

INDIGENT DEFENSE IN THE UNITED STATES: AN ANALYSIS OF STATE
FRAMEWORKS FOR ENSURING THE EFFECTIVE ASSISTANCE OF COUNSEL

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FRAMEWORKS FOR ENSURING THE EFFECTIVE ASSISTANCE OF COUNSEL

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DEDICATION

This dissertation is dedicated to my mom and dad. You were both with me when I started this journey, but neither of you are here to see me finish. Despite this, I know that you are looking down with smiles, pride, and love as you have always done. You both believed strongly in the power of education, and you instilled in me the confidence that I could accomplish anything with hard work and dedication. Most importantly, you gave me the love and support I needed to sustain the pursuit of my dreams. I love and miss you both, but you have been with me every day as I have worked toward this accomplishment, and I have no doubt that you will be there as I pursue the next.

I also dedicate this dissertation to the women and men that work day in and day out to defend the constitutional rights of indigent criminal defendants across the country. Work on this dissertation has shown me that indigent defense is often thankless work for which attorneys, investigators, and support staff are rarely, if ever, paid what they are worth. Despite this, the dedication to justice of those that choose to fight the good and necessary fight is clear. The passion of so many of those are responsible for indigent defense was evident in personal communications that I was fortunate enough to have as well as the many agency reports, memos, and other documents that I reviewed. The good and important work they do – though so often unpopular and misunderstood – is critical to fairness and justice of our criminal justice system and our society.

ABSTRACT

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Many indigent defense systems across the country lack sufficient resources and the appropriate administrative and operational infrastructure to ensure effective assistance of counsel under the Sixth Amendment. In fact, the literature indicates that many of the country's indigent defense systems have been in a state of crisis since the landmark case *Gideon v. Wainwright* solidified the right to counsel for poor criminal defendants over 50 years ago. Despite the well-documented nature of the problem and recommended solutions offered by the legal profession and panels of indigent defense experts, many indigent defense systems continue to struggle. Using a systematic qualitative analysis of court and government records, this dissertation sought to determine whether and to what extent each of the 50 states have adopted the recommendations from previous studies aimed at addressing the crisis. The dissertation further evaluated the relationship between the presence or absence of those components and legal challenges to the constitutionality of states' indigent defense delivery systems. The data for the study were obtained from publicly available documents obtained using a combination of Internet searches, legal research, previous studies, and, where necessary, public information requests.

Findings of the study indicate that though most states have some of the recommended components examined, very few had all of them in place. The findings also suggest, however, that while all recommended indigent defense system components may be preferred, not all are as critical as others to ensuring effective assistance of

counsel in day-to-day operations. However, states should be aware of which of the best practice components they do not have in place as well as the reasons they are lacking.

Further, states should assess the need for change on their own terms since several states that have failed to do so have faced costly and protracted structural reform litigation that has forced them to do so. The results provide a comprehensive overview of the nation's indigent defense systems that does not exist in the literature, but that is necessary to begin evaluating and addressing the causes of the indigent defense crisis that is well-documented in the literature.

KEY WORDS: Indigent defense, Right to counsel, Sixth amendment, Public defender, Effective assistance of counsel.

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CHAPTER I

INTRODUCTION

In early 2016, public defender offices in at least seven judicial districts in Louisiana, the state with the highest incarceration rate (National Institute of Corrections, 2016) and the third highest poverty rate in the country (United States Department of Agriculture, 2016), began putting indigent criminal defendants on waiting lists for representation (Robertson, 2016). One of these offices is the Orleans Public Defenders Office (the OPD). The OPD is responsible for providing representation to indigent criminal defendants in Orleans Parish, which includes New Orleans, the most populous city in the state (United States Census Bureau, 2016). An estimated 85 % of all criminal defendants in New Orleans cannot afford to hire their own counsel (Orleans Public Defender Office [OPD], 2015; Rothman, 2016). Citing severe budget shortfalls and unmanageable caseloads, the OPD's chief public defender announced in December 2015 that he could "no longer ethically assign cases to attorneys with excessive caseloads or those that lack the requisite experience and training to represent the most serious offenses" (OPD, 2015). In January 2016, following the announcement, the OPD began assigning cases to a waiting list, and by May, the waiting list had grown to 142 cases (Rothman, 2016).

The decision by the chief of the OPD, to stop taking new clients and create a waiting list for representation, led to a class action lawsuit filed by the American Civil Liberties Union (ACLU) against him and the Louisiana State Public Defender (*Yarls v. Bunton*, Complaint, 2016). The ACLU alleges that the creation of a waiting list for Orleans Parish indigent defendants violates the defendants' Sixth Amendment right to

counsel and Fourteenth Amendment rights to due process and equal protection (*Yarls v. Bunton*, Complaint, 2016). The lawsuit claims that Louisiana's funding source for indigent defense is "inherently unreliable and inadequate" because it relies largely on fees generated from traffic tickets (*Yarls v. Bunton*, Complaint, 2016, pp. 11-12). The ACLU claims the State's "dysfunctional funding scheme," which has led to "severe service restrictions" in 15 of its 42 public defender districts, will inevitably lead to more waiting lists in more districts (*Yarls v. Bunton*, Complaint, 2016, p. 12). The ACLU also cites a dire prediction made by Louisiana's State Public Defender: without additional funding from the State legislature around the end of fiscal year 2016, the entire public defender system would collapse because an estimated three-quarters of the districts will be fiscally insolvent (*Yarls v. Bunton*, Complaint, 2016, p. 12). Meanwhile many criminal defendants, who not only cannot afford to hire an attorney, but very often also cannot afford to make bail, must wait in jail indefinitely to have their days in court (Robertson, 2016).

Louisiana is not unique, the problem is not isolated, and it is not new. The literature indicates public defender systems across the country are, and have been for many years, in a state of "perpetual crisis" (e.g., Bright & Sanneh, 2013; DeSimone, 2006; Harvard Law Review Association, 2000; Klein, 1999; National Right to Counsel Committee [NRCC], 2009). The same funding shortages that Louisiana public defenders currently face have plagued many public defender offices for years (Citron, 1991; Harvard Law Review Association, 2005; Klein, 1999; Vick, 1995). Most jurisdictions, however, have not created waiting lists or stopped assigning cases to already overloaded public defenders. Instead, most offices continue to assign cases to overloaded and/or

under-experienced defense attorneys. Thus, even in cases where defendants are fortunate enough to have an attorney assigned, serious questions arise about whether the assistance of that attorney will be effective or even adequate because the under-funding of public defender programs leads to a number of untenable consequences.

For example, a lack of adequate funds results in lower salaries for public defenders, which makes recruiting and retaining qualified attorneys difficult because it discourages attorneys – many with enormous law school debts – from participating in the system at all (American Bar Association [ABA], 2004). Lower salaries can, therefore, lead to a shortage of qualified attorneys to staff the public defender systems (ABA, 2004; Citron, 1991; Hanlon, 2010). The attorneys who choose to work for offices that provide indigent defense services, despite the low salaries, are faced with unmanageably large caseloads and often do not have the time or resources to provide competent assistance (ABA, 2004; Citron, 1991). Attempts by these attorneys to manage their caseload lead to very limited contact with defendants and recommendations to clients for plea deals with very little time spent investigating the case (ABA, 2004).

Additionally, public defender offices often do not have sufficient budgets to pay for essential trial resources such as expert, investigative, and support services (Bright, 1997; West, 1986; Wright, 2004). Many prosecutor offices, on the other hand, have “vast resources” at their disposal, including “well-staffed offices” and access to law enforcement investigators and crime laboratories to help them identify and prepare evidence for their cases (Bright & Sanneh, 2013). The disparity in resources available to prosecutor’s offices compared to public defenders negatively impacts the quality of assistance provided to indigent defendants (ABA, 2004; Margulies, 1989; Wright, 2004).

Insufficient funding for public defender offices can also mean that attorneys involved in indigent defense operate in environments with “no provision for formal, systematic training” despite the complexity of the cases they handle (ABA, 2004, p. 11). This problem is amplified by the lack of uniform performance standards to which public defenders – and public defender systems – can be held accountable (ABA, 2004).

However, additional funding alone does not provide long-term solutions for indigent defense systems, and the recurrent problems in Louisiana provide an example. In 1993, the Louisiana Supreme Court found that the “unstable and unpredictable” nature of the state’s system for funding indigent defense resulted in a “general pattern” of “chronic underfunding of indigent defense programs in most areas of the state” (*State v. Peart*, 1993, p. 789). The court concluded that the facts of the case were sufficient to presume that indigent defendants were “not receiving assistance of counsel effective enough to meet constitutionally required standards” (*State v. Peart*, 1993, p. 791). The court also issued the following warning:

If legislative action is not forthcoming and indigent defense reform does not take place, this Court, in the exercise of its constitutional and inherent power and supervisory jurisdiction, may find it necessary to employ more intrusive and specific measures it has thus far avoided to ensure that indigent defendants receive reasonably effective assistance of counsel. (*State v. Peart*, 1993, p. 791)

The Louisiana legislature responded by increasing the budget for indigent defense (Harvard Law Review Association, 2000). Yet, Louisiana’s public defender system again faces significant budget shortfalls and a renewed challenge by the ACLU to the constitutionality of the services the state provides to indigent defendants. Thus, ad-hoc

infusions of funds are an inadequate solution without the concomitant political commitment to and implementation of structural changes to fundamentally improve assistance of counsel for indigent defendants for the long-term.

Statement of the Problem

Indigent defense delivery systems across the country lack the infrastructure and funding to fulfill the very purpose for which they exist – to protect poor criminal defendants’ rights, and our legal system does not have adequate remedies to address the violations. Specifically, failures of these systems threaten defendants’ right to effective assistance of counsel under the Sixth Amendment and equal protection guarantees under the Fourteenth Amendment. Furthermore, when indigent criminal defendants’ basic rights are compromised through the actions or omissions of individual defense attorneys or the systems in which they operate, the defendants have few, if any, viable avenues to challenge or remedy the violations. Systemic government failures that result in differential treatment of poor defendants compared to defendants with financial means do not just violate the Sixth Amendment right to counsel. More fundamentally, such failures are an affront to the concepts of fundamental fairness and equality and the ideals of social justice. The most consequential effect of indigent defendants’ inequitable treatment is not simply a violation of rights; rather, it is the potential for wrongful convictions of innocent defendants and inequitably harsh sentences for guilty indigent defendants.

The legal right to effective assistance of counsel

Indigent defendants facing federal or state criminal prosecution have the constitutional right to have the assistance of a publicly-funded attorney. The Sixth Amendment’s right to counsel provision has been a part of American law since 1791

when Congress, “to prevent misconstruction or abuse of its powers,” ratified the first 10 amendments to the United States Constitution known as the Bill of Rights (U.S. Const. Bill of Rights pmbl.). The Sixth Amendment states that “[i]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence” (U.S. Const. amend. VI). The language appears unambiguous on its face, and one state supreme court justice concluded, “Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have” (Schaefer, 1956, p. 8). However, the applicability of the right to counsel provision to all indigent criminal defendants was not immediately recognized. The first and foremost reason was because the Constitution is a federal document, drafted and signed by the Congress of the federal government. Since most criminal prosecutions are brought under state criminal law statutes, the constitutional right to counsel, among others, was not immediately granted to criminal defendants facing state prosecutions. Further, the right to counsel was initially only granted to defendants facing capital charges for which the death penalty was a possible punishment. The evolution of the Sixth Amendment right to counsel for all state defendants facing punishment that includes the possibility of incarceration is outlined below.

The *Powell v. Alabama* (1932) case marked the first time the Supreme Court dealt directly with the right to counsel, and it did so in the racially and politically charged South. On appeal for violations of the Sixth Amendment, the Court reversed the convictions of eight black males convicted without assistance of counsel of raping two white girls. The Court with Justice Sutherland writing for the majority found “the necessity of counsel was so vital and imperative that the failure of the trial court to make

an effective appointment of counsel was...a denial of due process within the meaning of the Fourteenth Amendment” (*Powell v. Alabama*, 1932, p. 71). Thus, with the *Powell* decision, the Court recognized that the Sixth Amendment right to counsel was applicable to state criminal defendants by virtue of the “due process clause” of the Fourteenth Amendment. The Fourteenth Amendment states, in part, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law...” (U.S. Const. amend. XIV, § 1). The Court, however, limited the reach of the decision to defendants in state and federal capital cases.

The next significant case regarding the right to counsel was *Johnson v. Zerbst* (1938). Defendant Johnson was tried and convicted of possessing and passing counterfeit money without the assistance of counsel. Upon review of Johnson’s case, the Supreme Court concluded that the “Sixth Amendment constitutionally entitles one charged with crime to the assistance of counsel, [and] compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty” (*Johnson v. Zerbst*, 1938, p. 467). With its decision in this case, the Court extended the right to counsel established in *Powell* to all criminal defendants facing any federal prosecution where incarceration was a possible punishment.

The Court next reviewed the Sixth Amendment right to counsel and the incorporation of those rights under the Fourteenth Amendment in *Betts v. Brady* (1942). Indicted for robbery, the state trial judge denied Defendant Betts’ request for court-appointed counsel for trial because the county only appointed counsel for defendants on trial for rape or murder. Betts pled not guilty, represented himself, and the judge

convicted him of robbery and sentenced him to eight years in prison. Upon review of *Betts*' case, a majority of the Supreme Court declined to extend the Sixth Amendment right to counsel via the Fourteenth Amendment's due process clause to non-capital state defendants. In a strongly worded dissenting opinion, Justice Hugo Black noted that "[d]enial to the poor of the request for counsel in proceedings based on charges of serious crime has long been regarded as shocking to the 'universal sense of justice' throughout this country." Further, Justice Black suggested that a judicially approved practice should "assure that no man...be deprived of counsel merely because of his poverty...other practice seems to...defeat the promise of our democratic society to provide equal justice under the law" (*Betts v. Brady*, 1942, Black, J. dissenting, pp. 476-477).

Twelve years later in a case with very similar facts, *Gideon v. Wainwright* (1963), a majority of the Court ultimately agreed with Justice Black's reasoning in his *Betts* dissent. Defendant Gideon was arrested and charged in a Florida state court with breaking and entering into a pool hall. He appeared in court without an attorney and without funds to hire one, and he asked the judge to appoint one for him. The trial judge abiding by the Court's decision in *Betts*, denied the request, citing that state courts were only required to appoint counsel for defendants charged with capital crimes. Gideon proceeded to represent himself, insisting that he was innocent, but the jury convicted him, and he was sentenced to a five-year prison term. Upon review of Gideon's case, a unanimous Supreme Court overruled *Betts* and reversed Gideon's conviction. Justice Black authored the opinion, noting that the Court got it wrong in *Betts*, and in reversing that decision, the Court held that the right to counsel is a fundamental right which is essential to a fair trial (*Gideon v. Wainwright*, 1963).

With the *Gideon* decision, the Sixth Amendment right to counsel was extended to state non-capital defendants accused of felonies through the Fourteenth Amendment, and nine years later in *Argersinger v. Hamlin* (1972), the Court confirmed that the right was not only reserved for felony defendants. In *Argersinger*, the Court held that the right to counsel was not governed by the classification of the offense, and that any defendant who faces deprivation of liberty as the result of any criminal prosecution, whether felony or misdemeanor, has the right to assistance of counsel (*Argersinger v. Hamlin*, 1972).

The Supreme Court has also acknowledged that the mere presence of an attorney in proceedings involving criminal defendants does not pass constitutional muster. As early as 1932 in the *Powell* case, the Court referred to the fact that due process required “the giving of effective aid in the preparation and trial of [an indigent defendant’s] case” (*Powell v. Alabama*, 1932, p. 65). Ten years later, the Court overturned a defendant’s conviction based on the finding that his appointed counsel’s conflict of interest prevented the representation of the defendant from being “as effective as it might have been” absent the conflict (*Glasser v. United States*, 1942, p. 76). By 1970, the Court noted that “[i]t has long been recognized that the right to counsel is the right to effective assistance of counsel” (*McMann v. Richardson*, 1970, note 14).

Low standards for “effectiveness” and inaccessible remedies for violations

Even though the Supreme Court has ruled that all federal and state criminal defendants facing incarceration have the right to effective assistance of counsel in defense against government prosecution, the legal remedies available to defendants when violations of those rights occur are woefully inadequate. As the current situation in Louisiana – and in jurisdictions across the country – suggests, the well-established legal

right to effective assistance of counsel is more of a mirage than a reality for some indigent defendants. The illusory nature of the right to counsel is attributable, at least in part, to the lack of any meaningful definition of what constitutes “effective” in this context (Allen, 2009; McLaughlin, 2014).

In this regard, the Supreme Court has been less than helpful to indigent defendants, setting such a low bar for effectiveness that it has been almost impossible for attorney performance to fall below that bar in the eyes of the courts (Allen, 2009). With its decision in *Strickland v. Washington* (1984), the Court had the opportunity to set a meaningful standard for assessing effectiveness to the benefit of many indigent defendants (Klein, 1999). The Court did, in fact, set a standard, but many legal scholars believe that the Court’s decision caused far more harm than good (e.g., Klein, 1999). In *Strickland*, the Court held that for assistance of counsel to be deemed ineffective, a defendant must first prove that counsel’s performance “fell below an objective standard of reasonableness” based on the legal profession’s “prevailing professional norms” (*Strickland v. Washington*, 1984, pp. 687-688). Second, the defendant must prove that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different” (*Strickland v. Washington*, 1984, p. 694). The Court apparently intended that its decision would make a successful challenge to effectiveness difficult so as not to “encourage the proliferation of ineffectiveness challenges” (*Strickland v. Washington*, 1984, p. 691). In fact, the Court specified that when reviewing whether defendants received effective assistance in any particular case, “counsel is strongly presumed to have rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment” (*Strickland v. Washington*, 1984, p. 690).

The standard set forth by the Court in *Strickland* is the “primary mechanism” for enforcing the right to effective assistance of counsel (Chemerinsky, 2012, p. 2688). Yet the mechanism has proven unhelpful to most criminal defendants – because of the low bar for effectiveness it established; further, the *Strickland* standard is inappropriate for dealing with systemic failures. First, the standard has “made it very difficult for courts to find ineffective assistance of counsel, even when representation is very deficient” (Chemerinsky, 2012, p. 2688). In fact, review courts have been reluctant to rule in favor of defendants raising claims of ineffectiveness of counsel even in the most ludicrous of situations such as when attorneys were found to have slept or to have been intoxicated while defending their clients (Allen, 2009; Bright, 1997; Kirchmeier, 1996; Klein, 1999). Second, even in cases where defense counsel’s conduct might fall below the very low bar for effectiveness, in most jurisdictions, indigent defendants are forced to challenge the conduct without an attorney because not all states guarantee the right to counsel for post-conviction challenges of effectiveness of trial counsel (Allen, 2009; Bright, 1997; Citron, 1991). Moreover, as one scholar noted, “[e]ven if the state provides a lawyer to raise a claim of ineffectiveness, there is no guarantee that the new lawyer will be any more competent than trial counsel” (Bright, 1997, p. 796). Third, the *Strickland* standard requires individual defendants to raise challenges to the effectiveness of defense counsel’s performance *after* conviction. Therefore, the standard cannot be used “preemptively to challenge the effectiveness of an attorney, regardless of the limitations on time or resources that may hamper the attorney’s ability to provide an adequate

defense” (Harvard Law Review Association, 2005). Fourth, the case-by-case review of attorney effectiveness that the *Strickland* standard requires, “offers little likelihood of promoting institutional change” (Steiker, 2013, p. 2701), because of the standard’s focus on the performance of the individual attorney during the specific case at hand. In fact, in *United States v. Cronin* (1984), decided at the same time as the *Strickland* case, the Supreme Court appeared to fend off arguments that “surrounding circumstances” such as inadequate time to prepare a case or inexperience of the attorney could, in and of themselves, be grounds for a finding of ineffectiveness absent demonstrable prejudice to a defendant (*United States v. Cronin*, 1984, pp. 665-666). Since such “surrounding circumstances” can be symptoms of the greater institutional and systemic deficiencies that plague indigent defense systems, the Court’s decision appeared to preclude actions seeking systemic remedies. The uselessness of the *Strickland* standard as a remedy for most indigent defendants that received ineffective assistance of counsel led one legal commentator to conclude that “[t]he Court has reduced the Sixth Amendment right to one of form over substance” (Klein, 1999, p. 1478).

Some legal scholars and defense advocates have suggested that, absent a meaningful legal standard of effectiveness for addressing systemic deficiencies, structural or institutional reform litigation shows more promise than seeking relief under the *Strickland* standard (Citron, 1991; Drinan, 2009; Harvard Law Review Association, 2000; Steiker, 2013). Such litigation has been employed in efforts to reform unconstitutional conditions in government institutions regarding school segregation and financing, prison conditions, and mental health institution conditions (Enrich, 1995; Harvard Law Review Association, 2000; Heise, 1995; Schlanger, 1999). The lawsuit

cited above filed by the ACLU in Louisiana is one example of such litigation that is currently pending (*Yarls v. Bunton*, Complaint, 2016).

Other such cases have been filed in several states with mixed results (Drinan, 2010; Drinan 2011; Steiker, 2013). The most positive results from such litigation appear to have been in the form of settlements and consent decrees in which states have agreed to address funding and caseload crises in, for example, Georgia, Washington, Pennsylvania, and Connecticut (Steiker, 2013). However, when states do not agree to settle cases filed against them, courts have been reticent to rule against them. One such case filed challenged the Michigan processes for providing indigent defense services. In that case, decided in 2010, the Michigan Supreme Court rejected the idea that the constitutional right to counsel set forth in *Gideon* has any bearing on a state's process for providing indigent defense; rather, it is focused on outcomes (Drinan, 2011). Thus, whether structural litigation can be successful as a reliable means of comprehensive reform is questionable.

Without any reliable means to affect broad-scale reform of indigent defense services across the country, some scholars have concluded that the Supreme Court's decisions in landmark cases such as *Gideon v. Wainwright*, amount to merely an "unfunded mandate" (Chemerinsky, 2012; Simon, 2008). Chemerinsky (2012, p. 2693) noted that the "unfunded mandate to provide attorneys for the poor without any mechanism for ensuring adequate resources is unlikely to succeed in providing competent counsel." The Court's failure to adopt a meaningful standard for effectiveness or alternative remedy has fostered, or at least failed to stop, situations like those in Louisiana in which states do not have sufficient incentive to create and sustain indigent

defense systems that adequately protect defendants' Sixth Amendment rights. Until courts and legislature become motivated to deal with the issues and enforce the constitutional right to counsel, the system will remain "deeply flawed" (Chemerinsky, 2012, p. 2693), and the right to counsel will largely remain symbolic – "an unrealized dream" (Harvard Law Review Association, 2005; Simon, 2008, p. 594).

Consequences of ineffective assistance of counsel

When criminal defendants do not receive effective assistance of counsel there can be real consequences. The most significant of the possible consequences include the wrongful conviction of innocent defendants and inequitably harsh sentences for guilty indigent defendants. Though as one legal scholar noted, "[m]ost Americans are convinced that the legal system coddles criminals and that defense lawyers get far too many defendants off on technicalities," such conclusions are based on misinformation about how the justice system actually works (Rhode, 2004a, p. 1018). In reality, according to Rhode (2004b, p. 124) as many 90 % of defendants plead guilty, most without significant time spent on their case by defense attorneys. Prosecutors on the other hand, "have vast resources and immense power in conducting their inquests and dictating outcomes in the plea bargaining that resolves the overwhelming majority of cases" (Bright & Sanneh, 2013, p. 2156). Disparities between the skill and resources of the prosecution and defense impairs the effectiveness of the adversarial system, which is premised on the ability of both sides to investigate and present their cases to the court (Bright & Sanneh, 2013). One effect of poor preparedness and performance by indigent defense counsel is that innocent defendants get convicted (Berry, 2003; Bright, 1997; Bright & Sanneh, 2013; NRCC, 2009; Uphoff, 2006). According to Bright (1997),

wrongful convictions can occur when attorneys fail to identify and present critical evidence to the court or are ignorant of some aspect of state procedural or sentencing laws. Another effect of poor attorney performance is that defendants who are found guilty may receive unduly and inequitably harsh punishments. Unfairly harsh punishments can occur when defendants accept ill-advised plea deals recommended by defense attorneys or because attorneys fail to present key mitigating evidence at sentencing (Bright, 1997; Bright & Sanneh, 2013).

Fairness, equality, and social justice

Systemic government failures that result in differential treatment of poor defendants compared to defendants with financial means do not just violate the Sixth Amendment (Bright, 1997; Harvard Law Review Association, 2000; Robinson, 2010). On a more basic level, such failures are an affront to the concepts of fundamental fairness and equality and the ideals of social justice. References to the ideal of fairness in the law as a basis for constitutional rights, such as those encompassed in the Sixth Amendment are common. In fact, the Supreme Court has noted, “the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial” (*United States v. Cronin*, 1984, p. 658). The concepts of fairness and equality are reflected in the Fourteenth Amendment, which stipulates that “[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws” (U.S. Const. amend. XIV, § 1). The right to equal protection of the law and the concept that “all are equal before the law” are fundamental to justice, and both have been more broadly adopted internationally as basic human rights (United Nations General Assembly, 1948, Article 7).

Equal justice for the poor has long been a concern within the United States criminal justice system. In 1932, Samuel Rubin a proponent for equality in the administration of criminal justice and a proponent of the adoption of the public defender system, wrote, “Throughout the country the cry is raised that there is one law for the rich and another for the poor” (Rubin, 1932, p. 705). Rubin also observed that “[f]rom the moment of his arrest – regardless of whether he is innocent or guilty – until his acquittal or conviction, the poor man is under a severe handicap” (Rubin, 1932, p. 708). In 1956, Justice Hugo Black observed that “[p]roviding equal justice for poor and rich, weak and powerful alike is an age-old problem” (*Griffin v. Illinois*, 1956, p. 16). In the same opinion, Justice Black wrote, “There can be no equal justice where the kind of trial a man gets depends on the amount of money he has” (*Griffin v. Illinois*, 1956, p. 19). The Court again, in 1963, in its *Gideon* opinion expressed a commitment to the ideals of fairness and equality: “[f]rom the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law” (*Gideon v. Wainwright*, 1963, p. 345).

The concerns expressed by Samuel Rubin in 1932 are no less of a concern today, and it is not hard to arrive at the conclusion that in practice our criminal justice system is at odds with the ideals of fairness and social justice that are often touted as its basis. Recently one legal commentator wrote of the *Gideon* Court’s statement cited above, “this rhetoric promised an equality that today appears almost absurd” (Thomas, 2014, p. 309). Rhode concluded that the principle of “equal justice under law” is “one of America’s

most proudly proclaimed and widely violated legal principles,” which “comes nowhere close to describing the legal system in practice” (Rhode, 2004b, p.3).

Robinson (2010) echoed the discrepancy between the ideals and the reality of justice in the United States in her assessment of criminal justice practices, including the provision of indigent defense services, using the principles of social justice theory. Broadly, the principles of social justice focus on equal access to society’s basic liberties, rights and opportunities or advantages, particularly for the least advantaged members of society (Miller, 1999; Rawls, 1999). Robinson concluded that the realities of unequal access to quality representation for poor defendants in criminal cases are inconsistent with the ideals and principles of social justice and inconsistent with the ideals embodied in United States Constitution’s Bill of Rights and Fourteenth Amendment (Robinson, 2010).

Another legal scholar laid the blame for the disconnect between ideals and reality directly on the *Gideon* Court, noting, “[t]he Court may have intended to define and advance a vision of social justice; however, it failed to provide the states with sufficient guidance regarding the development of a coherent system of public defense to enable that vision” (Taylor-Thompson, 2012, p. 872). The “states’ perfunctory compliance with the Court’s mandate since 1963” (Taylor-Thompson, 2012, p. 872), and the current state of indigent defense throughout the country suggests that Court’s lack of guidance to the states was imprudent. In the absence of practical guidance from Supreme Court, state governments are left to their own devices to create and administer indigent defense programs that ensure fairness and equity for poor defendants, and the literature suggests that many have failed in this regard (e.g., ABA, 2004; NRCC, 2009).

Purpose of the Study

The purpose of this study is, broadly, to explore the extent to which state governments have implemented the key components of an effective indigent defense system recommended by previous studies to address concerns of unfairness and inequity for poor criminal defendants. As described fully in Chapter II, the literature in the areas of government performance management, generally, and indigent defense, specifically, supports the conclusion that effective indigent defense systems – those that are situated to achieve fairness and equal justice – require several key components. Specifically, studies have recommended that state indigent defense system should be overseen and managed at the state level by an independently-appointed oversight commission. That commission should: ensure the system is funded at the state-level (as opposed to the county-level) using a reliable funding source that provides for sufficient resources that are comparable to those enjoyed by prosecutor's offices; ensure public defenders are qualified and trained; develop and enforce system-wide and attorney-specific performance standards; and establish protocols for the collection of meaningful data that enable it to monitor performance against established goals and performance standards.

Research Questions

The study was guided by the following research questions:

1. To what extent have states adopted the key components of an effective indigent defense system recommended by previous studies?
2. In states where the constitutionality of indigent defense systems has been challenged in court:
 - a. What were the outcomes of those cases?

- b. Is there any discernable relationship between the lawsuits challenging the constitutionality of indigent defense systems and the presence or absence of the key components of an effective indigent system (i.e., if the components were not, but had been in place could the challenge have been avoided? Were the components put in place as a result of the challenge?)?

Significance of the Study

Though recent data are lacking, an estimated 80 % of all defendants rely on government indigent defense systems to provide the assistance of counsel when they face criminal prosecutions (Smith & DeFrances, 1996). According to the National Center for State Courts (2016), state criminal court cases totaled more than 14.9 million in 2014. Based on those figures, almost 12 million criminal defendants rely on publicly-funding defense services annually. The literature on indigent defense indicates there are serious problems nationwide with the quality of defense services provided to indigent criminal defendants. Because such a high number of people rely on those services, the “overall fairness of the criminal justice system is called into question” (Harvard Law Review Association, 2000, p. 2065).

