of "mixed" representation are based on a principle that has been found to be of value in other jurisdictions viz. when the private Bar is involved to a greater
degree in the conduct of criminal cases they are more likely to support and be interested in the reforms advanced in the criminal justice system.

Our observations, supported by interviews, confirm the fact that the Public Defender could not handle all the appeals with dispatch. Either the excellence of their work product would suffer or the delay might become intolerable. We believe that the Public Defender should not be precluded from handling appeals, since there are many cases in which particular and significant issues, e.g. the death penalty, are appropriately handled by the Public Defender's Office. Not all cases are of this significance and therefore, the Public Defender's participation at the appellate level should be substantially curtailed. At the same time, it might be appropriate for the Attorney General, whose office is also experiencing difficulty in preparing appellate briefs in a timely fashion, to contract out some of his appellate work to the private bar.

b.) The team found that there was an increasing need for additional lawyers to be available for appointment at the trial level. There seems to be, in the State of Rhode Island, a dearth of what one might call qualified criminal trial practitioners. Difficult though it may be, an effort should begin to develop interest on the part of the Bar. One method of accomplishing this may be connected with recommendations 1 c.) and 1 e.) above.
As the result of recent decisions, (e.g. Holloway v. Arkansas, 98 S.Ct. 1173 (1978)), it may well be that in cases with multiple defendants non-Public Defender lawyers will have to be appointed. If the Public Defender is able to continue handling most of the felony trials (as it appears that he will) the need will not be great but will require some systematic method for insuring adequate representation. It also might well be appropriate for the Public Defender to consider establishing a legal education program for appointed counsel.

c.) The situation at the District Court level was both interesting and unique. Interviews with officials operating in that Court indicated that, for the most part, police charges were "papered" in the Court as they were brought from the street. In fact, at initial presentment in both felony and misdemeanor cases, a policeman carried out the traditional prosecutorial function. Most defendants were unrepresented by counsel and even those charged with felonies had no counsel at arraignment.

We do not wish to criticize a system which disposes of most cases to the satisfaction of most defendants who, although unrepresented by counsel, negotiate their dispositions with either a police officer or a part-time City solicitor. Given the practice of the Court, it is unlikely that anyone would complain on Argersinger or Scott v. Illinois, 99 S.Ct. 1158 (1974) grounds. Since no or relatively few defendants are
incarcerated, appointment of counsel is not constitutionally compelled. At the same time, we should mention that should the Court begin to impose punishments that includes incarceration the situation will change drastically.

We believe that the Public Defender, in order to conserve his limited resources, should provide counsel for those charged with felonies at the District Court level for two reasons: 1.) the bail decision is a most important one and counsel should be available to assist the defendant in securing release during a period which is conceded to be two months or longer; and 2.) the need for continuity of counsel in a felony case in order to properly prepare that case for trial, is beyond question.

(At this point we should note that we were told that a number of cases at the Superior Court level were described as "warranted" cases. What this means is that many defendants who had Informations returned at the Superior Court level, for one reason or another, probably due more to systematic failures in the notification process than any other reason, fail to appear in answer to the Information. As a result, a high number of cases were listed as "warranted" cases. In Recommendation D below, we will discuss one alternative that might alleviate this situation. At the same time, continuity of representation, as proved in a number of studies, will also positively affect this problem.)
It is our view that, given the present situation, young lawyers with little criminal experience could provide assistance at the District Court level in misdemeanor cases. At worst, their performance could not really hurt anyone. At the same time, involving them at this level could provide encouragement for them to become involved in the overall conduct of the criminal justice system and even spur interest in representing defendants at the Superior or Appellate Court levels.

d.) As has been noted, the innovative practices and programs begun under the direction of Judge Gallogly fulfill a need for much of the social work necessary in the Family Court. As the law has developed in recent years, and as proceedings that parallel criminal adult proceedings become more prevalent in the Family Court there is a need for some criminal defense expertise. The presence of the Public Defender to provide both representation in specific cases and assistance to other appointed counsel or others working at the direction of appointed counsel is vital. Again, as has been said in the Commentary to 1 c.), the development of a "bank" of available attorneys will have the salutary aspects mentioned above.

e.) It is clear that whether the Public Defender or private counsel is appointed, uniform standards of indigency should be developed. There are as many standards as there are courts. We have provided in the Appendices an example of standards in
one jurisdiction. It would be difficult to attempt in this
document to suggest what standards would be appropriate for
Rhode Island. (See Recommendation F and its Commentary.)

Clearly, if counsel is to be appointed at the
District Court, Family Court, Superior Court and Appellate
Court levels, some method for determining the amount of pay-
ment for their services should be adopted. We have provided
in the Appendices the Federal Guidelines for Payment of Counsel
and suggest that they serve as a starting point for this de-
velopment. (See Recommendation F.)

In the Rhode Island courts the determination of indigency
is an all or nothing proposition. More and more, jurisdictions
are requiring defendants to pay partial contribution for repre-
sentation. This procedure serves the dual purpose of helping
to defray the cost of providing counsel, while making counsel
available for those who would not qualify for counsel completely
paid for by the state. An example of this system is included
in the Appendices.

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B. Public Defender Resources

1. Recommendation

The Public Defender, in order to maximize the use of limited resources, should consider the following:

a.) The Unit presently designated the Appellate Unit should be restructured. That portion of its work which has been in the nature of staff training should be continued under the auspices of a continuing legal education program for the benefit of all staff attorneys. That portion of its work which is strictly the writing of appellate briefs and argument before the Supreme Court should continue on a limited basis.

b.) The Public Defender should consider the employment of a non-lawyer manager to handle the management of nonlegal office activities, for which the Director lacks sufficient time.

c.) The Public Defender, or his designee, should design and implement a systematic method of case evaluation and assignment on an ongoing case review basis.

d.) In order to provide his attorneys with support services the Public Defender should consider the establishment of an Offender Services Division which would provide: pretrial social services plans (employment, counselling, etc.) and pre-sentence investigation workups. Consideration should also be given to augmenting investigative services.

