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February 1, 2006

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the 2004-05 Weighted Caseload Study Update for the district public defenders, a special study prepared by the Office of Research as required by *Tennessee Code Annotated* §16-2-513. The study compiles and analyzes the dispositions, workload, and Full Time Equivalent (FTEs) for each judicial district and the state as a whole. It also examines compliance with indigence determination procedures, representation in juvenile courts, and other issues specific to the role of the public defender. I hope you find this information helpful.

Sincerely,

John G. Morgan
Comptroller of the Treasury

**FY2004-2005 Tennessee Weighted
Caseload Study Update:
District Public Defenders**



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Comptroller of the Treasury
Office of Research
February 2006**

Comptroller of the Treasury, Office of Research. Authorization Number 307332, 350 copies, February 2006. This public document was promulgated at a cost of \$2.64 per copy.

Executive Summary

Tennessee Code Annotated (T.C.A.) 16-2-513 requires the Comptroller of the Treasury to maintain and update a weighted caseload study for the state judges, district attorneys, and public defenders. In 1999, three independent consultants conducted separate time or case-weighting studies for each group. However, because of the lack of uniform case disposition data, the Comptroller's office could not update the original public defenders' study until 2004. The public defenders' study and methodology differ from that of the judges and district attorneys. Each study calculates Full Time Equivalents (FTEs) based on unique case types and methodology established by consultants in the original studies.

Prior to the original study, Tennessee had no uniform case standards, posing many problems in the judicial system, and making it difficult for all the consultants to conduct the respective studies.¹ In response to this problem in 2001, the General Assembly instituted uniform case standards under *T.C.A.* 16-1-117 for all courts. *T.C.A.* 16-2-513 requires all courts, the Administrative Office of the Courts, the Council for Juvenile and Family Court Judges, and the Tennessee District Public Defenders Conference (TDPDC) to provide the Comptroller's Office case disposition data according to the uniform case standards.

Public Act 588 of 1989 created the TDPDC. Since then, policy makers sought to establish an equitable means to determine the need for resources. In the past, the Tennessee General Assembly calculated the number of public defenders needed by applying a percentage to the number of district attorneys in each judicial district; initially it was 50 percent of district attorneys, then 75 percent. In 1994, the General Assembly amended the statute to employ a population-based formula that called for one public defender for every 26,675 people in a district. However, the formula was never instituted because of budget constraints.

The 1998 appropriations bill required the Comptroller's Office to conduct a weighted caseload study for public defenders. The Comptroller's Office contracted with the Spangenberg Group in April 1999 to conduct the study and determine the need for public defender resources, or full time equivalents (FTEs.) The ability to *weight* cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases, and time required to handle each type of case.

The weighted caseload study calculates the resources, or FTEs, districts need by dividing the total number of case dispositions for the most recent fiscal year by the workload

¹ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, pp. 48-49.

standard established by the consultants. (See Appendix A of the report for a detailed description of the methodology). However, the consultants' report emphasizes that these calculations provide only a base from which to estimate the need for resources. Analysts and policy makers must consider other factors that influence the workload of attorneys, such as the amount of additional local and federal funding, support staff, technology, and local rules in conjunction with quantitative methodology. (See Appendix B: Factors Affecting Workload for a more complete list of additional factors.)

Analysis and Conclusions

The 2005 public defender weighted caseload data showed 152,866 total dispositions. The largest number of dispositions for FY 05 was misdemeanors with 91,364 dispositions statewide. The case type with the largest increase in dispositions since 2004 is post-judgment actions with an increase of 155 dispositions or 35.22 percent. (See page 4.)

There is a statewide shortage of 120.52 public defenders, which is most prevalent in urban (6th and 20th) judicial districts with deficits of 19.76 and 16.94 FTEs, respectively. In 2005, Tennessee's public defenders carried workloads in excess of nationally recognized standards. Lack of resources and high workloads compromise the state's ability to use limited indigent defense resources efficiently. It is not clear how much of the \$19,914,252 received by private attorneys in FY 2005 Indigent Defense Fund reimbursements resulted from insufficient public defender resources. Reimbursement procedures set forth in *T.C.A. 40-14-208* do not require application for reimbursement for the Indigent Defense funds to include a reason for the appointment of a private attorney. Therefore, AOC officials cannot verify compliance with the law regarding use of these funds. Judges in both adult criminal and juvenile courts report that public defenders often are unavailable to accept cases resulting in the appointment of private counsel to represent indigent defendants. (See page 7.)

Many juvenile courts do not have adequate public defender representation. According to the Public Defenders Conference, the 15th, 20th, and 30th judicial districts have permanently assigned public defenders in their juvenile courts. When surveyed by the CJFCJ in 2004, at the request of the Comptroller's office, judges in 17 other districts reported having PDs permanently in their courts. In these courts, juveniles facing delinquency charges have PD representation unless they waive the right to counsel.

In the remaining districts without permanent PDs, private attorneys most often represent juveniles who exercise their right to counsel. In responses to the 2004 survey, judges in juvenile courts reported that they appoint private attorneys for one of two reasons: 1) PDs

are not available at all or within a reasonable amount of time, or 2) PDs do not have adequate skills or knowledge to represent defendants in juvenile court. (See pages 8-9.)

Not all courts comply with the Tennessee requirements for determination of indigence procedures. Consultants during the original study found that “screening for indigency is cursory at best.” Unfortunately, while defendants who provide false information on affidavits of indigency face severe penalties, Tennessee does not have a system of accountability or any penalty for noncompliance with the laws governing the use of screening procedures. As a result, public defenders, or private counsel through the Indigent Defense fund, represented 68 percent of all criminal defendants convicted of felonies in 2004 without knowing if all the defendants were truly indigent.² (See pages 9-10.)

Some public defenders’ offices lack adequate support staff. *T.C.A. 8-14-204 (c) (4)* allows district public defenders to hire attorneys into vacant investigator positions to act as assistant public defenders and to be compensated as such. According to the Public Defenders’ Conference, in 2005, 11 districts had attorneys in investigator positions who were carrying caseloads. Of those 11, four had no investigator positions other than those occupied by attorneys acting as defenders.³ The original report noted “not hiring investigators” compromises the function of representation.⁴ (See pages 10-11.)

The court system lacks a uniform information system to collect disposition data. As of 2005, the public defenders conference information system, Prolaw, is not integrated with the Tennessee Court Information System (TnCIS),⁵ nor are the information systems for the big four urban counties and the Council of Juvenile and Family Court Judges. Thus, several different information systems handle disposition data on the same individuals charged with one or more criminal offenses, leading to a duplication of effort and increasing chances for data entry errors. (See page 11.)

² Administrative Office of the Courts, 2003-04 Felony Convictions Methods of Representation, 2005.

³ TNDPD Conference, District Public Defender Office Staffing 2004-05, received in email to author October 21, 2005.

⁴ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, p. 17, 69.

⁵ TnCIS is the statewide court information system available to all courts in the state who choose it.

Recommendations

The General Assembly may wish to:

- Ensure that there are enough public defenders to handle the workload based on the need identified in the FY 2005 weighted caseload study update.
- Amend *T.C.A.* 40-14-202 regarding determination of indigence and appointment of public defenders to ensure accountability of courts' compliance and authorize penalties for non-compliance.
- Fund more support staff for public defenders to increase efficiency and reduce cost.
- Authorize a study to determine the number of private attorneys reimbursed from the indigent defense fund because of a lack of public defenders.

The AOC should integrate public defenders' case information with the Tennessee Court Information System (TnCIS).

See pages 11-12 for a complete list of all recommendations.

The Tennessee District Public Defender's Conference reviewed a draft of this report, and provided comments and suggestions, but chose not to submit a formal response letter.

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Introduction

Tennessee Code Annotated (T.C.A.) 16-2-513 requires the Comptroller of the Treasury to maintain and update a weighted caseload study for the state judges, district attorneys, and public defenders. In April 1999, consultants from the Spangenberg Group conducted the original case-weighting study, designed to assess objectively the need for public defender resources. However, because of the lack of uniform case disposition data among judicial agencies, the Comptroller's office could not update the original study until 2004.

Tennessee law requires weighted caseload study updates for the state judges, district attorneys, and public defenders. In 1999, three independent consultants conducted separate time or case-weighting studies for each group. The public defenders' study and methodology differ from that of the judges and district attorneys. Each study calculates Full Time Equivalents (FTEs) based on unique case types and methodology established by consultants in the original time studies.

Background

Public Act 588 of 1989 created the Tennessee District Public Defenders Conference (TDPDC). Since then, policy makers sought to establish an equitable means to determine the need for resources. In the past, the Tennessee General Assembly calculated the number of public defenders needed by applying a percentage to the number of district attorneys in each judicial district; initially it was 50 percent of district attorneys, then 75 percent. In 1994, the General Assembly amended the statute to employ a population-based formula that called for one public defender for every 26,675 people in a district. (See Appendix D for a list of Tennessee Judicial Districts.) However, the formula was never instituted because of budget constraints.

The 1998 appropriations bill required the Comptroller's Office to conduct a public defenders' weighted caseload study to provide policy makers an objective means to determine the need for judicial resources. The Comptroller's Office contracted with the Spangenberg Group in 1999 to conduct a weighted caseload study for the TDPDC and determine the need for public defender resources, or full time equivalents (FTEs.) The ability to *weight* cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases, and time required to handle each type of case.

Prior to the original study, Tennessee had no uniform case standards, posing many problems in the judicial system, and making it difficult for all the consultants to conduct

the respective studies.¹ In response to this problem, the General Assembly in 2001 instituted uniform case standards under *T.C.A. 16-1-117* for all courts. *T.C.A. 16-2-513* requires all courts, the Administrative Office of the Courts, the Council for Juvenile and Family Court Judges, and the TDPDC to provide the Comptroller's Office case disposition data according to the uniform case standards.