The fact that our criminal justice system, in practice, does not treat indigent defendants equally under the law in violation of their basic human and constitutional rights is not just a legal system problem for legal scholars or practitioners to address. While the issue requires consideration and understanding of certain legal issues, it is as relevant to social science, criminal justice, and public policy scholars. Despite the relevance to non-legal fields, however, the extant social science, criminal justice, and public policy literature includes very few research studies addressing the problem. In

addition to the few research studies that have been done, there have been a few broad-scale studies of the indigent defense crisis by commissions staffed by well-qualified experts in criminal justice policy and indigent defense. The studies resulted in reports with recommendations that states should adopt several key components for their indigent defense systems intended to address the systemic failures.

Overall, the adoption of these key components should help indigent defense systems meet the goals of fairness and equal justice for poor criminal defendants. Specifically, the aim should be that innocent defendants are not convicted and that similarly situated guilty defendants – i.e., those that committed similar crimes under similar aggravating and mitigating circumstances – should get roughly the same punishments. The current literature, however, lacks a comprehensive assessment of whether and to what extent states' indigent defense systems have (or lack) these components. This study seeks to fill that void.

Summary of Methodology

Using a descriptive qualitative method referred to as qualitative document analysis, this study explores the extent to which state governments have adopted the key components of an effective indigent defense program. Specifically, I systematically identified and reviewed relevant court decisions, prior studies, state statutes, and other publicly available government records, including regulations, administratively adopted rules or guidelines, state budgets, agency report, and standards for the delivery of indigent defense services. I obtained the records using electronic searches and, to the extent necessary, public information requests issued to appropriate state agencies.

Using the same method, I identified the court challenges to the constitutionality of states' indigent defense systems and evaluated court records, press releases, and government records to document the outcomes and assess whether the challenges resulted in the adoption of indigent defense standards and/or the likelihood that the challenges could have been avoided had such standards been adopted. I evaluated and compiled the information collected using these methods to develop a comprehensive nationwide picture of state indigent defense services, which does not exist in the current literature. Finally, I used the findings to identify public policy gaps and recommendations and to develop recommendations for future research.

Limitations of the Study

1. The study is limited to the review of publicly available government records to evaluate the existence of absence of the key components of an effective indigent defense system.
2. The study did not address the extent to which states carry out, in practice, the implementation or administration of the various components.

Chapter Summary

The literature indicates that indigent defense delivery systems across the country lack the infrastructure and funding to protect poor criminal defendants' rights. Failures of the indigent defense delivery systems threaten defendants' right to effective assistance of counsel under the Sixth Amendment and equal protection guarantees under the Fourteenth Amendment with few available remedies for those violations. Systemic government failures that result in differential treatment of poor defendants undermine the ideals of fundamental fairness, equality, and social justice. These failures can lead to the

wrongful conviction of innocent defendants and inequitably harsh sentences for guilty indigent defendants.

Previous studies have suggested that states implement specific organizational and administrative components designed to address systemic problems of indigent defense systems. Through a systematic qualitative analysis of court and government records, this study evaluates whether and to what extent state governments have adopted those recommended components. The study further evaluates the relationship between the presence or absence of those components and legal challenges to the constitutionality of states' indigent defense delivery systems. The results provide a comprehensive overview of the nation's indigent defense systems that does not exist today, but that is necessary to begin evaluating and addressing the causes of the indigent defense crisis that is well-documented in the literature.

Overview of the Study

Chapter II presents a comprehensive review of the relevant literature in the areas of indigent defense and government performance management. Chapter III describes the qualitative research design and methodology selected to address the research questions. Chapter IV describes the results of the study, Chapter V discusses the study findings in the context of the research questions, and Chapter VI presents the conclusions, limitations, and recommendations for future research as well as the policy implications that emerge from those findings.

CHAPTER II

LITERATURE REVIEW

The fact that our criminal justice system, in practice, does not treat indigent defendants equally under the law in violation of their rights is not merely a legal problem for legal scholars or practitioners to address. While the issue of the effectiveness of indigent defense systems requires an understanding of certain legal issues, it is as relevant to social science, criminal justice, and public policy scholars. Despite the relevance to non-legal fields, however, the social science, criminal justice, and public policy literature includes very few research studies addressing indigent defense systems or delivery. There is, however, ample literature relevant to the performance of individual public defenders and the systems within which they operate. For example, state legal organizations issue mandatory professional ethical standards for licensed attorneys. National legal organizations such as the American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA) have issued voluntary guidelines for indigent defense service delivery (ABA, 1992, 2002; NLADA, 2006). Also relevant to this study are the evaluations of one or more aspects of the indigent defense systems across the nation and of individual states. The studies include recommendations to states and public defender organizations to adopt certain infrastructure components and uniform performance standards including those recommended by the leading legal organizations (e.g., ABA, 2004; NRCC; 2009).

The purpose of this dissertation is to explore the extent to which state governments have implemented the key components of an effective indigent defense system recommended in the literature. Toward that end, this chapter describes that

literature, including the guidelines issued by the legal profession and the nationwide and state-specific studies of indigent defense systems.

Guidelines for Indigent Defense Systems from the Legal Profession

Attorneys, by virtue of their licenses to practice law, are bound by certain ethical standards, which apply regardless of the type of law they practice, system they operate within, or their caseload. Those standards typically require licensed attorneys to provide “competent and diligent representation” to all of their clients (e.g., State Bar of Texas, n.d.). If attorneys do not abide by the ethical standards for any reason, they can face disciplinary action ranging from a reprimand to the loss of their law licenses (State Bar of Texas, 2016).

In addition to the ethical standards applicable to all licensed attorneys, criminal justice and legal organizations have issued national, voluntary standards. The legal profession’s issuance of standards for public defenders began by the early 1970s, not long after *Gideon* was decided and the push to develop a national public defense infrastructure had begun. The National Advisory Commission on Criminal Justice Standards and Goals (NAC) appointed in 1971 by the Law Enforcement Assistance Administration, published specific caseload standards for public defenders, stratified by case type (NAC, 1973).

According to the NAC:

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25. (NAC, 1973, pp. 9-10)

In the years following the issuance of the NAC's caseload standards, two professional legal organizations, the ABA and the NLADA developed and published national voluntary standards and guidelines addressing not just caseloads, but also the structure and quality of services provided by indigent defense systems (ABA, 2002; NLADA, 2006). The ABA, this country's largest professional association of attorneys provides support to the legal profession, including issuing standards and guidelines for the practice of law (ABA, 2016). In 2002, the ABA's Standing Committee on Legal Aid and Indigent Defendants created The ABA's Ten Principles of a Public Defense Delivery System (Ten Principles) (ABA, 2002). According to the ABA, "[t]he Principles were created as a practical guide for government officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems" (ABA, 2002, p. 4). The ABA recommended that jurisdictions implement the Ten Principles because they "constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney" (ABA, 2002, p. 4).

The ABA's Ten Principles address aspects of indigent defense system structure and funding; caseload management; defense attorney qualifications, training, and supervision; and core elements of client service delivery. With respect to structure and funding, Principle 1 states that the "public defense function, including the selection, funding, and payments of defense counsel, is independent," and Principle 8 calls for "parity between defense counsel and the prosecution with respect to resources" (ABA, 2002, p. 5). Regarding caseload management, Principle 5 states that defense counsel's

workload should be controlled “to permit the rendering of quality representation,” and Principle 2 calls for the public defender system to consist of “active participation” from the private attorneys in jurisdictions where caseloads are “sufficiently high” (ABA, 2002, p. 5). Principles 6, 9, and 10 call for defense counsel to be qualified for the complexity of the cases they handle, “provided and required to attend continuing legal education,” and “supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards” (ABA, 2002, p. 5). Finally, Principles 3, 4, and 7 deal specifically with core elements of service delivery, calling for prompt screening of clients and appointment of counsel, provision of sufficient time and confidential space to meet with clients, and consistent representation from the same attorney for each client until the completion of the case (ABA, 2002, p. 5). The ABA’s Ten Principles are a condensed version of the organization’s more detailed *Standards for Criminal Justice on Providing Defense Services* (ABA, 1992), which “cover all of the important elements related to the structure of public defense programs” (NRCC, 2009).

The ABA has also issued separate, specific guidance regarding public defender workload management (ABA, 2009). According to the ABA, the goal of quality representation of indigent defendants “is not achievable...when the lawyers providing the defense representation have too many cases, which frequently occurs throughout the United States” (ABA, 2009, p. 1). Therefore, the ABA’s workload guidelines include a “detailed action plan” for public defense programs and for individual attorneys when they are faced with so many cases that they are prevented from effectively carrying out their professional duties (ABA, 2009, p. 1). The guidelines begin by establishing that workload assessment should not just include the number of cases assigned, but also an

assessment of the degree to which all essential tasks of legal representation can be fulfilled, including interviewing clients, conducting necessary investigations, performing sufficient legal research, and sufficiently preparing for both trials and sentencing hearings. The guidelines also recommend that public defender organizations establish supervision and training programs that monitor performance based on the fulfillment of all of the essential tasks and encourage attorneys to bring forward concerns about excessive workloads when they arise (ABA, 2009). The guidelines note that when concerns about workloads arise, public defender organizations should take “prompt actions” to address them by seeking additional resources through internal case reassignment, use of private attorneys, or by negotiating with prosecutors to handle low level, non-serious cases with civil instead of criminal remedies (ABA, 2009, p. 2). Finally, the guidelines recommend that when public defender organizations are faced with unmanageable caseloads, they should ask the court to stop assigning cases to them, and when courts refuse to do so, the organizations should appeal that decision to the appropriate review court (ABA, 2009).

The NLADA is the nation’s “oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel” (NLADA, 2016, p. 1). The NLADA accomplishes its work by, among other initiatives, publishing guidelines for the practice of law, including, the *Performance Guidelines for Criminal Defense Representation* (NLADA, 2006). Unlike the ABA’s guidance, which focuses on both system structure and service delivery, the NLADA’s Performance Guidelines are concentrated more on “recommendations covering a defense lawyer’s duty in representing a criminal defendant, from the very beginning of a case through the time

of conviction” (NRCC, 2009, p. 34). Thus, the NLADA (2006) offers specific guidance regarding defense counsels’ interviews with clients, investigations of cases, plea negotiations, and preparations for trial and sentencing hearings.

Compliance with the standards and guidelines issued by the NAC, ABA, and NLADA is voluntary for state and county public defenders (NRCC, 2009; Wallace & Carroll, 2003). However, these publications have served as models for some jurisdictions that have developed their own standards (Wallace & Carroll, 2003). Even in jurisdictions that have adopted customized versions of the standards for their own use, however, most such standards are voluntary and not enforced through sanctions for violations (NRCC, 2009). In addition to serving as models for jurisdictions that have developed their own standards, the guidance offered by these organizations has been cited in studies of indigent defense systems as criteria for effective indigent defense systems.

National Indigent Defense Studies

Studies that examine the characteristics of or problems with indigent defense systems across the nation include those that address a limited aspect of the system as well as those that more broadly address entire systems. Limited scope studies have addressed the variations in structure and funding of systems in different states, attempts to implement national standards for indigent defense, and problems of excessive public defender caseloads. Two recently published and often cited studies have more broadly examined the contexts, problems, and recommendations for reforming the nation’s indigent defense systems.

Structure and Funding of Indigent Defense Services

The structure and funding of “[i]ndigent defense delivery systems in the United States vary widely and [the systems] are complicated as a whole” (Owens, Accetta, Charles, & Shoemaker, 2015, p. 1). For this reason, one line of inquiry regarding indigent defense has focused on how the various states administer the public defender function. The Bureau of Justice Statistics (BJS) (Owens et al., 2015; Herberman & Kyckelhahn, 2015) and Stevens, Shepherd, Spangenberg, Wickman, & Gould (2010) have published reports that catalogue the basic structural and funding components of state systems. Broadly, the reports show that states’ indigent defense systems differ in administration along three primary lines: (a) method of service delivery, (b) level of oversight and administration, and (c) source of funding (Owens et al., 2015; Herberman & Kyckelhahn, 2015; Stevens et al., 2010).

State or county indigent defense systems deliver services to eligible criminal defendants in one or a combination of three ways. These include public defender systems, court-assigned counsel systems, and contract systems (Farole & Langton, 2010). Public defender systems have salaried employees that work full or part time for the government or an affiliated public non-profit organization. In court-assigned counsel systems, judges assign cases to participating private attorneys for an approved hourly rate (Stevens et al., 2010). In contract systems, private attorneys apply for and are awarded contracts to represent a specific number of indigent defendant cases during the contract term (Langton & Farole, 2010).

The level of oversight and administration of indigent defense services varies across states. Some states administer and oversee all indigent defense functions at the

state-level, some programs are handled entirely at the county-level, and still others operate hybrid systems combining state and county administration and oversight (Owens et al., 2015; Stevens et al., 2010).

Similarly, the method of funding indigent defense functions varies from state-to-state. Some systems are funded entirely at the state-level, and in others funding responsibilities are shared between the state and local governments, while only one state funds all of its indigent defense function at the county-level (Owens et al., 2015; Stevens et al., 2010).

Though both Owens et al. (2015) and Stevens et al. (2010) reports include basic information about each state's indigent delivery system, the focus is on government indigent defense expenditures. Using data from the U.S. Census Bureau's Annual Survey of State Government Finances, the BJS tallied state government spending on indigent defense services between fiscal years 2008 and 2012 and issued two reports (Owens et al., 2015; Herberman & Kyckelhahn, 2015). One report focused solely on state expenditures and presented five-year trends for each state and for all states combined, concluding that "from 2008 to 2012, state government indigent defense expenditures ranged from \$2.2 billion to \$2.4 billion" (Herberman & Kyckelhahn, 2015, p. 1). That report was a part of a larger study by the BJS, which resulted in a second report that included the same information on state-level expenditures in addition to information on the indigent defense systems of all 50 states obtained through legal research of state statutes related to indigent defense (Owens et al., 2015). Owens et al. included some information in this report regarding the service delivery model used by, oversight of, and funding sources for states' indigent defense functions. However, since those details are

not always specified in the state statutes which were reviewed for the report, the information was not complete (Owens et al., 2015). Neither of the BJS reports included any recommendations or conclusions regarding the level of funding or quality of indigent defense services provided by each state (Owens et al., 2015; Herberman & Kyckelhahn, 2015).

Stevens et al. (2010) also focused on indigent defense expenditures, but the data they compiled, though only for fiscal year 2008, was much more comprehensive than that presented in either of the BJS reports, since they include both state and local expenditures. The expenditure data may also be more accurate since it was obtained through direct contacts with those responsible for indigent defense including public defenders, court administrators, and state and county budget offices. The combined state and county expenditures total just under \$4.49 billion, with 53% of the expenditures made by states (Stevens et al., 2010).¹ The report also tabulated information on the funding sources used by each state. The table shows that in 2008, 23 states fund their indigent defense systems entirely with state funds, one state utilizes county-only funding, and the remaining 26 states fund indigent defense using a combination of state and local funds (Stevens et al., 2010, pp. 5-6). Like the BJS reports, Stevens et al. did not draw conclusions regarding the level of funding or quality of indigent defense services provided by each state or issue any recommendations (Stevens et al., 2010).

¹ A review of the Stevens et al. data indicates that the percent of state expenditures listed in the report – 33% (2010, p. 76) is an incorrect calculation. The data indicates that \$4,488,151,718 was the total state and county expenditures combined, and states accounted for \$2,392,145,655 (or 53%) of that total.

Implementation of Standards for Indigent Defense

At least two other studies have examined the implementation of indigent defense standards such as those published by the ABA described above. Researchers in the first study examined the impact of implementation of indigent defense standards similar to those issued by the ABA (Wallace & Carroll, 2003). In the second study, the researchers examined the extent to which public defense providers are able, in practice, to adhere to the ABA's Ten Principles of a Public Defense Delivery System (Cooper, 2015).

Wallace and Carroll (2003) studied the impact of the implementation of indigent defense standards using a mixed-method approach. First, the researchers designed and sent a survey to “directors of 169 state public defender agencies and other leading indigent defense providers in all 50 states and U.S. territories” (Wallace & Carroll, 2003, p. 9). The survey collected basic jurisdictional information, such as whether the respondent's system was funded with state, county, or mixed funds and whether the system was a government, non-profit agency, or private law firm. The survey also collected information regarding which ones of the 10 different principles had been adopted (i.e., independence, workload, client eligibility, parity of resources, attorney qualifications, attorney training). Finally, the survey inquired about the relative impact of implementation of the standards that had been adopted. For phase two of the study, based on the survey responses, the researchers chose four jurisdictions – all with different types of indigent defense systems – to conduct a “more detailed investigation and verification of the reported impact of the utilization of standards” (Wallace & Carroll, 2003, p. 9).

Wallace and Carroll's study (2003) was not designed to "assess the prevalence of indigent defense standards, but to assess the various impacts detected in those jurisdictions which have made the choice to implement standards" (Wallace & Carroll, 2003, p. 7). Thus, the study results did not include information regarding the states or counties that had implemented or had not implemented any particular standards. Instead, the researchers presented the results in terms of percentages of the 74 respondents that had adopted each of the 10 types of standards. Their findings indicated that the highest percentage of respondents' jurisdictions had adopted client eligibility standards (89%) and attorney qualification standards (66%). Adoption of other standards was less prevalent, ranging from 26% adoption of standards to ensure parity of resources with prosecutor offices to 51% adoption of a standard for the timeliness of the appointment of counsel for indigent defendants. The researchers found that impact of implementing standards was "overwhelmingly viewed as positive" by respondents in jurisdictions that had such standards (Wallace & Carroll, 2003, p. ii). Overall, the researchers concluded that "depending upon the extent of compliance, indigent defense standards can play a substantial role in...more uniform quality of public defense services, higher client satisfaction, and acceptance of case outcomes, and reduced appeals and reversals," as well as "reducing the risk of litigation" (Wallace & Carroll, 2003, p. ii).

Cooper (2015) studied public defenders' ability to adhere to the ABA's Ten Principles. The researcher designed a survey instrument through which she aimed not only to capture respondents' perceptions about their office's adherence to the Principles, but also to measure actual adherence to the Principles through more detailed questions that addressed achievement of "operational benchmarks" (Cooper, 2015, p. 1195). The

survey was sent to more than 1,150 public defense providers working in a wide-range of systems (government, private, and nonprofit) using different service delivery methods (public defender office, contract, and court-appointed). However, the author cited particular problems identifying the population of public defense providers to whom to send the survey since no national database of public defense attorneys exists. The limitation resulted in the oversampling and higher response rates from one type of public defense provider – 75 % of the 386 respondents worked in government public defender offices (Cooper, 2015, p. 1196).

Even with the limitation on the ability to generalize to the larger public defense community, according to the author, “the survey results provide a valuable perspective on the operational contexts in which public defense providers are working and the first national self-assessment of the day-to-day challenges they are encountering” (Cooper, 2015, p. 1197). The study found that over half of the 386 respondents were not familiar with the ABA’s Ten Principles prior to receiving the survey. Additionally, the researcher concluded from the results that many of the respondents lacked understanding of what is “truly required” to adhere to and achieve the Ten Principles in practice (Cooper, 2015, pp. 1200-1201). One of the clearest indicators was the discrepancy between the respondents’ perceptions of their office’s adherence to the Principles and the actual adherence to those principles as indicated in responses to the questions regarding the office’s operational practices. In fact, the responses to the operational questions indicated that actual adherence to the principles was 10 to 26 % lower than the respondents perceived. For example, 77 % of respondents reported their office adhered to the principle of independence, but responses to operational questions regarding the

respondents' offices actual practices showed only 44 % operationally adhered to the independence principle (Cooper, 2015). Most important, according to the researcher, the overall survey responses indicated a lack of a full understanding of “the import of each of the Principles and the systemic framework and infrastructure necessary to put the Principles into practice” (Cooper, 2015, p. 1203). The author noted that ABA’s Ten Principles “are not of equal weight” since the first principle, independence, “provides the foundation for achieving the other principles...including caseload limits, standards of practice, continuous representation, training, and supervision” (Cooper, 2015, p. 1206). Cooper concluded that achieving independence in the public defender function will not be easy. The “collaborative energy” of not only public defense providers, but also of judges, legislators, and executive branch officials will be required to create the “organizational structure to provide for the ‘independence’ necessary to deliver public defense services as envisioned by the Sixth Amendment” (Cooper, 2015, p. 1206).

Excessive Public Defender Caseloads

Most legal scholars and commentators agree that one of the most critical results of the problems in indigent defense is excessive caseloads for public defense providers. Two national reports published 10 years apart address the issue of bringing public defender caseloads to manageable levels (Lefstein, 2011; The Spangenberg Group (TSG), 2001b). While neither of the reports presents original research, they both address the context and causes of excessive public defender workloads from personal experience and prior studies. Both reports also include recommendations to deal with excessive caseloads for both individual attorneys and public defender offices (Lefstein, 2011; TSG, 2001b).

In 2001, the United States Department of Justice, Bureau of Justice Assistance commissioned a report by The Spangenberg Group (TSG). TSG's president, Robert Spangenberg, was a well-known and respected expert in the field of criminal justice, and specifically indigent defense, who conducted and published numerous studies of state indigent defense systems (TSG, 2001b, p. 1). By 2001, TSG had conducted statewide caseload studies for public defender programs in Colorado, Minnesota, Tennessee, and Wisconsin, as well as for the New York Legal Aid Society (TSG, 2001b, p. 27, note 10). The 2001 TSG report includes selected case study information from those states regarding the caseload challenges and attempts to resolve those challenges. Broadly, the authors suggested that public defender providers adopt caseload standards – either by adopting national standards such as those set forth by the NAC (1973) or by performing their own “case-weighting” studies using detailed time records kept by public defenders over a period of several weeks (TSG, 2001b, p. 9). Either way, according to TSG, the caseload standards should take into account not only raw caseload numbers but also to consider broader workload requirements. In addition to time spent in court, meeting with clients, investigating the case, meeting with prosecutors, and preparing for trial, public defenders have many responsibilities “that detract from the time a lawyer can spend on individual case work but are essential to the functioning of an effective defender office” (TSG, 2001b, pp. 3-4). Caseload standards, according to TSG, are only “one part of an overall program to ensure that defender offices have adequate staff and resources to properly represent clients” (TSG, 2001b, p. 7).

TSG also pointed out that while caseload standards are important, public defender organizations also need broader performance standards to help ensure the provision of

uniform, quality services. When adopted by a public defender jurisdiction or office, performance standards can be used to help ensure that when caseloads increase public defenders “maintain contact with the client, conduct a factual investigation, examine the complaint for legal sufficiency, file appropriate motions, and conduct discovery” (TSG, 2001b, p. 16). When performance of those functions begins to drop, public defenders can “use the standards to explain to the court...that appointment to additional cases will make it impossible to properly represent their current clients” (TSG, 2001b, p. 16). If such efforts are unsuccessful, public defenders can make a formal request to the court to withdraw from assigned cases and/or to not have new cases assigned temporarily. According to TSG, withdrawing from existing cases should be a last resort because the result can “trigger ripple effects through the entire local criminal justice system” (TSG, 2001b, p. 17). Such steps, however, may not result in necessary changes, and in that case, lawsuits to address the broad systemic deficiencies generally and at reducing caseloads specifically may be “the only alternative” (TSG, 2001b, p. 22).

Ultimately, the TSG recommended several strategies to keep public defender workloads manageable. For example, public defenders should develop and maintain effective working relationships with others in the criminal justice system, including prosecutors and judges and should consistently interact with others about the need for balanced resources. Further, the authors recommended developing a system for recording uniform statistics regarding cases, adopting and enforcing caseload standards, and consistently documenting excessive caseloads and needs for additional resources (TSG, 2001b).

A report published in 2011, written by Norman Lefstein and sponsored by the ABA's Standing Committee on Legal Aid and Indigent Defendants, demonstrates that in the 10 years between 2001 and 2011, the problems faced by the nation's indigent defense systems and, particularly, the excessive caseloads of the nation's public defenders did not substantively change. Like Robert Spangenberg of The Spangenberg Group, Professor Lefstein is an expert in indigent defense and has been active in research, consulting, and providing expert testimony regarding indigent defense generally and the effects of excessive caseloads (Lefstein, 2011). Lefstein's report, however, addresses the context, causes, and effects of excessive public defender caseloads more comprehensively than did the TSG report.

Central to the Lefstein report is the failure of public defender systems ability to provide constitutionally required effective assistance of counsel due to excessive caseloads. Lefstein concluded that the problem of excessive caseloads is very difficult to solve due to other problems that plague indigent defense systems, including inadequate funding, structural deficiencies – most notably the lack of independence of most public defender organizations – and the fact that public defenders have no control over the inputs into indigent defense systems. The first two reasons are straightforward and have been addressed to some degree above. The third issue – that public defenders have “no control over the intake” refers to the fact that public defenders have no control over the number of arrests that police make, the number of cases that prosecutors decide to prosecute, or the statutes enacted by legislatures that criminalize increasingly minor offenses (Lefstein, 2011).

Despite the fact that individual public defenders have little ability to directly address any of the three main causes of excessive caseloads, Lefstein (2011) pointed out that they are still bound by professional standards and the Constitution to provide effective assistance of counsel. Besides the negative potential effect on indigent defendant clients, the failure to abide by the professional standards and Constitution can, according to Lefstein, expose attorneys to disciplinary sanctions by state bar associations, which license attorneys. Further, attorneys can face civil liability under the Title 42 of the United States Code, Section 1983 if a plaintiff, such as a wrongfully convicted indigent defendant, proves that the attorney acted under color of law to deprive his or her client the constitutional right to effective assistance of counsel. Yet another possible repercussion for attorneys who cannot, due to an excessive caseload, provide effective representation is liability in a legal malpractice lawsuit filed by or on behalf of former clients (Lefstein, 2011).

Lefstein addressed the importance of determining staffing and resource needs through a systematic process including caseload studies, such as those recommended by TSG (2001b). However, Lefstein cautioned against being “blinded by the numbers” that result from caseload studies (Lefstein, 2011, p. 159). Since the caseload standards are expressed in terms of annual numbers of cases that any one attorney should be able to effectively handle within a 12-month period, they are not helpful for determining whether an attorney’s caseload is excessive or too low at any given time within the year. Lefstein advised, instead, that public defender organizations and other interested parties, such as judges and legislatures, use the caseload standards as “guides to what may be a reasonable caseload..., but they should never be the ‘sole factor’ in determining whether

a lawyer's caseload is excessive" (Lefstein, 2011, p. 159). Like TSG (2001b), Lefstein recommended public defenders taking such steps as withdrawing from cases and filing lawsuits to force the court to deal with excessive caseloads as a last resort largely because of the turmoil it can cause, not only to the system and its clients, but also to the individual attorneys who are likely to face judicial scorn for taking such steps. Still, Lefstein, pointed to several cases in which legal challenges brought either by public defenders seeking to reduce caseloads or third parties such as the ACLU on behalf of indigent defendants successfully forced some jurisdictions to make much needed reforms (Lefstein, 2011).

Ultimately, Lefstein recommended three main changes to indigent defense systems aimed at reducing excessive caseloads.

- First, he argued that virtually every public defender organization should have active involvement of private attorneys because an "elastic supply of private lawyers available to accept cases...enables caseloads of public defenders and private lawyers to be controlled" (Lefstein, 2011, p. 231).
- Second, like TSG (2001b), Lefstein recommended that public defender organizations continue to work to be independent of judicial and executive branch officials so that public defenders' appointment, resources, and continued employment do not depend upon pleasing any particular judge or elected official. In truly independent systems, judges should not be involved in selecting attorneys for cases, approving public defender compensation, or in the decision to withdraw from cases or seek private attorney assistance when caseloads become excessive.

- Third, he recommended that jurisdictions in the United States try the approach used by courts in England, in which they allow defendants to choose their own counsel from a list of approved public defenders. The effect, according to Lefstein, of the “free market” approach in England, has been that attorneys cannot afford to accept more cases that they can effectively handle because they fear not being recommended by defendants for future cases if their performance is subpar (Lefstein, 2011, pp. 241-242).

National Indigent Defense Systems

While the studies described above addressed problems with pieces of the country’s indigent defense systems, two recently published reports more broadly examined entire indigent defense systems. In 2004, the ABA published the results of its analysis of hearings it held during 2003, the 40th anniversary year of the Supreme Court’s landmark *Gideon v. Wainwright* (1963) decision. The ABA report was the first to provide a picture of the problems that plague indigent defense systems nationwide (ABA, 2004). On the heels of the ABA’s report, The National Right to Counsel Committee (NRCC), a subcommittee formed by the nonprofit advocacy group The Constitution Project, commissioned a separate comprehensive study of the nation’s indigent defense systems. The NRCC published its report in 2009, coming to many of the same troubling conclusions that the ABA reported five years earlier (NRCC, 2009).

In 2004, the ABA published the results of what it referred to as the first “comprehensive examination of the national picture” of indigent defense services (ABA, 2004, p. ii). To gather the information for the report, the ABA held hearings throughout 2003 during which the group took the testimony of “32 expert witnesses familiar with the

delivery of indigent defense services in their respective jurisdictions” (ABA, 2004, p. iv). Because of the diversity of the witnesses that testified, the ABA concluded that the “witnesses’ comments accurately captured the widespread difficulties in delivering adequate defense services to the poor” across the country (ABA, 2004, p. iv). The testimony was transcribed and analyzed to compile the information in the report, which includes a description of the main problems in indigent defense with excerpts from testimony of specific examples of the problems. The report also includes strategies to address the systemic issues and provides examples of public defender organizations that have adopted the strategies. The authors conclude the report by issuing eight recommendations to address the problems identified (ABA, 2004).

The first problem that the authors presented is that public defender organizations across the country lack adequate funding, which is particularly important because it results in a lack of parity with prosecutors’ offices, and testimony indicates that the imbalance is evident across all areas, including salaries, access to investigative and expert services, and availability of training. Secondly, the authors concluded that public defenders routinely provide inadequate legal representation to their indigent clients. Subpar representation is caused by excessive caseloads and inexperienced or incompetent public defenders that fail to establish and maintain contact with clients, fail to adequately investigate cases, or have legal or ethical conflicts of interest. According to witness testimony, subpar performance can manifest with public defenders meeting clients and encouraging them to sign plea deals offered by prosecutors all in the same short initial meeting with no examination of case facts at all. The witnesses and authors refer to these as “meet ‘em and plead ‘em lawyers” (ABA, 2004, p. 16).