2. Commentary:

a.) We observed that the much heralded unit described as the Appellate Unit was inundated with more than just
appellate work. Whether by design or by happenstance attorneys assigned to this Unit consider it as much their mission to provide legal education services to the public defender trial staff as to carry out the preparation and argument of appeals. Given the need for trial attorneys and the excellent reputation of the Defender Office at producing trial attorneys we believe that the Appellate work should be limited to those cases in which the Public Defender has a particular interest or which may have substantial system impact.

It struck the Public Defender as vital, and we concur, that there must be someone available to brief and update legal issues for the trial attorneys and someone with whom to discuss particular legal problems. It is our opinion that at least one position should be dedicated solely to the design and implementation of a continuing legal education program for the office. In addition, thought should be given to expanding that service to include the education of the Bar in general.

b.) If the Defender Office continues to grow, services other than strictly case representation will be needed. Budget problems, statistical analysis, investigation services, social services, personnel services, and other like duties, will need systematic review. In recommending that a non-lawyer be appointed to such a position our concern is that, a lawyer, given the demands on the office, will probably view his first obligation as sharing the load of trial representation. It is
critical that necessary administrative duties be attended to on an on-going regular basis.

c.) As has already been mentioned, there is a definite lack of continuity of representation in felony cases between the District Court and Superior Court levels. Since cases are not assigned to the Public Defender until they have been docketed in Superior Court it is difficult to recoup lost time in preparing those cases for trial. If the Public Defender is able, stationing assistants at the various District Courts would insure an early case assessment of each felony giving the Defender the opportunity, perhaps, to bargain with the Attorney General prior to the return of an Information and to analyze the complexity of the case at an early stage. This type of early case assessment would also permit the person responsible for assigning the cases to particular assistants to assign less complex cases regardless of the formal charges to less experienced assistants. In addition, that person would also be provided with an on-going review of what was transpiring with respect to all felonies.

d.) Most Defender Offices have some form of investigative services available, as this office did, yet most offices also can use additional assistance. In many instances we have seen investigative services provided by students and recommend that the Defender explore with local universities the possibility
of clinical programs which would provide to the Defender Office students working toward course credits.

It is axiomatic that some defendants charged, despite the skills of the Public Defender, will be convicted. It is also axiomatic that defense representation does not end with the conclusion of the trial. The defense attorney must also appear at sentencing. In many cases courts and legislators have provided funds for Defender Offices to permit them to develop their own "pre-sentence" reports, and in some cases, to develop social service plans during the pretrial period. In assessing the ability of the Defender Office to reach the elusive goal of "adequate representation" it is our view that the development of a Social Services Division within the Office is vital.
C. Establishment of Appointment Panels

1. Recommendation

The Director of the Administrative Office of the Courts in cooperation with the Public Defender, the Attorney General, and representatives of the private bar should develop a plan for the establishment of different panels of lawyers capable of handling appointments at the Appellate, Trial, District and Family Court levels.

2. Commentary:

As has been mentioned above, there is a need to develop the interest of the private Bar in representing indigent defendants throughout the court system. In order to encourage lawyers to participate, adequate compensation and appropriate conditions of appointment should be designed. At the same time, the court has an interest in seeing to it that competency of counsel does not become an issue at a subsequent time.
D. Clinical Program Development

1. Recommendation

The Director of the Administrative Office of the Courts in cooperation with the Public Defender, the Attorney General, and local universities should develop clinical programs that would provide student services to assist in the reestablishment of pretrial release investigations at the District Court level.

2. Commentary:

In many jurisdictions throughout the United States law school and graduate school students are working in the courts in various capacities as part of a particular university course requirement. Students have been used by many pretrial release programs to provide the service of interviewing defendants charged with crime, verifying background information concerning them, and submitting reports to the courts that will assist them in setting conditions of release. Our observations of felony presentations at the District Court level, confirmed by our interviews with various court personnel, were that no or little background information was available for the bail setting magistrate. Since there are a number of universities in the area and they (presumably) offer criminal justice courses at both the graduate and undergraduate level it should be fairly simple to construct (or reconstruct) a pretrial release program.
E. Early Screening of Cases by the Prosecutor

1. Recommendation

The Attorney General in consultation with other members of the criminal justice system, particularly the police, should establish an early screening unit whose purpose it would be to eliminate at the District Court level those cases for which no felony prosecution will be pursued.

2. Commentary:

The team learned that despite the 60-day rule (a rule which provides that if the police have not sought an Information in a felony case from the Attorney General the case is dismissed at the District Court level) a number of felony cases brought at the District Court level had received no apparent attention within 60 days. It was also observed, for example, that a particular offense (i.e., soliciting for the purposes of prostitution) was charged as a felony over and over but never prosecuted at the Superior Court level. These conditions suggest to us that if there were early case screening by the Attorney General's Office many of the cases presently docketed in the District Court would be dismissed prior to that time. Defendants who can ill afford to pay the cost of a bond premium would not be required to do so. The Court would not be in the position of enriching a bondsman knowing full well that the case will never be prosecuted. At the same time, we suspect that there are defendants who do not make bond and who languish in jail for some time only to have a case dismissed. It seems to us that the establishment of an early screening unit would benefit both the Office of the Attorney General and the Court as well.
F. Further Technical Assistance

1. Recommendation

The Criminal Courts Technical Assistance Project should consider the possibility of providing additional assistance to the State of Rhode Island should the system choose to adopt some or all of these recommendations, particularly those related to the development of standards for indigency determinations, a mixed system of representation, and the establishment of release procedures.

2. Commentary:

Despite the plethora of information made available to us during our on-site visit there were portions of this report that could only scratch the surface of the problems. As suggested in the recommendation, there is a need, should the Administrative Office of the Courts and the rest of the system be persuaded to adopt some of these recommendations, to assist them further in implementation.
IV. Summary.