The weighted caseload study calculates the resources, or FTEs, districts need by dividing the total number of case dispositions for the most recent fiscal year by the workload standard established by the consultants.² However, the consultants' report emphasizes these calculations provide only a base from which to estimate the need for resources. Analysts and policy makers must consider other factors that influence the workload of attorneys, such as the amount of additional local and federal funding, support staff, technology, and local rules in conjunction with quantitative methodology.³

¹ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, pp. 48-49.

² See Appendix A for a complete explanation of the study methodology and formulas and Appendix B for other related documents.

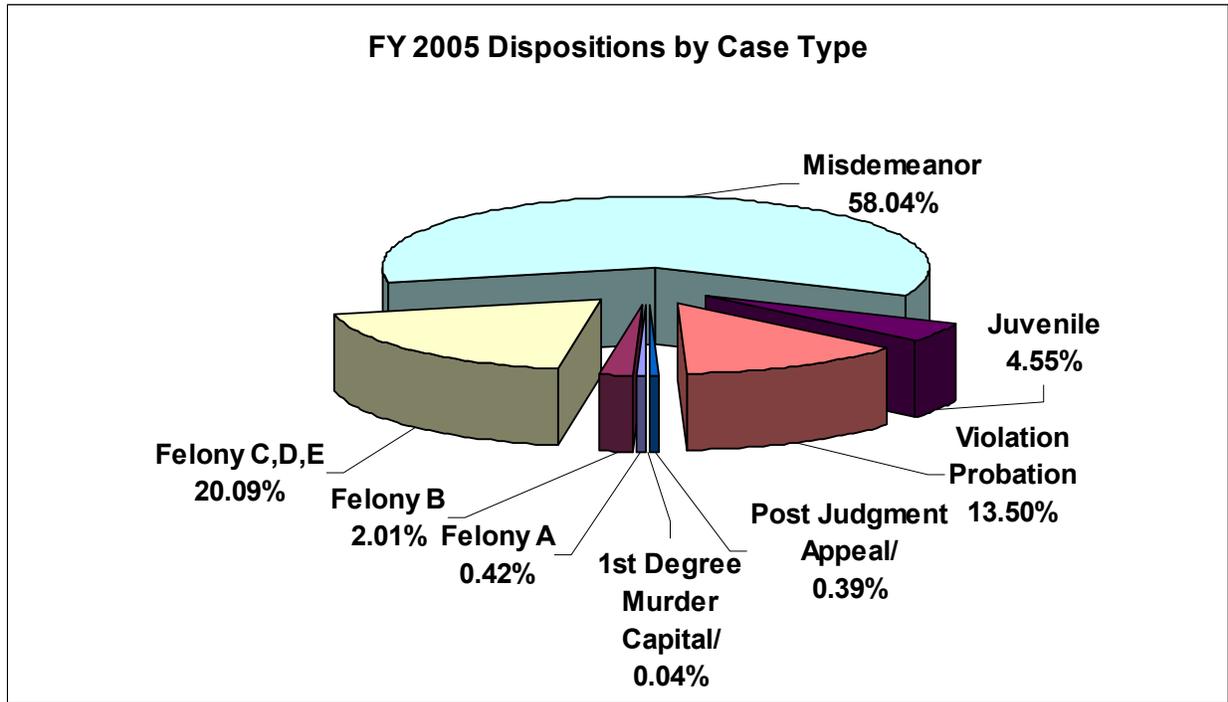
³ See Appendix C, *Factors Affecting Workload*, for a complete list of additional issues affecting workload.

Analysis and Conclusions

Dispositions

The 2005 public defender weighted caseload data showed 152,866 total dispositions. Exhibit 1 shows FY 2005 statewide dispositions by case type.

Exhibit 1



Source: TNDPDC FY 2005 Caseload Dispositions.

Exhibit 2: Total Dispositions by Case Type and 2004-2005 Changes

Total State Dispositions by Case Type and Year			Change in Case Dispositions by Year	
Case Type	FY 04	FY 05	FY 04 to FY 05	
			Number	Percent
Capital/1 st Degree Murder	51	54	3	5.88
Felony A	909	736	-173	-19.03
Felony B	3,367	3,065	-302	-8.97
Felony C, D, & E	32,510	29,465	-3,045	-9.37
Probation Violation/Other	20,525	20,637	112	.55
Post-Judgment Action	440	595	155	35.22
Misdemeanor	90,976	91,364	388	.43
Juvenile	7,807	6,950	-857	-10.98
Total	156,585	152,866	-3719	-2.38

Source: Chart produced by Office of Research Staff with data from the TDPDC.

Exhibit 3: Total FY 2005 Dispositions by District

Judicial Districts	Felony A	Felony B	Felony C, D, & E	Misdemeanor	Juvenile	Probation Violation/ Other	Appeals/ Post-Judgment	Capital/ First Degree murder	Totals
1	14	85	751	1,625	86	256	2	0	2,819
2	11	47	729	2,959	158	603	29	1	4,537
3	7	52	634	3,031	465	539	3	3	4,734
4	17	58	766	2,132	97	743	15	0	3,828
5	12	25	513	2,306	193	323	68	0	3,440
6	38	250	2,484	12,836	773	1,529	11	5	17,926
7	4	15	661	2,172	107	877	0	0	3,836
8	3	34	732	1,711	177	136	3	1	2,797
9	5	23	331	665	60	91	1	0	1,176
10	11	89	1,090	1,410	352	552	8	0	3,512
11	46	150	1,467	2,769	594	647	26	1	5,700
12	16	47	684	2,147	75	772	0	4	3,745
13	11	41	951	2,656	85	956	34	0	4,734
14	3	28	397	1,224	237	244	0	0	2,133
15	10	50	954	2,680	314	706	7	0	4,721
16	19	109	925	1,880	1	22	7	0	2,963
17	22	100	766	1,806	420	469	37	4	3,624
18	35	103	1,173	1,167	0	701	5	0	3,184
19	17	112	1,193	2,376	0	914	27	3	4,642
20	140	475	3,701	16,006	1,516	3,348	16	0	25,202
21	10	52	526	810	40	398	5	0	1,841
22	22	82	1,253	3,259	0	995	10	0	5,621
23	5	54	552	1,943	485	735	16	1	3,791
24	12	74	528	498	11	129	31	0	1,283
25	28	91	863	1,825	242	657	21	3	3,730
26	12	90	698	1,600	95	777	15	1	3,288
27	4	49	374	481	70	98	7	0	1,083
28	19	79	439	599	76	219	30	1	1,462
29	5	37	476	649	177	166	15	0	1,525
30	177	546	2,698	14,031	27	1,973	146	26	19,624
31	1	18	156	111	17	62	0	0	365
Total	736	3,065	29,465	91,364	6,950	20,637	595	54	152,866

Source: Chart produced by Office of Research Staff with data from the TDPDC.

The largest number of dispositions for FY 05 was misdemeanors with 91,364 dispositions statewide. Post-judgment actions/other cases had the largest increase in dispositions since 2004 with an increase of 155 dispositions or 35 percent. In 2005, Felony A cases were down 19 percent and juvenile cases decreased almost 11 percent from 2004.

Full Time Equivalents

Based on FY 2005 case disposition data and workload, and the addition of new attorney positions, the state’s deficit of public defenders has decreased since 2004.
(See Exhibit 4.)

Exhibit 4: Yearly Trend in the Need for Public Defender Resources (FTEs)

State Net FTEs	FY 98	FY 04	FY 05	Change FY 04-05
Total Public Defenders (FTEs)	250	260	291	31
Total Public Defenders Needed	305.64	422.14	411.52	(10.62)
Net excess or (deficit)	(55.64)	(162.14)	(120.52)	(41.62)

Source: Calculations by Office of Research staff based on data from TDPDC, 2005.

Exhibit 5: Excess or Deficit Full Time Equivalent (FTEs) by District for FY 04-FY 05

Comparison Between Excess/Deficit of PD FTEs Needed for FY 04 and FY 05				
Judicial District	Current Staff	FTEs Excess/Deficit 04	Estimated FTEs Excess/Deficit 05	Decrease or Increase in Deficit
1	7	-1.77	-.62	-1.15
2	9	-3.26	-2.99	-.27
3	7	-6.49	-5.14	-1.35
4	6	-4.25	-3.76	-.49
5	4	-6.65	-6.81	.16
6	24	-20.11	-19.76	-.35
7	4	-4.61	-4.76	.15
8	5	-3.29	-2.86	-.43
9	4	-1.31	.75	-2.06
10	6	-1.26	-4.23	2.97
11	13	-22.80	-3.90	-18.90
12	5	-3.21	-4.55	1.34
13	6	-5.39	-6.49	1.10
14	4	-1.69	-1.46	-.23
15	7	-4.85	-5.03	.18
16	7	-1.81	-1.59	-.22
17	5	-7.73	-6.83	-.90
18	5	-6.64	-4.04	-2.60
19	7	-7.21	-6.26	-.95
20	44	-17.10	-16.94	-.16
21	5	-1.02	.01	-1.03
22	6	-6.48	-7.99	1.51
23	6	-3.54	-4.05	.51
24	5	-1.44	-.07	-1.37
25	6	-5.27	-5.02	-.25
26	7	-.94	-1.76	.82
27	4	.76	.55	-.21
28	4	-1.36	-1.46	.10
29	4	-1.54	-.98	-.56
30	63	-10.83	6.63	-17.46
31	2	.99	.89	-.10
Total	291	-162.14	-120.52	-41.62

Source: Calculations by Office of Research staff based on data provided by TDPD. See Appendix E.

Additional Positions

Public Chapter 821 of 2004 created 18 additional assistant public defender positions, effective July 1, 2004. Legislation required the TPDPC executive director to file a report

by October 1, 2004, with recommendations regarding the judicial district designation of such positions. "As early as is practicable during the first session of the one hundred fourth General Assembly" the General Assembly is required to enact legislation to specify and assign the 18 positions to judicial districts. According to TDPDC staff, the conference terminated these contracts and reallocated the funds to create three additional PD positions. Since the new attorneys were in their positions for all or most of FY 2005, they have been included in the calculations for this year's update. In addition, local governments funded another 10 positions to bring the total change to 31 attorneys statewide.