Thirdly, the authors found that structural defects in indigent defense delivery systems exacerbate or lead to ineffective representation. Specifically, the witness testimony indicated many public defender organizations lack both independence from judicial or executive officials and adequate oversight to ensure the provision of quality, uniform legal services. More troubling, witness testimony revealed that some jurisdictions fail to provide counsel to indigent defendants at all or they do so after significant delays. For example, a Georgia witness testified that one defendant, arrested for loitering, spent “thirteen months in jail without seeing a lawyer or judge – or even being formally charged before local civil rights advocates ultimately secured his release” (ABA, 2004, p. 24). Similarly, a Mississippi defendant accused of shoplifting \$72 worth of merchandise, spent 11 months in jail before the appointment of a lawyer, another two months before the lawyer met with her, and another month before her first court hearing. Finally, the authors reported that in some states, witnesses testified that they lacked current and reliable data regarding caseloads and expenditures, for example, which is a “significant barrier to identifying, evaluating, and addressing structural deficiencies” (ABA, 2004, p. 29).

The ABA issued several recommendations to address problems identified during the hearings for the project. The following summarize the ABA’s recommendations:

- State governments should provide increased funding for the delivery of indigent defense services which is in parity with funding for the prosecution function, assuming that prosecutors are funded and supported adequately in all respects.
- State governments should establish oversight organizations that ensure the delivery of independent, uniform, quality indigent defense representation. The

oversight organization should:

- directly administer funding for indigent defense services to both state and local public defense providers;
 - monitor and enforce compliance with statewide standards; and
 - collect and maintain data on the state's indigent defense system.
- Public defenders “should refuse to continue indigent defense representation, or to accept new cases for representation, when...workloads are so excessive” as to prevent “quality legal representation or lead to the breach of constitutional or professional obligations” (ABA, 2004, p. 44).
 - State court judges should respect the independence of public defenders while still being willing to report unethical conduct by those defenders to appropriate authorities.
 - Others, such as the federal government, state and local bar associations, and community and public interest groups should take an interest and get involved in indigent defense (ABA, 2004).

Five years after the ABA issued its report, the NRCC issued a report which included many of the same findings entitled, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* (NRCC, 2009). The NRCC report cited not only expert testimony, but also detailed information collected from prior state-specific studies such as those cited below:

The Committee's two-fold mission was to examine, across the country, whether criminal defendants and juveniles charged with delinquency who are unable to retain their own lawyers receive adequate legal representation, consistent with

decisions of the Supreme Court and rules of the legal profession, *and* to develop consensus recommendations for achieving lasting reforms. (NRCC, 2009, p. 3)

The NRCC acknowledged that “there have been numerous studies that have cataloged the problems with indigent defense, but these reports have not had significant impact in bringing about improvements” (NRCC, 2009, p. 3). Therefore, the NRCC set out not only to catalogue the problems in indigent defense, but to “present detailed information on successful strategies for change” (NRCC, 2009, p. 3). Perhaps the most substantive difference in the NRCC’s report and the others cited in this review is that the NRCC’s report includes more information about the indigent defense structures of most, if not all, states and is cited with more detail – over 900 footnotes – from a wider range of sources. According to the NRCC, the effort to provide additional support was made because the NRCC “desired a study that would withstand the scrutiny of any persons who would doubt its findings” (NRCC, 2009, p. 3).

The NRCC noted that in the time since the Supreme Court decided the *Gideon* case, state and local jurisdictions have spent increasing sums of money on indigent defense, and in some jurisdictions, “defense services are being delivered by talented professionals who have the time, training, and resources to do first-rate legal work for their clients” (NRCC, 2009, p. 4). However, according to the NRCC, “the evidence is overwhelming that jurisdictions that have done reasonably well in the indigent defense area are in a distinct minority” (NRCC, 2009, p. 4). Though perhaps better supported, the findings of the NRCC regarding the problems that plague indigent defense systems are not substantively different than those in the studies cited above. The most pervasive finding across studies and according to the NRCC across the country is insufficient

funding of indigent defense. Many states have identified the importance of providing funding for the cause, but too often states use special funds and unpredictable revenue sources (i.e., court fees) instead of designating appropriations from the more stable state general funds. The insufficient funds lead to inequitable resources in terms of compensation and staffing levels compared to those enjoyed by prosecutors' offices in most jurisdictions (NRCC, 2009).

According to the NRCC, the problem of excessive caseloads is also pervasive across jurisdictions, in part due to insufficient funding and also to "tough on crime" policies such as "three-strikes laws" and the proliferation of laws that increasingly criminalize minor offenses (NRCC, 2009, pp. 70-72). Also, as in most of the studies cited above, the NRCC cited a lack of independence of the indigent defense function as a major barrier to obtaining and maintaining reasonable funding levels and to ensuring fair selection and compensation in appointed counsel systems. Additionally, the NRCC concluded that a surprising number of jurisdictions fail to provide or provide late access to counsel for indigent defendants. In many cases, in initial appearances judges or prosecutors convince defendants to waive the appointment of counsel without adequately informing defendants of the right (NRCC, 2009). Once counsel is appointed, however, many public defenders lack access critical services including investigators, experts, and interpreters, which both hampers defenders' ability to communicate with clients and to investigate their cases thoroughly.

In many jurisdictions, the problems identified are caused or exacerbated by a lack of performance standards, oversight, supervision, and training – all of which are critical to a public defender organization's ability to provide quality, uniform representation of

indigent criminal defendants. Also critical to a public defender organization is access to technology. The NRCC found that some public defenders did not have computers or access to online legal research services – both so commonplace that the NRCC referred to the absence of these resources in the legal world today as “remarkable” (NRCC, 2009, p. 97). Access to technology is also essential to collect and analyze data regarding cases and costs, but many jurisdictions do not engage in any assessment of empirical data, which prevents public defense providers from being able convincingly to demonstrate to stakeholders the need for additional resources. The failure to conduct meaningful data assessment also prevents policymakers from being able to “assess systemic deficiencies and compare various programs to determine those that are most efficient” (NRCC, 2009, p. 98).

To address the problems identified in the study, the NRCC issued 22 detailed recommendations. The NRCC directed some recommendations to state governments, some to the federal government, and others to criminal justice agencies, state and local bar associations, and individuals. The recommendations addressed a wide array of topics, including independence; attorney qualifications, supervision, and training; workload management; attorney compensation; provision of adequate resources; prompt assignment of counsel; data collection; and the use of litigation as a reform tool. Because of their importance to the present study, Table 1 below presents details of selected NRCC recommendations.

Table 1
Selected Recommendations from *Justice Denied*¹

Topic	Recommendations
Compliance with the Constitution	<p>States should adhere to their obligation to guarantee fair criminal and juvenile proceedings in compliance with constitutional requirements.</p> <ul style="list-style-type: none"> • Legislators should appropriate adequate funds so that quality indigent defense services can be provided. • Judges should ensure that all waivers of counsel are voluntary, knowing, intelligent, and on the record, and that guilty pleas are not accepted absent valid waivers of counsel. • Prosecutors should not negotiate plea agreements absent valid waivers of counsel and should assure that accused persons are advised of their right to a lawyer.
Independence	States should establish a statewide, independent, non-partisan agency headed by a Board or Commission responsible for all components of indigent defense services.
Qualifications, Performance, Supervision of Counsel	<p>The Board or Commission should:</p> <ul style="list-style-type: none"> • establish and enforce qualification and performance standards for defense attorneys; • ensure that all attorneys who provide defense representation are effectively supervised; and • remove those defense attorneys who fail to provide quality services.
Workload	The Board or Commission should establish and enforce workload limits for defense attorneys, which take into account their other responsibilities in addition to client representation, in order to ensure that quality defense services are provided and ethical obligations are not violated.
Adherence to Ethical Standards	Defense attorneys and defender programs should refuse to compromise their ethical duties in the face of political and systemic pressures; therefore, they should refuse to continue representation or accept new cases for representation when faced with excessive workloads that will lead to a breach of their professional obligations.

Table 1
Selected Recommendations from *Justice Denied* (continued)

Topic	Recommendations
Compensation	Fair compensation should be provided, as well as reasonable fees and overhead expenses, to all publicly funded defenders and for attorneys who provide representation pursuant to contracts and on a case-by-case basis. Salary parity should be provided for defenders with equivalent prosecution attorneys when prosecutors are fairly compensated.
Adequate Support and Resources	Sufficient support services and resources should be provided to enable all defense attorneys to deliver quality indigent defense representation, including access to independent experts, investigators, social workers, paralegals, secretaries, technology, research capabilities, and training.
Eligibility and Prompt Assignment	Prompt eligibility screening should be undertaken by individuals who are independent of any defense agency, and defense lawyers should be provided as soon as feasible after accused persons are arrested, detained, or request counsel.
Data Collection	Uniform definitions of a case and a consistent uniform case reporting system should be established. The system should provide continuous data that accurately contains the number of new appointments by case type, the number of dispositions by case type, and the number of pending cases.
Litigation	When indigent defense systems require defense attorneys to represent more clients than they can competently represent or otherwise fail to assure legal representation under the Sixth Amendment, litigation to remedy such deficiencies should be filed; pretrial litigation should be filed when seeking favorable remedies to impact large classes of future defendants.

1 From “Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel,” by The National Right to Counsel Committee, 2009, pp. 11-15. Copyright 2009 by the Constitution Project and the National Legal Aid & Defender Association. Adapted with permission.

State-Specific Indigent Defense Studies

In addition to national-scoped reviews of the performance of state indigent defense systems, comprehensive studies of at least 17 states have been published during the last 25 years, and four of the states have had more than one study (Delaware, Louisiana, Mississippi, and Nevada). Information from the state-specific studies is summarized in Table 2, which appears below. The table lists which states' indigent defense systems were studied, the year the studies were published, and the authors of the resulting reports. Additionally, the table lists 12 indigent defense system components and indicates with an "x" where the various state-specific studies identified problems with those components.

TSG, which also authored national studies, authored seven of the state studies. Eight state studies were conducted by indigent defense-focused non-profit organizations, the NLADA and the Sixth Amendment Center. Another non-profit, the National Association for the Advancement of Colored People (NAACP) authored one of the Mississippi studies. Three legislative audit groups – in Alaska, Louisiana, and Minnesota – conducted performance reviews of indigent defense systems in those states. Finally, indigent defense task forces in Pennsylvania and Vermont published reviews of the systems in those states.

As Table 2 shows, the state-specific studies identified many of the same deficiencies cited in the national reports described above. Most commonly, the studies cited a lack of a statewide, independent oversight organization responsible for indigent defense service delivery and excessive public defender caseloads, each of which were cited in 14 of the published reviews. Also particularly prevalent were deficiencies in

state-level funding; statewide performance standards for indigent defense service delivery; and problems with public defender qualifications, training, and supervision, each cited in 11 studies. Finally, 10 of the state-specific studies cited the need for more and/or better data collection and assessment regarding the performance of the indigent defense system.

The summary of state-specific studies depicted in Table 2 makes it clear that, according to the authors of the studies, many states' systems were deficient and needed improvement in more than one of the several categories listed. The results of the state-specific studies, therefore, indicate that to be effective, indigent defense systems should adopt and/or address several key components – each of which impact the quality of representation those systems provide. Those components are identified and described in the next section of this chapter.

Table 2
Summary of State-Specific Indigent Defense Studies

State	Year	Program Components in Which Deficiencies Were Identified												Author
		Independent, statewide oversight	Service delivery model	State funding	Performance standards	Defender caseloads	Indigency determination	Prompt, continuous, confidential rep.	Resource parity	Investigation, expert, support services	Training, qualifications, supervision	Data collection, assessment	Performance monitoring	
Alaska	1998				x	x			x		x			Alaska Division of Legislative Audit
Arizona	1993	x	x	x	x	x					x			The Spangenberg Group
Delaware	2014	x			x	x	x			x	x	x		Sixth Amendment Center
Delaware	2004b				x		x	x	x	x	x	x		The Spangenberg Group
Idaho	2010	x			x	x	x		x	x				National Legal Aid & Defender Assn.
Louisiana	2004a	x	x	x	x		x	x		x	x			National Legal Aid & Defender Assn.
Louisiana ¹	2014				x						x	x		Louisiana Legislative Auditor
Minnesota	2010			x	x	x	x			x		x		Minnesota Office of the Legislative Auditor
Mississippi	2003	x		x	x	x	x	x	x	x		x		NAACP Legal Defense and Educational Fund
Mississippi	2014	x		x	x									Sixth Amendment Center & MS OSPD
Montana	2004b	x		x	x	x	x	x		x	x	x		National Legal Aid & Defender Assn.

Table 2
Summary of State-Specific Indigent Defense Studies (continued)

State	Year	Program Components in Which Deficiencies Were Identified												Author
		Independent, statewide oversight	Service delivery model	State funding	Performance standards	Defender caseloads	Indigency determination	Prompt, continuous, confidential rep.	Resource parity	Investigation, expert, support services	Training, qualifications, supervision	Data collection, assessment	Performance monitoring	
Nevada	2013	x			x									Sixth Amendment Center
Nevada	2001a	x	x	x		x							x	The Spangenberg Group
New York	2006	x		x	x		x	x	x	x		x		The Spangenberg Group
North Dakota	2004c	x	x			x					x		x	The Spangenberg Group
Pennsylvania	2011	x		x	x	x			x			x		PA Task Force on Svcs to Criminal Defendants
Tennessee ²	2007								x					The Spangenberg Group
Utah	2015b	x	x		x	x					x		x	Sixth Amendment Center
Vermont	2001										x			Vermont Indigent Defense Task Force
Virginia	2004a	x		x	x	x					x	x		The Spangenberg Group
Wisconsin ³	2015a		x	x										Sixth Amendment Center
Total instances deficiencies identified		14	6	11	11	14	8	6	7	5	11	10	9	

1 - The 2014 Louisiana study was limited in scope to defense services in capital cases.

2 - The Tennessee study was limited in scope to examining resource parity with prosecutors.

3 - The Wisconsin study was limited in scope to examining compensation for assigned counsel.

Components of Effective Indigent Defense Systems from the Literature

Though inadequate funding is most often cited as the paramount issue plaguing the nation's indigent defense systems, the literature makes it clear that more than additional funds is necessary (ABA, 2002, 2004; NRCC, 2009). Ad-hoc infusions of funds, while helpful as an initial step, often prove to be only temporary fixes (Uphoff, 2006). Instead, "systemic problems require systemic solutions" (Chemerinsky, 2012, p. 2692). As one legal commentator summarized:

The lack of adequate organization, training, and oversight of indigent defense lawyers by experienced leaders; the lack of crucial independence from the political and judicial branches that many such lawyers and public defense organizations face; and the absence of a robust culture of client-centered, zealous advocacy all prevent the delivery of decent indigent defense services just as surely as the lack of adequate material resources. (Steiker, 2013, p. 2700)

To be effective and to have sustainable results, therefore, indigent defense systems must be reformed on "three levels: resources, structure, and accountability" (Rhode, 2004a, p. 1024). It makes sense then that the ABA's Ten Principles and the recommendations of the nationwide studies on indigent defense systems address issues on all of those levels (ABA, 2002, 2004; NRCC, 2009). The consensus is that the components of an effective indigent defense system should include: (a) statewide administration and independent oversight of indigent defense services; (b) sufficient state-level funding from a stable source that provides parity with prosecutors' offices; (c) statewide standards for performance, addressing: attorney qualifications, training, supervision, and compensation; caseload standards; case management; adherence to ethical standards; and

provisions for determining client eligibility for counsel; and (d) a system of data collection, assessment, and reporting to evaluate and improve performance. The literature further recommends the use of litigation to spur reform when public defender organizations face barriers to implementing other components.

Statewide Administration and Independent Oversight

Experts recommend that indigent defense systems be organized and administered at the state level under an agency that has responsibility for all aspects of service delivery. Centralization of the administration of services allows monitoring of the quality of service delivery across the state, which can *and should* also ensure some uniformity in service delivery (ABA, 2004; Felice, 2001; Simon, 2008); provide coordination for the effective allocation of available resources (Allen, 2009; NRCC, 2009; Simon, 2008); offer efficiency and economy of operations (Allen, 2009; Felice, 2001; NRCC, 2009); and provide accountability and oversight (ABA, 2004; Drinan, 2009; NRCC, 2009; Simon, 2008).

The first of the ABA's Ten Principles is that, "[t]he public defense function, including the selection, funding, and payment of defense counsel, is independent" (ABA, 2002 p. 1). Cooper (2015, p. 1206) observed that this principle is perhaps most important because it "provides the foundation for achieving the other principles...including caseload limits, standards of practice, continuous representation, training, and supervision." A lack of independence of individual attorneys and of the public defense function limits the ability to provide effective assistance of counsel (ABA, 2004; Mann, 2010; NRCC, 2009). Therefore, the creation of a statewide, independent public defender commission that insulates a state-administered public defense function from political

pressures and judicial interference is critical (ABA, 2002, 2004; Cooper, 2015; Drinan, 2009; Lefstein, 2011; NRCC, 2009). Allen (2009) called it the “greatest hope” for lasting improvements in indigent defense (p. 408). Toward those ends, the NRCC (2009) and the ABA (2004) recommend that the oversight commission should take the lead in instituting the other critical components into the state’s public defense function, which are described below under separate headings.

Sufficient, Stable, and Equal State Funding for Indigent Defense

State governments should adequately fund indigent defense systems so that constitutional obligations of effective representation can be met. However, according to one legal commentator, “the central problem in implementing *Gideon* has been that the Court created an affirmative right and the left it to the political process to fund” (Chemerinsky, 2012, p. 2692). Legislatures, the primary governing bodies responsible for the political process, are “by nature majoritarian institutions populated by politically self-interested actors, whereas the beneficiaries of indigent defense programs are typically numerical, economic, and ethnic minorities” (Harvard Law Review Association, 2005, pp. 1743-1744). Therefore, legislatures are not naturally politically motivated to spend money on indigent defense; in fact, legislatures are much more interested in spending money on getting tough on criminals than defending them (Harvard Law Review Association, 2005; Rhode, 2004b). These political issues contribute to the reason that funding for indigent defense is both less substantial and less stable than funding for other criminal justice programs (Brown, 2010; NRCC, 2009).

The problem is even worse in states with dispersed, county-funded systems. Rural, poor counties that have the lowest property and sales tax revenues – the primary

source of funds for local governments – often have much lower per capita levels of funding for their indigent defense systems than do more populous metropolitan counties (Pruitt & Colgan, 2010). Thus, to better ensure effective, stable, and needs-based allocation of indigent defense resources, researchers and legal scholars recommend state-level administration and funding (ABA, 2004; Allen, 2009; Brennan, 2015; NRCC, 2009; Pruitt & Colgan, 2010; Simon, 2008).

Further, state oversight organizations should advocate for and state legislatures should appropriate sufficient funds for the public defense from a *stable* source (Drinan, 2009; NRCC, 2009). Because systems that are funded through special fees or revenue funds are unreliable, more stable state general funds should be used (NRCC, 2009).

Perhaps most critically, the funds appropriated for indigent defense should be sufficient to ensure parity with prosecutors' offices. The parity should not just extend to compensation levels for attorneys but should also include equitable access to training opportunities and critical investigative, expert, and support services, such as research, information technology, and secretarial staff. (ABA, 2002, 2004; Allen, 2009; Brennan, 2015; NRCC, 2009; Wright, 2004).

Statewide Standards for Indigent Defense Service Delivery

Independent statewide organizations should, as noted above, be given responsibility for the administration and oversight of all indigent defense services (NRCC, 2009). The responsibilities should include the adoption and enforcement of statewide standards for the delivery of services. Those standards should reflect the overall intent of the standards set forth by the legal profession but should be customized for practical institutionalization within the jurisdictions of the state. Further, statewide

standards should be enforced as mandatory (ABA, 2004; NRCC, 2009). Standards should address the myriad aspects of service delivery, including: attorney qualifications and supervision, attorney case management and performance, and attorney compensation. Statewide standards should also establish system-wide caseload limits, criteria for client eligibility, and parameters to ensure prompt appointment of counsel once eligibility has been established (ABA, 2004; NRCC, 2009). Finally, standards should address a commitment to attorney adherence to professional ethical obligations (ABA, 2004; NRCC, 2009). A lack of independence, excessive caseloads, and the lack of adequate resources can lead to violations of public defenders' professional ethical obligations (Anderson, 2012; Green, 2003; Lefstein, 2011). When attorneys violate ethical standards, they are at risk of disciplinary sanctions and civil lawsuits for malpractice and constitutional rights violations (Lefstein, 2011). Therefore, statewide standards should not only attempt to prevent such violations, they should address how attorneys are expected to handle situations, such as excessive caseloads, conflicts of interest, and political pressures that threaten their professional ethical obligations (ABA, 2004; NRCC, 2009).

Data Collection, Assessment, and Reporting to Improve Performance

Government programs committed to effective performance should collect and assess key performance data, evaluate performance against established goals, and regularly report on performance (e.g., National Performance Management Advisory Commission, 2010; Artley, Ellison, & Kennedy, 2001). The ABA (2004) and the NRCC (2009) have recognized the importance of reliable performance data and recommended

that state oversight organizations develop a system of data collection and assessment to evaluate caseloads, resource needs, and overall performance.

Despite the value of performance data, the quantity and quality of any data regarding indigent defense service delivery is substantially lacking (ABA, 2004; Davies, 2015; Laurin, 2015; NRCC, 2009). In fact, one legal commentator observed that the field of indigent defense “lacks any systematic understanding of how system inputs – attorney practices, client characteristics, compensation or hours spent – relate to desired outcomes, as well as any agreed-upon framework for stating and measuring what the desired outcomes *are*” (Laurin, 2015, pp. 335-336).

More and better data collected by public defender organizations would serve many functions – all of which would ultimately increase the capacities of public defender organizations to effectively represent indigent defendants. Meaningful performance data, for example, would help public defender organizations and advocates identify and document inequities in spending and service delivery (Davies, 2015). Such evidence could be particularly helpful if the need arises for public defender organizations or advocacy groups to file lawsuits seeking court-intervention to implement reforms (Harvard Law Review Association, 2005; Laurin, 2015).

Further, performance data is critical to policymakers that have to make tough decisions regarding appropriations of limited funds (Davies, 2015; Laurin, 2015; NRCC, 2009). Public defender organizations also need performance data to monitor the health and performance of the system, so when problems arise, corrective action can be taken (Davies, 2015; Laurin, 2015; NRCC, 2009). Finally, performance data regarding aspects of indigent defense would be useful in the broader context of providing avenues for

evidence-based lines of scientific inquiry, which to date have been limited (Davies, 2015; Frederique, Joseph & Hild, 2015; Hashimoto, 2011).

Use of Litigation to Spur Systemic Reforms

The NRCC (2009) recommended the use of litigation to address systemic deficiencies that compromise public defenders' ability to competently represent indigent clients. When state legislatures refuse to provide adequate resources and infrastructure for indigent defense services, but criminal prosecutions continue or even increase, problems only get worse for public defenders and indigent defendants. Thus, once other avenues have been exhausted, the use of litigation to bring about change may be the best and last option (TSG, 2001b; Lefstein, 2011; NRCC, 2009). Several legal scholars have observed that when legislatures fail to address government systems that violate constitutional rights, it is the courts' duty and obligation to step in and force institutional reforms (Citron, 1991; Harvard Law Review Association, 2000, 2005; Uphoff, 2006). Such litigation has been used to halt and remedy unconstitutional conditions of or treatment by government institutions in other arenas, including school segregation and financing, prison conditions, and mental health institution conditions (Enrich, 1995; Harvard Law Review Association, 2000; Heise, 1995; Schlanger, 1999).

Experts recommend that public defenders and public defender organizations should file lawsuits seeking to halt the assignment of cases based on attorneys' inability to adhere to professional ethical duties and inability to provide constitutionally required representation due to excessive caseloads (Lefstein, 2011; NRCC, 2009). Additionally, public defender organizations or indigent defense advocacy groups should file lawsuits on behalf of large classes of current and future defendants to seek specific remedies from

the court that will address system-wide structural and/or financial deficiencies (Citron, 1991; Drinan, 2009; Harvard Law Review Association, 2000; NRCC, 2009). Such litigation can directly lead to reforms through court injunctions that require systemic changes. Even in the absence of court decisions, litigation can lead to change indirectly, by mobilizing public support through positive press coverage that motivates policymakers to make needed changes (Harvard Law Review Association, 2000; NRCC, 2009).

Combined, the legal profession standards and guidelines as well as findings and recommendations from previous studies create a clear picture of the infrastructure and critical components that experts believe are necessary to create and sustain an effective indigent defense system. However, the literature lacks a comprehensive assessment of whether and to what extent states' indigent defense systems have (or lack) these components. This dissertation makes such an assessment using a combination of qualitative methods, including legal research and document analysis fully described in Chapter III.

CHAPTER III

METHODOLOGY

The purpose of this study is, broadly, to determine the extent to which state governments have implemented the key components of an effective indigent defense system recommended by previous studies to address concerns of unfairness and inequity for poor criminal defendants. Using qualitative document analysis, a descriptive research method, the study was guided by the following research questions: (1) To what extent have states adopted the key components of an effective indigent defense system recommended by previous studies? (2) In states where the constitutionality of indigent defense systems has been challenged in court: (a) What were the outcomes of those cases? (b) Is there any discernable relationship between the lawsuits challenging the constitutionality of indigent defense systems and the presence or absence of the key components of an effective indigent system?

Research Design

To explore the extent to which state governments have adopted the recommended components of an effective indigent defense program, the research approach for the study was a descriptive method referred to as qualitative document analysis. The data to address the research questions was obtained by reviewing relevant documents reflecting the structure, funding, and administrative operations of state indigent defense systems. The documents were identified and obtained using a combination of Internet searches, legal research to identify relevant statutes and cases, and, where necessary, public information requests. This section describes the research approach and method in detail, provides the benefits of the approach, and describes the research population.

Qualitative, Descriptive Research Approach

To answer the research questions proposed for this dissertation, a mainly qualitative, descriptive approach was used. Qualitative research has generally been referred to as a “residual category for almost any kind of nonquantitative research” (“Qualitative Research,” 2005, p. 256). Quantitative studies are generally designed to produce results that are used to describe “numerical changes in measurable characteristics of a population of interest; generalize to other, similar situations, provide explanations of predictions; and explain causal relationships” (Kraska, 2010, p. 1166). In an attempt to distinguish between qualitative and quantitative research methods, Thomas (2003) wrote:

The simplest way to distinguish between qualitative and quantitative may be to say that qualitative methods involve a researcher describing kinds of characteristics of people and events without comparing events in terms of measurements or amounts. Quantitative methods, on the other hand, focus attention on measurements and amounts (more and less, larger and smaller, often and seldom, similar and different) of the characteristics displayed by the people and events that the researcher studies. (p. 1)

Though this study includes some numerical summaries of the data collected, it is primarily qualitative in nature because it provides detailed information about the existence or absence of certain qualities of state indigent defense systems.

Social science research can serve several purposes, including to explore, describe, explain, predict, or evaluate an issue under study (Greenstein, 2006). Exploratory research seeks to discover or understand more about a new topic or a new angle of an existing topic and with generating and building theory (Davies, 2006). Explanatory

research seeks to explain *why* something occurs by “discovering and measuring causal relations among” variables (“Explanatory Research,” 2005, p. 112), and predictive research seeks to estimate a future value or predict a future event (“Predictive Research,” 2005). Evaluation research is “designed to test the effectiveness or impact of a social program or intervention” (“Evaluation Research,” 2005, p. 109). Thomlison (2001) described descriptive studies as “situated in the midpoint of the knowledge spectrum between exploratory and explanatory designs” and noted that descriptive studies are designed to “describe or explain relationships among phenomena, situations, and events as they occur” in order to provide “an overall ‘picture’ of a population or phenomenon by describing situations or events” (Thomlison, 2001, p. 131). This study describes the extent to which state governments have implemented components of an effective indigent defense system; thus, the study is descriptive in nature.

Qualitative Document Analysis

Data for this study were collected by analyzing various types of publicly available documents regarding states’ indigent defense systems. Generally, document analysis refers to the “various procedures involved in analyzing and interpreting data generated from the examination of documents and records relevant to a particular study” (“Document Analysis,” 2007, p.75). Sources of data for document analysis can include, for example, public records such as political or judicial reports, legislation, legislative histories, handbooks, guidelines, legal documents, interview transcripts, minutes of meetings, annual reports, letters, memoranda, news articles, press releases, and previous research studies or evaluation reports (Bowen, 2009; “Document Analysis,” 2007; Hurworth, 2005). Document analysis is useful when evaluating programs, in particular,

because it allows researchers to learn the program's purpose and rationale, identify the program's key stakeholders, understand the program's history, and learn why a program is the way it is (Hurworth, 2005).

Though documents often serve as key sources of data for social science research, document analysis as a research method is not often highlighted (Bowen, 2009; Hurworth, 2005; Prior, 2008; Wesley, 2015). Historically, the analysis of documents as a research tool has been subsumed under broader qualitative research categories such as "unobtrusive methods" or "archival research" (Prior, 2008; Wesley, 2015). More recently, however, qualitative document analysis (QDA) has emerged as a "widely recognized" qualitative research method used for "identifying retrieving, and analyzing documents for their relevance, significance, and meaning" (Altheide, Coyle, DeVriese, & Schneider, 2010, p. 128). QDA, therefore, goes beyond merely reading and pulling excerpts from relevant documents; rather, it is "a process for evaluating documents in such a way that empirical knowledge is produced and understanding is developed" (Bowen, 2009, pp. 33-34).

QDA has been most often used in combination with other methodologies to verify research findings by triangulating evidence, but it has also been useful as a "standalone method" in situations in which documents are the most viable source to address the research questions (Bowen, 2009, p. 29). For example, Wesley analyzed political party campaign documents in three Canadian provinces dated from 1932 to 2008 to look for patterns and themes in the campaign rhetoric of dominant political parties (Wesley, 2011). QDA has also been used to analyze science curriculum documents to evaluate similarities and differences in the science curricula across educational jurisdictions

(Finegold & MacKeracher, 1986). Also, in 2010, Chin et al. used QDA to evaluate workplace safety programs using information and documents gathered from government and non-profit agency websites (Chin et al., 2010).