It is our general impression that the system of criminal justice as it is administered in the State of Rhode Island is in excellent shape. The suggestions we have made may not all be possible to accomplish. We recognize that it is difficult for any jurisdiction simply to adopt what is recommended in a written report. There are many underlying factors that are difficult and even impossible to evaluate. What has been suggested here is intended to enhance an already exemplary system.
APPENDICES
Appendix A
APPENDIX A

List of Interviews

Joseph Bevilacqua
Chief Justice
Supreme Court

Joseph Calista
Clerk
Superior Court

Edward Gallogly
Chief Justice
Family Court

Henry Gemma, Esquire
Assistant Attorney General

Robert Harrall
Deputy Court Administrator

John Hogan
Court Administrator
Superior Court

Barbara Hurst
Office of the Public Defender

Walter Kane
State Court Administrator

Henry Laliberte
Chief Judge
District Court

Thomas Luongo
Office of Public Defender

Susan McCalmont
Planning Unit
Administrative Office of the Courts

Florence Murry
Presiding Justice
Superior Court

Len O'Brien
Planning Unit
Administrative Office of the Courts

William Reilly, Esquire
Public Defender

William Schelegeter
Providence Police Prosecutor
Sixth Division
District Court

Joseph Weisberger
Supreme Court

Terry Mc Fadden
Office of Public Defender
The following Standards of Eligibility under the Criminal Justice Act are hereby adopted by the Superior Court of the District of Columbia with respect to appointments made on and after September 30, 1971. These Standards will be subject to continuing review by the Court and to final acceptance by the Board of Judges of the Superior Court before they are permanently adopted.

HAROLD H. GREENE
Chief Judge

September 10, 1971

PROPOSED STANDARDS OF ELIGIBILITY
UNDER THE CRIMINAL JUSTICE ACT

1. A defendant is eligible for the appointment of counsel and/or the authorization of other services necessary to an adequate defense under the Criminal Justice Act when the value of his present net assets, determined in accordance with Standard 2, infra, and his net income, determined in accordance with Standard 3, infra, are insufficient to enable him promptly to retain a qualified attorney, obtain release on bond and pay other expenses necessary to an adequate defense, while furnishing himself and his dependents with the necessities of life.

2. "Present net assets" means assets which are owned by the defendant, less the amount of any security interest held by third parties, but does not include assets the sale of which would cause an unreasonable hardship to the person or his dependents. These assets shall be valued at the lowest amount reasonably expected to be realized at a sale prior to trial, or prior to the filing of an appeal briefs for counsel or services in connection with an appeal.

3. "Net income" means, in the case of salaried, take-home pay, and, for other forms of income, the amount received after any withholding, to the extent that the income is or will be received prior to trial, or prior to the filing of appellate briefs for counsel or services in connection with an appeal.

4. In determining the amount required to enable a person to retain a qualified attorney, the following amounts shall be considered as minimum: (c) for an appellate matter, $4,000 plus $400 for a capital case, $1,500 plus $400 for a non-capital felony case, $1,000 for a misdemeanant, $400; (e) for a proceeding before the Panel, Division of the Superior Court, $400, and (b) for representation pursuant to a discretionary appointment under Subsection C of that Criminal Justice Act or Section III D of the Plan for Furnishing Representation to Indigents in the District of Columbia (adopted February 11, 1971), $400.

5. "Necessities of life" shall in all cases include the following minimum living allowances: $32 per week for an individual, $77 per week for an individual with one dependent and $9 per week for each dependent in excess of one. However, where present net assets and net income exceed the applicable minimum living allowance, "necessities of life" shall mean the minimum living allowance plus the amount by which any existing obligation for necessities exceeds the amount allocated for that necessity in the Tables attached hereto. Other existing obligations, not included in the Tables, may be counted as obligations for necessities if failure to meet such obligations would cause a assets or income used for necessities listed in the Tables.

6. When a defendant's existing obligations for necessities are considered, the court may exclude any part of any existing obligation which exceeds a reasonable amount for a person in the defendant's circumstances.

7. The assets (including assets jointly owned with the defendant), income and expenses of the spouse of a defendant shall be included in determining the eligibility for the appointment of counsel or authorization of services except where due to separation, divorce or other reasons, it is unlikely that the income and assets of the spouse shall be available. The expenses of the spouse shall be considered as though they were expenses of the defendant only if the income and assets of the spouse are considered.

8. When a person under 21 seeks the appointment of counsel or other services, the assets, income and expenses of his parents or person legally responsible for his support shall be considered, unless it is unlikely that the assets or income will be available.

9. Whenever it appears to a court or magistrate who has appointed counsel or authorized services for a defendant, or where otherwise the case
is then prudent, that funds are available for payment, in excess of the amount reasonably required for necessities of life, he may order payment of such excess pursuant to 18 U.S.C. 3604(a)(1). Such contribution orders shall not take into account assets or income received by the person after sentence or detention in the case of a trial proceeding, or after denial of the appeal in the case of an appellate proceeding.

10. The assets, income, and expenses of a spouse may be considered, in accordance with Standard 7, in fixing the amount of any contribution order. The assets, income, and expenses of a parent or person legally responsible for the support of a person under 21 may be considered in fixing the amount of any contribution order for counsel or services furnished to a person under 21.

11. Except in unusual cases where justice so requires, funds which a defendant might otherwise be entitled to shall not be considered in determining eligibility under the Act.

12. In case of doubt about the defendant's eligibility where public attorneys or monies authorized pursuant to other provisions of law are available, counsel shall be appointed or services shall be furnished, with a contribution order based on income at a later date if funds are available.

13. These standards shall be construed (1) to obtain equitable and consistent determinations of eligibility for counsel and other services pursuant to the Criminal Justice Act; (2) to limit the expenditure of public funds to cases where services are required; (3) to obtain contributions from those able to pay part of the costs of their defense; (4) to safeguard the rights of indigents to an adequate defense, and (5) to assure the effective and efficient functioning of the criminal justice system.