There is a statewide shortage of 120.52 public defenders, which is most prevalent in urban (6th and 20th) judicial districts with deficits of 19.76 and 16.94 FTEs respectively. In addition, four other districts (5, 13, 17, and 19) have deficits of over six FTEs. T.C.A. 8-14-201 and the United States Constitution require the state to provide an attorney to represent any person charged with the commission of a crime, involving a possible deprivation of liberty, who cannot afford a private attorney. In 2005, Tennessee's public defenders carried workloads in excess of nationally recognized standards. For example, according to the workload standard, in District 6 (Knox County) the misdemeanor caseload (72 percent of total dispositions) requires all 24 PD positions to handle cases properly. Analysis shows that district needs almost 20 additional PDs to meet workload standards for the total number of dispositions in FY 2005. Lack of resources and high workloads compromise the state's ability to use limited indigent defense resources efficiently. In FY 2005, the AOC paid private attorneys \$19,914,252 from the Indigent Defense fund for handling 71,250 cases traditionally covered by public defenders, up 64 percent from 2004.⁴ These numbers are equal to 75 percent of the District Public Defenders' budget and 46 percent of total public defender dispositions for the same fiscal year.⁵ According to Indigent Defense Fund reimbursement data, the average claim for indigent defense in case types PDs would handle was \$279.50 per case in FY 2005. The TDPDC reported an average cost of \$190 per case actually handled by a public defender for that same period.⁶

It is not clear how much of the \$19,914,252 received by private attorneys in FY 2005 Indigent Defense Fund reimbursements resulted from insufficient public defender resources. Supreme Court Rule 13 (see Appendix F) authorizes the Supreme Court to

⁴ State of Tennessee, Executive Secretary of the Supreme Court, FY 2005 Indigent Defense Funds Claims Statistics, 2005.

⁵ Tennessee District Public Defenders Conference Disposition Data 2004-05 and Tennessee District Public Defenders Conference budget estimates in *State of Tennessee Budget 2004-05*.

⁶ State of Tennessee, Executive Secretary of the Supreme Court, FY 2005 Indigent Defense Funds Claims Statistics, 2004, and Tennessee District Public Defenders Conference Cost per Case 2005.

reimburse private attorneys who represent indigent defendants when there is a conflict of interest or some other legal reason the public defender is not able to represent the individual. Reimbursement procedures set forth in *T.C.A.* 40-14-208 do not require application for reimbursement for the Indigent Defense funds to include a reason for the appointment of a private attorney. Therefore, AOC officials cannot verify compliance with the law regarding use of these funds.

The District Public Defenders' Conference has no data on the number of private attorneys representing indigent defendants appointed because of insufficient public defender resources. However, the TNDPD conference indicates that judges in some districts often appoint private attorneys because the shortage of public defenders is widely acknowledged.⁷ In addition, juvenile cases account for \$1,749,683, or 8.7 percent, of the FY 2005 reimbursement from the Indigent Defense Fund.⁸ Thirty percent of juvenile court judges responding to a 2004 Office of Research survey indicated that PD staffing in their district was not adequate to cover juvenile courts, resulting in appointment of private attorneys in most cases.

Judges in both adult criminal and juvenile courts report that public defenders often are unavailable to accept cases resulting in the appointment of private counsel to represent indigent defendants.

Many juvenile courts do not have adequate public defender representation. Juvenile defendants have the right to counsel by law under *T.C.A.* 37-1-126. Although the original 1999 public defender weighted caseload study, a report by the Comptroller's Office in January 2004, and interviews with judges from the Council of Juvenile and Family Court Judges (CJFCJ) indicated that some juvenile defendants lacked any attorney representation, recent data shows that most juveniles have access to counsel if they want it. However, in most cases, juvenile court judges appoint private attorneys to represent juveniles facing delinquency, unruly behavior, or status offense charges. Public defenders handled 6,950 juvenile delinquent cases in FY 2005. While total juvenile court caseload data is not yet available for 2005, in 2004, PDs handled 12 percent of the 58,683 delinquency, status offense, and unruly behavior cases reported in the Council of Juvenile and Family Court Judges' annual report for that year.⁹ Indigent

⁷ Tennessee District Public Defenders Conference, Agency response, 1.25.06.

⁸ State of Tennessee, Executive Secretary of the Supreme Court, FY 2005 Indigent Defense Funds Claims Statistics, 2005.

⁹ Tennessee District Public Defenders Conference FY 2005 disposition data and Council of Juvenile and Family Court Judges 2004 Annual report.

Defense Fund data showed that private attorneys filed 6,342 claims for juvenile felony and misdemeanor cases costing a total of \$1,116,581 in FY 2005.¹⁰

According to the Public Defenders Conference, the 15th, 20th, and 30th judicial districts have permanently assigned public defenders in their juvenile courts. When surveyed by the CJFCJ in 2004, at the request of the Comptroller's office, judges in 17 other districts reported having PDs permanently in their courts. In these courts, juveniles facing delinquency charges have PD representation unless they waive the right to counsel.

In the remaining districts without permanent PDs, private attorneys most often represent juveniles who exercise their right to counsel. In responses to the 2004 survey, judges in juvenile courts reported that they appoint private attorneys for one of two reasons: 1) PDs are not available at all or within a reasonable amount of time, or 2) PDs do not have the skills or knowledge required to adequately represent defendants in juvenile court. When asked how best to resolve the issue of public defender representation in their courts, all responding judges without permanently assigned PDs, indicated that they needed PDs dedicated to their courts and specifically trained to handle juvenile cases.¹¹

Not all courts comply with Tennessee requirements for determination of indigence procedures. *T.C.A. 40-14-202* requires, after September 1, 1992, any person "financially unable to obtain the assistance of counsel ...to complete the uniform affidavit of indigency." The uniform affidavit of indigency is also required under Supreme Court Rule 13. In addition, this section of the code requires a hearing to determine indigence in all felony cases. Consultants during the original study found that "screening for indigency is cursory at best." Unfortunately, while defendants who provide false information on affidavits of indigency face severe penalties, Tennessee does not have a system of accountability or any penalty for noncompliance with the laws governing the use of screening procedures. As a result, public defenders, or private counsel through the Indigent Defense fund, represented 68 percent of all criminal defendants convicted of felonies in 2004 without knowing if all the defendants were truly indigent.¹²

Public defenders, in response to a 2004 survey, reported that if a defendant requests an appointed attorney, they usually receive one, regardless of their true financial status.

¹⁰ State of Tennessee, Executive Secretary of the Supreme Court, FY 2005 Indigent Defense Funds Claims Statistics, 2005.

¹¹ Council of Juvenile and Family Court Judges, Juvenile Court Survey: Adequacy of Public Defender Representation In Juvenile Courts, October 2004.

¹² Administrative Office of the Courts, 2003-04 Felony Convictions Methods of Representation, 2005.

Only one responding district reported that criminal court judges conducted the required hearings in felony cases. However, that same district reported no compliance with indigence determination procedures in general sessions regardless of the type of charges. One criteria used in every court attended by responding PDs is whether the accused is incarcerated. Judges assume a defendant who has not posted bond is indigent, and often do not even require a sworn affidavit. Even if the defendant fills out and signs an affidavit, no one investigates or confirms the validity of the affidavit. When public defenders investigate because they suspect false statements, they often find the defendant has misstated financial status and successfully request removal from those cases. However, PD offices lack adequate resources to do this regularly.

For FY 2005, Public Defenders continue to report a perception that judges appoint them and private attorneys to cases as a matter of convenience to the court. Without monitoring of indigence determination and attorney appointing practices, verification of this allegation or actual procedural compliance remain impossible.

Some public defenders' offices do not have enough support staff. In the original case-weighting study report, Spangenberg staff recommended "support staff guidelines be adopted in Tennessee in conjunction with the caseload standards."¹³ *T.C.A. 8-14-202 (e)* authorizes at least one criminal investigator per district and another investigator for every five assistant public defender positions. The TDPDC indicates that it allocates one secretarial position for every three attorneys and one office manager per district. For 2005, six districts received funding for new investigator and secretarial positions based on the allocation of new PD positions, the formula set forth in *T.C.A. 8-14-202 (e)*, and the TDPDC policies.

During the original study, the consultants found that some districts used investigator positions as assistant public defenders because of high caseloads. *T.C.A. 8-14-207 (c)(4)* allows district public defenders to hire attorneys into vacant investigator positions to act as assistant public defenders and to be compensated as such. According to the Public Defenders' Conference, in 2005, 11 districts had attorneys in investigator positions that were carrying caseloads. Of those 11, four had no investigator positions other than those occupied by attorneys acting as defenders.¹⁴ The original report noted "not hiring investigators" compromises the function of representation.¹⁵

¹³ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, p. 62.

¹⁴ Tennessee District Public Defenders Conference, District Public Defender Office Staffing 2004-05, received in email to author October 21, 2005.

¹⁵ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, pp. 17, 69.

Exhibit 7

Investigator Positions Filled by Attorneys Carrying Caseloads		
District	Attorneys in Investigator Positions	Total Investigator Positions
1	1	2
4	1	2
5	1	2
9	1	2
12*	2	2
13	1	2
16	1	2
19	1	2
21*	2	2
23*	2	2
31*	1	1

Source: Chart produced by Office of Research Staff with data from the TDPDC

**Districts using all investigator positions as assistant public defenders.*

The court system lacks a uniform information system to collect disposition data.

Currently the public defenders conference information system, Prolaw, is not integrated with the Tennessee Court Information System (TnCIS),¹⁶ nor are the information systems for the big four urban counties and the Council of Juvenile and Family Court Judges. Thus, several different information systems handle disposition data on the same individual charged with a criminal offense/s, leading to a duplication of effort and increasing chances for data entry errors.