QDA must be carried out in a systematic and disciplined manner, but the process used should not be so highly structured as to be inflexible to the consideration of new document sources or types that are relevant to addressing the research questions (Altheide et al., 2010). The process of QDA can be summarized in four high-level steps: (1) identifying and gaining access to the documents, (2) collecting data from the documents, (3) organizing the data, and (4) analyzing the data (Altheide & Schneider, 2013). A key aspect of the QDA method includes the development of a data protocol or data collection instrument (DCI), which is a tool that provides a “method of systematically querying the data” for the study (Altheide et al., 2010, p. 148). The DCI is essentially a “list of questions, items, categories, or variables that guide data collection from documents” (Altheide & Schneider, 2013, p. 44). The researcher creates the DCI after gaining an in-depth understanding of the issue under study and identifying viable document sources and relevant document types. After the initial DCI is created, the researcher should test the DCI by collecting data from an initial set of documents. This process allows the researcher to revise and refine the protocol in preparation for further data collection. The refinement of the DCI continues throughout data collection since the goal is for the tool and the researcher to be open to identifying additional documents and document sources that were not necessarily a part of the original plan but that provide meaningful information for the study (Altheide & Schneider, 2013). The categories of the DCI are also useful after data collection for identifying and summarizing themes that emerge from

the data during the analysis and synthesis phase of the study (Altheide & Schneider, 2013).

Benefits of QDA

QDA affords researchers several benefits compared to other methods. Because many documents are publicly available over the Internet, they provide a cost-effective and timesaving source of data compared to data obtained from other sources. Further, documents are both stable and non-reactive data sources, and these features add credibility to the data and reduce problems of researcher bias that can affect other, more intrusive data collection methods (Bowen, 2009; Hurworth, 2005). Documents can also provide details of past events and a breadth of coverage that would not be possible to gain with the same level of precision using other methods such as subject interviews, surveys, or focus groups (Bowen, 2009).

Research Population

This study did not require the selection of a sample since it involved a review of the entire population – the indigent defense systems of all 50 states. The systematic analysis and cataloging of each of the aspects of the indigent defense systems of all states is part of what sets this study apart from previous studies that have focused on specific states (e.g., National Legal Aid & Defender Association, 2010; Sixth Amendment Center, 2015a, 2016; The Spangenberg Group, 2001b); discrete components of indigent defense systems (e.g., Lefstein, 2011; Louisiana Legislative Auditor, 2014); and the more ad-hoc, largely testimony-based national studies (ABA, 2004; NRCC, 2009).

In QDA studies, researchers must make decisions regarding the appropriate unit of analysis upon which to focus their review (Altheide & Schneider, 2013). For studies involving the analysis of media reports, for example, researchers must decide whether to focus on the transcript of an entire newscast or on a portion of the newscast that deals with a particular topic (Altheide & Schneider, 2013). In the present study, however, the unit of analysis is not a document or a portion of a document; instead, the unit of analysis is each state's indigent defense system. For this reason, several different types of documents were obtained to collect data regarding the structure, funding, and administrative operations of each state's indigent defense system.

Data Collection

Data collection for this study included steps to identify and obtain relevant documents as well as to systematically review the documents and extract data to answer the research questions. Documents used for the study include state government records (Dixon, 2016; Florida Justice Administrative Commission, 2015; Iowa State Public Defender, 2015), court filings (*Best v. Grant County*, Settlement Agreement, 2005; *Wilbur et al. v. City of Mount Vernon et al.*, Memorandum of Decision, 2013; *Yarls v. Bunton*, Complaint, 2016), and previous studies on indigent defense systems (National Legal Aid & Defender Association, 2010; Sixth Amendment Center, 2016; TSG, 2004b). The documents were obtained from state agency or indigent defense advocacy organization websites (Iowa State Public Defender, 2015; Sixth Amendment Center, 2016), legal research services (La. Stat. Ann. § 15:152, 2008; Va. Code Ann. § 19.2-163.01, 2010), and public information requests (Kajer, 2016; Wisconsin State Public Defender, 2014). Data were collected from the identified documents using a systematic

approach guided by the use of DCIs which were created, tested, and revised as appropriate to ensure that relevant and accurate data were extracted from which credible and verifiable findings could developed and used to answer the study's research questions.

Identifying and Obtaining Relevant Documents

Data collection for this study began with steps to identify and obtain relevant documents from which to extract data to answer the research questions. During the course of operations, governments create and are required to maintain certain records related to public functions (National Association of Counties, 2010). Public defender organizations are government entities that create and maintain such operational records. The documents that were collected and analyzed for this study include, but are not limited to, indigent defense standards and/or guidelines, annual reports issued by public defender offices, indigent defense task force reports, meeting agendas and minutes, state budget documents, attorney job postings, state statutes, prior studies, and court filings. Increasingly, due to open government and e-government initiatives, such records are readily available to the public for download and can be obtained through Internet searches of government agency websites (McDermott, 2010; Porumbescu, 2016).

The process to identify and obtain documents regarding each state's indigent defense system proceeded alphabetically state-by-state. That is, beginning with Alabama and proceeding through each of the 50 states through Wyoming, research was conducted and documents were sought and obtained that addressed whether each state had adopted all or any of the recommended components of an effective indigent defense system.

To start, for each state, I reviewed statutes that established the system for indigent defense in each state, such as those that authorize the creation of state oversight commissions and stipulate the duties and requirements of the commission. All states have enacted some version of indigent defense statutes, and the statutes were obtained using the Westlaw online legal research service. The statutes were critical to understanding the basic organizational and fiscal structure authorized and/or required for each state's indigent defense system.

Next, state public defender or indigent defense agency and/or commission websites were identified and explored for information about how those statutes have been implemented – by implementing standards or collecting and reporting indigent defense data, for example. In most cases, the state agency websites provided detailed explanations of or links to documents, such as annual reports, that described how the public defender systems are organized and funded, how they operate, and in some cases, what data they collect. In addition, the annual or biennial budget of every state that provides some state-level indigent defense funding was obtained from state budget department websites and was reviewed for detailed information about how state public defender agencies are funded.² Websites for state court systems, judicial commissions, budget offices, and legislatures were also reviewed for relevant information and documents. However, because not all state websites are as robust as others and not all

² This step was not taken for states that organize and fund indigent defense at the county level except in a few instances to verify that county funds were appropriated for county-level public defenders. In fact, because the literature recommends state-level administration and funding for indigent defense, once it was confirmed that states delegated those responsibilities to local counties or cities little further analysis was needed regarding those structural components. For example, Texas delegates indigent defense service delivery and most of the funding of those services to its 254 counties, and once that was determined, it was not necessary to analyze the county-level websites or budgets for each of the 254 counties. Instead, it was clear, at least with respect to the level of administration and funding, that the Texas system does not comport with the best practices set forth in the literature.

states are equally transparent with state records (Ganapati & Reddick, 2012; West, 2008), other methods of obtaining state government documents were necessary in some cases.

The websites of indigent defense advocacy organizations and state and national professional legal associations, such as state bar associations, which license and provide oversight and assistance to licensed attorneys, were reviewed for relevant information about state indigent defense systems. Additionally, previous studies of indigent defense systems were used to obtain information relevant to the indigent defense systems of certain states. Such sources were especially helpful for states in which recent, in-depth studies have been conducted (e.g., Sixth Amendment Center, 2014 (Delaware); Sixth Amendment Center, 2015b (Utah)). Recent state-specific studies provide certain data on the states' indigent defense systems that are not readily available via the state agency website. Therefore, using the information from such studies – after taking steps to verify or triangulate that information – was most feasible in some cases.

Where the methods described above did not result in the identification of documents necessary to address state-specific questions, public information requests were issued to the relevant government agencies by email or telephone calls. All states have “public information,” “freedom of information,” “sunshine,” or “open records” laws (Kimball, 2011; National Association of Counties, 2010). Such laws require government agencies to release records related to their operations upon written request, as long as the documents are not protected from disclosure for one of several limited exceptions to the laws such as documents that are confidential by law, medical records, personnel files, and documents regarding pending investigations (National Association of Counties, 2010). Generally, the records sought for analysis in this study do not fall into categories of

exempted documents; therefore, to the extent those records exist, they were obtainable by making a request to the appropriate agencies (National Association of Counties, 2010).

Organizing the Documents

Once identified and obtained, the relevant documents and/or portions of documents were electronically saved and organized into state folders on a personal computer. The electronic documents were organized first by state and next by type of document. Thus, for every state an electronic folder was created with the state name, and within each state folder, subfolders were created for organizing statutes, annual reports, standards, budget documents, and lawsuits, for example. Once documents for a state were obtained and organized, the documents were systematically reviewed and relevant information was electronically documented using a Microsoft OneNote notebook which again was organized into sections first by state then subsections for each of the system components: statewide oversight organization, funding, service delivery methods used, standards, data collection, and structural reform lawsuits. The Microsoft OneNote application provided an excellent method for systematically organizing, citing, and summarizing text and images from a very large number of relevant documents and portions of documents supporting the existence or absence of each indigent defense system component for each state.

Since not all of the many state documents relied upon to develop findings and conclusions for this study are specifically cited herein,³ the document management and

³ Specific statutes and other documents are cited in text when quoted or used to support examples. Documents that were relied upon, but not specifically cited in the text of the dissertation or in the references list, are listed and cited in the appendices and organized by document by type: Appendix A lists the statutes reviewed; Appendix B lists the court opinions, orders, and case-related documents reviewed; Appendix C lists the indigent defense agency websites reviewed; Appendix D lists the indigent defense standards reviewed; Appendix E lists the indigent defense agency/commission reports reviewed; and Appendix F lists the state budget documents reviewed.

organization scheme will be maintained and shared if future researchers have questions about the origin of any specific finding reported below. In other words, the extensive steps to systematically manage and organize relevant documents or relevant portions of documents and documentation of findings drawn from them were undertaken to help ensure methodological rigor of QDA as suggested in the literature (Bowen, 2009; Elo et al., 2014; Shenton, 2004; Wesley, 2015). In particular, Wesley suggested that QDA researchers should triangulate their findings through the use of more than one source of evidence; immerse themselves in the documents and provide detailed or “thick” accounts of their findings; and create detailed “audit trails” describing the process used to reach conclusions, including clear explanations of decisions made and discrepant or inconsistent evidence (Wesley, 2015). The steps described here accomplish those aspects of trustworthiness. Further, the steps described help ensure the dependability – or the stability and traceability – of the study and the degree to which it follows a logical research process (Lincoln, 2004; Wesley, 2015). The steps also make the study confirmable since the findings and conclusions reported below can be “pursued back to original data sources” (Lincoln, 2004, p. 1145) rather than based upon the predispositions of the researcher (Wesley, 2015).

Systematically Reviewing Documents and Extracting Relevant Data

As described above, a key aspect of the QDA method includes the development and refinement of a system for querying the desired data from documents (Altheide et al., 2010; Altheide & Schneider, 2013). For this study, a series of DCIs were constructed, tested, and revised using Microsoft Excel spreadsheets, and information for each state was summarized using a Microsoft OneNote notebook. One DCI was used to collect

general information about the structure, service delivery model used, and funding of each state's indigent defense system as well as whether the state has standards for indigent defense and collects and assesses data regarding indigent defense. The same DCI captured whether any structural reform lawsuits have been filed that claim the state's system violates defendants' Sixth or Fourteenth Amendment rights. An excerpt from the template of the general DCI is depicted in Table 3 below.

Table 3

General Data Collection Instrument Template (excerpt)

State	Admin. level (state, county, hybrid)	Statewide oversight commission (Y/N)	Service delivery model (Public Def. (PD) Assigned (A) Contract (C))	Funding (state, county, hybrid)	Statewide standards (Y/N)	Data collection, assessment, reporting (Y/N)	Structural reform lawsuit (Year filed)
Alabama							
Alaska							
Arizona							
Arkansas							
[States]...							
Wyoming							

Additional DCIs were developed to collect more detailed data on specific components of state indigent defense systems. For example, a separate DCI was used to collect data on indigent defense funding, including exact source of funding used and information to assess parity of funding with prosecutor offices. Two other DCIs were used to collect detailed information regarding the nature of both statewide indigent defense standards and practices for data collection, assessment, and reporting in states where they exist. A fourth DCI was used to collect detailed data regarding structural reform lawsuits that have been filed, including the date filed, the plaintiff, the nature of the allegations made in the lawsuit, the outcome of the lawsuit, and the extent to which

changes were made to state indigent defense systems following the lawsuits. The DCIs are essentially matrices which, when completed, indicate whether a state has adopted or not adopted the components of effective indigent defense systems recommended by the literature. The matrices are coded to indicate whether the state has adopted the component, and the codes are described in detail and reflected in tables in the corresponding findings sections in Chapter IV.

Using the DCIs as data collection guides, I systematically identified, obtained, and reviewed documents that contained information regarding each of the categories or variables identified for each state, and I documented the information, denoted primary and secondary sources of the information, and made clear notes about processes used, assumptions made, outliers identified, and information missing. According to Wesley, (2015), creating such detailed documentation of the QDA process used and decisions made helps the researcher create an audit trail which is critical to ensure the trustworthiness of the study's findings and conclusions.

Trustworthiness

The rigor of quantitative research studies is typically evaluated based on the concepts of internal and external validity, reliability, and objectivity, whereas the rigor of qualitative studies is often discussed in terms of aspects of trustworthiness (Bloomberg & Volpe, 2012; Lincoln, 2004; Wesley, 2015). Qualitative research is considered trustworthy if it is credible, dependable, confirmable, and transferable (Guba, 1981; Lincoln & Guba, 1985). Credibility, viewed by some as the most important factor in ensuring trustworthiness in qualitative research, refers to the degree to which the study yields plausible or believable results (Lincoln & Guba, 1985). Dependability refers to a

study's stability and traceability and the degree to which it follows a logical research process (Lincoln, 2004) and the degree to which readers of the study would reach the same general conclusions using the same approach (Wesley, 2015). A qualitative study is confirmable if the findings and conclusions reported can be "pursued back to original data sources" (Lincoln, 2004, p. 1145) rather than the predispositions of the researcher (Wesley, 2015). Finally, a qualitative study is transferable if it can be used in other contexts or settings (Bloomberg & Volpe, 2012; Lincoln, 2004) or if it can offer insights beyond the particular study (Wesley, 2015).

Wesley (2015) pointed out that while the burden of assessing the ultimate trustworthiness of a qualitative study is on the readers of that study, researchers should take steps to ensure actual trustworthiness is achieved. Authors have suggested various strategies that researchers can incorporate into their qualitative studies to ensure methodological rigor (Bowen, 2009; Elo et al., 2014; Shenton, 2004; Wesley, 2015). In particular, Wesley suggested that QDA researchers should triangulate their findings through the use of more than one source of evidence, immerse themselves in the documents and provide detailed or "thick" accounts of their findings, and create detailed "audit trails" describing the process used to reach conclusions, including clear explanations of decisions made and discrepant or inconsistent evidence (Wesley, 2015).

To ensure rigor in this study, Wesley's suggestions for the use of triangulation and the creation of detailed accounts of findings and processes used to arrive at those findings were incorporated into this study. As a simple example, one component of an effective indigent defense system is the existence of a statewide, independent oversight commission (ABA, 2002, 2004; NRCC, 2009), and some states have established such

commissions through legislation. One way to triangulate – or use different sources to confirm – the existence of a statewide indigent defense commission is to identify not only the statute that called for the establishment of the commission but also evidence that the commission was actually created, such as agendas or minutes of commission meetings or reports or standards issued by commissions. Additionally, where statutes stipulate that public defender commissions or agencies should collect, assess, and report indigent defense data, the actual implementation of the statutory requirements was verified through a review of periodic reports issued by the agency that reflect such data assessment and reporting. Another way to triangulate the study’s findings was to cross check them against findings from prior national or state-specific studies. Where findings differed, the reason for the differences were noted. Every effort was made to identify documents from more than one source to establish the existence or absence of particular components reviewed.

Further, detailed accounts of processes used and decisions made during the course of the study to arrive at findings and conclusions were thoroughly documented in the various DCIs and OneNote notebook used to collect the data for the study. Some findings were more objective than others; therefore, some findings required more detailed documentation and description than others. For example, documents evincing the existence of a statewide oversight commission, such as statutes and meeting minutes are objective and required little interpretation and description. However, the determination of whether that commission is truly *independent* of external political influences, as previous studies recommend it should be, required the consideration and documentation of additional factors, such as how the commission members are appointed, who the

commission members are, and how or whether they are compensated (ABA, 2002; ABA 2004; NRCC, 2009). Where necessary and appropriate, the detailed notes regarding the criteria applied and considerations made to arrive at key decisions were made and can be made available to future researchers if requested.

Limitations of the Study

The use of publicly available documents and the QDA method provide several advantages for the current study, including efficiency and cost-effectiveness, but there are also important limitations to consider. Perhaps the most important of the limitations is that the study does not address the extent to which states carry out, in practice, the implementation or administration of the various components. In other words, documents alone cannot be used to evaluate “how an organization actually operates day-to-day” (Bowen 2009, p. 30). For instance, state statutes and other records can objectively indicate that states have intended to and provided funding for implementing statewide oversight commissions, indigent defense standards, data collection and assessment practices, and public defender qualifications and training. However, those statutes and records cannot address more subjective issues, such as how well those components have been implemented, including, for example, whether data collected is actually used to improve performance or whether public defenders competently represent their clients. Nor do written statutes or standards – even if clearly intended to be mandatory – indicate the degree to which indigent defense standards are enforced in practice. Thus, this study reports findings of whether states have intended to implement and have put the infrastructure in place for the components of an effective indigent defense system as recommended by previous studies. Though the limitation on the ability to evaluate the

effectiveness of the implementation of the components is significant, the identification of the mere existence of both the intent and the infrastructure for the components is substantial because both intent and infrastructure (i.e., authorizing statutes, funding) must be in place *before* they can have any impact on indigent defense outcomes. Therefore, even with this limitation, the findings of the study, particularly regarding the absence of the recommended components, has substantial implications.

Another limitation of the study is the potential that documents to confirm the presence or absence of particular components of state indigent defense systems were not identified or, if identified, could not be obtained. When planning the study, however, I conducted a high-level survey of all states' public defender, judicial, and budget agencies websites, and I have, in previous studies examined state statutes and administrative regulations regarding indigent defense (Wynne & Vaughn, 2016) and whistleblower protection (Wynne & Vaughn, in press). Based on these activities, I was confident that most of the data sought for this study could and would be located and obtained using the methods described herein. In fact, this was the case since I received responses to all public information requests made. Where documents were identified but could not be obtained or where decisions about the presence or absence of a particular indigent defense system component could not reasonably be determined from the evidence available, the issues are documented and accounted for in the findings and results sections in Chapter IV.

Chapter Summary

Chapter III has provided a description of the qualitative research design and methodology selected to address the proposed research questions. To explore the extent

to which state governments have adopted the key components of an effective indigent defense program, qualitative document analysis was used. The data for the study were obtained from publicly available documents obtained using a combination of Internet searches, legal research, previous studies, and, where necessary, public information requests.

Data collection for this study included steps to identify and obtain relevant documents as well as to review the documents systematically and extract data to answer the research questions. Data were collected using a systematic approach guided by the use of DCIs, which were created, tested, and revised as appropriate to ensure relevant and accurate data were extracted from which credible and verifiable findings could be developed and used to answer the study's research questions. Efforts to ensure methodological rigor and to establish trustworthiness of the findings were incorporated throughout this study.

CHAPTER IV

RESULTS

The literature indicates that many indigent defense systems lack the infrastructure and funding to adequately protect indigent defendants' right of effective assistance of counsel when they are faced with criminal charges even though governments have a constitutional mandate to provide for such protections. When poor criminal defendants do not receive adequate representation from competent, adequately-resourced attorneys, the justice system as a whole – which is predicated on zealous, adversarial testing of evidence against criminal defendants – breaks down (*United States v. Cronin*, 1984). Though, the literature creates a clear picture of the recommended systemic components that indigent defense experts believe are needed to address the manifold problems, there is little question that the problems persist. However, the literature does not include a current, comprehensive assessment of whether and to what extent states' indigent defense systems have (or lack) these components. Further, the literature lacks a comprehensive assessment of the court challenges to the constitutionality of indigent defense systems and the relationship of the cases to the presence or absence of the recommended components.

This study initiates an inquiry into whether and to what extent state governments have adopted the components recommended by indigent defense experts and published in prior studies. This chapter begins with a summary of the steps used to collect the documents reviewed, an explanation of the methods used for managing and organizing the data collected, and a description of the coding process used. Next, the findings are presented. The findings are organized into sections for the components that experts have

concluded are important for an effective indigent defense system: (a) statewide administration and independent oversight of indigent defense services; (b) sufficient state-level funding from a stable source that provides parity with prosecutors' offices; (c) statewide standards for performance, addressing attorney qualifications, training, supervision, compensation; caseload standards; case management; adherence to ethical standards; provisions for determining client eligibility for counsel; (d) a system of data collection, assessment, and reporting to evaluate and improve performance; and (e) the use of litigation to spur reform when public defender organizations face barriers to implementing other components.

To explore the extent to which state governments have adopted the key components of an effective indigent defense program, qualitative document analysis was used. The data for the study were obtained from publicly available documents obtained using a combination of Internet searches, legal research, previous studies, and, where necessary, public information requests. The relevant documents were logically organized and systematically reviewed to collect data regarding whether states have or have not adopted recommended components.

Statewide Administration and Independent Oversight

Previous studies and indigent defense experts recommend that indigent defense systems be organized and administered at the state level, and they recommend the creation of an independent state commission to provide oversight to the system. These steps, according to the literature, are fundamental to effective indigent defense service delivery (ABA, 2004; NRCC, 2009).

Statewide Administration

Experts recommend that indigent defense systems be organized and administered at the state level under an agency that has responsibility for all aspects of service delivery. Centralization of the administration of services allows monitoring of the quality of service delivery across the state, which should provide uniformity in service delivery, coordination for the effective allocation of available resources, and efficiency and economy of operations (ABA, 2004; Allen, 2009; Felice, 2001; NRCC, 2009; Simon, 2008).

Twenty-six states administer trial-level indigent defense services at the state level through the use of state-paid public defenders and/or contracts between the states and private attorneys or non-profit organizations. Though the funding of indigent defense systems is discussed in more detail in the section below (see, Table 7), it is noteworthy that the service-delivery and funding of indigent defense programs are not always fully aligned under the same level of government. All but one of the 26 states that administer indigent defense delivery through state employees or state contracts fund the services with 100% state appropriations from general revenue funds which are, in some cases, supplemented by court fines and fees. Louisiana is the only state responsible for administering indigent defense services that relies primarily on criminal court fines and fees collected by local courts to fund those services.

In 16 states, county governments are responsible for providing indigent defense services. In eight of the 16 states, counties are also completely responsible for funding trial-level services, while seven states receive some funding from the state through grants or other reimbursement programs. Alabama is the only state that provides 100% state

reimbursement of county indigent defense costs but has no state-level control over the services delivered.

In eight states, indigent defense services are administered using hybrid systems. Six states operate a state-county hybrid system. Both Kansas and New Jersey handle felony cases at the state level and misdemeanor cases at the county level. In both Georgia and Oklahoma, state-paid public defenders provide services in most counties, but in both states certain counties opt out of the state public defender program and provide their own indigent defense services. In South Carolina, county governments are primarily responsible for indigent defense services, but because both county- and state-paid employees staff public defender offices, this state's system is considered a hybrid. The Nevada Public Defender's Office (NPDO) provides indigent defense services in one of the state's small counties, while the rest of Nevada counties provide for their own public defenders (NPDO, 2014). Finally, in both Florida and Tennessee each judicial circuit, which is made up of one or more counties, has an elected public defender, and the staff of the circuit public defender offices are state-paid employees. Thus, both Florida and Tennessee operate state-judicial circuit hybrid systems.

Table 4 summarizes the findings regarding the level of administration of indigent defense systems for all 50 states.

Table 4

Level of Indigent Defense System Administration - All States

State	Hybrid Administration		
	State-Judicial Circuit	State-County	County
Alaska	Florida	Georgia	Alabama
Arkansas	Tennessee	Kansas	Arizona
Colorado		Nevada	California
Connecticut		New Jersey	Idaho
Delaware		Oklahoma	Illinois
Hawaii		South Carolina	Indiana
Iowa			Michigan
Kentucky			Mississippi
Louisiana			Nebraska
Maine			New York
Maryland			Ohio
Massachusetts			Pennsylvania
Minnesota			South Dakota
Missouri			Texas
Montana			Utah
New Hampshire			Washington
New Mexico			
North Carolina			
North Dakota			
Oregon			
Rhode Island			
Vermont			
Virginia			
West Virginia			
Wisconsin			
Wyoming			
N = 26	2	6	16

Independent Oversight

To provide oversight to a state agency responsible for service delivery, the literature also recommends that states establish an independent indigent defense commission. The commission should insulate the defense function from political pressures and judicial interference and provide statewide oversight and accountability (ABA, 2002, 2004; Cooper, 2015; Drinan, 2009; Lefstein, 2011; NRCC, 2009). The NRCC (2009) and the ABA (2004) suggest the oversight commission should take the

lead in instituting the other critical components into the state's public defense function, including securing adequate funding, establishing statewide mandatory standards, and ensuring accurate and meaningful indigent defense data is collected and used to inform the administration of the system.

Before determining whether states had established statewide commissions to oversee state agencies responsible for indigent defense, I sought to determine whether an indigent defense agency existed in each state, and then I determined whether a board or commission governed the agency. Whether state governments have established indigent defense agencies is subtly different issue than how indigent defense systems are administered. Even in states that leave the responsibility of service delivery to county governments, some states have indigent defense agencies to administer state reimbursement grants to counties or to provide training to county systems. For example, the Indiana Public Defender Commission (IPDC) does not provide public defender services, which are the responsibility of Indiana's counties. The IPDC is, however, responsible for reviewing and approving county requests for reimbursement from the state public defense fund (Indiana Public Defender Commission, n.d.). Additionally, the Mississippi Office of State Public Defender (OSPD) has no responsibility for trial-level indigent defense services; instead, the office handles appellate cases. However, it also has a training division with responsibility for offering legal training programs to both state and local public defenders (Mississippi OSPD, 2011). To determine whether states had established agencies and/or commissions with indigent defense responsibilities, I reviewed state statutes, previous studies, and searched the Internet for state indigent defense agency websites.

Results indicate that six states have neither a statewide indigent defense agency nor a statewide commission (Arizona, California, Florida, Illinois, Pennsylvania, and South Dakota). All of these except for Florida administers trial level indigent defense solely at the county level. In Florida, public defenders are elected in each of the state's judicial circuits each of which includes one or more counties; funding is provided by the state and passed to judicial circuits through the Justice Administration Commission (JAC). The JAC, however, has no authority over indigent defense services (Florida Justice Administrative Commission, 2016).

Ten states have an agency with some responsibility for indigent defense services but have no commission or board. Seven of the agencies provide statewide indigent defense services, while three provide support to county systems. Table 5 summarizes information about the 10 state agencies that operate with no governing board.

Table 5

States with Indigent Defense Agencies and No Commission or Board

State	Admin level ¹	State agency	Agency/office head	Appointed by	Statewide defense services
Alabama	C	Office of Indigent Defense Services	Director	Dir. of Finance	N ²
Alaska	S	Public Defender Agency	State Public Defender	Governor	Y
Delaware	S	Office of Defense Services	Chief Defender	Governor	Y
Iowa	S	Office of the State Public Defender	State Public Defender	Governor	Y
Mississippi	C	Office of State Public Defender	Chief Executive Officer	[Unclear]	N ³
Nevada	S/C	Public Defender's Office	State Public Defender	Governor	N ⁴
New Jersey	S/C	Office of the Public Defender	Public Defender	Governor	Y ⁵
Rhode Island	S	Public Defender	Public Defender	Governor	Y
Vermont	S	Office of the Defender General	Defender General	Governor	Y
Wyoming	S	Office of the State Public Defender	State Public Defender	Governor	Y
N = 10					

1 Denotes whether the state's trial-level indigent defense services are administered at the county (C), state (S), or a hybrid of those (S/C).

2 The Alabama Office of Indigent Defense Services provides state reimbursements to county systems.

3 The Mississippi Office of State Public Defender provides public defender training.

4 The Nevada Public Defender's Office provides public defender services in one of the state's counties.

5 The New Jersey Office of the Public Defender provides public defender services in all felony cases.

Thirty-four states have established a state-level indigent defense entity, such as a commission, board, or council that provides some oversight to or support of state or local indigent defense service providers. To determine whether state commissions are independent and have authority for statewide oversight, I reviewed statutes relevant to states' indigent defense systems using the Westlaw legal research service. Statutes establishing indigent defense commissions also include legal requirements for how the commission's members must be appointed as well as the commission's duties and powers. So, in addition to reviewing statutes for the existence of a statewide commission, I also reviewed them to determine whether the appointment of the members provided for independence from undue influence from any one political entity or branch of government. For example, by statute all seven members of the Arkansas Public Defender Commission are appointed by the state's governor (Ark. Code Ann. § 16-87-202, 1997), making it - at least by appearance - beholden to the governor's priorities regarding indigent defense. By contrast, the 15 members of the Massachusetts Committee for Public Counsel Services are appointed by several different authorities, including the state's governor, president of the senate, speaker of the house of representatives, and supreme court justices upon consideration of nominees from various state professional attorney associations (Mass. Gen. Laws. Ann. ch 211D § 1, 2011). When such diverse authorities appoint members, opportunities for undue political influence are better controlled (NRCC, 2009).

Next, I determined whether the commission had authority over all (trial- and appellate-level) indigent defense services in both felony and misdemeanor cases. The North Dakota Commission on Legal Counsel for Indigents, for example, has broad

authority over the state's indigent defense system. The breadth of the commission's authority is evident in its authorizing statute, which states that the commission was "established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services which are required under the Constitution of North Dakota and the United States Constitution" (N.D. Cent. Code Ann. § 54-61-01, 2015, para.1). Illinois, however, does not have an indigent defense commission that oversees trial-level indigent defense, likely because the state delegates responsibility to trial-level indigent defense services to Illinois counties (55 Ill. Comp. Stat. Ann. 5/3-4001, 1990; 55 Ill. Comp. Stat. Ann. 5/3-4002, 1990), while appellate cases for indigents are handled by the State Appellate Defender (Illinois State Appellate Defender, 2015). Thus, the Illinois commission, the State Appellate Defender Commission, only has authority over indigent defense services provided in cases on appeal (725 Ill. Comp. Stat. Ann. 105/4, 1972).