TABLES OF MINIMUM ALLOWANCES

A. INDOMIN</p></code>

B. INDIVIDUAL WITH ONE DEPENDENT (per month)

C. EACH ADDITIONAL DEPENDENT (per month)

(Con'd from p. 1621) (Proposed Guidelines for Compensation)

Comments. The Judicial Conference of the United States in 1966 adopted a "Statement of Policy" that travel time may be allowed by the court at the out-of-court rate where the time involved is an hour or more, performed during normal office hours, and solely for the purpose of discharging CJA duties. See Annual Report of the Director of the Administrative Office of the United States Courts 1966, pp. 31-32. The Revised Administrative Office Guidelines contains a similar provision (page II-15).

The Proposed guideline follows these standards, with a specific definition of "office hours" as 9:00 a.m. to 5:00 p.m. The time allowed should also be limited to time spent in regular office hours, rather than his residence.

PROPOSED GUIDELINE 7: COMPENSATION FOR WAITING TIME

Time necessarily spent by an attorney, after his appointment under the Act, waiting and physically present in a courtroom or Assessment Commissioner's Office in connection with his appointed case, is compensable at the rate of $20 per hour to the extent that it exceeds three hours in any one appointed case. When the waiting time is in connection with several CJA appointments, the time spent shall be prorated equally among the several cases.

In claims for compensation for waiting time, the attorney shall submit a sworn statement specifying:
(Con'd from p. 1628)

(a) the dates and inclusive hours of all waiting time, including the three non-compensable hours.
(b) the courtroom and presiding judge or Assignment Commissioner's Office, and
(c) the nature of the proceeding for which he was waiting.

Sample Statement

<table>
<thead>
<tr>
<th>Waiting Time</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 28, 1971; 10:00 to 11:30, Courtroom 11, Judge X Hearing, on Motion to Suppress Evidence</td>
<td>1.5 hours</td>
</tr>
<tr>
<td>May 5, 1971; 1:30 to 3:30, Courtroom 12, Judge Y Hearing on Motion</td>
<td></td>
</tr>
<tr>
<td>Total Waiting Time</td>
<td>3.5 hours</td>
</tr>
<tr>
<td>Minus non-compensable waiting time</td>
<td>-3.0 hours</td>
</tr>
<tr>
<td>Compendable Waiting Time</td>
<td>0.5 hours</td>
</tr>
</tbody>
</table>

Comment: The Proposed Guideline recommends that attorneys should be compensated for time necessarily spent waiting in court, but requires a three-hour "set-off" for such time. Of course, to the extent that an attorney uses enfeoffed waiting time in service reasonably necessary to his appointed case, such time should be compensated at the normal $20 per hour out-of-court rate and without set-off.

To the extent that waiting time is not used for other purposes, compensation may be authorized under the Proposed Guideline.

PROPOSED GUIDELINE 3: COMPENSATION FOR RESEARCH TIME

Time spent by an attorney in legal research in connection with an appointment under the Act is compensable at the rate of $20 per hour, irrespective of the specific issues raised by the case, but it is not compensable to the extent that it constitutes routine research which would be unnecessary for an attorney with average experience in the criminal law.

In claiming compensation for research time, the attorney shall submit a sworn statement identifying the specific point researched, and the dates and hours involved.

Sample Statement

<table>
<thead>
<tr>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 8, 1971; proof of &quot;constructive possession&quot; of narcotics</td>
</tr>
<tr>
<td>April 10, 1971; same</td>
</tr>
<tr>
<td>April 22, 1971; standards for waiver of right to counsel under Miranda?</td>
</tr>
<tr>
<td>April 30, 1971; &quot;dying declaration&quot; exception to hearsay rule</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

Commentary: The American Bar Association's Project on Minimum Standards for Criminal Justice, Standards Relating to Providing Defense Services (Approved Draft, 1968) recommends (page 85) that

"In the process of learning the skills of the criminal lawyer, each lawyer must devote a part of the time to the system of the public, some part of the time devoted to educating himself in criminal law and procedure. This is no more than the application of a truism of practice long familiar in all areas of practice."

The Proposed Guideline attempts to reflect that view. To enable the Court to consider the particular research involved, a statement must be submitted with the claim. The data required to be submitted will normally be available to the attorney under generally accepted practice procedures regarding record-keeping, and its submission serves an appropriate sine qua non of payment.
Appendix C
APPENDIX C
Plan for Furnishing Representation to Indigents
November 29, 1974

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Plan for Furnishing Representation to Indigents under the
DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

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PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS
under the
DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

Pursuant to the provisions of the District of Columbia Criminal Justice Act of 1974 (Pub. L. 93-412), the Joint Committee on Judicial Administration has adopted the following plan for the adequate representation of any person, otherwise financially unable to obtain adequate representation, who is within the scope of either the District of Columbia Criminal Justice Act of 1974, or Section 302 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Pub. L. 91-358, 84 Stat. 473), or both.

I. PROVISION FOR FURNISHING COUNSEL

This plan provides for the furnishing of legal services by the Public Defender Service of the District of Columbia, and for the appointment of private attorneys and law students to represent the remainder of the persons there listed. Since the duty of affording legal services properly rest on the bar of the District of Columbia, all qualified members of the bar will be expected to comply with such plan including the answering of such questionnaires as may be propounded thereunder. Any waiver thereunder, however, shall not be a matter of right, and will be made at the individual attorney.

II. ADMINISTRATIVE ORGANIZATION

A. SUPERVISORY FUNCTIONS

1) JOINT COMMITTEE ON JUDICIAL ADMINISTRATION.
The Joint Committee on Judicial Administration shall oversee the operation of this Plan.