Recommendations

The General Assembly may wish to ensure that there are enough public defenders to handle the workload based on the need identified in the FY 2005 weighted caseload study update. Proper funding of the public defender system would reduce reliance on private attorneys and make more efficient use of Indigent Defense Fund dollars. The General Assembly may wish to consider allocating excess funds from the Indigent Defense Fund to the Public Defenders Conference to the extent that resources are lacking under the weighted caseload study.

¹⁶ TnCIS is the statewide court information system available to all courts in the state who choose it.

The General Assembly may wish to amend T.C.A. 40-14-202 regarding determination of indigence and appointment of public defenders to ensure accountability of courts' compliance and authorize penalties for non-compliance. This may reduce the workload for public defenders and cost to the indigent defense fund.

The General Assembly may wish to fund more support staff for public defenders to increase efficiency and reduce cost. Investigators, paralegals, and legal secretaries can provide essential evidence and research, among other things, to a case at a lower cost than attorneys provide, and increase the efficiency of public defenders' case duties.

The General Assembly may wish to authorize a study to determine the number of private attorneys reimbursed from the indigent defense fund because of a lack of public defenders. The AOC may wish to add a section to the form for private attorneys applying for reimbursement from the Indigent Defense Fund citing the reason for the appointment, i.e., conflict of interest or lack of public defender resources.

The Administrative Office of the Courts should integrate public defenders' case information with the Tennessee Court Information System (TnCIS). This could reduce duplication of data entry and ensure more accurate, uniform, and timely case and disposition information.

Appendix A: District Public Defender Weighted Caseload Methodology

The Spangenberg Group employed a “time-based” methodology to conduct the public defenders’ weighted caseload “time study.” Over the years, the Spangenberg Group concluded “the time-recorded case weighting method” is the most thorough and complete method to determine valid, empirical workload measures that can be translated into caseload standards for public defender programs.¹

Originally, a steering committee worked with consultants from the Spangenberg Group to coordinate the study. The consultants conducted a time study for a period of seven weeks (from January 11 to February 26, 1999). The sample included nine judicial districts – the 2nd, 8th, 5th, 13th, 16th, 20th, 24th, 26th, and 30th districts.² During the study, attorneys kept track of all their time by type of activity, type of case, and disposition. For example, a type of activity would include arraignment, legal research, and sentencing. Sample dispositions include bound over, acquitted, convicted. (See Appendix B– for related documents including Case Activity Codes and Daily Activity Log with complete list of activity types and the time log.)

The steering committee narrowed all cases into the following major categories for the time study. They are:

1. Capital/First Degree Murder
2. Felony A
3. Felony B
4. Felony C/D/E
5. Misdemeanors
6. Juvenile
7. Probation Violations
8. Post Judgment Actions, and
9. Other

Counting Dispositions versus Filed Cases

The methodology employed by the Spangenberg Group in the time study counted cases by dispositions. The time study measured the average amount of time spent to dispose of a case. While no study can calculate workload exactly, dispositions more accurately reflect the workload of attorneys than filings. Counting filings reflects only the number of cases opened during a given time period, not the time and work to complete the case. Cases can linger without action for months after filing. Dispositions reflect the total time spent working on a case, even if the case is filed in a previous year. In addition, if a case is filed and disposed in the same year it will be counted in the number of disposed cases in the weighted caseload study.

¹ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, p. 11.

² Originally there were 10 districts, that included the 19th district, but because of a tornado that caused serious damage to the courts and offices in that district, they were excluded.

Disposition Methodology

Exhibit 1 provides the basic definitions of calculations used in the methodology, followed by an overview of the methodology used to estimate the public defender resources needed.

Exhibit 1

Data Element	Description & Source	Formula
Case Weight	Average time required to dispose of different case types based on attorney time divided by number of dispositions by case type reported on the Daily Activity Log sheet during the time study.	Total case hours ÷ total dispositions in time study
Case Dispositions	Closed cases.	Dispositions counted by highest class charge at the time the case is closed.
Annual Number of Case Dispositions	Total annual number of case dispositions by case types collected from the Public Defenders Conference.	Add total dispositions from each judicial district by case types.
Public Defender Year Value	The total amount of time available for processing cases per full-time attorney based on the State standard 7.5 hour workday.	See Exhibit 2.
Workload Standard	The total number of cases an attorney should be able to handle in a year for a single case type if that were the only type of case handled.	Workload Standard = Attorney Year ÷ case weight
FTEs (Full Time Equivalents)	The total number of resources/attorneys needed to handle workload.	1635 hours ÷ Workload Standard (PD Year Value)

Case Weights

The formula to determine the projected workload and resulting standard for each type of case uses “attorney-time-per-disposition,” calculated by adding the total hours attributed to a case type during the time study and dividing that number by the total number of dispositions for the same case-type during the time study period.³ To determine case weights for the various case types attorneys kept up with all the time they spent on cases and the number of cases disposed during the time study by the different case types listed on page 3.

³ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, p. 53.

The following is an example of how a Felony A case is calculated:

The total time spent on felony A cases during the time study = 2,990:46 (hours: minutes.)

The total dispositions reported during the same time = 86. Therefore,

Case weight = 2990:46 ÷ 86, or 29:57 per case.

While some cases may take more or less than 30 hours, this is an average amount of time as calculated by the time study.

Case Dispositions

Case dispositions are counted by the highest charge in the case *at the time of disposition* (when the case is closed). For example, a person may be initially charged with one felony A count, one felony B count, and two misdemeanor counts. If at trial the felony A count is dismissed and the defendant is found guilty on all other counts, the case is counted as a felony B case at disposition.

Attorney Year

The attorney year, or amount of time an attorney has to devote to cases, must be determined to calculate the workload standards for the different cases. Tennessee public defenders work a 7.5-hour workday, and receive ten annual leave days and five annual sick days. In addition, Tennessee observes 12 state holidays. Public defenders also are paid for five days of official conferences and for ten days of continuing legal education training each year.

Based on these figures, the Public Defender Weighted Caseload Steering Sub-Committee determined that the average Tennessee public defender works 1,635 hours per year.

Exhibit 2 displays the formula and calculations used to determine the total attorney hours per year:

Exhibit 2⁴

Total Available Attorney Hours Per Year			
		<u>Calculation</u>	<u>Hours</u>
A.	Work Day		7.5
B.	Work Week	(Row A x 5)	37.5
C.	Work Year (Prior to Leave Time Allowance)	(Row B x 52)	1,950
Leave Time			
		<u>Days Per Year</u>	<u>Hours</u>
D.	State Holidays	12	90
E.	Annual Leave	10	75

⁴ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, p. 55.

F.	Sick Leave	5	37.5
G.	Official Conferences	5	37.5
H.	Continuing Legal Education Training	10	75
I.	Total All Leave	42	315
		<u>Calculation</u>	<u>Hours</u>
Total Available Attorney Hours Per Year		(Row C - Row I)	1,635

260 days (total workdays in a year) – 42 (total training and leave days per year) = 218 days.

Workload Standard Formula

The original consultant’s report defined workload standards as “the average number of cases that a single attorney can be expected to handle during the course of one year if that attorney handles only that type of case.” Once the case weights and attorney year are calculated, the workload standards can be calculated. The workload measure for each case type is calculated by dividing the attorney year by the case weight for each case type.⁵

Workload Standard = 1635 ÷ attorney hours per disposition (case weight)⁶

Example: case type Felony A workload standard is calculated as follows:

1635 ÷ 29:57 = 55

The consultants attempted to perform this calculation for each case type.⁷ Because of the small sample size and shortness of the time study, it was not possible to calculate the workload for some case types. For example, there was not enough data from the time study to develop a work measure for Capital/First Degree Murder (death penalty) and appeal cases. Thus, the consultants established a workload measure by using averages of standards from other states, which equaled five cases per year.⁸

Determining accurate workload measures for the three categories of felonies also proved problematic. To calculate a more accurate workload The Spangenberg Group added all types of felonies to calculate one workload standard. This resulted in a workload standard of 233 cases per year for felony cases.⁹

⁵ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, p. 55-56.

⁶ Ibid.

⁷ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, Table 6-3, p. 56.

⁸ Ibid, pp. 60-61 and 64.

⁹ Ibid, p. 64.

In addition, analysis of time study data showed the workload for misdemeanor cases to be 850 per year. Based on 176 workdays available per year, attorneys would need to dispose of about five cases per day, if those were the only types of cases an attorney handled. The Spangenberg Group found this to be excessive, at approximately twice the number found in studies conducted in 12 other states where the standards were usually about 400.¹⁰ Therefore, they adjusted the workload standard to 500 cases per year.

Based on these adjustments Exhibit 3 lists the workload standard for each case type used in the formula to calculate FTEs.

Exhibit 3

Case Types and Workload Standards to Estimate Public Defender Staffing Needs¹¹	
Case Type	Workload Standard¹²
Capital/1 st Degree Murder	5
Felony	233
Misdemeanor	500
Juvenile	273
Appeals	25
Other	795

Formula to Calculate Full Time Equivalents (FTEs)

The formula used to calculate the number of attorney resources (FTEs needed) is the total dispositions for the fiscal year (as reported by the Public Defenders Conference by Case Type) ÷ Workload Standard established in original consultants’ study.¹³ More simply put:

$$\text{(FTEs)} = \text{Total Dispositions} \div \text{Workload Standard}$$

Using the disposition data from FY 1998, the workload standards established in the time study, and number of attorneys at that time, the consultants determined that the state needed 56 additional assistant public defenders.¹⁴

The Spangenberg Group “strongly” recommended against using the formula to calculate the FTEs for each district because of the many other factors that affect workload.¹⁵ Instead, the report suggested calculating total state resources needed, and let “policy-makers in conjunction with representatives from TDPDC and the Weighted Caseload Study Steering Committee” decide how to allocate resources among the different districts. (See Appendix E: District-by-District Public Defender Staffing Estimates and Appendix F for a map of Tennessee Judicial Districts.)

¹⁰ Ibid.