Finally, I determined whether the commission had explicit statutory authority to create statewide mandatory indigent defense standards. For example, the Virginia Indigent Defense Commission has broad authority over indigent defense services, including the explicit statutory authority to "establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients" (Va. Code Ann. § 19.2-163.01, 2010, para. A.4). On the other hand, some state commissions have very little actual authority over indigent defense service delivery at all, serving instead an advisory or research role. For example, the New York Indigent Legal Services Board has no oversight authority over indigent defense delivery in the state. Rather, the Board provides evaluation, consulting, and advisory services to the state's Office of Indigent Legal Services (N.Y. Exec. Law § 833, 2010), which is responsible for

monitoring and improving the quality of indigent defense services provided by New York counties (New York Office of Indigent Legal Services, n.d.; N.Y. Exec. Law § 832, 2010).

Results show that only 11 of the 34 indigent defense commissions are independent from political influence and have adequate oversight over all indigent defense services in their respective states. Twenty-two states have commissions that independently appointed. Twenty states' commissions have statewide oversight authority. However, only 11 states have commissions that are both independent and have statewide authority. Notwithstanding issues of independence and statewide authority, 24 commissions have explicit statutory authority to establish statewide indigent defense standards or guidelines.

Table 6 summarizes the findings regarding the independence, oversight, and authority of state commissions that have some responsibility for trial-level indigent defense.

Table 6
Independence, Oversight, and Authority of Indigent Defense Commissions¹

State	Independent	Statewide oversight authority	Independent commission w/ statewide authority	Comm. has statutory authority to set standards
Arkansas		X		Y
Colorado		X		
Connecticut	X	X	✓	Y ²
Georgia				
Hawaii		X		
Idaho	X			Y
Indiana	X			Y
Kansas				Y
Kentucky	X	X	✓	
Louisiana	X	X	✓	Y
Maine		X		Y
Maryland	X	X	✓	
Massachusetts	X	X	✓	Y
Michigan	X			Y
Minnesota	X	X	✓	Y
Missouri		X		Y ³
Montana	X	X	✓	Y
Nebraska	X			Y
New Hampshire	X	X	✓	
New Mexico	X	X	✓	Y
New York	X			
North Carolina		X		Y
North Dakota	X	X	✓	Y
Ohio	X			Y
Oklahoma				
Oregon		X		Y
South Carolina	X			Y
Tennessee	X			
Texas	X			Y
Utah	X			Y
Virginia	X	X	✓	Y
Washington	X			
West Virginia		X		Y
Wisconsin		X		Y ⁴
N = 34	22	20	11	24

1 Sixteen states have no statewide indigent defense entity: Alabama, Alaska, Arizona, California, Delaware, Florida, Illinois, Iowa, Mississippi, Nevada, New Jersey, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wyoming.

2 The Connecticut Public Defender Services Commission has statutory authority to adopt rules, including but not limited to, income eligibility guidelines.

3 The Missouri Public Defender Commission has statutory authority to make any rules needed for the administration of the state public defender system.

4 The Wisconsin Public Defender Board has statutory authority to promulgate rules for indigency determination.

Funding Sources, Sufficiency, and Parity

To provide for effective, stable, and needs-based allocation of indigent defense resources, researchers and legal scholars recommend state, rather than local, administration and funding of indigent defense systems (ABA, 2004; Allen, 2009; Brennan, 2015; NRCC, 2009; Pruitt & Colgan, 2010; Simon, 2008). Further, state oversight organizations should advocate for and state legislatures should appropriate sufficient funds for the public defense from a *stable* source (Drinan, 2009; NRCC, 2009). Because systems that are funded through special fees or revenue funds are unreliable, more stable state general funds should be used (NRCC, 2009). Another critical consideration is that funds appropriated for indigent defense should be sufficient to ensure parity with prosecutors' offices. Parity should exist for attorney compensation as well as access to critical investigative, expert, and support services, such as research, information technology, and secretarial staff. (ABA, 2002, 2004; Allen, 2009; Brennan, 2015; NRCC, 2009; Wright, 2004).

Funding Sources

Because many states administer and fund trial-level and appellate level indigent defense services separately, the focus of this study for funding information was on trial-level services. To determine how each state's trial-level indigent defense services are funded, I reviewed several sources, including state indigent defense statutes, state budgets, previous studies, and indigent defense agency annual reports and websites.

Twenty-seven states fund trial-level indigent defense entirely at the state level. Nine states delegate funding for trial-level indigent defense entirely to counties. The remaining 14 states' trial level services are funded through some mix of state and county

funds. Whether funded at the state or local level, most governments fund indigent defense services primarily through general revenue fund appropriations, and many supplement those general funds with court fines and fees. Louisiana is the only state where indigent defense services are funded almost entirely through locally generated and collected traffic fines and court fees (Dixon, 2016).

Table 7 summarizes the percent of state funding for trial-level indigent defense services for all states.

Table 7
Percent State Funding for Trial-Level Indigent Defense Services

100%	< 100% - 75%	< 75% - 50%	< 50% - 25%	< 25% - 1%	0%
Alabama	Kansas	Oklahoma	Georgia	Arizona	California
Alaska	Tennessee	South Carolina	Louisiana	Idaho	Illinois
Arkansas			Ohio	Indiana	Michigan
Colorado				New York	Mississippi
Connecticut				Texas	Nebraska
Delaware				Washington	Nevada
Florida					Pennsylvania
Hawaii					South Dakota
Iowa					Utah
Kentucky					
Maine					
Maryland					
Massachusetts					
Minnesota					
Missouri					
Montana					
New Hampshire					
New Jersey (felonies)					
New Mexico					
North Carolina					
North Dakota					
Oregon					
Rhode Island					
Vermont					
Virginia					
West Virginia					
Wisconsin					
Wyoming					
N = 28	2	2	3	6	9

Funding Sufficiency

The issue of whether an indigent defense system or program – or any other public or private organization – is sufficiently funded was more difficult to discern than whether a state has established a commission to oversee that program or whether the state provides funds for that program. Reviews of state budgets for indigent defense services indicate that most of the funding for indigent defense is spent on salaries to compensate the attorneys, investigators, and other support staff needed to defend indigent criminal defendants (Colorado Office of the State Public Defender, 2016; Iowa Department of Management, 2016). For example, \$22.1 million of \$26.5 million (83%) of the Iowa State Public Defender's fiscal year 2017 budget is designated for Personal Services or salaries (Iowa Department of Management, 2016, p. 466). The same percentage (83%) of the Colorado State Public Defender's fiscal year 2017 budget was dedicated to salaries (Colorado Office of the State Public Defender, 2016). Thus, at the most basic level, and notwithstanding complicated issues of staff productivity, the question of how much funding an indigent defense organization needs comes down to how many criminal defendants require representation from its attorneys and support staff and the complexity of the defendants' cases.

No indigent defense organization can predict or has control over either of those issues that drive their workloads (TSG, 2001b), which makes planning for sufficient resources difficult even when government officials responsible for allocating funds are supportive of the indigent defense function. To try to better understand and plan for resource needs, several state indigent defense programs have conducted or commissioned weighted workload studies. The workload studies are designed to determine how many

attorney and support staff hours are needed for different types of cases and using that data to extrapolate how many staff resources are needed based on recent caseload trends (Lefstein, 2011). The current study did not include workload studies or any thorough analysis of the workload studies that have been done to assess resource sufficiency.

Rather, during the course of the detailed document review and analysis of each state's annual agency reports, budget documents, previous studies, and press articles, I documented information indicating that indigent defense systems were underfunded and/or understaffed. Such an approach did not – and was not intended to – produce comprehensive and definitive information on, the whether each system is or is not sufficiently funded. The method did, however, highlight the pervasiveness and significance of the funding issues faced by many indigent defense systems.

In all, the research of publicly available documents revealed clear indications that indigent defense systems in at least 28 states lack sufficient resources. Table G1 in Appendix G describes the evidence of state indigent defense system underfunding identified in all 28 of the states, and the following are examples from that table.

Mississippi. The Mississippi Legislative Budget Office recommended a 37.4% budget cut for the Office of the State Public Defender (OSPD) for fiscal year 2018, and the OSPD letter in response to the recommended cuts indicates that funding has been inadequate for five years and additional cuts would require a 40-50% staff reduction (Mississippi OSPD, 2017).

Missouri. Similarly, the Missouri State Public Defender Commission's fiscal year 2016 Annual Report warned that caseloads are so high for staff attorneys that the risk of wrongful conviction of its clients is “a substantial likelihood” (Missouri Public Defender

Commission, 2016, p.iii). The annual report and press reports suggest that political disputes between the governor and the MSPD have led to budget cuts and even the governor's withholding of funds that were originally appropriated for indigent defense (Carroll, 2016; Missouri Public Defender Commission, 2016).

Kentucky. The Kentucky Department of Public Advocacy's Annual Litigation Report for fiscal year 2016 cited acute deficiencies in the state's indigent defense system, including workloads in violation of professional standards, inadequate compensation to reimburse contract attorneys for necessary work, and public defender employee compensation "substantially lower than the surrounding states" (Kentucky Department of Public Advocacy, 2017, p.2).

Minnesota. The Minnesota State Public Defender's 2018-2019 budget request memo to the state's Board of Public Defense reported that just to meet the goal of increasing staffing to levels needed to have 75% of the attorneys recommended by the state's weighted caseload standards, 19 additional attorneys will be needed in FY 2018 and an additional 19 will be needed in FY 2019 (Kajer, 2016).

Oklahoma. According to the Oklahoma Indigent Defense System 2016 Annual Report published by the state's Office of Indigent Defense Services (OIDS):

The loss of over \$1.8 million in funding during fiscal years 2016 and 2017 has jeopardized the agency's ability to continue to provide constitutionally effective legal representation to its court-appointed clients. The fallout from this funding crisis, absent relief, will include the release of defendants awaiting trial in certain cases if no counsel can be provided, the reversal of various cases in which necessary expert services could not be funded, and either preventing death penalty

cases from going forward or causing subsequent case reversals where required services could not be provided. (p. 2)

Funding Parity

Like the issue of funding sufficiency, the question of funding parity between public defenders that represent indigent defendants and the prosecutors that bring charges against those defendants is a complicated one. This study did not attempt to make an exhaustive comparison of public defender and prosecutor funding or resources across every state since doing so in just one state would require an entirely separate dissertation. Instead, through the review of state agency reports, statutes, budgets, and press articles regarding state indigent defense systems, I documented references to attempts to achieve parity with prosecutors as well as indications that parity or disparity of resources exists. The documents reviewed were much less illustrative regarding the issue of parity than for sufficiency, however. In fact, information about parity or disparity of resources for public defenders compared to prosecutors was only identified in 13 states.

At least nine states have made an effort, through statutory requirements, indigent defense system standards, or budget requests to achieve some level of salary or overall budget parity between public defenders and prosecutors. For example, by statute, the Connecticut Public Defender Services Commission is required "to establish a compensation plan comparable to that established for the Division of Criminal Justice" (Conn. Gen. Stat. Ann. § 51-289 (k), 2011). Also, the budget for the state of South Carolina for fiscal year 2016-2017 included a recommendation to add over \$6.65 million to the budget of the Commission on Indigent Defense to "fund public defenders in proportion to circuit solicitor support" in order to "maintain parity and efficiency in the

judicial system" (South Carolina Governor's Office, 2016, p. 396). Table 8 summarizes the findings regarding nine states' efforts to ensure parity.

Table 8

States' Efforts to Achieve Defender and Prosecutor Resource Parity

State	Parity Type	Description
California	Salary, Resources	The state bar association guidelines note that indigent defense providers should provide public defenders salaries and resources comparable to those enjoyed by prosecutors (State Bar of California, 2006).
Connecticut	Salary	By statute, the Connecticut Public Defender Services Commission is required "to establish a compensation plan comparable to that established for the Division of Criminal Justice" (Conn. Gen. Stat. Ann. § 51-289 (k), 2011).
Georgia	Salary	A September 2016 news article reported that the executive director of the Georgia Public Defender Council convinced the legislature to provide \$4 million more in state funds enabling salary parity between state-paid assistant public defenders and assistant district attorneys (Ringel, 2016).
Indiana	Salary	State indigent defense standards require that county comprehensive plans (required for eligibility for state reimbursements) provide for salaries for public defenders at the same level as prosecutors in similar positions with similar experience (IPDC, 2015).
Massachusetts	Salary	In response to a public information request, general counsel for the Massachusetts Committee for Public Counsel Services reported that while public defender salaries are low, they are equal to those for prosecutors with similar experience (Hewitt, personal communication, February 23, 2017).
Montana	Salary, Resources	State standards adopted in 2012 include a goal for parity of resources with prosecutors including salaries and overall operating expenses including office, library, and equipment (Montana Public Defender Commission, 2012).
Ohio	Salary, Resources	The Ohio Public Defender Commission rules require counties to provide public defender salaries "in parity with the compensation received by prosecutors with comparable years in practice and experience." The regulation also requires "substantially equivalent supporting staff, facilities, supplies, and other requirements" (Ohio Admin. Code 120-1-06, 2015).
South Carolina	Budget	The state budget for fiscal year 2016-17 added \$6.65 million to the budget of the Commission on Indigent Defense to "fund public defenders in proportion to circuit solicitor support" in order to "maintain parity and efficiency in the judicial system" (South Carolina Governor's Office, 2016, p. 396).
Tennessee	Budget	By statute, "any increase in local funding for positions or office expense for the district attorney general shall be accompanied by an increase in funding of seventy-five percent (75%) of the increase in funding to the office of the public defender in such district for the purpose of indigent criminal defense." (Tenn. Code Ann. § 16-2-518, 1994).

Research revealed evidence of salary, staff positions, or overall budget disparities between public defenders and prosecutors in seven states. For example, for fiscal year 2016-2017, the Florida governor recommended lower budgets for public defenders compared to prosecutors in each of the state's 20 judicial circuits, resulting in \$221 million less and 3,282 fewer positions for public defenders than for state attorneys for all circuits combined (Scott, 2017). Additionally, a 2017 class action lawsuit filed by attorneys of the Southern Poverty Law Center on behalf of a class of indigent defendants against the state alleges significant disparity between public defenders and prosecutor offices across the state. Specifically, the lawsuit claims that district attorney budgets are from two to four times higher than public defenders in the same districts, and "[i]n the worst districts, defenders received less than 20 percent of the funding received by prosecutors" (*Allen et al v. Edwards et al*, Complaint, 2017, pp. 7-9). Table 9 summarizes the findings regarding the resource disparities in seven states.

Table 9
States with Public Defender and Prosecutor Resource Disparity

State	Disparity Type	Description
Colorado	Positions, Salary	A 2013 OSPD report concluded that prosecutors had a resource advantage with 595 prosecutors and only 381 public defenders statewide. The report also noted that salaries of public defenders were 17.9% below the salaries for public attorneys in corresponding positions (Colorado Office of the State Public Defender, 2013).
Connecticut	Positions	The 2015 PDS annual report noted resource inequities ranging "from two to six times the number of prosecutorial staff compared to that of public defender offices in some jurisdictions" (Connecticut Division of Public Defender Services, 2016, p. 14).
Florida	Budget	For FY 2016-17, the Florida governor's budgets funds public defenders lower compared to prosecutors in all 20 judicial circuits, resulting in \$221 million less and 3,282 fewer positions for public defenders than for state attorneys for all circuits combined (Florida Justice Administrative Commission, 2016).
Louisiana	Budget	A 2017 lawsuit against the state alleges that district attorney budgets are from two to four times higher than public defenders in the same district and "[i]n the worst districts, defenders received less than 20 percent of the funding received by prosecutors" (<i>Allen et al. v. Edwards et al.</i> , Complaint, 2017, pp. 7-9).
North Carolina	Total resources	A 2011 Office of Indigent Defense Services report concluded that, for FY 2010, the state's prosecutors had access to resources totaling over \$285 million compared to OIDS resources of \$102.6 million (North Carolina Office of Indigent Defense Services, 2011).
North Dakota	Salary	A July 2016 article published by the <i>Bismarck Tribune</i> reported wide disparities in salaries between prosecutors and public defenders. According to the article, public defenders earn from \$12,000 to \$32,000 less than their prosecutor counterparts (Ingersoll, 2016).
Oregon	Salary	The Oregon state budget for the 2015-2017 biennium reported "attorneys in public defense organizations are, on average, paid approximately 21% less than their district attorney counterparts, with the percentage varying greatly among the organizations (Oregon Legislative Fiscal Office, 2015, p. 208)

Statewide Mandatory Standards

Indigent defense experts recommend that states should adopt mandatory statewide indigent defense standards to guide public defenders in the provision of effective representation for their clients (ABA, 2004; NRCC, 2009). Standards should be customized for practical institutionalization within each state, and they should address the myriad aspects of service delivery, including attorney qualifications, training, and compensation, and attorney case management/performance. Statewide standards should also establish system-wide caseload limits and criteria for client eligibility (ABA, 2004; NRCC, 2009). Finally, standards should address how attorneys should uphold their professional ethical obligations in the face of systemic political and caseload pressures that could threaten the quality of representation provided to clients (ABA, 2004; NRCC, 2009).

Thirty-five states have established standards or guidelines for trial-level cases that address one or more of the seven aspects of indigent defense service delivery noted in the paragraph above, but in only 15 of those states do the standards appear to be mandatory. At least two additional states, Michigan and West Virginia, are currently in the process of developing standards addressing one or more of the aspects. Thus, I found no evidence that 13 states have statewide standards in place or have plans to establish standards. Table 10 below summarizes which state standards address which of the seven aspects of service delivery, and Appendix C lists all state standards reviewed as well as citations for the two states that are currently developing standards. As Table 10 shows in the column labeled “# Issues per state,” only three states have standards that address all of the aspects of service delivery (Massachusetts, Montana, and Ohio). Four states have standards

addressing only one of the service delivery aspects reviewed (Alabama, Colorado, New York, and Wisconsin).

Case Management/Attorney Practice Standards

The standards of 24 states address case management or attorney practice issues for each phase of a case. Most practice standards describe public defenders' general guidelines regarding the role of defense counsel, general training and experience requirements, and attorney-client communication and provide more specific guidance for each step in a criminal case. For example, the Connecticut Guidelines on Indigent Defense provide guidance on particular aspects of each case, including conducting the initial client interview; recognizing attorney conflicts of interest; pretrial steps such as investigating the case and filing motions with the court; conducting plea negotiations; trial preparation and performance; sentencing procedures; and post-conviction appeals procedures (Connecticut Public Defender Services Commission, n.d.). States with such standards are shown in Table 10 with a check under "Practice stds."

Table 10
Summary of State Indigent Defense Standards/Guidelines

State ¹	Issues addressed standards/guidelines							# per state	Mandatory
	Practice stds.	Attny case/workload ²	Attny quals. ³	Attny training ⁴	Attny comp.	Attny eth. obl.	Client elig.		
Alabama	✓	Cases/yr	G	G				4	
Arizona	✓		G	Hrs/yr		✓		4	
Arkansas			S	Hrs/yr				2	
California	✓	G	G	Hrs/yr	P	✓		6	
Colorado		Cases/yr						1	
Connecticut	✓	Cases/yr	G	Hrs/yr			✓	5	
Florida	✓	G	G	G		✓		5	
Idaho			G	Hrs/yr				2	Y
Indiana		Cases/yr	S	G	P		✓	5	Y
Iowa			S	S			✓	3	Y
Kansas			S	Hrs/yr	R		✓	4	
Louisiana	✓	Cases/yr	G	G		✓		5	Y
Maine	✓	G	S	S	R		✓	6	Y
Maryland		Cases/yr					✓	2	
Massachusetts	✓	Cases/yr	S	S	R	✓	✓	7	Y
Minnesota	✓	Cases/yr				✓	✓	4	
Mississippi	✓		G	G		✓		4	
Missouri	✓	Hrs/case	G	Hrs/yr		✓	✓	6	Y
Montana	✓	G	G	Hrs/yr	P	✓	✓	7	Y
Nebraska	✓	Cases/yr	S	G				4	
Nevada	✓		G	G		✓		4	
New Hampshire		Cases/yr	G			✓		3	Y
New Jersey			G					1	
New Mexico	✓		G	G		✓		4	
New York							✓	1	
North Carolina	✓		G	G	R			4	
North Dakota	✓	G	G	G		✓	✓	6	
Ohio	✓	G	S	S	P	✓	✓	7	Y
Oregon	✓	G	S	S		✓		5	Y
South Carolina	✓		G	G		✓		4	
Tennessee		Cases/yr			R			2	
Texas	✓	Cases/yr	G	G		✓		5	
Virginia	✓		S	S		✓		4	Y
Washington	✓	Cases/yr	S	S		✓	✓	6	Y
Wisconsin	✓	Cases/yr		G		✓	✓	5	Y
N = 35 States	24	22	29	28	9	20	15		15

1 Thirty-five states have standards in place (N=35). At least two others, Michigan and West Virginia are developing standards. Nebraska standards appear to apply only to state public defenders, which handle only a small percentage of the total cases in the state since Nebraska is primarily a county-based system.

2 Denotes whether standards include general or specific criteria to avoid excessive workloads: G = general guidance; Cases/yr = a maximum number of cases per year per case type that attorneys should be assigned; Hrs/case type = the number of hours one case of each type typically requires.

3 Denotes whether standards include general or specific criteria regarding attorney qualifications: G = general guidance that attorneys should be sufficiently qualified; S = specific years and/or types of experience required for certain case types.

4 Denotes whether standards include general or specific criteria regarding attorney training: Hrs/yr = a set number of training hours required per year; G = general statement that attorneys should be sufficiently trained; S = standards require certain types and hours of training per case type.

5 Denotes whether standards reference compensation parity with prosecutors or address specific rates of pay: P = parity between public defender and prosecutor compensation; R = hourly rates of pay per case type for contract or assigned counsel public defenders.

Attorney Caseload/Workload Standards

The standards of 22 states address, in some way, attorney caseloads or workloads. The focus of this aspect of standards is on attempts to maintain reasonable public defender workloads so that attorneys have the necessary time to provide effective assistance to all indigent defendants. Thirteen states' standards set guidelines for the maximum number of cases by case type that one public defender should handle in any particular year. For example, Alabama enacted administrative rules that established caseload standards of 200 felony cases per year or 400 misdemeanor and traffic cases per year. The Alabama standards recognize, however, that public defenders will handle a combination of felonies and misdemeanors, so the standards also issue the general guidance that "in any given year, an attorney should not accept a caseload of any combination of the types...that, due to the volume of cases, compromises the ability of the attorney to render quality representation" (Ala. Admin. Code 355-9-1.10, 2015). The 14 states with caseload standards that establish maximum cases per year are coded in Table 10 under Attorney caseload/workload as "Cases/yr."

Rather than a number of cases per year, Missouri commissioned a study to determine the average number of "controllable" hours that each type of case requires for effective representation, which can be used to project the number of attorneys and support staff required based on caseload trends and expectations. For example, the study concluded that Missouri public defenders should spend an average of 106.6 hours to defend homicide cases, while probation violations should only require about 9.8 hours (RubinBrown, LLP, 2014, pp. 6, 22-23). In Table 10, Missouri's Attorney caseload/workload standard is coded as "Hrs/case type."

Seven states' standards address attorney caseloads, but they do not establish numerical thresholds at all; instead they provide more general guidance to avoid excessive caseloads. For example, Ohio's regulations regarding workload standards instruct public defenders to inform the court and request withdrawal from cases when they determine that excessive workloads "will lead to the inadequate representation of any client" (Ohio Admin. Code 120-1-07 (B), 2016). Similarly, the Oregon Public Defense Services Commission's standards state, "Neither defender organizations nor assigned counsel shall accept caseloads that, by reason of their size or complexity, interfere with providing competent representation to each client or lead to the breach of professional obligations" (Oregon Public Defense Services Commission, 2016, p. 1). States with standards that provide similar general guidance regarding caseloads are coded in Table 10 with a "G" in the Attorney case/workload column.

Attorney Qualification Standards

Twenty-nine states have rules or standards that refer to public defender qualifications. Most provide the general guidance that public defenders should have sufficient experience to handle the cases to which they are assigned, while others specify the specific experience required for different types of cases. Eighteen states have general attorney qualification standards. For example, South Carolina's indigent defense standards for non-capital cases require public defenders to be familiar with the relevant criminal and procedural laws of the jurisdiction and to "have sufficient experience or training to provide quality representation" (South Carolina Commission on Indigent Defense, 2013, p. 2). For states with standards that provide such general guidance, Table 10 shows "G" under the Attorney qualifications column. Eleven states' standards

provide more specific guidance, requiring specific experience for different types of cases. In Ohio, for instance, before public defenders can accept cases involving possible life sentences for their clients, they are required to have at least five years of experience as a criminal law attorney, have prior experience as lead counsel in at least five jury trials involving first or second degree felonies, and meet other specific requirements. By contrast, public defenders that handle misdemeanor cases are required to have only one year of experience as an attorney and to have completed other specified training (Ohio Admin. Code 120-1-10, 2015). In Table 10, states that set forth specific qualification requirements for different types and complexities of cases are coded with an “S” under the Attorney qualifications column.

Attorney Training Standards

Twenty-eight states’ standards address the issue of public defender training. Like the issue of attorney qualifications, some states merely provide general guidance that attorneys must be sufficiently trained; the 13 states that provide such general guidance are coded with a “G” in Table 10 under the Attorney training column. Seven states require public defenders to have different levels of training based on the types and complexities of cases they are allowed to accept, and these states are coded with an “S” in Table 10 under Attorney training. Finally, eight states simply specify the number of legal education hours that all public defenders must attend every year. Missouri, for example, requires public defenders to “participate in no less than fifteen hours of continuing legal education programs” every year (Missouri Office of the State Public Defender (OSPD), 1992). In Table 10, states with similar requirements specifying the number of hours of training per year required for public defenders are coded as “Hrs/yr.”

Attorney Compensation Standards

Nine states have standards that reference attorney compensation. Four state standards require salary parity between public defenders and prosecutors, which are coded in Table 10 with a “P” and are described in a previous section in Table 8. Five states have standards that set specific hourly compensation rates per case type for contract or assigned public defenders. For example, Kansas’s administrative regulations include a standard that “assigned counsel shall be compensated at the rate of \$70 per hour” (Kan. Admin. Regs. § 105-5-2 (a), 2016). In Table 10, states with standards that set specific compensation rates for assigned or contract public defenders are coded with an “R.”

Attorney Ethical Obligations

The standards of 20 states reference public defenders’ obligation to act ethically while carrying out their duties, shown in Table 10 with a check in the Attorney ethical obligations column. Some state standards are more specific than others regarding ethical guidance. For example, Arizona standards have an entire section entitled “Acting Ethically,” which lists several ethical prohibitions, including “Counsel shall not accept appointment to any cases which potentially place counsel or any other attorneys in the same agency in danger of violating standards of professional responsibility” (Arizona Public Defender Association, 2008, p. 4). The New Mexico standards provide less detailed guidance stating, “Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court” (New Mexico Public Defender Commission & Law Office of the Public Defender, 2016, p. 2).

Client Eligibility Standards

The indigent defense standards of 15 states include standards for determining which defendants are eligible for government-paid counsel based upon income, assets, and other criteria. In addition, some states' standards, such as those established by North Dakota, also provide guidance on the process for initiating an application for eligibility, who is responsible for reviewing and verifying the application, and once a decision of indigency is made, the process for assigning counsel and notifying clients of application results (North Dakota Commission on Legal Counsel for Indigents, 2014). State indigent defense functions that have established client eligibility standards are marked with a check in the Client eligibility column of Table 10.

Enforcement of Standards as Mandatory

Experts recommend that indigent defense standards should be enforced as mandatory. Such a recommendation implies two separate conditions: 1) compliance with the standards is expected; and 2) there is some mechanism in place to ensure compliance. Whether both of those conditions exist in the 33 states that have adopted indigent defense standards was not always clear using the methods employed in this study. Thus, conclusions regarding whether state standards are enforced as mandatory are limited and are based information in documents reviewed that indicates that standards are mandatory and/or enforced.

Overall, I found affirmative evidence suggesting that standards are considered mandatory in 14 of the 33 states that have indigent defense standards in place. In 13 states statutes, public defender policies, attorney evaluations, or contracts state or imply that the standards are mandatory (Idaho, Indiana, Iowa, Maine, Massachusetts, Montana,

New Hampshire, North Dakota, Ohio, Oregon, Virginia, Washington, and Wisconsin).

The preamble to the Missouri indigent defense guidelines state that the guidelines “will be used by supervising attorneys in evaluating staff performance,” which suggests that the guidelines are considered mandatory (Missouri OSPD, 1992, p. i). In Louisiana, the staff of the Louisiana Public Defender Board (LPDB) conducts compliance visits to selected district public defender offices each year, again suggesting that the state’s standards are considered compulsory.

In 13 of the 15 states with mandatory standards, there is also a mechanism to ensure compliance with the standards. In at least five states, compliance with standards is tied to state funding through either requirements for county eligibility state grants or reimbursements (Idaho, Indiana, and Washington) or through contract terms (Maine and New Hampshire). In four states, enforcement of standards is required by state statute (Massachusetts, North Dakota, and Oregon) or regulation (Ohio). In Louisiana, while not required by statute, annual compliance visits are an enforcement mechanism for that state’s standards. The administrative policies of the Montana Office of the State Public Defender requires regional public defenders to monitor day-to-day compliance with standards and calls for random compliance checks by an OSPD training officer (Montana Office of the State Public Defender, 2010). As cited above, the Missouri indigent defense standards indicate that supervising attorneys will evaluate staff performance based on the standards (Missouri OSPD, 1992). Similarly, the Wisconsin State Public Defender attorney performance evaluations are based on practice standards (Wisconsin SPD, 2014). Table 11 shows the findings for the states with mandatory indigent defense standards including whether an enforcement mechanism was identified.