2) COMPLAINTS. Whenever a judge receives a complaint prior to trial relating to the performance of counsel which he is unable to adjust by informal methods, he may refer the matter to the office of Bar Counsel under the general jurisdiction of the Disciplinary Board of the District of Columbia Bar. Such counsel shall investigate the complaint and render a report to the judge with such recommendations as the counsel deems appropriate.

In the event that a judge considers that an attorney should be removed from the central file of Criminal Justice Act attorneys, he shall refer such report to a committee of judges (active or retired) to be appointed by the Joint Committee, which shall have the authority upon consideration of such report to terminate the eligibility of an attorney for appointment in future cases. The committee may also, in its discretion, refer the report and its findings to Bar Counsel for further consideration in accordance with rules applicable to the Disciplinary Board.

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1) In order to provide the courts with a larger panel of qualified members of the bar upon which to draw for the defense of indigent defendants, the Joint Committee shall mail to all members of the Bar of the District of Columbia residing in the metropolitan area who are not government employees, a questionnaire concerning their qualifications to act as defense counsel in criminal and juvenile delinquency cases. Such questionnaires shall require of the recipients to provide information as follows: (a) whether the attorney wishes to volunteer to act as defense counsel in criminal or juvenile delinquency cases, (b) whether such attorney would or would not be prepared to waive any compensation, (c) the number of appointments such attorney would be willing to accept during any one calendar year, and (d) an inquiry of senior partners in law firms to determine whether those partners are willing to designate on a projected basis for months in advance, one or more firm members or associates who will be made available for appointment to criminal cases where such appointment will not foreseeably conflict with other responsibilities.

No attorney shall be appointed to cases in excess of the number specified in his reply to the questionnaire. Appointments shall be made only of attorneys who volunteer, unless the Joint Committee shall thereafter amend this Plan.

2) On the basis of the information obtained by such questionnaires, the Public Defender Service shall develop and maintain a central file of attorneys for appointment in the proceedings covered by this Plan. Said central file shall contain information concerning the experience and other qualifications of all attorneys, not government employees, who are members of the Bar of the District of Columbia, engaged in the practice of law in the metropolitan Washington area. From this file the Public Defender Service shall develop panels of attorneys for the respective courts to receive appointments in the proceedings covered by this Plan. The active administration and coordination of this Plan shall be lodged in the Public Defender Service, but the power of appointment shall reside in each court.
November 29, 1974

PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS under the DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

3) Appointments shall be arranged to insure full use of the attorneys of the Public Defender Service, and qualified law students participating in clinical programs.

4) The panels of attorneys shall be periodically re-examined by the Public Defender Service to insure that such panels are kept current.

In every criminal case in which a person is charged with a felony or misdemeanor or other offense involving the possibility of imprisonment, or with juvenile delinquency or in need of supervision, or with a violation of probation, and appears without counsel, the court shall advise the person that he has the right to be represented by counsel throughout the case and that counsel will be appointed to represent him if he so desires and if he is financially unable to obtain counsel.

In all cases, it shall be the duty of a judge or hearing officer to determine whether a person is financially unable to obtain adequate representation. All statements made by a person in such an inquiry shall be either (1) by affidavit sworn to before a judge, a hearing officer, a court clerk, or his deputy, or a notary public, or (2) under oath in open court before a judge or hearing officer.

B. COUNSEL FOR PERSON ARRESTED WHEN REPRESENTATION IS REQUIRED BY LAW.

Where a person arrested has been represented by counsel before his presentation before the court under circumstances where such representation is required by law, his counsel may subsequently apply for approval of compensation. If the court finds such a person was financially unable to obtain an adequate defense at the time the representation was furnished, and that such representation was required by law, compensation will be allowed to cover out-of-court time.
PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS
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expended by the attorney during the arrest period. If the person represented is unavailable at the time counsel applies to the court for approval of compensation for services rendered during the arrest period, the attorney may nevertheless submit his claim to the court for approval based on the arrestee's financial condition at the time the services were rendered, and a showing that such representation was required by law.

C. OTHER APPOINTMENTS.

The court may proceed as under Section 4 supra to make an appointment of counsel for a person other than one described in B. above, as provided for in Section 11-2501 of the District of Columbia Code.

In all cases where the appointment of counsel is discretionary, persons shall be advised that counsel may be appointed to provide representation in the event of financial inability, and the court shall in all cases advise persons that the assignment of counsel may be requested. Application for the appointment of counsel shall be addressed to the court and shall demonstrate (1) that the interests of justice require that counsel be appointed and (2) that such person is financially unable otherwise to obtain representation. If a person is not before the court, the court may, with or without requiring the personal appearance of the person for such purpose, act on the basis of an application alone, or the application as supplemented by such information as may be made available by an officer or custodian or other responsible officer, provided that such information is also made available to the person. The court may authorize such representation on a determination that the interests of justice so require and that such person is financially unable to obtain representation.

D. REDETERMINATION OF NEED.

If at any time after the appointment of counsel, the court finds that a person is financially able to obtain counsel or to make partial payment for representation, he may terminate the appointment of counsel, order that any funds available to the person be paid as provided in the District of Columbia Criminal Justice Act, or take other appropriate action. In the event that funds are ordered paid to the appointed attorney, the amount so paid shall be deducted by the court in determining the total compensation to be paid such attorney.

If at any time after his appointment, counsel has reason to believe that a person is financially able to obtain counsel or to make partial payment for counsel, he shall advise the court which appointed him that there is a question concerning the person's right
November 29, 1974

PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS under the
DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

to appointed counsel. The court may conduct a hearing to determine
the person's financial status, but shall not require the appointed
attorney to disclose confidential information concerning his client's
financial status if the attorney states that such information might be
incriminating to the person. The court may appoint, where appropriate,
separate counsel to represent the person for purposes of any hearing
to determine the person's right to have appointed counsel.