¹¹ Ibid, p. 65.

¹² The total number an attorney should be able to handle if they handled that case type only.

¹³ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, p. 65.

¹⁴ Ibid.

¹⁵ Ibid.

The main factors the report cited affecting workload include the source and amount of additional local funding available to a judicial district and number of support staff, especially investigators.¹⁶ However, at the request of the General Assembly the Spangenberg Group provided a list of FTEs needed by district in Appendix D of the original report. Those numbers, along with a comparison of 2004 estimated staffing needs, appear in the Analysis and Conclusions section of this report.

Qualitative Issues

As noted, “the ability to *weight* cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases handled by the program. However, this ability is particularly valuable in light of numerous factors affecting indigent defense caseloads nationally and locally.”¹⁷ The original report listed several elements that affect workload other than cases such as work environment, travel time, and available support staff. (See Appendix C: Factors Affecting Workload.)

¹⁶ Ibid, p. 66.

¹⁷ The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April 1999, pp. 24-25.

APPENDIX B: Case Activity Codes and Daily Activity Log

I. CASE TYPE CODES

(Most Serious Charge)

- | | |
|-------------------------------|---------------------------------------|
| 40. Capital/1st Degree Murder | 46. Probation Violation |
| 41. Felony A | 47. Post-Judgment Action |
| 42. Felony B | 48. Appeal |
| 43. Felony C, D, E | 49. Other |
| 44. Misdemeanor | 60. Multiple Case Types, Case-Related |
| 45. Juvenile | 70. Non-Case Related |

II. ACTIVITY CODES

A. Out-of-Court Case Related Activities

1. Investigation
2. Client Related Contact
3. Social Services Activity
4. Legal Research
5. Conference with Supervisor or Colleague
6. Conference with D.A. or Court Personnel
7. Case Preparation

B. In-Court Case Related Activities

8. Arraignment
9. Initial Hearing/First Appearance
10. Preliminary Hearing
11. Bond Hearing
12. Pre-Trial Conference/Status Hearing
13. Motions
14. Disposition/Plea/Settlement Day
15. Trial
16. Sentencing
17. Post-Trial/Post-Plea
18. Detention Hearing
19. Diversion
20. Waiver Hearing

C. General Activities (Case or Non-Case Related)

21. Waiting Time
22. Travel Time
23. Multiple Activities
24. Supervision

D. Non-Case Related Activities

25. Administrative Activity
26. Professional Development
27. Lunch & Other Breaks
28. Vacation & Time Away from Work
29. Training
30. Community Service & Public Education

III. OTHER ACTIVITY CODES

31. Other Activities

IV. DISPOSITION CODES

- | | |
|---|---|
| A. Withdrawal | F. Plea/Sentence |
| B. Diversion | G. Trial - Acquitted |
| C. Bound Over to Circuit/Criminal Court | H. Trial-Convicted |
| D. Dismissed | I. Committed to State Hospital/Incompetency |
| E. Plea/Deferred Sentence | |

APPENDIX C

Factors Affecting Workload Nationally and in Tennessee

As the preceding discussion indicates, factors such as geography and population density can contribute to regional variations in public defender practice.

Moreover, national and local trends in criminal justice jurisprudence and legislative and law enforcement policies necessarily influence the way the public defender must approach his or her work. The public defender's duties are defined by not just the number of cases they must handle, but also their increasing complexity. This is the premise behind a case weighting study.

The ability to weight cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases handled by the program. However, this ability is particularly valuable in light of numerous factors affecting indigent defense caseloads nationally and locally. For instance, "tough on crime" legislation has been enormously popular around the country in recent years, resulting in new mandatory minimum sentences and habitual offender sentence enhancements. Each of these phenomena produces greater numbers of initial filings by prosecutors, as well as fewer cases which can be diverted out of the system at an earlier stage of litigation.

While violence-related drug crimes have been a main target of prosecution for several years, we have begun to see a considerable increase in arrests of non-violent drug offenders as well. Other important factors nationwide include:

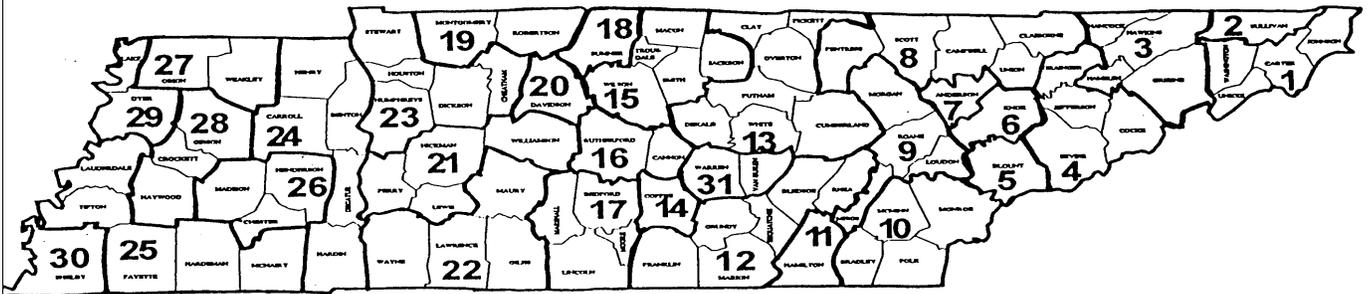
- Changes in statutes, case law, or court rules in individual states that increase the types of cases or proceedings for which counsel is required;
- Changes in the economy, resulting in increased claims of indigence;
- Increased levels of appropriation to public safety and prosecutorial functions, without a commensurate increase to public defenders, resulting in greater numbers of prosecutions and case filings;

- Increased levels of appropriation to corrections and prison facilities, enabling greater numbers of offenders to be incarcerated;
- Changes in public policy or office policy within public defender offices requiring the performance of additional tasks, e.g., preparation of sentencing reports and diversion recommendations, indigency screening, and appellate review;
- Changes in prosecutorial practices such as the institution of career criminal prosecution programs or policies limiting plea bargaining in certain types of cases;
- Changes in the method of case disposition or the stage at which cases are disposed, e.g., increase in trials, more frequent use of juries, fewer dismissals, less plea bargaining at early stages of the case;
- Changes in the nature of offenses for public defenders with an increased percentage of cases exposing clients to substantial, mandatory imprisonment;
- Reductions in court processing time through added judgeships or other increases in court efficiency; and
- Changes in procedural handling (e.g., speedier trials or preliminary hearings) for certain classes of offenses.

The Tennessee caseload, while affected by national trends in criminal justice, has manifested its own unique workload characteristics. The following is a non-exhaustive list of Tennessee-specific information concerning public defender caseload:

- In 1991, the average annual caseload for TDPDC attorneys was 545 cases. By the next year, caseloads had risen 20% to 653 cases per attorney;
- In 1996 there was a 12% increase in the average caseload per attorney, and in both 1997 and 1998 the annual caseload grew by 8%. The current average, annual caseload is 670 cases per attorney;
- Homicide filings from 1997-1998 were nearly 30% higher than those in 1996-1997, and are currently at about 1,321 statewide.

TENNESSEE JUDICIAL DISTRICTS



- District 1 - Carter, Johnson, Unicoi, and Washington Counties
- District 2 - Sullivan County
- District 3 - Greene, Hamblen, Hancock, and Hawkins Counties
- District 4 - Cocke, Grainger, Jefferson, and Sevier Counties
- District 5 - Blount County
- District 6 - Knox County
- District 7 - Anderson County
- District 8 - Campbell, Claiborne, Fentress, Scott, and Union Counties
- District 9 - Loudon, Meigs, Morgan, and Roane Counties
- District 10 - Bradley, McMinn, Monroe, and Polk Counties
- District 11 - Hamilton County
- District 12 - Bledsoe, Franklin, Grundy, Marion, Rhea, and Sequatchie Counties
- District 13 - Clay, Cumberland, DeKalb, Overton, Pickett, Putnam, and White Counties
- District 14 - Coffee County
- District 15 - Jackson, Macon, Smith, Trousdale, and Wilson Counties
- District 16 - Cannon and Rutherford Counties
- District 17 - Bedford, Lincoln, Marshall, and Moore Counties
- District 18 - Sumner County
- District 19 - Montgomery and Robertson Counties
- District 20 - Davidson County
- District 21 - Hickman, Lewis, Perry, and Williamson Counties
- District 22 - Giles, Lawrence, Maury, and Wayne Counties
- District 23 - Cheatham, Dickson, Houston, Humphreys, and Stewart Counties
- District 24 - Benton, Carroll, Decatur, Hardin and Henry Counties
- District 25 - Fayette, Hardeman, Lauderdale, McNairy, and Tipton Counties
- District 26 - Chester, Henderson, and Madison Counties
- District 27 - Obion and Weakley Counties
- District 28 - Crockett, Gibson, and Haywood Counties
- District 29 - Dyer and Lake Counties
- District 30 - Shelby County
- District 31 - Van Buren and Warren Counties

Appendix E-Public Defender Weighted Caseload Model Update - FY 2005

Judicial District	Wkload	1	2	3	4	5	6	7	8	9	10
Casetype	Workload Standard	Case Dispositions per District*									
1	Capital/1st Degree Murder	0	1	3	0	0	5	0	1	0	0
2	Felony**	850	787	693	841	550	2,772	680	769	359	1,190
3	Misdemeanor	1,625	2,959	3,031	2,132	2,306	12,836	2,172	1,711	665	1,410
4	Juvenile	86	158	465	97	193	773	107	177	60	352
5	Appeals	2	29	3	15	68	11	0	3	1	8
6	Probation Violations/Other	256	603	539	743	323	1,529	877	136	91	552
7	Total Dispositions	2,819	4,537	4,734	3,828	3,440	17,926	3,836	2,797	1,176	3,512
8	Total # of PDs	7	9	7	6	4	24	4	5	4	6
9	FTEs Needed for Year***	7.62	11.99	12.14	9.76	10.81	43.76	8.76	7.86	3.25	10.23
10	FTE Deficit or Excess	-0.62	-2.99	-5.14	-3.76	-6.81	-19.76	-4.76	-2.86	0.75	-4.23

Source: Conference of the Tennessee Public Defenders and the Council of Juvenile and Family Court Judges.