Table 11
States with Mandatory Indigent Defense Standards

State	Enf. mechanism identified?	Indications that standards are mandatory and/or enforced
Idaho	Y	Statute requires compliance and ties the state grants available to counties from the state to compliance (Idaho Code § 19-862A).
Indiana	Y	By statute, to be eligible for state reimbursement for indigent defense expenses, counties must comply with state standards (Ind. Code §§ 33-40).
Iowa		Compliance with Iowa's client eligibility standards is required by state regulation (Iowa Admin. Code r. 493-10, 2012). No information about enforcement was found.
Louisiana	Y	The state Public Defender is required to "ensure compliance" standards adopted by the LPDB (La.Stat. Ann. § 15:152, 2008). The LPDB conducted "full-scale compliance visits" in six judicial districts in 2016 (LPDB, 2017).
Maine	Y	According to the standards adopted by the Maine Commission on Indigent Legal Services (MCILS), "the Commission will apply these standards...when evaluating the performance or conduct of counsel" (MCILS, 2012).
Massachusetts	Y	By statute, the Committee for Public Counsel Services is required to monitor and evaluate compliance with indigent defense standards (Mass. Gen. Laws ch. 211D § 9, 1996; Mass. Gen. Laws ch. 211D § 10, 1990).
Missouri	Y	The Missouri indigent defense guidelines state that the guidelines "will be used by supervising attorneys in evaluating staff performance" (Missouri OSPD, 1992, p. i).
Montana	Y	By policy, regional public defenders are "responsible for day-to-day monitoring of each attorney's compliance with the Standards," and the OSPD must conduct at least 10 random compliance checks per month (Montana OPSD, 2010).
New Hampshire	Y	The state Judicial Council contracts with a nonprofit organization for indigent defense service delivery, and the contract requires compliance with caseload standards (New Hampshire Judicial Council, 2015).
North Dakota	Y	The director of the Commission on Legal Counsel for Indigents is required to supervise compliance with standards (N.D. Cent. Code Ann. § 54-61-03 2005).
Ohio	Y	The Ohio OPD is required to "supervise the compliance of county public defender offices...with standards" (Ohio Rev. Code Ann. §120.04, 1999).
Oregon	Y	Statute requires the executive director of the Public Defender Services Commission to ensure compliance with standards adopted by the Commission (Or. Rev. Stat. § 151.219, 2003).
Virginia		The state's standards note, "[c]ourt appointed counsel and public defenders must comply with these Standards" (Virginia IDC, 2016, p. 1). No information about enforcement was found.
Washington	Y	The Washington OPD conducts site visits to counties and cities that apply for state funds to assess compliance with standards and other requirements (Washington State OPD, 2016).
Wisconsin	Y	The Wisconsin SPD attorneys' performance is evaluated based on practice standards (Wisconsin SPD, 2014). Caseloads are also addressed in attorney evaluations and in state statutes (Wis. Stat. Ann. § 977.08, 2008).
N = 15	13	

Data Collection, Assessment, and Reporting

Indigent defense experts recommend that state oversight organizations develop a system of data collection and assessment to evaluate caseloads, resource needs, and overall performance. The literature indicates, however, the quantity and quality of data regarding indigent defense service delivery is substantially lacking (ABA, 2004; Davies, 2015; Laurin, 2015; NRCC, 2009).

To determine whether and to what extent statewide indigent defense data is collected, assessed, and/or reported by each state I obtained and reviewed state statutes, agency reports and websites, state budgets, and responses to public information requests. First, I determined whether state statutes require data collection and reporting by requiring periodic agency reports. Next, I reviewed state agency websites, reports, budgets, and previous studies to determine whether and what types of indigent data states collect, assess, and/or report.

Results indicate that 37 states collect, assess, and/or report some type of indigent defense information, and statutes of 29 of those states require some level of data collection and reporting. I found no information regarding statewide data collection and reporting in 11 states, and while two states, Michigan and Utah have not historically collected and reported statewide data, both states are reforming their systems to include data collection, assessment, and reporting. The type of data collected varies by state and includes information about cases received, budget and expenses, case or agency outcomes, and other agency-related information (i.e., staffing and salary levels, training programs offered, recommendations for statutory changes, agency structure). Table 12 summarizes the findings regarding states' collection, assessment, and reporting.

Table 12

Summary of Indigent Defense Data Collection, Assessment, Reporting

State ¹	Data collection/ report required by statute	Types of data collected, assessed, reported				#
		Caseload	Budget/ Expense	Outcome	Other	
Alabama ²	Y				X	1
Arkansas	Y	X				1
Colorado		X	X		X	3
Connecticut	Y	X	X			2
Delaware	Y	X	X	X	X	4
Florida		X	X			2
Georgia ³	Y	X	X			2
Idaho	Y		X		X	2
Indiana ²	Y				X	1
Iowa	Y	X	X	X	X	4
Kansas	Y	X	X			2
Kentucky	Y	X	X			2
Louisiana	Y	X	X	X	X	4
Maine	Y	X	X			2
Maryland	Y	X			X	2
Massachusetts	Y	X	X	X	X	4
Minnesota		X				1
Missouri	Y	X	X		X	3
Montana	Y	X	X		X	3
Nebraska					X	1
New Hampshire		X	X	X	X	4
New Jersey	Y	X	X			2
New Mexico	Y	X		X	X	3
North Carolina	Y	X	X		X	3
Ohio	Y	X	X			2
Oklahoma	Y	X	X			2
Oregon	Y	X			X	2
Rhode Island		X				1
South Carolina	Y		X		X	2
Tennessee ³	Y	X	X			2
Texas	Y	X	X			2
Vermont	Y	X	X		X	3
Virginia ⁴	Y	X				1
Washington ⁵	Y	X	X		X	3
West Virginia		X	X		X	3
Wisconsin	Y	X	X			2
Wyoming		X	X			2
N = 37	29	32	27	7	19	

1 No information was found regarding data collection and reporting in 11 states (Alaska, Arizona, California, Hawaii, Illinois, Mississippi, Nevada, New York, North Dakota, Pennsylvania, and South Dakota). Both Michigan and Utah are working on system reforms, including preparing to collect and report indigent defense data.

2 Both Alabama and Indiana only collect data on state reimbursements of funds to counties.

3 Georgia and Tennessee statutes require indigent defense only upon request (i.e., not routinely).

4 Virginia reports data at the public defender office level, but does not aggregate statewide.

5 Washington collects county-based indigent defense commission data but does not compile the data statewide, and warns against doing so since data collection methods vary by county.

Even in states that collect data of the same type – i.e., caseload, expenditure, and/or outcome – the extent of the data collected and reported varies. With respect to data about the indigent defense cases handled, some states report indigent defense data, but do not report statewide data. For example, Ohio, Virginia, and Washington report data at the county or district-level, but do not aggregate the data to create a statewide picture of indigent defense. Other states track and/or report simply the total number of cases handled in a given year with no other descriptive information about caseloads (Iowa, Maine, Oregon, and Wisconsin). Other states report more in depth data regarding their cases, including the number of cases by type (i.e., felony, misdemeanor, juvenile, appeals), the number of cases by judicial circuit or office, the workload or average number of cases per attorney, comparison of attorney workload to standards or goals, and/or the disposition of cases. Table 13 summarizes the findings regarding the breadth of case-related data collected and/or reported by states.

Table 13

Detailed Case Data Collected, Assessed, and/or Reported

State	Statewide data	Total # cases	# Cases by type	# Cases by district, circuit, etc.	Workload (# cases/ attny)	Compare workload stds/goals	Case disposition	#
Arkansas	Y	X	X	X				3
Colorado	Y	X	X	X				3
Connecticut	Y	X	X	X	X	X		5
Delaware	Y	X	X	X	X	X		5
Florida	Y	X		X	X			3
Georgia	Y	X		X				2
Iowa	Y	X						1
Kansas	Y	X		X	X			3
Kentucky	Y	X	X	X	X	X		5
Louisiana	Y	X	X	X	X	X	X	6
Maine	Y	X						1
Maryland	Y	X	X	X	X	X		5
Massachusetts	Y	X	X	X	X	X	X	6
Minnesota	Y	X	X	X	X	X		5
Missouri	Y	X	X	X				3
Montana	Y	X	X	X	X	X		5
New Hampshire	Y	X	X	X			X	4
New Jersey	Y	X						1
New Mexico	Y	X	X				X	3
North Carolina	Y	X	X	X	X			4
Ohio		X	X	X				3
Oklahoma	Y	X	X					2
Oregon	Y	X						1
Rhode Island	Y	X	X		X	X		4
Tennessee	Y	X	X	X				3
Texas	Y	X	X	X	X			4
Vermont	Y	X	X	X				3
Virginia				X				1
Washington			X	X				2
West Virginia	Y	X	X	X				3
Wisconsin	Y	X						1
Wyoming	Y	X	X		X	X		4
N = 32	29	30	23	23	14	10	4	

Structural Reform Litigation

According to indigent defense experts, when state legislatures refuse to provide adequate resources and infrastructure for indigent defense services and other avenues have been exhausted, the use of litigation to bring about change may be the best and last option (Lefstein, 2011; NRCC, 2009; TSG, 2001b). Such litigation can directly lead to reforms through court injunctions that require systemic changes, and even when courts do not render a decision against the government, litigation can and has led to system reforms (Harvard Law Review Association, 2000; NRCC, 2009).

Structural reform lawsuits regarding trial-level indigent defense services have been filed against the state or county governments in nine states, and two of the states have experienced more than one such lawsuit. While there are additional, more narrowly-focused lawsuits related to public defender compensation delays in appointing counsel for indigent defendants, for example, the structural reform lawsuits analyzed here are unique because they allege that the entire indigent defense system of a state or county is constitutionally deficient. Each of the lawsuits allege that systemic and structural problems with indigent defense systems lead to violations of indigent defendants Sixth and Fourteenth Amendment rights to effective assistance of counsel, due process and equal protection under the law. The lawsuits, all filed between 2002 and 2017, also allege violations of indigent defendants' state constitutional rights, and some allege state statute violations. All but one of the 11 structural reform lawsuits was brought under Title 42, Section 1983 of the United States Code. Section 1983 "provides a mechanism for seeking redress for an alleged deprivation of a litigant's federal constitutional and federal statutory rights by persons acting under color of state law" (Blum & Urbonya,

1998, p. 1), which includes, by inference, government officials that oversee the provision of indigent defense services. Six of the 11 cases have been resolved, while five cases are still ongoing. Information about the resolution of the cases is provided in the section below. Table 14 summarizes this basic information about the 11 structural reform lawsuits.

Table 14
Indigent Defense Structural Reform Lawsuits

State	Case(s)	System Level ¹	Year filed	Year resolved	§1983	Violations alleged			
						6th Am	14th Am	State Const	State Statute
California	<i>Phillips v. State of California, Fresno County</i>	County	2015	-		Y	Y	Y	Y
Idaho	<i>Tucker et al. v. State of Idaho et al.</i>	County	2015	On appeal	Y	Y	Y	Y	
Louisiana	<i>Yarls v. Bunton</i>	State	2016	2017	Y	Y	Y	Y	
Louisiana	<i>Allen et al. v. Edwards et al.</i>	State	2017	-	Y	Y	Y	Y	
Michigan	<i>Duncan v. State of Michigan</i>	County	2007	2013	Y	Y	Y	Y	
Montana	<i>White v. Martz</i>	County	2002	2006	Y	Y	Y	Y	Y
New York ²	<i>Hurrell-Harring, et al. v. State of New York</i>	County	2007	-	Y	Y	Y	Y	
Pennsylvania	<i>Kuren (formerly Flora) v. Luzerne County</i>	County	2012	-	Y	Y	Y	Y	
Utah	<i>Remick v. State of Utah</i>	County	2016	-	Y	Y	Y	Y	Y
Washington	<i>Best v. Grant County</i>	County	2004	2013	Y	Y	Y	Y	
Washington	<i>Wilbur v. Cities of Mount Vernon & Burlington</i>	County	2011	2013	Y	Y	Y	Y	

- 1 System Level denotes whether the indigent defense system, which was the target of the lawsuit was administered at the county or state level at the time the case was filed.
- 2 In the case against the State of New York, the parties to the lawsuit reached settlement in October 2014, but because part of the settlement involves an actively monitored seven-and-a-half-year settlement agreement, that case is considered ongoing. If New York satisfactorily addresses agreed upon reforms to its system per the settlement agreement, the case will likely be formally dismissed in 2021 or 2022 (*Hurrell-Harding v. State of New York*, Stipulation and Order of Settlement, 2014).

Lawsuit allegations. The most pervasive allegations regarding the indigent defense systems that have been the subject of indigent defense lawsuits are a lack of funding and excessive public defender caseloads; all 11 lawsuits alleged those fundamental problems. Seven of the lawsuits alleged that attorneys were either too busy or too disinterested to conduct a meaningful investigation of their clients' cases. Perhaps relatedly, six of the lawsuits alleged inadequate attorney-client communication regarding the planning and progress of clients' cases. Other problems often cited in the lawsuits were inadequate or non-existent supervision, oversight and evaluation of the indigent defense system; pervasive and unchecked attorney conflicts of interest, due in large part to excessive caseloads; a lack of funding for investigative, expert, and support services; and the failure to provide representation to indigent defendants at all critical states of their cases. Attorney compensation, qualifications, training, and supervision were also often cited as systemic problems that led to violations of defendants' right to effective assistance of counsel. Table 15 summarizes the problems with indigent defense alleged in structural reform lawsuits.

Table 15

Problems with Indigent Defense Systems Alleged in Lawsuits

Problems alleged in lawsuit	CA ¹ 2015	ID 2015	LA 2016	LA 2017	MI 2007	MT 2002	NY 2007	PA 2012	UT 2016	WA ² 2004	WA ³ 2011	N =
Funding	X	X	X	X	X	X	X	X	X	X	X	11
Caseloads/staffing levels	X	X	X	X	X	X	X	X	X	X	X	11
Investigation of client's case	X	X		X	X		X	X			X	7
Attorney-client contact/communication	X	X			X		X	X			X	6
System supervision, oversight, evaluation					X	X	X		X	X	X	6
Conflicts of interest	X			X	X	X					X	5
Funding for investigative, expert, support svcs		X				X	X	X		X		5
Representation at all critical stages		X					X	X	X	X		5
Independence of public defender		X			X		X			X		4
Attorney supervision, oversight, evaluation	X	X		X	X		X					5
Attorney performance, caseload standards						X	X	X	X			4
Attorney compensation - e.g., parity, rates	X			X		X	X					4
Attorney training, qualifications		X			X	X	X					4
Confidential attorney-client meeting space	X							X	X			3
Representation of all eligible defendants					X		X					3
Continuous representation	X						X					2
Extended, unnecessary pretrial detention		X										1
Fixed fee contracts		X										1
N = 18	9	11	2	6	10	8	14	8	6	6	6	

¹ Lawsuit involves Fresno County, CA² Lawsuit involved Grant County, WA³ Lawsuit involved cities of Mount Vernon and Burlington, WA

Lawsuit outcomes. The dispositions of the structural reform lawsuits decided to date are mixed, but undoubtedly the ultimate outcomes have favored the plaintiffs seeking indigent defense reforms. In two of the cases the parties settled. Both Grant County, Washington (*Best v. Grant County*, Settlement Agreement, 2004) and the State of New York (NYCLU, 2014) agreed to multi-year, court-monitored settlements requiring them to institute indigent defense reforms requested by the plaintiffs. The Montana trial court dismissed the case against that state after requested reforms were initiated (Berken, 2014b), and in the case against the state of Michigan, the plaintiffs' ACLU attorneys voluntarily dismissed their case after the state initiated the reforms requested (ACLU of Michigan, n.d.). In the case against the cities of Mount Vernon and Burlington, Washington, the United States district court ruled in favor of the plaintiffs, finding that the cities' indigent defense system deficiencies had deprived the plaintiffs of their right to counsel (*Wilbur v. Mount Vernon*, 2013). In the case against the state of Louisiana, however, a different United States district court dismissed the plaintiff's case against the state citing concerns about federalism and a reluctance to get involved in issues regarding state criminal courts. Despite the dismissal, the court noted, "It is clear that the Louisiana legislature is failing miserably at upholding its obligations" to provide indigent defense. "Budget shortages are no excuse to violate the United States Constitution. The legislature must resolve the crisis and locate a stable funding source" (*Yarls v. Bunton*, 2017). Table 16 summarizes the resolutions of the lawsuits.

Table 16

Summary of Structural Reform Lawsuit Resolutions

State	Disposition	Resolution
Louisiana	Dismissed	The United States District Court dismissed the case against the state in January 2017. The federal district court judge dismissed the case due to concerns about federalism and its reluctance to get involved in issues regarding state criminal courts. Despite the dismissal, the court noted, "It is clear that the Louisiana legislature is failing miserably at upholding its obligations" to provide indigent defense. "Budget shortages are no excuse to violate the United States Constitution. The legislature must resolve the crisis and locate a stable funding source" (<i>Yarls v. Bunton</i> , 2017, p.9).
Michigan	Dismissed	Plaintiffs' attorneys for the ACLU voluntarily dismissed the case against the state after requested reforms were initiated in July 2013 (ACLU of Michigan, n.d.).
Montana	Dismissed	The Montana trial court dismissed the case against the state in January 2006 after requested reforms were initiated (Berken, 2014).
New York	Settled - <i>Ongoing</i>	In October 2014, the parties reached a seven-and-a-half-year settlement agreement the day before the trial was set to begin. According to the NYCLU, under the terms of the settlement, "the state will adopt major reforms focusing on five New York counties – Ontario, Onondaga (Syracuse), Schuyler, Suffolk and Washington" (New York Civil Liberties Union, 2014).
Washington (Grant Co.)	Settled	In November 2005, the parties entered into a six-year, court-enforceable settlement agreement. Under the terms of the settlement agreement, Grant County was required to reduce excessive public defender caseloads, ensure that public defenders were qualified to handle serious felony cases, provide adequate funding for investigators and expert witnesses, and comply with indigent defense standards created by the state bar association and endorse by the state legislature (<i>Best v. Grant County</i> , Settlement Agreement, 2004).
Washington (Mt. Vernon and Burlington)	Judgment for the plaintiffs	In December 2013, the United States District Court found that the cities had deprived the plaintiffs of their right to counsel and granted an injunction requiring the cities to reevaluate their public defender contract to insure it provides for effective assistance of counsel and to hire a part-time public defense supervisor to supervise and evaluate the provision of legal services (<i>Wilbur v. Mount Vernon</i> , 2013).

Reforms prompted by litigation. In at least 7 of the 11 cases where indigent defense system constitutionality has been challenged to date, the litigation prompted structural reforms and improvements. The states of Michigan, Montana, New York, and Utah have all initiated and/or implemented reforms to their indigent defense systems. Though the lawsuit against Utah is still in progress, the state has already initiated the reforms. Grant County and the cities of Wilbur and Burlington have also made improvements to their systems. Louisiana, however, despite its long history of chronically underfunding its indigent defense system and having to turn away indigent defense cases in many of its judicial districts due to a lack of adequate funding, has yet to initiate any system reforms to address the deficiencies. Table 17 summarizes which lawsuits have led to indigent defense reforms. Chapter V discusses the reforms in detail.

Table 17

Indigent Defense Reforms Prompted by Lawsuits

State	Year Filed	Disposition	Indigent defense system reforms initiated
California ¹	2015	<i>Ongoing</i>	
Idaho	2015	<i>On appeal</i>	Y
Louisiana	2016	Dismissed	
Louisiana	2017	<i>Ongoing</i>	
Michigan	2007	Dismissed	Y
Montana	2002	Dismissed	Y
New York	2007	Settled	Y
Pennsylvania	2012	<i>Ongoing</i>	
Utah	2016	<i>Ongoing</i>	Y
Washington ²	2004	Settled	Y
Washington ³	2011	Judgment against county	Y

¹ Lawsuit involves Fresno County, CA² Lawsuit involved Grant County, WA³ Lawsuit involved cities of Wilbur and Burlington, WA

Summary of Findings

This study sought to determine whether and to what extent state indigent defense systems have structural and operational components recommended by indigent defense experts and in previous studies. Up to this point, this chapter has presented the findings of the study in sections corresponding to each of the recommended indigent defense system components. The individual sections provided detailed information about findings related to each component included in this study. The previous sections do not, however, provide information from which one can assess the nature of the indigent defense systems of each of the 50 states even if the sections are considered in aggregate. With the individual components addressed in detail in the previous sections, the purpose of this section is to provide an overview of the findings regarding all recommended indigent defense system components for all states. Toward that end, Table 18 combines information from each of the previous sections for all 50 states. An explanation of the coding used in Table 18 appears on the page following the table.

Table 18
Overview of State Indigent Defense Systems

State	St/Cnty Admin. ¹	Indep. Comm. ²	Funding			Statewide standards		Data Collect. ⁸	Reform Lawsuit ⁹
			% State Funds ³	Insuff. Fund. ⁴	Parity/ Disparity ⁵	# Rec. Stds. (1 - 7) ⁶	Stds. Enf. ⁷		
Alabama	C		100%			(4)		Ot	
Alaska	S		100%						
Arizona	C		< 25%			(4)			
Arkansas	S	*	100%			(2)		C	
California	C		0%	Y	P	(6)			Y (C)
Colorado	S	*	100%	Y	D	(1)		C,E,Ot	
Connecticut	S	Y	100%	Y	P, D	(5)		C,E,Oc	
Delaware	S		100%					C,E,Oc,Ot	
Florida	JC/S		100%	Y	D	(5)		C,E	
Georgia	S/C	*	< 50%		P			C,E	
Hawaii	S	*	100%						
Idaho	C	*	< 25%			(2)	Y	E,Ot	Y
Illinois	C		0%	Y					
Indiana	C	*	< 25%	Y	P	(5)	Y	Ot	
Iowa	S		100%			(3)	Y*	C,E,Oc,Ot	
Kansas	S/C	*	< 100%			(4)		C,E	
Kentucky	S	Y	100%	Y				C,E	
Louisiana	S	Y	< 50%	Y	D	(5)	Y	C,E,Oc,Ot	Y (2)
Maine	S	*	100%			(6)	Y	C,E	
Maryland	S	Y	100%	Y		(2)		C,Ot	
Massachusetts	S	Y	100%		P	(7)	Y	C,E,Oc,Ot	
Michigan	C	*	0%						Y
Minnesota	S	Y	100%	Y		(4)		C	
Mississippi	C		0%	Y		(4)			
Missouri	S	*	100%	Y		(6)	Y	C,E,Ot	
Montana	S	Y	100%		P	(7)	Y	C,E,Ot	Y
Nebraska	C	*	0%					Ot	
Nevada	S/C		0%	Y		(4)			
New Hampshire	S	Y	100%			(3)	Y	C,E,Oc,Ot	
New Jersey ¹⁰	S/C		100%			(1)		C,E	
New Mexico	S	Y	100%	Y		(4)		C,Oc,Ot	
New York	C	*	< 25%	Y		(1)			Y
North Carolina	S	*	100%	Y	D	(4)		C,E,Ot	
North Dakota	S	Y	100%	Y	D	(6)			
Ohio	C	*	< 50%	Y	P	(7)	Y	C,E	
Oklahoma	S/C	*	< 75%	Y				C,E	
Oregon	S	*	100%	Y	D	(5)	Y	C,Ot	
Pennsylvania	C		0%	Y					Y (C)
Rhode Island	S		100%					C	
South Carolina	S/C	*	< 75%		P	(4)		E,Ot	
South Dakota	C		0%						
Tennessee	JC/S	*	< 100%		P	(2)		C,E	
Texas	C	*	< 25%	Y		(5)		C,E	
Utah	C	*	0%	Y					Y
Vermont	S		100%	Y				C,E,Ot	
Virginia	S	Y	100%			(4)	Y*	C	
Washington	C	*	< 25%	Y		(6)	Y	C,E,Ot	Y (2C)
West Virginia	S	*	100%	Y				C,E,Ot	
Wisconsin	S	*	100%	Y		(5)	Y	C,E	
Wyoming	S		100%	Y				C,E	

Table 18 Notes:

Note #	Column Name	Coding Notes
1	St/County Admin.	Denotes whether the state's trial-level indigent defense services are delivered/administered at the county (C), state (S), judicial circuit (JC) level or a hybrid of those (S/C or JC/S).
2	Indep. Comm.	Denotes whether the state has a state commission with responsibilities for indigent defense: Y = the state has a commission that is both independently appointed and has statewide authority; * = the state has a commission but either lacks independence or statewide authority. See also, Table 4.
3	% State Funds	Denotes the percentage of total indigent defense funding that is provided by the state. See also, Table 5.
4	Insuff. Fund.	Denotes whether the research revealed affirmative indications that the state's indigent defense system lacked sufficient funds to provide effective representation: Y = indications of insufficient funding were identified. See also, Appendix G, which describes the indications of state indigent defense system underfunding for all 26 of the states.
5	Parity/Disparity	Denotes whether the research revealed affirmative indications that state indigent defense systems made attempts to (through statutes or standards) and/or achieved resource parity with prosecutors' offices or that resource disparity between public defenders and prosecutors exists: P = indications of parity were found; D = indications of disparity were found. See also, Tables 8 and 9.
6	# Rec. Stds. (1-7)	Denotes whether and to what extent states have adopted indigent defense standards recommended in previous studies. This study involved a review of state standards to determine whether the standards addressed seven issues recommended in previous studies. This column denotes how many of those seven issues were addressed in state standards. See also, Table 10.
7	Stds. Enf.	Denotes whether the research revealed that state indigent defense standards are enforced as mandatory: Y = state standards appear to be mandatory and there appears to be an enforcement mechanism in place to enforce the standards; Y* = state standards appear to be mandatory, but the research did not identify an enforcement mechanism.
8	Data Collect.	Denotes whether and to what extent states collect, assess, and/or report indigent defense data. The letters in the column correspond to the types of data collected, assessed and/or reported: C = caseload data; E = expense/cost data; Oc = case or system outcome data; Ot = other information. See also, Tables 10 and 11.
9	Reform Lawsuit	Denotes whether structural reform lawsuits citing constitutional deficiencies in indigent defense systems have been filed: Y = one lawsuit has been filed against the state; Y(2) = two lawsuits have been filed against the state; Y(C) = one lawsuit has been filed against a county within the state; Y(2C) = two lawsuits have been filed against counties in the state.
10	New Jersey	In New Jersey, felony trial level indigent defense services are administered and funded at the state level while misdemeanor cases are administered and funded at the county level. Felony indigent defense services are funded 100% with state funds.

As Table 18 shows, no two states indigent defense systems are the same. Further, few states' systems have all the components exactly as they are recommended in the

literature, though several state systems meet some of the recommended criteria. With respect to structure and funding, for example, only 10 states have indigent defense systems that are fully administered and funded at the state level and are governed by an independent oversight commission with sufficient statewide authority (Connecticut, Kentucky, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Mexico, North Dakota, and Virginia). However, the research indicates that six of those systems suffer from insufficient funding. Further, while nine have adopted some form of indigent defense standards, in only four cases does it appear those standards are mandatory (Massachusetts, Montana, New Hampshire, and Virginia). Overall, only four states' systems meet the recommended structural and organizational criteria of state administered, funded, and independent oversight, do not have clear indications of underfunding, have adopted statewide mandatory standards, and collect and report indigent defense data (Massachusetts, Montana, New Hampshire, and Virginia).

Three states currently have none of the recommended indigent defense system features in place – Illinois, Pennsylvania, and South Dakota. The Michigan and Utah systems are currently undergoing reforms prompted by structural reform lawsuits, but aside from forming an independent statewide commission, no other recommended features are yet in place in those states. More details about the reforms initiated in those states is described below.

Chapter V reviews the study and discusses the findings in the context of the research questions. Chapter VI discusses the conclusions reached as well as the limitations and implications of these findings and examines policy implications and suggests future research needed.

CHAPTER V

DISCUSSION

This chapter begins with a summary of the study and an overview of the findings. Next, the chapter addresses the research questions and provides a detailed discussion of the findings within the context of the research questions and previous literature.

Summary of the Study

This study sought to determine whether and to what extent state indigent defense systems have structural and operational components recommended by indigent defense experts and previous studies to address concerns of unfairness and inequity for poor criminal defendants. Previous studies indicate that an effective indigent defense system should have the following structural, fiscal, and operational features:

- (a) statewide administration and independent oversight of indigent defense services;
- (b) sufficient state-level funding from a stable source that provides parity with prosecutors' offices;
- (c) statewide mandatory standards for the conduct of indigent defense services; and
- (d) a system of data collection, assessment, and reporting to evaluate performance.

Previous studies also recommend the use of litigation to spur reform when public defender organizations face barriers to implementing other components.

Using a descriptive qualitative method referred to as qualitative document analysis, this study explored the extent to which state indigent defense systems have the recommended features. The data for the study were obtained from publicly available documents obtained using a combination of Internet searches, legal research, previous

studies, and, where necessary, public information requests. The study was guided by the following research questions:

- (1) To what extent have states adopted the key components of an effective indigent defense system recommended by previous studies?
- (2) In states where the constitutionality of indigent defense systems has been challenged in court:
 - (a) What were the outcomes of those cases?
 - (b) Is there any discernable relationship between the lawsuits challenging the constitutionality of indigent defense systems and the presence or absence of the key components of an effective indigent system?

Overview of the Findings

Few states have indigent defense systems that have all the structural and operational features recommended in previous studies, and a few have none of the recommended components in place. Most states' systems fall somewhere between those two extremes – having some of the recommended components but falling short in some areas. Indigent defense struggles in nine states have led to a total of 11 structural reform lawsuits, and in most of those cases, indigent defense reforms have been initiated.

Statewide Administration and Independent Oversight

Twenty-six states administer trial-level indigent defense services at the state level through the use of state-paid public defenders and/or contracts between the states and private attorneys or non-profit organizations. In 16 states, county governments are responsible for providing indigent defense services. In eight states, indigent defense

services are administered using hybrid systems. Six states operate a state-county hybrid system; two states have a state-judicial circuit system.

Six states have neither a statewide indigent defense agency nor a statewide commission. Ten states have an agency with some responsibility for indigent defense services but have no commission or board. Thirty-four states have established a state-level indigent defense entity, such as a commission, board, or council that provides some oversight to or support of state or local indigent defense service providers, but only 11 of the 34 indigent defense commissions are independent from political influence and have adequate oversight over all indigent defense services in the state.