If at any stage of the proceedings, the court finds that a
person is financially unable to pay counsel whom he had retained, or
to obtain other counsel, the court may appoint counsel in accordance
with the general procedure set forth in this plan. An attorney thus
appointed may claim compensation for services rendered after the
date of his appointment. The court will ordinarily not appoint the
same attorney who was previously retained.

IV. APPOINTMENT OF COUNSEL

Upon a finding, in a proceeding within the scope of Sections A
or C of Title III of this plan, that a person is financially unable to
obtain adequate representation, the court shall promptly appoint
counsel to represent the person. The court may appoint counsel in
proceedings within the scope of Section D of Title III and approve
representation furnished pursuant to Section B of Title III. In appoint-
ing such counsel, the court shall appoint a Public Defender Service
attorney, a private attorney or law student selected from the appro-
priate panel as approved by the court. A person shall not have the
right to select his appointed counsel from the Public Defender Service,
from a panel, or the nature of the case in making an appointment,
nor from appointing any attorney on any panel without regard to the
usual procedures in exceptional cases as justice may require.

The court shall appoint separate counsel for persons having interests
that cannot properly be represented by the same counsel, or when other
good cause is shown. In an extremely difficult case, where the court
finds that it is in the interest of justice to appoint two attorneys to
represent one defendant, and so states in its order, two attorneys
may be appointed.

Appointed counsel shall, unless excused by order of court,
continue to act for the person throughout the proceedings. In cases
where an appeal is available as of right, trial counsel appointed
hereunder shall advise the person of his right to appeal and of his
right to counsel on appeal. If requested to do so by the person, counsel
shall file a timely Notice of Appeal and shall continue to represent the
person unless or until he is relieved by the District of Columbia Court
of Appeals.

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PLAN IV (cont'd)  

November 29, 1974

PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS under the  
DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

If appointed counsel wishes to be relieved prior to the termination of the proceedings in the trial court, he shall communicate his request, in writing, to the judge before whom the case is then pending. Such request shall reflect that a copy of the request has been served on his client.

In the interests of justice, the court before whom a case is pending may substitute one appointed counsel for another at any stage of the proceeding, except that counsel to handle the appeal shall be appointed by the appellate court.

V. COMPENSATION

A. INDIVIDUAL PAYMENTS UNDER THIS PLAN.

Payment of fees and expenses to counsel appointed under this plan, and payment for investigative, expert, and other services incurred pursuant to Title VI hereof, shall be made in accordance with such rules and regulations and guidelines, as have been or may be prescribed from time to time by the Superior Court and/or the District of Columbia Court of Appeals, and in accordance with the policies of the Fiscal Officer of the District of Columbia Courts. Upon approval of claims for compensation, they shall be forwarded to the Fiscal Officer of the District of Columbia Courts for payment.

B. SCHEDULE OF MAXIMUM FEES FOR COUNSEL.

The following fees are hereby prescribed:

1) MAXIMUM HOURLY RATE FOR COUNSEL. The maximum hourly rate for attorneys shall not exceed the hourly scale established by the provisions of Section 3006 A(d)(1) of Title 18, United States Code.

2) MAXIMUM AMOUNTS FOR COUNSEL. The maximum compensation to be paid to an attorney shall not exceed the maximum amounts established by Section 3006 A(d)(2) of Title 18, United States Code. For representation of a defendant before the Family Division, the maximum compensation shall not exceed the maximum established in Section 3006 A(d)(2), above, for a felony for each attorney in cases in which acts are charged which would constitute felonies if committed by an adult, and the maximum established in Section 3006 A(d)(2), above, for a misdemeanor for each attorney in cases involving persons in need of supervision and in which only acts which would constitute misdemeanors if committed by an adult are charged. For representation on appeal in cases involving a felony or misdemeanor conviction, or a finding of juvenile delinquency on the basis of acts, which, if committed by an adult, would constitute a felony or misdemeanor,
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or in cases involving persons adjudicated in need of supervision, the
maximum compensation shall not exceed the maximum established in
Section 3006 A(d)(2) for an appeal for each attorney.

The maximum provided in the last sentence of Section
3006 A(d)(2) is established as the maximum for each attorney in each
court for any of the following representations:

(a) a post-trial motion made after entry of judgment.

(b) a probation revocation proceeding,

c) A review of disposition proceeding in the Family
Division.

d) a parole revocation proceeding,

(e) representing a material witness.

(f) representing a person seeking relief under D.C.
Code #16-1901 or D.C. Code #23-110,

(g) representing a person where the Sixth Amendment
to the Constitution requiring the appointment of counsel or for whom,
in a case in which he faces a loss of life or liberty, any District
of Columbia law requires the appointment of counsel.

(h) extradition proceedings, and

(i) representing a person in proceedings pursuant to
D.C. Code #24-302 or Chapter 5 of Title 21 of the District of Columbia
Code (hospitalization of the mentally ill).

Representation of a person on a new trial shall be
considered a separate case, and fees shall be paid on the same basis
as on the original trial.

If one attorney represents two or more persons whose
appeals are heard together, the attorney's total compensation shall
not exceed the statutory maximum for one person, unless the case in-
volves extended or complex representation.
PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS
under the
DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

An appointed attorney may claim compensation for
services furnished by his partner or associate within the maximum
compensation allowed.

3) WAIVING MAXIMUM COUNSEL FEES. Payment in
excess of any maximum amount provided in Subpart 2 of Section B above,
may be made for extended or complex representation whenever such
payment is necessary to provide a fair compensation. Any such re-
qust for excess compensation shall be submitted by the attorney for
approval by the Chief Judge of the Superior Court upon recommendation
of the presiding judge in the case or, in cases before the District
of Columbia Court of Appeals, approval by the Chief Judge of the
Court of Appeals upon recommendation of the presiding judge in the
case.