* Dispositions based on highest charge if case involves more than one charge.

** Includes all classes of felonies

*** FTEs needed are calculated by dividing number of dispositions by workload measure per case type

Appendix E-Public Defender Weighted Caseload Model Update - FY 2005

	11	12	13	14	15	16	17	18	19	20	21
Judicial District											
Casetype	Case Dispositions per District										
1	1	4	0	0	0	0	4	0	3	0	0
Capital/1st Degree Murder											
2	1,663	747	1,003	428	1,014	1,053	888	1,311	1,322	4,316	588
Felony											
3	2,769	2,147	2,656	1,224	2,680	1,880	1,806	1,167	2,376	16,006	810
Misdemeanor											
4	594	75	85	237	314	1	420	0	0	1,516	40
Juvenile											
5	26	0	34	0	7	7	37	5	27	16	5
Appeals											
6	647	772	956	244	706	22	469	701	914	3,348	398
Probation Violations/Other											
7	5,700	3,745	4,734	2,133	4,721	2,963	3,624	3,184	4,642	25,202	1,841
Total Dispositions											
8	13	5	6	4	7	7	5	5	7	44	5
Total # of PDs											
9	16.90	9.55	12.49	5.46	12.03	8.59	11.83	9.04	13.26	60.94	4.99
FTEs Needed for Year***											
10	-3.90	-4.55	-6.49	-1.46	-5.03	-1.59	-6.83	-4.04	-6.26	-16.94	0.01
FTE Deficit or Excess											

Source: Conference of the Tennessee Public Defenders and the Council of Juvenile and Family Court Judges.

* Dispositions based on highest charge if case involves more than one charge.

** Includes all classes of felonies

*** FTEs needed are calculated by dividing number of dispositions by workload measure per case type

Appendix E- Public Defender Weighted Caseload Model Update - FY 2005

Judicial District	22	23	24	25	26	27	28	29	30	31	Totals	
Casetype	Case Dispositions per District											Totals
1	0	1	0	3	1	0	1	0	26	0	54	
2	1,357	611	614	982	800	427	537	518	3,421	175	33,266	
3	3,259	1,943	498	1,825	1,600	481	599	649	14,031	111	91,364	
4	0	485	11	242	95	70	76	177	27	17	6,950	
5	10	16	31	21	15	7	30	15	146	0	595	
6	995	735	129	657	777	98	219	166	1,973	62	20,637	
7	5,621	3,791	1,283	3,730	3,288	1,083	1,462	1,525	19,624	365	152,866	
8	6	6	5	6	7	4	4	4	63	2	291	
9	13.99	10.05	5.07	11.02	8.76	3.45	5.46	4.98	56.37	1.11	411.52	
10	-7.99	-4.05	-0.07	-5.02	-1.76	0.55	-1.46	-0.98	6.63	0.89	-120.52	

Source: Conference of the Tennessee Public Defenders and the Council of Juvenile and Family Court Judges.

* Dispositions based on highest charge if case involves more than one charge.

** Includes all classes of felonies

*** FTEs needed are calculated by dividing number of dispositions by workload measure per case type

APPENDIX F

Supreme Court Rule 13. Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants.

Section 1. Right to counsel and procedure for appointment of counsel.

(a) The purposes of this rule are to establish qualifications for counsel in capital cases, and to establish qualifications and procedures for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel for indigent defendants in capital and non-capital trials, direct appeals, post-conviction proceedings and in any other proceeding in which a defendant has a statutory or constitutional right to appointed counsel. This rule is intended to meet the standards set forth in Section 107 of the Antiterrorism and Effective Death Penalty Act of 1996.

(b) There shall be maintained for each trial court exercising criminal jurisdiction a roster of attorneys who have demonstrated the commitment and proficiency necessary for providing effective assistance of counsel from which roster appointments will be made, provided a court may appoint attorneys whose names are not on the roster if necessary to obtain competent counsel according to the provisions of this rule.

(c) All general sessions, juvenile, trial, and appellate courts shall appoint counsel to represent indigent defendants and other parties who have a constitutional or statutory right to representation (herein "indigent defendant" or "defendant") according to the procedures and standards set forth in this rule.

(d) In the following cases and in all other cases required by law, the court or appointing authority shall advise any party who is without counsel that he or she has the right to be represented by counsel throughout the case and that counsel will be appointed to represent the party if he or she is indigent and requests the appointment of counsel. The child who is or may be the subject of a report or investigation of abuse or neglect and in proceedings to terminate parental rights shall not be required to request appointment of counsel.

(1) Cases in which an adult is charged with a felony or a misdemeanor and is in jeopardy of incarceration;

(2) Cases in which a juvenile is charged with juvenile delinquency by the commission of an act which if committed by an adult would be a misdemeanor or a felony;

(3) In contempt of court proceedings in which the defendant is in jeopardy of incarceration;

(4) In proceedings initiated by a petition for habeas corpus, early release from incarceration, suspended sentence or probation revocation;

(5) In post-conviction proceedings in non-capital cases, subject to the provisions of Rule 28, Supreme Court Rules;

(6) In all post-conviction proceedings in capital cases;

(7) In cases under Title 37 of Tenn. Code Ann. in which allegations against the parents could result in finding the child dependent or neglected, or in which there is a petition for termination of parental rights.

(8) The court shall appoint a guardian ad litem for every child who is or may be the subject of report of abuse or neglect or an investigation report under §§37-1-401 -37-1-411. The appointment of the guardian ad litem shall be made upon the filing of the petition or upon the court's own motion, based upon knowledge or reasonable belief that the child may have been abused or neglected. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than each child.

(9) In proceedings to terminate parental rights the court shall appoint a guardian ad litem for the child, unless the termination is uncontested. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than each child.

(10) In parole revocation proceedings pursuant to the authority of state and or federal law.

(11) In judicial proceedings under Chapter 3 through 8 of Title 33, Mental Health Law.

(12) In cases in which a superintendent of a mental health facility files a petition under the guardianship law, Title 34.

(13) In cases under Tenn. Code Ann. §37-10-304 and Supreme Court Rule 24 relative to petitions for waiver of parental consent for abortions.

(14) In cases in which a juvenile is charged upon three (3) or more court proceedings to be unruly as defined in Tenn. Code Ann. §37-1-126(a).

(e) Whenever a party to any case in Section 1(d) states to the court that he or she is financially unable to obtain counsel and requests the appointment of counsel, the party shall be required to complete an Affidavit of Indigency Form provided by the Administrative Office of the Courts. The court shall upon inquiry make a finding as to the indigency of the party pursuant to the provisions of Tenn. Code

Ann. § 40-14-202. The court shall enter an order appointing counsel upon a finding that the defendant is indigent and accepts the offer of appointed counsel, or is unable competently to decide whether to accept or reject the offer. The court shall not appoint counsel upon finding that the party rejected the offer of counsel with an understanding of the legal consequences of the rejection, or upon finding that the party is not indigent.

(f) The court shall appoint separate counsel for indigent defendants having interests that cannot be properly represented by the same counsel or when other good cause is shown.

(g) The court shall not make an appointment which creates a total work load on counsel so excessive that it effectively prevents the rendering of effective representation for the defendant in accordance with constitutional and professional standards.

(h) The court shall designate the public defender, the post- conviction defender, their staffs or other attorneys employed by the state for that purpose (hereinafter "public defender") as appointed counsel if available and qualified pursuant to this rule; and, if the public defender is not available or qualified, the court shall designate counsel from a roster of private attorneys approved by the court. Appointment of public defenders shall be subject to the limitations of Tenn. Code Ann. § 8-14-201 et seq. The defendant shall not have the right to select counsel to be appointed. If a competent defendant refuses to accept the services of appointed counsel, such refusal shall be written and signed by the defendant in the presence of the court, which shall acknowledge thereon the signature of the defendant and make the written refusal a part of the record in the case. In that event, the defendant may act pro se without the assistance or presence of counsel.

(i) Counsel appointed shall continue to act for the defendant throughout the proceedings in the court in which the appointment is made and in any subsequent proceedings or appeals until the case has been concluded or counsel has been relieved by the court.

(j) The failure of any court to follow the provisions of this rule shall not constitute grounds for relief from a judgment of conviction or sentence. The failure of appointed counsel to meet the qualifications set forth in this rule shall not be deemed evidence that counsel did not provide effective assistance of counsel in a particular case.

Section 2. Qualifications and compensation of counsel in non- capital cases.

(a) Before counsel or a guardian ad litem is appointed for an indigent defendant, parent, or child, the court shall be satisfied that the attorney to be appointed is capable of providing the defendant, parent or child with effective assistance of counsel.

(b) Appointed counsel, other than public defenders, shall be entitled to reasonable compensation for their services rendered as provided in this rule. Co-counsel or associate attorneys in non-capital cases may not be compensated. Reasonable compensation shall be determined by the court in which services are rendered, subject to the limitations set forth in this rule, which limitations are declared to be reasonable. The limitations apply to compensation for services rendered in each court, municipal, juvenile, or general sessions; criminal, circuit, or chancery; Court of Appeals or Court of Criminal Appeals; the Tennessee Supreme Court; and the United States Supreme Court.

(c) The hourly rate for appointed counsel in non-capital cases shall not exceed forty dollars (\$40) per hour for time reasonably spent in trial preparation and fifty dollars (\$50) per hour for time reasonably spent in court. For the purposes of this rule, "time reasonably spent in court" means time spent in courtroom proceedings before a judge.

(d) Except as provided in Section 2(e) of this rule, the compensation allowed appointed counsel for services rendered in a non- capital case shall not exceed the amounts indicated. The maximum compensation allowed shall be determined by the original charge or allegations in the case.