Sources and Sufficiency of Funding

Twenty-eight states fund trial-level indigent defense entirely at the state level. Nine states delegate funding for trial-level indigent defense entirely to counties. The remaining 13 states' trial level services are funded through some mix of state and county funds. Whether funded at the state or local level, most governments fund indigent defense services primarily through general revenue fund appropriations, and many supplement those general funds with court fines and fees. Louisiana is the only state where indigent defense services are funded almost entirely through locally generated and collected traffic fines and court fees (Dixon, 2016). Findings support the previous literature that indicates that insufficient funding for indigent defense services is widespread among states. Research of publicly available documents revealed clear indications that indigent defense systems in at least 26 states lack sufficient resources. At least nine states have taken steps, through statutory requirements, indigent defense system standards, or budget requests to achieve some level of salary or overall budget

parity between public defenders and prosecutors. On the other hand, research revealed evidence of disparities in salary, staff positions, and/or overall budget disparities between public defenders and prosecutors in seven states.

Statewide Mandatory Standards

Thirty-four states have established standards or guidelines for trial-level cases that address one or more of the seven aspects of indigent defense service delivery recommended by experts, and at least two additional states are currently in the process of developing standards. However, in only 13 of the 33 states that currently have standards do the standards appear to be enforced as mandatory per language in state statutes, public defender policies, contracts, or other documents.

Data Collection, Assessment, and Reporting

Thirty-six states collect, assess, and/or report some type of indigent defense information, and statutes of 29 of those states require some level of data collection and reporting. Two additional states that have not historically collected and reported statewide data are both reforming their systems to include data collection, assessment, and reporting. The type of data collected varies by state and includes information about cases received, budget and expenses, case or agency outcomes, and other agency-related information (i.e., staffing and salary levels, training programs offered, recommendations for statutory changes, agency structure). Even in states that collect data of the same type – i.e., caseload, expenditure, and/or outcome – the extent of the data collected and reported varies.

Structural Reform Lawsuits

Structural reform lawsuits have been filed against the state or county governments in nine states, and two of the states have experienced more than one such lawsuit. Each of the lawsuits alleges that systemic and structural problems with indigent defense systems lead to violations of indigent defendants' Sixth and Fourteenth Amendment rights to effective assistance of counsel, due process, and equal protection under the law. The most pervasive allegations are a lack of funding and excessive public defender caseloads; all 11 lawsuits alleged those fundamental problems. Other problems cited in lawsuits include the failure by public defenders to investigate their clients' cases; inadequate attorney-client communication; inadequate oversight of the indigent defense system; pervasive, unmitigated conflicts of interest; and a lack of adequate public defender supervision, compensation, qualifications, and training. The outcomes of the structural reform lawsuits decided to date are mixed, but undoubtedly most results have favored the plaintiffs seeking indigent defense reforms. In at least seven of the 11 cases where indigent defense system constitutionality has been challenged to date, the litigation prompted structural reforms and improvements.

Discussion of the Findings

The study yielded sufficient information to answer the research questions posed. Specifically, the extent to which states have adopted recommended features of effective indigent defense systems varies from state to state, and these results lead to further questions regarding those components, including whether they are all of equal importance to a system's ability to provide effective assistance of counsel. Additionally, the findings are clear that structural reform lawsuits have led to needed indigent defense reforms and

that states could avoid costly litigation by beginning to implement the recommendations from prior studies.

Research Question 1: To what extent have states adopted the key components of an effective indigent defense system recommended by previous studies?

Very few states have adopted all the key structural, fiscal, and operational components recommended by previous studies, and the extent to which those features are in place varies widely from state to state. As Chapter II shows, the literature reports that indigent defense systems across the country are, and have been, in a state of crisis for years. The structural and operational features examined in this study have been widely accepted by the legal profession and panels of indigent defense experts for years as means to address the sources and causes of that crisis (ABA, 2002, 2004; NRCC, 2009). Therefore, the fact that states have not more fully implemented the recommended solutions is puzzling and leads to more questions.

The most obvious question is why all states have not taken steps to implement the recommendations of the prior studies. There are several potential answers to that question, including states and/or indigent defense agencies: (a) do not know about the recommendations; (b) have considered the recommendations and opted not to adopt some/all of them because they are deemed not necessary; and/or (c) face barriers that have prevented the adoption of the recommendations.

The possibility that the recommended features have not been adopted because those involved in indigent defense are unaware of the recommended best practices is unlikely. The most thorough national studies examining the depth and breadth of the indigent defense crisis and issuing comprehensive recommendations for reform were

those issued by the American Bar Association in 2004, *Gideon's Broken Promise*, and the National Right to Counsel Committee in 2009, *Justice Denied*. So, by 2017, it is unlikely that the myriad problems or the recommended solutions are a secret to those involved in indigent defense. It is more likely that some or all the recommended components are not in place because of conscious decisions not to adopt them and/or the existence of barriers to their adoption. Temporarily putting aside the reasons for not adopting all components, the next question is whether or not indigent defense systems that lack some of the recommended components can consistently provide effective assistance of counsel. Put a different way: Are all the recommended components needed in every state, or are there circumstances under which an indigent defense system could operate effectively without some of the components? Relatedly: Are all the recommended features examined in this study of equal importance or are some more critical than others?

This discussion suggests that not all the recommended components are equally critical to the ability of every indigent defense attorney to deliver effective assistance of counsel from day-to-day, though they may be required for an indigent defense system to operate optimally. The findings of this study indicate that some components appear to be critical, others are important but perhaps not critical, and still other components are useful but not as integral to effective service delivery. Still, there is little doubt from an organizational and systems perspective that even the less critical components are preferred.

Structure, independence, and funding are critical. The previous literature and the findings of this study indicate that state-level administration, independence, and sufficient funding are critical to the ability to ensure effective assistance of counsel.

State Administration. To address deficiencies in the delivery of effective assistance of counsel, previous studies have recommended state-level administration and funding of the indigent defense function to better ensure effective, stable, and needs-based allocation of resources (ABA, 2004; Allen, 2009; Brennan, 2015; NRCC, 2009; Pruitt & Colgan, 2010; Simon, 2008). The findings of this study support the conclusion that state-level administration and funding is critical since county-administered systems have proven problematic. In fact, nine of the 11 structural reform lawsuits filed to date involve systems that were county-based at the time the lawsuits were filed. The only exceptions are the two lawsuits alleging constitutional deficiencies of the state of Louisiana's system. Table 14 shows that structural reform lawsuits have been filed against county-administered systems in California, Idaho, Michigan, Montana, New York, Pennsylvania, Utah, and Washington. It is relevant to note that in 2002, when the Montana lawsuit was filed, the indigent defense system was a county-based system, and as a part of post-litigation reforms, in 2005, the state implemented a state-administered and funded system (Mont. Code Ann., § 47-1-101 et seq., 2005). As Table 15 shows, in eight of the nine cases, the lawsuits allege a lack of adequate supervision, oversight, and evaluation of individual public defenders and/or the entire public defender system. Each of these problems can be linked to the fact that these are county-based rather than state-based systems.

Even where structural reform lawsuits have not yet been filed, problems with county-based systems are evident. The state of Nevada, which delegates indigent defense to its counties, is an example. In February 2015, the ACLU of Nevada wrote a letter to the state of Nevada’s legislative judiciary committee putting “[t]he State of Nevada and its counties... on notice that the state of [its] indigent defense system, particularly in [its] rural counties, is constitutionally inadequate” (ACLU of Nevada, 2015, p. 5). The letter further noted, “[t]here is little doubt that the state of Nevada, not its counties are [sic] responsible for the funding of and policies managing indigent defense and that the currently statutory scheme...as implemented, fails to meet the state’s constitutional obligations” (ACLU of Nevada, 2015, p. 5).

In another example, in Indiana, indigent defense is administered at the county level, and the state provides up to 50% reimbursement funding to counties that qualify by complying with state requirements and standards (Indiana PDC, 2017). However, a recent report issued by the Sixth Amendment Center found that despite the requirement for compliance with standards, the state has no reliable mechanism to ensure that indigent defendants receive effective assistance of counsel. The report also noted widespread county manipulation of attorney caseload data and other information provided to the state in applications for reimbursements (Sixth Amendment Center, 2016). All of these examples point to issues that could be better addressed by a statewide system with adequate monitoring and oversight functions.

Independent oversight. The ABA’s Ten Principles of a Public Defense Delivery System and previous studies recommend that the indigent defense function be insulated from political pressures and interference (ABA, 2002, 2004; NRCC, 2009). One scholar

called independence the “greatest hope” for lasting improvements in indigent defense (Allen, 2009, p. 408). As Tables 6 and 18 show, 34 states have commissions to oversee some trial-level indigent defense services, but only 14 of those commissions have the independence and authority recommended by experts.

Despite these findings, independent statewide oversight appears to be critical to ensure stability in the indigent defense function. In times of political accord between indigent defense leaders and state political leaders, the issue of political independence may not seem as critical. Yet, Missouri provides a doomsday example of a state that has a statewide indigent defense program governed by a commission that lacks political independence since the governor appoints all members (Mo. Ann. Stat. § 600.015, 1982). The Missouri Office of the State Public Defender (Missouri OSPD) has battled excessive caseloads and insufficient funding for years, and the state’s public defender commission once had a rule that allowed the Missouri OSPD to stop accepting cases once its caseloads reached certain levels. However, in 2013, the state legislature enacted legislation voiding the rule and requiring that the Missouri OSPD get judicial approval before refusing new cases (Missouri Public Defender Commission, 2016). In August 2016 still facing exorbitant caseloads, the public defender invoked his statutory powers that allowed him to assign any licensed attorney in the state to act as a public defender by appointing the state’s governor to represent an indigent criminal defendant. In apparent retaliation, the governor immediately moved to fill three vacancies on the state’s public defender commission, which is responsible for hiring and firing the public defender (Carroll, 2016). In the same year, the governor withheld \$3.5 million of the \$4.5 million in general revenue funds that had already been approved and added to the Missouri

OSPD's budget for fiscal year 2017 (Missouri Public Defender Commission, 2016). An independent commission with additional fiscal authority or input over the indigent defense budget is a critical control to prevent undue political interference.

Sufficient funding. The findings of this study suggest that sufficient funding for indigent defense is the most important – and perhaps the most often lacking – of the components examined. To provide effective assistance of counsel to indigent defendants, systems must have sufficient funding to hire or contract with public defenders to represent those defendants. Further, to allow for adequate investigation of defendants' cases, systems must have adequate funding to pay for investigators, forensic laboratory services, expert witnesses, and other resources. Without sufficient funding, it is only logical that representation of indigent defendants will be compromised. Despite this, as Table 18 and Appendix G show, this study found evidence of insufficient funding in at least 27 states. That sufficient funding is paramount over – or at least a limiting factor for the effectiveness of – other components is exemplified by the state of Louisiana. As Table 18 shows, Louisiana has a state-administered indigent defense system governed by an independent commission with statewide authority; it has adopted indigent defense standards; it enforces the standards as mandatory; and it collects, assesses, and reports as much indigent defense data as any state. Thus, Louisiana has almost all the components recommended by previous studies and experts. However, the state legislature's reliance on locally generated traffic fines and court fees as its primary funding source for indigent defense has led to chronic underfunding, the creation of waiting lists for representation in many of the state's judicial districts, and two structural reform lawsuits alleging pervasive constitutional deficiencies caused by underfunding. The Louisiana example

provides compelling evidence that sufficient funding is the most significant barrier to the ability to provide effective assistance of counsel.

Standards for indigent defense are important but not critical. Previous studies and indigent defense experts have recommended statewide mandatory standards for indigent defense that address the myriad aspects of service delivery including attorney qualifications, performance, compensation, caseload limits, and adherence to ethical obligations (ABA, 2004; NRCC, 2009). Thirty-four states have established standards or guidelines for trial-level cases that address one or more of the seven aspects of indigent defense service delivery examined. However, the standards are only mandatory in 15 of those states. Findings suggest that the existence of written standards may not always be illustrative of efforts to maintain a standard of performance, and to be useful/meaningful the standards should be customized for the state and for different parts of the state.

The findings regarding the number of states that have or do not have written statewide standards do not appear always reliably indicate whether states promote and maintain a standard of performance. For example, as Tables 10 and 18 show, both Nebraska and Mississippi have standards that address some of the aspects recommended by previous studies, but neither state appears to place much importance on those standards. The Nebraska standards were obtained through a public information request, and the transmittal email accompanying the response from the chief counsel of the Nebraska Commission on Public Advocacy indicated that, though he had been on the job for over a year, he was unaware of the existence of the standards before the request (J. Pickens, personal communication, January 30, 2017). That the chief counsel of the Commission was unaware of the existence of the standards suggests that the standards

may not be of particular importance in the state. Similarly, the response to a public information request regarding standards in Mississippi indicated that no Mississippi entity has authority to set indigent defense standards and so the “suggested performance standards” are purely “academic” (A. De Gruy, personal communication, February 10, 2017). So, while the findings of this study indicate that 34 states have standards or guidelines, a better indicator of the relative import or weight of the standards within the state may be that only 15 states appear to have mandatory standards, as indicated in Tables 10 and 11.

Conversely, states with no written standards in place may still enforce a standard of performance not evident from the findings of the study. For example, Tables 10 and 18 indicate that Georgia does not currently have indigent defense standards. However, in response to a public information request submitted as a part of this study, the executive director of the Georgia Public Defender Council explained that the state previously had both attorney practice standards and caseload standards. He explained that he no longer relies on the formal standards because: 1) enforcement of the statewide caseload limits was not feasible across all parts of the state when prosecutor charging tendencies and complexity of cases differ in rural compared to urban parts of the state; and 2) the attorney practice standards got so voluminous and prescriptive that they were inflexible and restrictive. Currently the executive director reviews caseload data by district and follows up on anomalies, and he relies on communication of expectations and performance evaluations to ensure attorney performance is up to expectations (Tyson, 2017).

Indigent defense standards, such as caseload standards, may be of limited value if they are not customized for the jurisdiction. As noted above, Georgia dropped its statewide caseload standards because they were not feasible based on differences across districts within the state. Two states have addressed that issue by adopting caseload standards that vary based on the characteristics of the different parts of the state. Maryland has adopted different caseload standards for rural, suburban, and urban districts (Maryland Office of the Public Defender, 2016), and Massachusetts has also adopted caseload standards for different districts based on factors such as prosecutorial charging tendencies and case complexity across urban, suburban, and rural areas (Hewitt, 2017).

Finally, caseload standards or limits are only useful in ensuring effective assistance of counsel if there is a mechanism for stopping the flow of cases to overloaded attorneys when those limits are exceeded. As Table 10 indicates, 15 states have numerical caseload standards or limits, but in several instances, reports indicate that the public defender caseloads exceed those limits and that a lack of funding prevents hiring of additional attorneys to address the overload. For example, as noted above, Maryland has adopted caseload standards specific to characteristics of certain districts within the state. However, according to the Maryland Office of the Public Defender's (OPD) 2016 annual report, "By any measure, attorney caseloads continue to exceed acceptable caseloads" (p. 32). The report also noted that "[b]udget constraints continue to prevent OPD from increasing its attorney positions to meet the demand of staffing" hearings in certain courts (Maryland Office of the Public Defender, 2016, p. 14). Similarly, despite the fact that Missouri has adopted workload standards, in his office's 2016 annual report, the state public defender warned that caseloads are so high for every staff attorney that

the risk of wrongful conviction of its clients is “a substantial likelihood” (Missouri Public Defender Commission, 2016, p. iv). The Minnesota state public defender’s 2018-2019 biennial budget memo to the state Board of Public Defense requested a total of 38 additional attorneys over the two-year period just to have 75% of the attorneys needed to meet that office’s caseload standards (Kajer, 2016). These examples illustrate that while caseload standards or limits may provide an appropriate and useful benchmark for identifying resource needs, excessive caseloads persist in states that have adopted them.

While indigent defense experts recommend state-specific caseload standards, even public defender agencies without such standards are aware of the impact that excessive caseloads have on the effectiveness of the services. For example, New Mexico has not adopted formal caseload standards, but the state public defender’s 2016 strategic plan reported that despite a small reduction in the number of cases handled from the previous year, caseloads “remain high enough to question whether defendant’s [sic] are receiving constitutionally adequate representation” (New Mexico Law Office of the Public Defender (LOPD), 2016, p. 10).

In summary, written, mandatory practice standards may be more important in some states than others. For example, such standards may be especially important in systems that are emerging from crisis and dysfunction or those that continue to lack sufficient funding and have excessive attorney caseloads. On the other hand, where standards have been integrated into the organizational culture and day-to-day operations, there may need to be less focus on strict enforcement of written standards. As is further discussed below, establishing caseload standards and collecting reliable data regarding the actual caseloads compared to those standards could be useful for supporting requests

for additional resources. However, without a mechanism to stem the flow of cases until additional funding can be allocated, such standards are not extraordinarily helpful to the ability of an organization to deliver effective assistance of counsel in the short term.

Data collection, assessment, and reporting are useful. Previous studies recommend that indigent defense systems should collect, assess, and report data to evaluate caseloads, resource needs, and overall performance (ABA, 2004, NRCC, 2009). Indigent defense performance data can be useful for identifying and justifying resource needs, monitoring and evaluating system outcomes to assess overall effectiveness, and providing avenues for evidence-based research on indigent defense, which to date has been limited (Davies, 2015; Laurin, 2015; NRCC, 2009).

While the collection and assessment of data is more important at a management level for system improvement efforts, it is not critical to the day-to-day direct delivery of indigent defense services. As shown in Tables 12 and 18, at least 36 states collect, assess, and/or report indigent defense data. Most of those track data related to cases and expense, which can be useful for assessing resource needs, but very few states track case disposition or outcomes. However, data collection across states – even for the same type of data – varies widely. For example, as shown in Table 13, among states that track case-related data most track the number of cases by case type and district or office, but fewer track the number of cases by attorney compared to any standard or goal while only four report case disposition.

Overall, states with county-administered indigent defense systems are less likely to track and aggregate indigent defense data at the state level, and in county-based systems where some data is reported, it is typically not as robust as that reported by state-

administered systems. In fact, as indicated in Table 18, of the 16 county-based systems, nine do not appear to track or report any statewide data at all, and only three report any statewide case-related data. Some county-based systems do not collect statewide case data due to a lack of uniformity across counties for what constitutes a case. For example, in response to a public information request sent to the Alabama Office of Indigent Defense Services, the director explained that caseload data in the state is particularly problematic. Differences in prosecutorial charging tendencies across jurisdictions results in some counties counting a case for every charge filed while others count every unique defendant as one case. When such discrepancies exist across counties, attempting to aggregate the case data to the state-level is futile (C. Roberts, personal communication, September 19, 2016). Similarly, aggregating county-level data in Washington to construct a statewide picture of indigent defense is impaired by the fact that county-reported data varies “due to differing case-counting and reporting practices” and “there is no standard method; systems differ, sometimes even within individual jurisdictions” (Washington State Office of Public Defense, 2016, p. 75). Idaho had similar problems, and as a part of its post-litigation reform efforts, the Idaho Public Defense Commission promulgated rules in 2016 to establish “uniform data reporting requirements and model forms” (Idaho Public Defense Commission, 2017, p. 20).

Texas, which is also a county-based system, is an anomaly. The Texas Indigent Defense Commission collects vast amounts of indigent defense data obtained from counties and makes the data available on its interactive website from where one can access aggregated statewide as well as county-specific case, expense, and attorney workload data. The website also includes links to the indigent defense plans for each

county as well as detailed information about state grants awarded to counties for various indigent defense projects. Though the Texas data are transparent, accessible, and robust, the data do not include any information on case dispositions or outcomes (Texas Indigent Defense Commission, 2012).

Case disposition and outcome data would be useful for assessing system effectiveness, but despite the value of such performance data, only seven states appear to track any disposition or outcome data at all, as indicated in Table 18. Dispositions of indigent defense cases would be critical for evaluating the relative effectiveness of public defenders. Such an analysis could be done by comparing case outcomes for cases handled by public defenders compared to privately paid attorneys in cases with similar mitigating and aggravating circumstances. However, I found no indication that any state undertook such an analysis. Further, only three states reported any information on system outcomes. The Iowa State Public Defender tracks the “percent of public defender cases where there have been no final findings of ineffective assistance of counsel” (Iowa State Public Defender, 2015, p. 6). The New Mexico public defender tracks the percent of felony, misdemeanor, and juvenile cases handled by public defenders that result in a reduction of the original charges filed by prosecutors (New Mexico LOPD, 2015). Massachusetts has the most robust data collection and performance measurement reporting of any state reviewed. Several of the numerous performance measures of the state’s Committee for Public Counsel Services are outcome-based, including the percent of cases in which the maximum incarceration penalty was avoided, percent of cases in which there was an acquittal on all charges, and the percent of cases in which collateral consequences (e.g., loss of parental or voting rights, government benefits, immigration

status) were avoided (Committee for Public Counsel Services & Center for Court Innovation, 2014). Only through the collection and assessment of reliable outcome data can an indigent defense agency begin to move beyond merely counting the cases it handles and begin to look at how effectively it handles those cases.

Research Question 2: In states where the constitutionality of indigent defense systems has been challenged in court: (a) what were the outcomes of those cases? (b) is there any discernable relationship between the lawsuits challenging the constitutionality of indigent defense systems and the presence or absence of the key components of an effective indigent system?

The findings of the study indicated that outcomes of structural reform lawsuits have led to systemic reforms in most cases. Results also show that there is a clear relationship between the lawsuits challenging the constitutionality of indigent defense systems and the absence of the components of an effective indigent system studied here. Specifically, lawsuits targeted states that lacked or had significant deficiencies with those components.

Outcomes of reform litigation. The findings of the study indicated that outcomes of structural reform lawsuits have led to important systemic reforms in most cases. Between 2002 and 2017, structural reform lawsuits regarding trial-level indigent defense services have been filed against the state or county governments in nine states, and two of the states have experienced more than one such lawsuit. As Tables 16 and 17 show, the dispositions of the structural reform lawsuits decided so far are mixed; some cases have resulted in settlements, others in dismissals, and at least one judgment in favor of the reform-seeking plaintiffs. Undoubtedly, however, the ultimate outcomes have favored

the plaintiffs seeking indigent defense reforms. In at least 7 of the 11 cases where indigent defense system constitutionality has been challenged, the litigation prompted structural reforms and improvements.

The states of Michigan, Montana, New York, and Utah have all initiated and/or implemented broad scale reforms to their indigent defense systems. In Washington, Grant County, and the cities of Mount Vernon and Burlington have also made improvements to their systems. Louisiana, however, despite its long history of chronically underfunding its indigent defense system and having to turn away indigent defense cases in many of its judicial districts due to a lack of adequate funding, has yet to initiate any system reforms to address the deficiencies.

Michigan. In February 2007, the ACLU of Michigan filed a lawsuit seeking indigent defense reform, which had theretofore delegated its indigent defense responsibilities to counties. Among other problems, the lawsuit alleged that the lack of state oversight and funding and a lack of public defender independence had led to excessive public defender caseloads, conflicts of interest, and inadequate investigation of cases (*Duncan v. State of Michigan*, Complaint, 2007). After years of back and forth, with the State attempting to get the case dismissed because it claimed that indigent defense was the responsibility of local county governments - not the State, ultimately Michigan began substantive reform of its indigent defense systems. According to the ACLU, in June 2013, "the Michigan legislature, enacted a law to implement statewide reform that the ACLU and its coalition partners had been advocating for years...[which] put in place many of the reforms the lawsuit called for" (ACLU of Michigan, n.d.). The Michigan Indigent Defense Commission Act established the Michigan Indigent Defense

Commission (MICD), which has statewide oversight and political independence. The statute authorizes the MIDC to establish and enforce indigent defense standards, ensure public defenders are adequately trained, and monitor attorney performance in order to ensure effective representation of indigent defendants (Mich. Comp. Laws Ann. § 780, 2013).

Montana. In February 2002, the ACLU of Montana filed a federal class action lawsuit against the state and several Montana counties on behalf of indigent criminal defendants, alleging that Montana indigent defense systems failed to provide constitutionally adequate legal representation to indigent defendants in violation of their Sixth and Fourteenth Amendment right to counsel (*White v. Martz*, Complaint, 2002). After the lawsuit was filed, the ACLU commissioned an independent expert assessment of Montana's indigent defense system, the results of which supported the allegations made by the ACLU lawsuit (National Legal Aid & Defender Association, 2004b). In 2005, before the assessment was complete, the Montana legislature enacted the Montana Public Defender Act, which completely overhauled the state's system by creating a statewide system – with an independent oversight commission and provided for the establishment of statewide standards and training requirements - to replace the county-based system that had been in place (Mont. Code Ann., § 47-1-101 et seq., 2005).

New York. In November 2007, the New York Civil Liberties Union (NYCLU) filed a federal class action lawsuit on behalf of indigent criminal defendants who were or would be represented by New York's attorneys in the indigent defense system (*Hurrell-Harring, et al v. State of New York*, Complaint, 2007). According to the NYCLU, the lawsuit alleged that New York's failure to provide "adequate funding, oversight and

statewide standards” for its public defense system threatened to deprive these defendants and the class they represent of their constitutional right to meaningful and effective assistance of counsel” (NYCLU, 2007, para.3). In October 2014, the parties reached a “historic settlement” the day before the trial was scheduled to begin. Under the terms of the settlement, the state is required to “adopt major reforms focusing on five New York counties – Ontario, Onondaga (Syracuse), Schuyler, Suffolk and Washington” (NYCLU, 2014, para.1). The agreement, which will last seven-and-a-half years, contains several major provisions, including ones related to timing of counsel appointment, sufficiency of attorneys and support resources, caseload standards to limit cases lawyers can accept, increased communications with defendants, eligibility standards, increased oversight authority by ILS, and detailed reports to the NYCLU to allow them to monitor compliance with the settlement terms (*Hurrell-Harring, et al v. State of New York, Stipulation and Order of Settlement*, 2014).

Though the New York state legislature recently initiated an attempt to implement wider-scoped reforms than those covered by the settlement, the state’s governor blocked the attempt with a veto and has undermined reform efforts. In 2016, the New York state legislature approved a bipartisan bill, which overwhelmingly passed both the House and Senate, which would have created a state-administered, fully state-funded indigent defense system in the state (NYCLU, 2017a). The bill was in response to claims made by the NYCLU in the *Hurrell-Harring* lawsuit and would have pushed reforms beyond those in the settlement, which only focused on five New York counties (NYCLU, 2017a). Despite overwhelming support for the bill, on December 31, 2016, the New York governor vetoed it because “the legislature was committed to a flawed bill that placed an

\$800 million burden on taxpayers - \$600 million of which was unnecessary – with no way to pay for it and no plan to make one” (Lovett, 2017, para. 3). In January 2017, the governor’s proposed budget included some resources for indigent defense reform. The governor’s proposal, however, does not require the state to fully fund services across the state and makes his budget officials responsible for approving reform plans proposed by the Office of Indigent Legal Services, undermining the independence of the indigent defense function (NYCLU, 2017b).

Utah. In June 2016, the ACLU of Utah filed a federal class action lawsuit against the state of Utah and the Utah attorney general on behalf of indigent criminal defendants claiming Sixth and Fourteenth amendment rights violations. Specifically, the allegations stem from the fact that the state’s county-based system is underfunded and poorly and unevenly managed and that the state has failed to provide adequate defense services, adequate guidelines, and resources for defense services (*Remick v. Utah*, Complaint, 2016). In May 2016, Utah enacted legislation to create an indigent defense commission, which has the duty to adopt guiding principles for the oversight and assessment of the state’s indigent defense system (Utah Code Ann. § 77-32-801 et seq., 2016). By October 2016, the members of the commission had been appointed (Miller, 2016).

Grant County, Washington. In December 2004, the ACLU of Washington filed a class action lawsuit against Grant County on behalf of indigent criminal defendants. The lawsuit alleged that the county failed to establish a public defense system that ensured effective assistance of counsel due to several systemic deficiencies. In November 2005, the parties entered into a six-year, court-enforceable settlement agreement (Berken, 2014a). Under the terms of the settlement agreement, Grant County

was required to reduce excessive public defender caseloads, ensure that public defenders were qualified to handle serious felony cases, provide adequate funding for investigators and expert witnesses, and comply with indigent defense standards created by the state bar association and endorse by the state legislature (*Best v. Grant County*, Settlement Agreement, 2004). In an April 2016 report, the Washington State Office of Public Defense reported, “Grant County has adopted a public defense standards ordinance and the Grant County public defender contracts require approved annual attorney training and reporting of non-public defense attorney hours” (Washington State Office of Public Defense, 2016, p. 26).

Mount Vernon and Burlington, Washington. In June 2011, the ACLU of Washington filed a class action lawsuit on behalf of indigent criminal defendants against the cities of Mount Vernon and Burlington, Washington. The lawsuit alleged violations of the Sixth and Fourteenth Amendment right to effective assistance of counsel due to the cities’ failure to impose reasonable caseload limits on public defenders, monitor and oversee the public defender system, adequately fund the system, and provide representation at all critical stages of prosecution (Arakaki, 2014). In December 2013, the United States District Court found that the cities had deprived the plaintiffs of their right to counsel and granted an injunction requiring the cities to reevaluate their public defender contract to insure it provides for effective assistance of counsel and to hire a part-time public defense supervisor to supervise and evaluate the provision of legal services (*Wilbur v. Mount Vernon*, 2013). In response to the decision in the lawsuit, several Washington counties and cities began requiring contract public defenders to submit periodic reports regarding case activities and outcomes. Also, three Washington

cities (Selah, Union Gap, and Westport) adopted resolutions or ordinances to comply with both state indigent defense standards and the decision in the lawsuit (Washington State Office of Public Defense, 2016).

Louisiana. Unlike other states, Louisiana has yet to initiate any system reforms to address the deficiencies despite two recent structural reform lawsuits and an older case that also addressed indigent defense system deficiencies. The United States District Court dismissed the 2016 case against the State of Louisiana, which is described in Chapter I, because the court was reluctant to get involved in state criminal court matters. Despite that, the court noted, “It is clear that the Louisiana legislature is failing miserably at upholding its obligations” (*Yarls v. Bunton*, 2017, p. 9).