C. PAYMENT FOR SERVICES OTHER THAN COUNSEL

1) PREVIOUSLY APPROVED SERVICES. Where counsel
has received prior authorization for services, the maximum which
may be paid per person so authorized shall not exceed $300 exclusive
of reimbursement for expenses, other than for reporter's transcript
of proceedings, reasonably incurred, unless payment in excess of
that limit is certified and approved by the presiding judge in the
case, as necessary to provide fair compensation for services or an
unusual character or duration.

2) SERVICES FURNISHED WITHOUT PRIOR REQUEST.
The total cost of all services obtained without prior authorization
may not exceed a total of $150 and expenses reasonably incurred.
Waiver of such limit is not provided for in this plan. No counsel may
incur, without prior authorization, any expense for court reporter's
transcript of proceedings.

D. TIME LIMITATION ON CLAIMS.

No claim for compensation or reimbursement will be
honored unless filed within sixty (60) days of the termination of the
representation, provided that if the sixty-first calendar day falls on a
weekend or holiday, the due date will be the court day immediately
following the sixty-first calendar day.
V. INVESTIGATIVE, EXPERT AND OTHER SERVICES

A. UPON REQUEST.

Counsel (whether or not appointed under the District of Columbia Criminal Justice Act) for a person who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his case may request such services in an ex parte application before a judge. Upon finding, after appropriate inquiry in such ex parte proceeding, that the services are necessary, and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services. The judge may establish a limit on the amount which may be expended or promised for such services within the maximum prescribed by law.

B. WITHOUT PRIOR REQUEST.

A counsel, appointed under the District of Columbia Criminal Justice Act, may obtain, subject to later review, investigative, expert, or other services except for reporter’s transcript of proceedings without prior authorization, if necessary for an adequate defense. The total cost of services obtained without prior authorization, however, may not exceed a maximum of $150 and expenses reasonably incurred, and no greater amount may be authorized regardless of the number of persons used or the character of services. A sworn application may be made by counsel to the court for the ex parte review by the judge and for ratification of such expenses. Such expenditures without prior court authorization are not favored, and in addition to showing that such expenditures were "necessary for an adequate defense" and that the person was financially unable to obtain them, the application for ratification must show why prior authorization could not have been obtained.
PLAN FOR FURNISHING REPRESENTATION TO INDIGENTS
under the
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C. QUALITY OF SERVICES.

The court will in all cases hold counsel accountable to obtain only qualified investigators or experts.

VII. FORMS.

Where standard forms have been approved by the Superior Court and/or the District of Columbia Court of Appeals, such forms shall be used by the court(s), the Public Defender Service and counsel. Additional forms and records may be prescribed by the court(s).

VIII. EFFECTIVE DATE

This plan shall take effect on the 29th day of November, 1974.

APPROVED BY:

/s/ Gerard S. Reilly                     /s/ Harold H. Greene
Chief Judge, District of Columbia Court of Appeals

/s/ Frank Q. Nebeker                     /s/ Fred L. McIntyre
Associate Judge, District of Columbia Court of Appeals

/s/ Wm. S. Thompson
Associate Judge, Superior Court of the District of Columbia

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Appendix D
Chapter 26—REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

Sec. 11-2601. Plan for furnishing representation to indigents in criminal cases.

11-2602. Appointment of counsel.

11-2603. Duration and substitution of appointments.

11-2604. Payment for representation.

11-2605. Surcharges other than counsel.

11-2606. Receipt of other payments.

11-2607. Preparation of briefs.


11-2609. Authority of counsel.

Amendment


11-2601. Plan for furnishing representation to indigents in criminal cases.

The Joint Committee on Judicial Administration shall in operation, within ninety days after the effective date of this chapter in the District of Columbia, notice furnished representation to any person in the District of Columbia who is financially unable to obtain adequate representation.

(a) The District of Columbia shall by notice furnished representation to any person in the District of Columbia who is financially unable to obtain adequate representation.

(b) The District of Columbia shall by notice furnished representation to any person in the District of Columbia who is financially unable to obtain adequate representation.

(A) Section 23-110 of the District of Columbia Code (remedies on motion attacking sentence).

(B) Chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from Justice).

(C) Chapter 19 of title 16 of the District of Columbia Code (Habeas corpus).

1. See original. Does not conform to section outline.
2. A comma probably should appear after "parole."
Article II
Organization and Administration of the District of Columbia

Chapter 11
Organization of the District of Columbia by Congress

§ 11-304. Appointment of counsel

Counsel furnished representation under the plan shall be selected from panels of attorneys designated and approved by the courts in all cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel. The court shall advise the defendant or respondent who has the right to be represented by counsel that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all cases covered by the Act of March 3, 1891, representation by counsel shall be continued, the defendant or respondent advised that he may be represented to represent him if he is financially unable to obtain counsel and the court shall hold such hearing for the defendant or respondent of the manner and procedure by which he may request the appointment of counsel. (Added Sept. 2, 1974, Pub. L. 93-412, 88 Stat. 1086.)
forcement of the provisions of this Act in the Court. A decision shall be made by the proper court under the case, and the decision of the court shall be final. The court may, in its discretion, issue a temporary restraining order or preliminary injunction to prevent the enforcement of an order under this Act in the event that it appears necessary to prevent irreparable harm to the public interest. The court may, in its discretion, issue a temporary restraining order or preliminary injunction to prevent the enforcement of an order under this Act in the event that it appears necessary to prevent irreparable harm to the public interest.

Section 11-2603. Service of other than notice

The Governor shall, upon request, certified to the court, and in his discretion, issue a temporary restraining order or preliminary injunction to prevent the enforcement of an order under this Act in the event that it appears necessary to prevent irreparable harm to the public interest.

Section 11-2604. Authorization of appropriations

There are hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated for the administration of this Act for the fiscal years 1977 and 1978. When so appropriated the provisions of this Act shall be considered to be for the public welfare and the benefit of the people of the District of Columbia, and shall be subject to the provisions of the District of Columbia appropriations acts. The provisions of this Act shall be considered to be for the public welfare and the benefit of the people of the District of Columbia, and shall be subject to the provisions of the District of Columbia appropriations acts.