(1) Five hundred dollars (\$500) in:

(A) Cases in which an adult or a juvenile is charged with a misdemeanor and is in jeopardy of incarceration;

(B) Dependent or neglected child cases;

(C) Contempt of court cases where an adult or juvenile is in jeopardy of incarceration.

(D) For guardian ad litem representation for every child who is or may be the subject of a report of abuse or neglect or an investigation report under §§37-1-401 - 37-1-411, from the filing of the dependency petition through the dispositional hearing.

(E) For guardian ad litem representation for every child who is or may be the subject of a report of abuse or neglect or an investigation report under §§37-1-401 - 37-1-411, for all post- dispositional proceedings;

(F) In parole revocation proceedings pursuant to the authority of state and or federal law.

(G) In judicial proceedings under Chapter 3 through 8 of Title 33, Mental Health Law.

(H) In cases in which a superintendent of a mental health facility files a petition under the guardianship law, Title 34.

(I) In cases under Tenn. Code Ann. §37-10-304 and Supreme Court Rule 24 relative to petitions for waiver of parental consent for abortions.

(J) In cases in which a juvenile is charged upon three (3) or more court proceedings to be unruly as defined in Tenn. Code Ann. §37-1-126(a).

(2) One thousand dollars (\$1,000) in:

(A) Preliminary hearings in general sessions and municipal courts in which an adult is charged with a felony;

(B) Cases in trial courts in which the defendant is charged with a felony;

(C) Direct and interlocutory appeals;

(D) Cases in which a defendant is applying for early release from incarceration or a suspended sentence;

(E) Non-capital post conviction and habeas corpus proceedings;

(F) Probation revocation proceedings;

(G) Cases in which a juvenile is charged with a non-capital felony;

(H) Proceedings against parents in which allegations against the parents could result in termination of parental rights.

(I) For guardian ad litem representation of every child in a termination of parental rights case.

(J) All other non-capital cases in which the defendant has a statutory or constitutional right to be represented by counsel.

(e) If the court in a non-capital case shall certify to the director of the Administrative Office of the Courts that the case requires extended or complex representation within the meaning of Tenn. Code Ann. § 40-14- 207(a)(2) or an amount in excess of the maximum amount allowed by section 2(d) is necessary to provide reasonable compensation to appointed counsel, the compensation shall be limited to the amount stated in this subsection. In addition, all payments under this section 2(e) must be submitted to the director for approval; but, if a payment under this section 2(e) is not approved by the director, the director shall transmit the claim to the chief justice for approval or disapproval.

- (1) One thousand dollars (\$1,000) in those categories of cases described in section 2(d)(1) of this rule;
 - (2) Two thousand dollars (\$2,000) in those categories of cases described in section 2(d)(2)(A), (C), (D), (E), (F),(G),(H),(I) and (j) of this rule; and
 - (3) Three thousand dollars (\$3,000) in that category of cases described in section 2(d)(2)(B).
- (f) The Chief Justice may waive the maximum allowable amount in Section 2(e)(3) in a homicide case if the Chief Justice finds that extraordinary circumstances exist and the failure to waive the maximum would result in undue hardship.

Section 3. Minimum qualifications and compensation of counsel in capital cases.

(a) For the purposes of this rule, a capital case is a case in which a defendant is being tried for first degree murder and the state has filed notice to seek the death penalty as provided in Tenn. Code Ann. §39-13- 208, and Rule 12.3(b) of the Tennessee Rules of Criminal Procedure, and no order withdrawing the notice has been filed.

(b) The court shall appoint two attorneys to represent a defendant at trial in a capital case. At least one of the attorneys appointed must maintain a law office in the state of Tennessee and have significant experience in Tennessee criminal trial practice. The counsel appointed shall be designated "lead counsel" and "co-counsel."

(c) Lead counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to the practice pro hac vice;

(2) have for at least three years regularly represented defendants in criminal jury trials;

(3) have had a minimum of twelve hours of specialized training in the defense of defendants charged with a capital offense; and

(4) have at least one of the following:

(A) experience as lead counsel in the jury trial of at least one capital case;

(B) experience as co-counsel in the trial of at least two capital cases;

(C) experience as co-counsel in the trial of a capital case and experience as lead or sole counsel in the jury trial of at least one murder case; or

(D) experience as lead counsel or sole counsel in at least three murder jury trials; or one murder jury trial and three felony jury trials.

(d) Co-counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to practice pro hac vice;

(2) have had a minimum of 12 hours of specialized training in the defense of defendants charged with a capital offense; and

(3) have at least one of the following qualifications:

(A) qualify as lead counsel under (c) above;

(B) experience as sole counsel, lead counsel, or co-counsel in a murder jury trial.

(e) The attorneys who represented the defendant in the trial court in a capital case may be designated by the trial court to represent the defendant on direct appeal, provided either of the trial attorneys qualifies as new appellate counsel under section 3(g) of this rule and both attorneys are available for appointment. However, new counsel will be appointed to represent the defendant if the trial court, or the court in which the case is pending, shall determine that the appointment of new counsel is necessary to provide the defendant with effective assistance of counsel or that the best interest of the defendant requires the appointment of new counsel.

(f) If new counsel are appointed to represent the defendant on direct appeal, at least one attorney must be a member in good standing of the Tennessee Bar and maintain a law office in the state of Tennessee. If the other attorney appointed is not a member of the Tennessee Bar, he or she must be admitted to practice pro hac vice;

(g) Counsel in cases on direct appeal, regardless of any prior representation of the defendant, must have three years of litigation experience in criminal trials and appeals; and they must have at least one of the following qualifications: experience as counsel of record in the appeal of a capital case; or experience as counsel of record in the appeal of at least three felony convictions within the past three years and a minimum of six hours of specialized training in the trial and appeal of capital cases.

(h) Counsel eligible to be appointed as post-conviction counsel in capital cases must have the same qualifications as new appellate counsel; or have trial and appellate experience as counsel of record in state post-conviction proceedings in three felony cases, two homicide cases, or one capital case. They also must have a working knowledge of federal habeas corpus practice, which may be satisfied by

six hours of specialized training in the representation in federal courts of defendants under the sentence of death imposed in state courts; and they must have not previously represented the defendant at trial or on direct appeal in the case for which the appointment is made, unless the defendant and counsel expressly consent to continued representation.

(i) A prisoner who seeks relief from his or her conviction or sentence in a state trial or appellate court when his or her execution is imminent is entitled to the representation of no more than two attorneys, at least one of whom is qualified as a post conviction counsel as set forth in Section 3(h). For purposes of this rule execution is imminent if the prisoner has unsuccessfully pursued all state and federal remedies for testing the validity and correctness of his or her conviction and sentence and the Tennessee Supreme Court has set an execution date.

(j) Appointed counsel, other than public defenders, in capital cases shall be entitled to reasonable compensation as determined by the court in which such services are rendered. Compensation shall be limited to the two attorneys actually appointed in the case. Appointed counsel, in a capital case, may submit interim claims for compensation as approved by the court in which such services are rendered.

(k) Appointed counsel in capital cases shall be compensated on hourly rates which shall be at least the following:

- (1) Lead counsel out-of-court - seventy-five dollars (\$75);
- (2) Lead counsel in-court - one hundred dollars (\$100);
- (3) Co-counsel out-of-court - sixty dollars (\$60);
- (4) Co-counsel in-court - eighty dollars (\$80);
- (5) Post-conviction counsel out-of-court - sixty dollars (\$60);
- (6) Post-conviction counsel in-court - eighty dollars (\$80).
- (7) Counsel appointed pursuant to (i) - eighty dollars (\$80).

(l) If the notice of intent to seek the death penalty is withdrawn at least thirty (30) days prior to trial, the trial court shall enter an order relieving one of the attorneys previously appointed. In these circumstances, the trial judge may grant the defendant, upon motion, a reasonable continuance of the trial. If the notice is withdrawn less than thirty (30) days prior to trial, the trial judge may either enter an order authorizing the two attorneys previously appointed to remain on the case for the duration of the present trial, or enter an order relieving one of the attorneys previously appointed and granting the defendant, upon motion, a reasonable continuance of the trial. [Amended by order filed April,29 2003.]

Section 4. Payment of expenses incident to representation.

(a) Appointed counsel, experts, and investigators may be reimbursed for certain necessary expenses directly related to the representation of indigent defendants. [Amended by order filed June 23, 2003. Effective July 1, 2003.]

(1) Expenses for long distance telephone calls, copying, printing, and travel within the state, approved by the court as reasonably necessary, will be reimbursed. Claims for reimbursement for long distance telephone calls must be supported by a log showing the date the call was made, the person or office called, the purpose of the call, and the duration of the call stated in one-tenth (1/10) hour segments. Travel within the state will be reimbursed in accordance with Judicial Department travel regulations.

(2) Funding may be obtained for other expenses directly related to the representation, including travel outside the state, but only upon prior authorization by the court in which the representation is rendered and by prior approval of the administrative director of the courts. Authorization of expenses shall be sought by motion to the court. The motion shall include both an itemized statement of the costs and specific factual allegations demonstrating that the expenses are necessary to the effective representation of the defendant. The court shall enter an order which evidences the action taken on the motion. The order shall recite the specific facts demonstrating that the expenses are necessary to the effective representation of the defendant or incorporate by reference and attach the defense motion which includes the specific facts demonstrating that the expenses are necessary to the effective representation of the defendant. The order and any attachments shall be submitted to the administrative director for prior approval before the expenses can be incurred. [Amended by order filed June 23, 2003. Effective July 1, 2003.]

(3) Appointed counsel may not be reimbursed for the services of a paralegal, law clerk, secretary, legal assistant or other administrative assistants.

Effective September 8, 2003, the Supreme Court adopted the following interim rule for payment of spoken foreign language interpreters and translators. The numbering of this section reflects the placement of this provision in the proposed amendment to Supreme Court Rule 13 which can be found in its entirety [HERE](#).