Section 11-2605. Authority of the Board

The Board of Education shall have the power to make rules and regulations governing the operation of the schools under this Act.

Section 11-2606. Authority of the Board

The Board of Education shall have the power to make rules and regulations governing the operation of the schools under this Act.
§ 2-2113. Separability of provisions.

If any provision of this chapter, or the application thereof to any persons or circumstances, is held invalid, the remainder of the chapter, and the application of the same provision to other persons or circumstances, shall not be affected thereby. (July 10, 1957, D.C. 287, Pub. L. 85-87, § 18.)

§ 2-2114. Appropriations.

Such appropriations as may be necessary to carry out the purposes of this chapter are authorized. (July 10, 1957, D.C. 287, Pub. L. 85-87, § 18.)

Chapter 22—PUBLIC DEFENDER SERVICE

Sec. 2-2201 to 2-2210 Repealed.

2-2202. Functions and authorities of Service—Persons who may be represented—Use of private attorneys—Determination of financial capability of applicant—False information—Penalties.
2-2203. Board of Trustees—Appointment—Membership—Powers—Term of office—Vacancies—Legal Aid Society—Trustees to constitute in order—Trustees deemed employees of District for purpose of suit.
2-2204. Director and Deputy Director—Duties—Salaries.
2-2206. Reports by Board of Trustees—Annual audits by certified public accountants.
2-2207. Appropriations—Grants and contributions.
2-2208. Transition provisions.


Sections being section 1 to 12 of the Act of June 21, 1960, 74 Stat. 229, Pub. L. 80-501, set up the Legal Aid Agency in the District of Columbia to provide legal representation of indigents in judicial proceedings and spelled out the rights and procedures thereunder. The successor to the Agency is the Public Defender Service. See sections 2-2211 to 2-2220.

Effective Date of Amendment

See note to section 2-2221.

§ 2-2221. Redesignation of Legal Aid Agency as Public Defender Service.

The Legal Aid Agency for the District of Columbia is redesignated the District of Columbia Public Defender Service (hereafter in this chapter referred to as "the Service"). (July 29, 1970, Pub. L. 91-358, § 301, title III, 84 Stat. 654.)
necessary and appropriate to the duties described above.

The determination whether a person is financially unable to obtain adequate representation shall be based on information provided by the person to be represented and such other persons or agencies as the court in its discretion shall require. Whoever in providing this information knowingly falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined not more than $1,000 or imprisoned not more than one year.

Notes to Decisions Under Present Law

Public Defender Section should be appointed to represent infirm Clients if Client has insufficient funds to pay for representation and Client will benefit from having representation.

Notes to Decisions Under Prior Law

Duty of counsel

Legal Aid Attorney attends as much as other attorney over any number of clients. Lack of resources to maintain one's own defense and lack of access to legal means and ability to make that decision is generally a sufficient reason to appoint counsel. Notes to his appearance in re. J. Bernard (1971), 465, 2d 330, 134 U.S. App. D.C. 92.

Notes to Decisions UnderPresent Law

Waiver of preliminary hearing

A person who is prohibited in District of Columbia to waive preliminary hearings without proper procedures or is wrongfully denied opportunity to present witnesses in his own behalf will be entitled to a preliminary hearing held or ordered by the court, at which opportunity the defendant has the right to present evidence of his own.
Appendix E
APPENDIX E
Indigency Eligibility Questionnaire

ELIGIBILITY QUESTIONNAIRE

1. NAME: ____________________________ DATE: ____________________________
2. ADDRESS: ____________________________ (Street) ____________________________ (City & State) ____________________________
3. CHARGE: ____________________________ 4. AGE: ____________________________
5. MARITAL STATUS: Single: _______ Married: _______ Separated: _______
6. DEPENDENTS: Spouse: _______ Children: _______ Others: _______
7. EMPLOYMENT: Employed: _______ Unemployed: _______
   Take Home Pay: Monthly: $_______ Weekly: $_______
   SPOUSE: Employed: _______ Unemployed: _______
   Take Home Pay: Monthly: $_______ Weekly: $_______
8. OTHER INCOME (including spouse): Amount: $_______ Source: ____________________________
9. CASH ON HAND OR IN BANK (including spouse): $________________________
10. PROPERTY (including spouse):

I, the undersigned defendant, being duly sworn, depose and say that the facts contained herein are true.
Defendant: ____________________________ Interviewer: ____________________________
Notary Public: ____________________________

[TO BE COMPLETED ONLY IF DEFENDANT IS UNDER 21 AND SINGLE]
11. Defendant lives with and/or is supported by parents or guardians: Yes ___ No ___
12. PARENTS OR GUARDIAN: Name and Relationship: ____________________________
13. DEPENDENTS: Spouse: _______ Children: _______ Others: _______
14. EMPLOYMENT: Employed: _______ Unemployed: _______
   Take Home Pay: Monthly: $_______ Weekly: $_______
   SPOUSE: Employed: _______ Unemployed: _______
   Take Home Pay: Monthly: $_______ Weekly: $_______
15. OTHER INCOME (including spouse): Amount: $_______ Source: ____________________________
16. CASH ON HAND OR IN BANK (including spouse): $________________________
17. PROPERTY (including spouse):

I, the undersigned parent or guardian, being duly sworn, depose and say that the facts contained herein are true.
Parent or Guardian: ____________________________ Interviewer: ____________________________
Notary Public: ____________________________

[TO BE COMPLETED WHERE NET INCOME AND ASSETS EXCEED MINIMUM LIVING ALLOWANCE]
RENT: _______ MORTGAGE: _______ OTHER DEBTS: _______

TOTAL MONTHLY PAYMENTS: _______

RECOMMENDATION:

____ Eligible, no contribution
____ Eligible, contribution $_______
____ Ineligible