Section 4. (a)(3)(K) Spoken Foreign Language Interpreters and Translators -
(i) The reasonable costs associated with an interpreter's and/or translator's services will be compensated when a trial court finds, upon motion of counsel, or sua sponte when counsel has not been appointed, that an indigent party has limited English proficiency ("LEP"). The term "interpret" refers to the process of transmitting the spoken word from one language to another. The term "translate" refers to the process of transmitting the written word from one language to another.

(ii) This section rather than Tennessee Rule of Criminal Procedure 28 applies when an indigent party requires the services of a spoken foreign language interpreter. (iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour. For languages other than Spanish: if the court finds that these rates are inadequate to secure the services of a qualified interpreter, the court shall make written findings regarding such inadequacy and determine a reasonable rate for a qualified interpreter.

(iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate. (v) Mileage, lodging, meals, and parking expenses may be reimbursed as provided in Section 4(a)(3)(B), (C), (D), and (E).

(vi) The court shall determine if it is reasonably necessary for documents to be translated as part of assuring adequate representation of an indigent party with LEP. Document translation shall be compensated at no more than twenty (20) cents per word. For languages other than Spanish: if the court finds that these rates are inadequate to secure the services of a qualified translator, the court shall make written findings regarding such inadequacy and determine a reasonable per word translation rate.

(vii) Claims for compensation of interpreters and translators shall be submitted to the Administrative Office of the Courts on forms provided by the Administrative Office of the Courts.

Section 5. Expert services.

(a) In the trial and direct appeals of all criminal cases in which the defendant is entitled to appointed counsel and in the trial and appeals of post-conviction proceedings in capital cases, the court in an ex parte hearing may in its discretion determine that investigative or expert services or other similar services are necessary to ensure that the constitutional rights of the defendant are properly protected. If such determination is made, the court may grant prior authorization for these necessary services in a reasonable amount to be determined by the court. The authorization shall be evidenced by a signed order of the court. The order shall provide for the payment or reimbursement of reasonable and necessary expenses by the administrative director of the courts. (See Tenn. Code Ann. § 40-14-207(b); State v. Barnett, 909 S.W.2d 423 (1995); and Owens v. State, 908 S.W.2d 923 (1995).)

(b) Counsel for the defendant must seek authorization for the services considered necessary by motion delivered to the judge of the court setting forth the nature of the services, the name and location of the person proposed to provide the services, an explanation for not obtaining the services in Tennessee if the person proposed to furnish the services is not located in Tennessee, the means, the date,

and time and the location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs, such as court appearances by experts. If the trial court finds that the defendant has satisfied these threshold requirements, the trial court must conduct an ex parte hearing on the motion and determine if the requested services are necessary to ensure the protection of the defendant's constitutional rights.

(c) If, after conducting a hearing, the court determines that the requested services are necessary to ensure the protection of the defendant's constitutional rights, the court shall enter an order authorizing the requested expert or investigative services. The order shall recite the specific facts demonstrating that the expenses are necessary to ensure the protection of the defendant's constitutional rights or incorporate by reference and attach the defense motion which includes the specific facts demonstrating that the expenses are necessary to ensure the protection of the defendant's constitutional rights. See, e.g., *State v. Barnett*, 909 S.W.2d 423 (Tenn. 1995); and *Owens v. State*, 908 S.W.2d 923 (Tenn. 1995). Once the services are authorized by the court in which the case is pending, the order and any attachments must be submitted for prior approval to the administrative director. If the administrative director denies prior approval of the request, or the request exceeds five thousand dollars (\$5,000) per expert, or the hourly rate of any person or entity exceeds one hundred and fifty dollars (\$150), the claim shall be transmitted to the chief justice for disposition and prior approval. [Amended by order filed June 23, 2003. Effective July 1, 2003.]

(d) Payment may be made directly to the person, agency, or entity providing the services upon certification by counsel for the defendant that the services authorized by order of the court have been rendered. Requests for payment will be supported by a copy of the court order authorizing the expenditure, approval by the chief justice where required, and counsel's certification.

Section 6. Review of claims for compensation and reimbursement of expenses.

(a) Claims for compensation, expert services, and litigation expenses shall be filed by counsel with the Administrative Office of the Courts on forms approved by that office. Time spent by counsel on a single case or proceeding shall be included in a single claim for compensation. Counsel will be held to a high degree of care in the keeping of records supporting all claims and in the application for payment. The Administrative Office of the Courts shall examine and audit all claims for attorneys' fees and expenses to insure compliance with these rules and other statutory requirements. After such examination and audit and given due consideration to state revenues, the Administrative Director shall make a determination as to the compensation to be paid to each attorney and/expert and cause payment to be issued in satisfaction thereof. The determination by the Administrative Director shall be final, except as provided in this section. If the claim for compensation pertains to a capital case, the Chief Justice of the Supreme Court must approve the amount found by the Administrative Director

to be owed prior to the payment being made to the attorney or expert unless the Chief Justice has previously approved the expert service pursuant to Section 5.

(b) Any party aggrieved by the final action taken with regard to the award of compensation for appointed counsel, the authorization for expenses, or the authorization for services may petition the Supreme Court for review of that action within thirty (30) days from the date thereof, which petition the court may grant or deny. Upon grant of the petition to review, that portion of the record relevant to the issue raised shall be forwarded to the clerk of the Supreme Court at Nashville within thirty (30) days of the date on which the petition was granted. Review shall be de novo upon the record unless the court requests additional information.

(c) There shall be a presumption that the action taken by the court is correct.

(d) The provisions of this rule will be followed where by their terms are applicable regardless of the agency of the state against whose budget the payments are charged.

[As amended by orders entered December 1, 1982; November 7, 1983, August 20, 1984; August 4, 1986; May 12, 1992; February 3, 1993; effective March 9, 1993, July 1, 1993; August 8, 1993; August 17, 1994; April 3, 1997; April 10, 1997; and February 4, 1998; as amended by orders filed November 23, 1998; December 2, 1998; January 25, 2001; and by order filed June 25, 2001.]

IN THE _____ COURT FOR _____ COUNTY
STATE OF TENNESSEE Case No _____

vs.

Defendant

UNIFORM AFFIDAVIT OF INDIGENCY

Comes the defendant and, subject to the penalty of perjury, makes oath to the following facts (please list, circle, complete, etc.):

PART I

1. Full Name: _____ 2. Social Security No.: _____

3. Any other names ever used: _____ 4. Address: _____

5. Telephone Nos.: (Home) _____ (Work) _____ (Other) _____

6. Are you working anywhere? Yes () No ()

Where _____

7. How much do you make? ____ (weekly, monthly, etc.) 8.

Birthdate: _____

9. Do you receive any governmental assistance or pensions (disability, SSI, AFDC, etc.)?

Yes () No () What is its value? _____ (weekly, monthly, etc.)

10. Do you own any property (house, car, bank acct., etc.): Yes () No () What is its value? _____

11. Are you, or your family, going to be able to post your bond? Yes () No ()

12. Are you, or your family, going to hire a private attorney? Yes () No ()

13. Are you now in custody? Yes () No () If so, how long have you been in custody? _____

(If the defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.)

PART II

14. Names & ages of all dependents: _____ relationship

_____ relationship _____

_____ relationship _____

15. I have met with following lawyer(s), have attempted to hire said lawyer(s) to represent me, and have been unable to do so:

Name _____

Address _____

16. All my income from all sources (including, but not limited to wages, interest, gifts, AFDC, SSI, social security, retirement, disability, pension, unemployment, alimony, worker's compensation, etc.):

\$ _____ per _____ from _____

\$ _____ per _____ from _____

\$ _____ per _____ from _____

17. All money available to me from any source: A. Cash

_____ B. Checking, Saving, or CD Account(s)-give bank, acct. no., balance

_____ C. Debts owed me _____

D. Credit Card(s)-give acct. no., balance, credit limit, and type (Visa, Mastercard, American Express, etc.)

_____ E. Other _____

18. All vehicles/vessels owned by me, solely or jointly, within the last six months (including but not limited to cars, trucks, motorcycles, farm equip., boats etc.):

_____ value \$ _____ amt. owed

_____ value \$ _____ amt. owed

_____ value \$ _____ amt. owed

19. All real estate owned by me, solely or jointly, within the last six months (including land, lots, houses, mobile homes, etc.):

_____ value \$ _____ amt. owed

_____ value \$ _____ amt. owed

20. All assets or property not already listed owned within the last six months or expected in the future:

_____ value \$ _____ amt. owed

_____ value \$ _____ amt. owed

21. The last income tax return I filed was for the year ____ and it reflected a net income of

\$ _____.

I will file a copy of same within one week if required.

22. I am out of jail on bond of \$ _____ made by _____. The money to make bond, \$ _____ was paid by _____.

PART III

23. Acknowledging that I am still under oath, I certify that I have listed in Parts I and II all assets in which I hold or expect to hold any legal or equitable interest.

24. I am financially unable to obtain the assistance of a lawyer and request the court to appoint a lawyer for me.

25. I understand that it is a Class A misdemeanor for which I can be sentenced to jail for up to 11 months 29 days or be fined up to \$2500.00 or both if I intentionally or knowingly misrepresent, falsify, or withhold any information required in this affidavit. I also understand that I may be required by the Court to produce other information in support of my request for an attorney.

This _____ day of _____, _____. _____

Defendant

Sworn to and Subscribed before me this ____ day of _____, _____.

Clerk

Judge

Offices of Research and Education Accountability Staff

Director

◆Ethel Detch

Assistant Director (Research)

◆Douglas Wright

Assistant Director (Education Accountability)

Phil Doss

Principal Legislative Research Analyst

◆Kim Potts

Senior Legislative Research Analysts

Corey Chatis

Kevin Krushenski

Russell Moore

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Jessica Gibson

◆Nneka Gordon

Jessica Lewis

Erin Lyttle

Mike Montgomery

Tim Roberto

Executive Secretary

◆Sherrill Murrell

◆indicates staff who assisted with this project