The 2016 lawsuit was not the first or the last case to address the deficiencies of the Louisiana system for funding indigent defense. In the 1993 criminal case (i.e., not a civil structural reform case), *State v. Peart*, the United States District Court had cause to address the issue. In that case, the public defender representing indigent defendant Leonard Peart, filed a motion with the court for the court to require the state to fund the necessary resources to represent Mr. Peart. The case ultimately made it to the state’s supreme court, which determined that indigent defendants in at least one district in the state were not receiving effective assistance of counsel, but the court refused to require the legislature to implement funding reforms (*State v. Peart*, 1993). After the *Yarls v. Bunton* case was dismissed in early 2017 by the United States District Court, a new class action lawsuit was filed immediately in state district court. The February 2017 case involves a different group of indigent defendants and more specific information regarding the systemic deficiencies than did the 2016 lawsuit. However, the lawsuit essentially

makes the same allegations regarding the state's ailing indigent defense system (*Allen et al. v. Edwards et al.*, Complaint, 2017).

Relationship of reform litigation to recommended system components. The structural reform lawsuits filed to date have targeted states that lacked or had significant deficiencies with several of the recommended system components. Each of the 11 lawsuits allege that systemic and structural problems with indigent defense systems have led and continue to lead to violations of indigent defendants' Sixth and Fourteenth Amendment rights to effective assistance of counsel, due process, and equal protection under the law. Table 15 demonstrates that problems alleged in lawsuits mirror the problems identified in the indigent defense literature, including both system-based and attorney practice-based deficiencies. The systems-based deficiencies include a lack of sufficient funding to hire enough employees to handle caseloads and to adequately compensate those employees, a lack of public defender independence, the failure to provide representation at all critical stages, the failure to monitor and address attorney caseloads, and a lack of system-level and attorney-level supervision, oversight, and evaluation. The attorney practice-based allegations point to problems that are more directly related to the quality of public defenders and the services they provide, including a lack of properly trained and qualified attorneys, and the failure of public defenders to adequately communicate with clients and investigate clients' cases.

The problems alleged in lawsuits are the very problems that recommendations issued in previous studies – those that were the topic of examination in this study – were meant to address. The results, therefore, signal that states could avoid costly and protracted litigation if they began implementing the recommendations of previous studies

and reforms similar to those adopted by states that have been sued. Findings also indicate that structural reform lawsuits can be effective for plaintiffs seeking indigent defense system reforms.

Discussion Summary

The legal profession, advocacy organizations, and panels of indigent defense experts have, over the years, made a number of recommendations to state governments aimed at addressing deficiencies with indigent defense systems. Yet, as this study shows, many states have not implemented those recommendations. This discussion has proposed, however, that not all the indigent defense system components studied here are equally critical to the ability of indigent defense organizations to deliver effective assistance of counsel.

The recommendations regarding system structure, independence, and funding are critical to the ability of the indigent defense system to provide for effective assistance of counsel. The findings of this study support the conclusion that state-level administration and funding is critical since county-administered systems have proven problematic. Furthermore, the independent statewide oversight appears to be critical to ensure stability in the indigent defense function, particularly in times of political discord. Sufficient funding for indigent defense is the most critical – and perhaps the most often lacking – of the components examined. Once in place, a solid structural and fiscal organizational infrastructure can facilitate the adoption of needed operational components, such as standards and data collection and assessment.

Statewide, mandatory standards for indigent defense are important but not always critical to day-to-day service delivery. Standards, however, may be especially important

in systems that are emerging from crisis and dysfunction that need to regain some level of control over public defender caseloads, qualifications, and case practices. On the other hand, where an expected standard of performance has been integrated into the organizational culture and day-to-day operations, there may need to be less focus on strict enforcement of written standards. Finally, the collection, assessment and reporting of indigent defense data can certainly be useful for optimizing system performance, but it is not integral to effective day-to-day service delivery.

That not all the components examined in this study are equally as critical to the ability to provide effective assistance of counsel is important because the conclusion suggests that a system that lacks some of the components is not necessarily constitutionally deficient. However, states should be aware of which of the best practice components they do not have in place as well as the reasons they are lacking. If necessary, states should assess the need for change on their own terms since several states that have failed to do so have faced costly and embarrassing structural reform litigation that has forced them to do so.

Chapter VI concludes the study with a discussion of its conclusions and limitations as well as recommendations for future research and policy implications.

CHAPTER VI

CONCLUSION

This chapter presents the conclusions and addresses the limitations of the study. Further, in light of the limitations and the findings of the study, suggestions are made for future research. Finally, the chapter addresses the policy implications of this study and addresses recommendations to state government officials responsible for indigent defense systems and criminal justice systems.

Study Conclusions

Many indigent defense systems across the country lack sufficient resources and the appropriate administrative and operational infrastructure to ensure effective assistance of counsel under the Sixth Amendment. In fact, the literature indicates that many of the country's indigent defense systems have been in a state of crisis since the landmark case *Gideon v. Wainwright* solidified the right to counsel for poor criminal defendants over 50 years ago. Despite the well-documented nature of the problem and recommended solutions offered by the legal profession and panels of indigent defense experts, it is clear that some indigent defense systems continue to struggle. This study sought to determine whether and to what extent states have adopted the recommendations from previous studies aimed at addressing the crisis. Specifically, the study examined whether the indigent defense systems in each of the 50 states have independent statewide oversight, are administered and funded at the state level, are sufficiently funded, have certain mandatory indigent defense standards in place, and have a system of data collection and assessment to evaluate performance.

Findings of the study indicate that though most states have some of the recommended components examined, very few had all of them in place. The findings also suggest, however, that while all recommended indigent defense system components may be preferred, not all are as critical as others to ensuring effective assistance of counsel in day-to-day operations. That some components are more critical than others suggests that systems that lack some of the components are not necessarily constitutionally deficient. However, if just one of the critical components, such as sufficient funding, for example, is lacking, the system's ability to provide effective assistance of counsel is likely to be compromised. Organizational effectiveness and capability maturity concepts offer perspective for considering the relative status of organizations and systems, such as those that are responsible for indigent defense.

Organizational effectiveness and capability maturity literature suggest that indigent defense systems that are more dysfunctional and are operating in crisis mode have a greater need for infrastructure enhancements and explicit standards of practice to increase organizational stability, while more functional or mature systems may operate effectively with more flexibility (Quinn & Rohrbaugh, 1981; Quinn & Rohrbaugh, 1983; Curtis, Hefley, & Miller, 2009; Gallagher, 2002; Herndon et al., 2003; Institute of Internal Auditors Research Foundation, 2009). For example, accepted theories of organizational effectiveness posit that different organizations value, and perhaps even require, more stability, formality, and control to be effective, while others require more flexibility to adapt to changing priorities and pressures (Quinn & Rohrbaugh, 1981; Quinn & Rohrbaugh, 1983). Further, models of process and organizational capability or maturity suggest that organizations not only value and operate under varying levels of

structure and control, but that those levels are defined, in part, by the relative capabilities of the organization (Curtis et al., 2009; Gallagher, 2002; Herndon et al., 2003; Institute of Internal Auditors Research Foundation, 2009).

Capability maturity models describe a hierarchical and sequential progression of maturity levels of systems and organizations. The least functional, capable, and mature organizations are those that are characterized by ad-hoc, unstructured systems in which good outcomes occur, if they do, only because of the heroics of certain individuals (Herndon et al., 2003; Institute of Internal Auditors Research Foundation, 2009).

Organizations progress through different stages of capability and maturity until they are performing optimally. Optimally performing organizations are those that can routinely and reliably achieve good outcomes, can more flexibly and pliantly adapt to external changes, and are focused on continuous improvement and innovation (Curtis et al., 2009; Herndon et al., 2003; Institute of Internal Auditors Research Foundation, 2009). The incremental progression from an ad-hoc, crisis-mode system to one that is performing optimally is characterized, at least in part, by the adoption of sound infrastructure components; the integration of operational policies and standards that promote uniformity of practices and alignment of expectations; and the increased ability to reflect, plan, adapt, and ultimately begin to predict changes that will affect the organization (Curtis, Hefly, & Miller, 2009; Herndon et al., 2003; Institute of Internal Auditors Research Foundation, 2009).

Combined, the organizational control concepts and capability maturity models support the conclusion that systems, such as those responsible for indigent defense, have different needs depending upon their relative organizational maturity. For example,

systems that are attempting to emerge or are emerging from dysfunction and crisis including insufficient funding, excessive workloads, poor attorney practices require an infusion of control – i.e., sound infrastructure, standardization and enforcement of expected practices – to become more stable and reliable. Once stability and reliability are achieved; financial burdens are eased; uniform, standard practices are integrated into the organizational culture; and workloads are managed, the organizational focus can shift to less formal, social controls, which provide increased flexibility to adapt to external changes and pressures (O'Reilly & Chatman, 1996).

Limitations and Recommendations of the Study

Previous studies that have attempted to address the nationwide indigent defense crisis have recommended additional controls in the form of structural, fiscal, and operational controls examined in this study. This study identified whether and to what extent states have adopted those recommendations. This study did not, however, set out to determine the reasons that states have not put the recommended structural, fiscal, and operational components into place. Thus, the study did not determine whether missing components are not in place because of conscious decisions not to adopt them or because of barriers to their adoption. Furthermore, the study did not evaluate the impact of the missing components on any individual state's ability to provide effective assistance of counsel. Thus, additional work is needed to know whether missing components point to the risk of or actual constitutional deficiencies and the critical need for reform.

Studies should be done of all states' indigent defense systems, not just those that are in crisis. Previous studies and structural reform litigation show that the indigent defense systems that have the worst problems get examined closely – either by advocacy

organizations or the courts or both. Missing from the literature are evaluations of systems that are doing well or are at least not currently in crisis.

By studying all systems – those that are in crisis, those that are performing optimally, and those that are somewhere in the middle of that continuum – researchers can begin to identify best practices that promote effectiveness even when certain recommended components examined in this study may be lacking. Furthermore, such studies will reveal problems that may not have fully surfaced yet but could ultimately pose risks that lead to constitutional deficiencies. Identifying and addressing those problems before they lead to constitutional deficiencies should be the goal.

Policy Implications

Indigent defense practitioners and advocates should lobby state legislators and governors to promote the importance of an effective indigent defense system. Because different legislatures and executive branch officials respond to different political priorities, lobbying efforts should leverage those priorities. For example, some officials may be inclined to act to initiate reforms once they understand and see the full breadth of the constitutional implications of the shortcomings of indigent defense systems. Other officials, however, may not be motivated to invest large sums of limited resources to protect indigent criminal defendants' constitutional rights. In such cases, indigent defense proponents should point out that effective indigent defense systems not only protect defendant's rights, they also serve to balance and limit the profound power of government prosecutors and law enforcement. No matter the motivation of state legislatures and other officials, indigent defense advocates must work to find and

leverage common ground to initiate and sustain important conversations and critical improvements.

State officials including legislators, governors, and judges should realize the benefits of having a healthy and robust public defender system. Without such a system, the criminal justice system as a whole becomes imbalanced and justice is compromised. Furthermore, state officials should realize that indigent defense is not an entitlement program that should be defunded or underfunded based upon political predilections. Rather, indigent defense is a constitutional mandate, the deprivation of which leads to real implications such as indefinite pre-trial detentions, wrongful convictions, and unfair sentences based on defendants' financial status instead of real threats to communities. For those reasons, state officials should commission studies of their indigent defense systems. The studies should be aimed at identifying what is working and what is not within those systems, and where problems are identified, recommendations for improvements should be sought. Most critically, state legislators should do what it takes to address recommendations from past and future studies by making effective indigent defense a priority and appropriating sufficient funds to make it a reality.

To help alleviate crushing workloads of public defenders, state policymakers should also implement criminal justice policy reforms that reduce the possible crimes for which incarceration is a penalty and, therefore, for which public defenders must be appointed. For example, criminal justice policies should focus more on diverting drug offenders to treatment programs rather than prison and making low-level non-violent offenses punishable by fines and community service programs rather than incarceration.

Taking those and similar steps will reduce the reliance on incarceration and the workloads of public defenders.

This study initiated a nationwide assessment of indigent defense systems by examining the extent to which those systems have implemented recommendations made by indigent defense experts and scholars to address pervasive systemic failures. This chapter has explored some of the conclusions and limitations of this study as well as made recommendations for future research. Finally, the chapter summarized the policy implications of this and previous studies.

Failures of indigent defense systems threaten defendants' right to effective assistance of counsel under the Sixth Amendment, equal protection guarantees under the Fourteenth Amendment, and even more basic human rights. Such failures are an affront to the concepts of fundamental fairness and equality and the ideals of social justice upon which our justice system and democracy were based. Furthermore, when indigent criminal defendants' fundamental constitutional rights are compromised through the actions or omissions of individual defense attorneys or the systems in which they operate, defendants have few, if any, viable avenues to challenge or remedy the violations. The problems with indigent defense and suggested solutions are well documented in previous literature and in this study. What is remaining is for state officials to take the actions necessary to elevate the import of indigent defense and implement sustainable reforms to ensure that the systems for which they are ultimately responsible uphold basic constitutional and human rights.

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APPENDIX A

Table A1
State Statutes Reviewed

State	Statutes
Alabama	ALA. CODE §§ 15-12-1 – 15-12-46 (2017)
Alaska	ALASKA STAT. ANN. §§ 18.85.010 – 18.85.180 (2017)
Arizona	ARIZ. REV. STAT. ANN. § 9-499.09, §§ 11-581 – 11-588 (2017)
Arkansas	ARK. CODE ANN. §§ 16-87-101 – 16-87-307 (2017)
California	CAL. GOV'T CODE §§ 27700 – 27712, § 15400 – 15425 (2017)
Colorado	COLO. REV. STAT. ANN. §§ 21-1-101 – 21-2-107 (2017)
Connecticut	CONN. GEN. STAT. ANN. §§ 51-289 – 51-300 (2017)
Delaware	DEL. CODE ANN. tit. 29 §§ 4601 – 4608 (2017)
Florida	FLA. STAT. ANN. §§ 27.40 – 27.61 (2017)
Georgia	GA. CODE ANN. §§ 17-12-1 – 17-12-52 (2017)
Hawaii	HAW. REV. STAT. ANN. §§ 802-1 – 802-12 (2017)
Idaho	IDAHO CODE ANN. §§ 19-849 – 19-864 (2017)
Illinois	725 ILL. COMP. STAT. ANN. 105/1 – 105/11, 5/3-4000 – 5/3-4012 (2017)
Indiana	IND. CODE ANN. §§ 33-40-1-1 – 33-40-8-5 (2017)
Iowa	IOWA CODE ANN. §§ 13B.1 – 13B.12, 815.2 – 815.14 (2017)
Kansas	KAN. STAT. ANN. §§ 22-4501 – 22-4529 (2017)
Kentucky	KY. REV. STAT. ANN. §§ 31.010 – 31.250 (2017)
Louisiana	LA. STAT. ANN. §§ 15:141 – 15:183 (2017)
Maine	ME. STAT. ANN. tit. 4 §§ 1801 – 1806 (2017)
Maryland	MD. CODE ANN. §§ 16-101 – 16-403 (2017)
Massachusetts	MASS. GEN. LAWS ANN. ch 211D §§ 1 – 16 (2017)
Michigan	MICH. COMP. LAWS ANN. §§ 780.981 – 780.1003 (2017)
Minnesota	MINN. STAT. ANN. §§ 611.14 – 611.27 (2017)
Mississippi	MISS. CODE ANN. §§ 25-32-1 – 25-32-71 (2017)
Missouri	MO. ANN. STAT. §§ 600.011 – 600.101 (2017)
Montana	MONT. CODE ANN. § 2-15-1028, §§ 47-1-101 – 47-1-216 (2017)
Nebraska	NEB. REV. STAT. ANN. §§ 23-3401 – 23-3408, §§ 29-3901 – 29-3933 (2017)
Nevada	NEV. REV. STAT. ANN. §§ 180.010-110, §§ 260.010 – 260.080 (2017)
New Hampshire	N.H. REV. STAT. Ann. §§ 494:1 – 494:7, 604-A; 604-B (2017)
New Jersey	N.J. STAT. ANN. §§ 2B:24-1 – 24-17, §§ 2A:158A-1 – 158A – 25 (2017)
New Mexico	N.M. STAT. ANN. §§ 31-15-1 – 31-15-12, §§ 31-16-1 – 31-16-10 (2017)
New York	N.Y. COUNTY LAW §§ 711 – 721, N.Y. EXEC. LAW § 832 – 833 (2017)
North Carolina	N.C. GEN. STAT. ANN. §§ 7A-498.1 – 498.9 (2017)
North Dakota	N.D. CENT. CODE ANN. §§ 54-61-01 – 54-61-04 (2017)
Ohio	OHIO REV. CODE ANN. §§ 120.01 – 120.55 (2017)
Oklahoma	OKLA. STAT. ANN. tit. 22, §§ 1355 – 1370 (2017)
Oregon	OR. REV. STAT. ANN. §§ 151.010 – 151.505 (2017)
Pennsylvania	16 PA. STAT. AND CONS. STAT. ANN. §§ 9960.1 – 9960.13 (2017)
Rhode Island	R.I. GEN. LAWS ANN. §§ 12-15-1 – 12-15-11 (2017)
South Carolina	S.C. CODE ANN. §§ 17-3-5 – 17-3-600 (2017)
South Dakota	S.D. CODIFIED LAWS §§ 23A-40-6 – 23A-40-20 (2017)
Tennessee	TENN. CODE ANN. §§ 18-14-101 – 18-14-501, § 16-2-518 (2017)
Texas	TEX. GOV'T CODE ANN. §§ 79.001 – 79.040 (2017)
Utah	UTAH CODE ANN. §§ 77-32-101 – 77-32-810 (2017)
Vermont	Vt. STAT. ANN. tit.13, §§ 5201 – 5277 (2017)
Virginia	VA. CODE ANN. §§ 19.2-157 – 19.2-163 (2017)
Washington	WASH. REV. CODE ANN. §§ 2.70.005 – 2.70.900, §§ 10.101.005 – 10.101.900 (2017)
West Virginia	W.VA. CODE ANN. §§ 29-21-1 – 29-21-21 (2017)
Wisconsin	WIS. STAT. ANN. §§ 977.01 – 977.09 (2017)
Wyoming	WYO. STAT. ANN. §§ 7-6-101 – 7-6-114 (2017)

APPENDIX B

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<https://www.clearinghouse.net/chDocs/public/PD-MT-0001-0001.pdf>

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APPENDIX C

Table C1
State Agency Websites Reviewed

State	State indigent defense agency	Website
Alabama	Office of Indigent Defense Services	http://oids.alabama.gov
Alaska	Public Defender Agency	http://doa.alaska.gov/pda/home.html
Arizona		
Arkansas	Public Defender Commission	http://www.apdc.myarkansas.net
California		
Colorado	State Public Defender	http://www.coloradodefenders.us
Connecticut	Division of Public Defender Services	http://www.ct.gov/ocpd/site/default.asp
Delaware	Office of Defense Services	http://ods.delaware.gov
Florida		
Georgia	Public Defender Council	http://www.gapubdef.org
Hawaii	Office of the Public Defender	http://publicdefender.hawaii.gov
Idaho	Public Defense Commission	https://pdc.idaho.gov
Illinois		
Indiana	Public Defender Commission	http://www.in.gov/ipdc/
Iowa	Office of the State Public Defender	https://spd.iowa.gov
Kansas	State Board of Indigents' Defense Services	http://www.sbids.org/contact.html
Kentucky	Department of Public Advocacy	http://dpa.ky.gov/Pages/default.aspx
Louisiana	Public Defender Board	http://lpdb.la.gov/index/index.php
Maine	Commission on Indigent Legal Services	http://www.maine.gov/mcils/
Maryland	Office of the Public Defender	http://www.opd.state.md.us
Massachusetts	Committee for Public Counsel Services	https://www.publiccounsel.net
Michigan	Indigent Defense Commission	http://michiganidc.gov
Minnesota	Board of Public Defense	http://www.pubdef.state.mn.us
Mississippi	Office of State Public Defender	http://www.ospd.ms.gov
Missouri	State Public Defender	http://www.publicdefender.mo.gov
Montana	Office of the State Public Defender	http://www.publicdefender.mt.gov
Nebraska	Commission on Public Advocacy	http://www.ncpa.ne.gov
Nevada	Public Defender's Office	http://dhhs.nv.gov/Resources/PD/Public_Defender/
New Hampshire	Judicial Council*	https://www.nh.gov/judicialcouncil/
New Jersey	Office of the Public Defender	http://www.nj.gov/defender/
New Mexico	Law Offices of the Public Defender	http://www.lopdnm.us
New York	Office of Indigent Legal Services	https://www.ils.ny.gov
North Carolina	Office of Indigent Defense Services	http://www.ncids.org
North Dakota	Commission on Legal Counsel for Indigents	http://www.nd.gov/indigents/attorney/
Ohio	Office of the Public Defender	http://opd.ohio.gov
Oklahoma	Indigent Defense System	https://www.ok.gov/OIDS/
Oregon	Offices of Public Defense Services	https://www.oregon.gov/OPDS/Pages/index.aspx

Table C1
State Agency Websites Reviewed (continued)

State	State indigent defense agency	Website
Rhode Island	Public Defender	http://www.ripd.org
Pennsylvania		
South Carolina	Office of Indigent Defense	https://www.sccid.sc.gov
South Dakota		
Tennessee	Public Defenders Conference	https://www.tn.gov/expunction/article/pdo-conference-history
Texas	Indigent Defense Commission	http://www.tidc.texas.gov
Utah		
Vermont	Office of the Defender General	http://defgen.vermont.gov
Virginia	Indigent Defense Commission	http://www.publicdefender.state.va.us
Washington	Office of Public Defense	http://www.opd.wa.gov
West Virginia	Public Defender Services	http://www.pds.wv.gov/Pages/default.aspx
Wisconsin	State Public Defenders	http://www.wispd.org
Wyoming	Office of the State Public Defender	http://wyodefender.wyo.gov

APPENDIX D

Table D1
State Indigent Defense Standards Reviewed

State	Issuing Organization	Standards	Year	Retrieved From
Alabama	Alabama Department of Finance	Ala. Admin Code r. 355-9-1	2015	http://oids.alabama.gov/Rules.aspx
Arizona	Arizona Public Defender Association	<i>Performance Standards for Indigent Defense Counsel</i>	2008	https://apda.us/forms/Attorney_Performance_2011.pdf
Arkansas	Arkansas Public Defender Commission	<i>Minimum Standards</i>	2015	http://www.apdc.myarkansas.net/news/posts/minimum-standards/
California	The State Bar of California	<i>Guidelines on Indigent Defense Services Delivery Systems</i>	2006	http://www.calbar.ca.gov/LinkClick.aspx?fileticket=fwTzyTmupEY%3D&tabid=2326
Colorado	Colorado Office of the State Public Defender	Weighted caseload standards cited in OSPD's <i>Fiscal Year 2017-178 Budget Request</i>	n.d.	http://www.coloradodefenders.us/wp-content/uploads/2016/12/FY18-OSPD-Budget-Request.pdf
Connecticut	Connecticut Public Defender Services Commission	<i>Guidelines relating to the representation of indigent defendants accused of a criminal offense.</i>	n.d.	http://www.ct.gov/ocpd/cwp/view.asp?a=4087&q=479228
		Caseload goals cited in the <i>2015 Annual Report of the Chief Public Defender</i> (2016)	n.d.	http://www.ct.gov/ocpd/site/default.asp
		<i>Income Eligibility Guidelines</i>	2016	http://www.ct.gov/ocpd/cwp/view.asp?a=4089&q=590342
Idaho	Idaho Public Defense Commission	<i>Standards for Defending Attorneys</i>	2016	https://pdc.idaho.gov/rules/standards-and-guidelines/
Indiana	Indiana Public Defender Commission	<i>Standards for indigent defense services in non-capital cases</i>	2015	http://www.in.gov/publicdefender/2340.htm
Iowa	Iowa Office of the State Public Defender	Iowa Admin. Code r. 493-10. Eligibility guidelines for court-appointed counsel.	2011	https://www.legis.iowa.gov/docs/ACO/chapter/493.10.pdf
Kansas	Board of Indigents' Defense Services	Administrative Regulations §§ 105-3-2, 104-4, 105-5-2	2016	http://www.sbid.org/forms/ksbidsreg.pdf
Louisiana	Louisiana Public Defender Board	<i>Trial Court Performance Standards</i>	2013	http://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/LPDB%20Trial%20Court%20Performance%20Standards.pdf

Table D1
State Indigent Defense Standards Reviewed (continued)

State	Issuing Organization	Standards	Year	Retrieved From
Louisiana	Louisiana Public Defender Board	<i>Standards Relating to Workload for Counsel Providing Defense Services to Indigents</i>	n.d.	Personal communication in response to public information request; received January 23, 2017.
Maine	Maine Commission on Indigent Legal Services	<i>Standards for Qualifications of Assigned Counsel</i>	2010	http://www.maine.gov/mcils/rules/adopted.html
		<i>Standards of Practice for Attorneys Who Represent Adults in Criminal Proceedings</i>	2012	http://www.maine.gov/mcils/rules/adopted.html
		<i>Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel</i>	2016	http://www.maine.gov/mcils/rules/adopted.html
		<i>Guidelines for Determination of Financial Eligibility for Assigned Counsel and Reimbursement of Assigned Counsel Costs</i>	n.d.	http://www.maine.gov/mcils/rules/adopted.html
Maryland	National Center for State Courts for Maryland Office of the Public Defender	Caseload standards developed and published in <i>Maryland Attorney and Staff Workload Assessment</i>	2005	http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Workload%20Assessment/ResWorkLdMDAttyStaffWkLdAs05.ashx
	Maryland Office of the Public Defender	Code of Maryland Regulations § 14.06.03.05 Determination of Eligibility for Services	2016	Westlaw
Massachusetts	Massachusetts Committee for Public Counsel Services	<i>Assigned Counsel Manual</i>	n.d.	https://www.publiccounsel.net/assigned-counsel-manual/
Minnesota	Minnesota Board of Public Defense	Board adopted ABA caseload standards for budget purposes.	n.d.	Personal communication in response to public information request; received January 30, 2017.
		Application for Public Defender (eligibility standards)	2012	http://www.pubdef.state.mn.us/sites/default/files/english_version.pdf
		<i>Quality Representation Best Practices</i>	2011	Personal communication in response to public information request; received January 30, 2017.

Table D1
State Indigent Defense Standards Reviewed (continued)

State	Issuing Organization	Standards	Year	Retrieved From
Missouri	RubinBrown, LLP for Missouri State Public Defender	Attorney workload standards cited in <i>The Missouri project: A Study of the Missouri Public Defender System and Attorney Workload Standards</i>	2014	http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_5c_the_missouri_project_report.authcheckdam.pdf
	Missouri Public Defender Commission	Missouri Code of State Regulations § 18-10-3. Guidelines for the Determination of Indigence	2007	http://www.sos.mo.gov/cmsimages/adrules/csr/current/18csr/18c10-3.pdf
	Missouri State Public Defender	<i>Guidelines for Representation</i>	1992	http://www.publicdefender.mo.gov/contracts/Guidelines%20for%20Representation.pdf
Montana	Montana Public Defender Commission	<i>Practice Standards</i>	2012	http://www.publicdefender.mt.gov/Standards/StandardsTOC.asp
Nevada	Nevada Supreme Court Indigent Defense Commission	<i>Performance Standards</i>	2008	http://njdc.info/wp-content/uploads/2016/02/Nevada-Supreme-Court-Ordered-Standards-2008.pdf
New Hamp.	New Hampshire Judicial Council	Caseload and attorney qualifications per contract: <i>Agreement for Statewide Indigent Defense Representation</i>	2015	https://www.nh.gov/judicialcouncil/documents/nhpd-contract.pdf
New Mexico	New Mexico Public Defender Commission & Law Office of the Public Defender	<i>Performance Standards for Criminal Defense Representation</i>	2016	http://www.lopdnm.us/pdf/2016PerfStand.pdf
New York	New York Office of Indigent Legal Services	<i>Criteria and Procedures for Determining Assigned Counsel Eligibility</i>	2016	https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Final%20Eligibility%20Standards/Eligibility%20Criteria%20and%20Procedures%20FINAL%20FULL%20April%204%202016.pdf

Table D1
State Indigent Defense Standards Reviewed (continued)

State	Issuing Organization	Standards	Year	Retrieved From
North Carolina	North Carolina Commission on Indigent Defense Services	<i>Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level</i>	2004	http://www.ncids.org/Rules%20&%20Procedures/Performance%20Guidelines/Trial%20Level%20Final%20Performance%20Guidelines.pdf
		<i>Private Assigned Counsel Rate Information and Calculators</i>	2014	http://www.ncids.org/rateinfo/rateinfotext.htm?c=Information%20for%20Counsel,%20PAC%20Rate%20Information%20and%20Calculators
North Dakota	North Dakota Commission on Legal Counsel for Indigents	<i>Minimum Attorney Performance Standards Criminal Matters</i>	n.d.	http://www.nd.gov/indigents/docs/performanceStandardsCriminal.pdf
		<i>Guidelines to Determine Eligibility for Indigent Defense Services</i>	2014	http://www.nd.gov/indigents/docs/guidelines.pdf
Ohio	Office of the Ohio Public Defender	<i>Performance Standards for Criminal Defense Representation in Indigent Criminal Cases</i>	n.d.	http://opd.ohio.gov/Portals/0/PDF/PO/opd_practice_standards.pdf
		Ohio Admin. Code 120-1-06 requires salary, support services, facility, equipment parity with prosecutors.	2015	Westlaw
Oregon	Oregon Public Defense Services Commission	<i>Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense</i>	2016	https://www.oregon.gov/OPDS/docs/CBS/Attorney%20Qualification%20Standards%202016.pdf
	Oregon State Bar	<i>Specific Standards for Representation in Criminal and Juvenile Delinquency Cases</i>	2014	http://www.oregonstatebar.org/_docs/resources/juveniletaskforce/JTFR2.pdf
		<i>Maximum Caseload Standards for Defense Counsel</i>	n.d.	http://www.oregonstatebar.org/_docs/resources/juveniletaskforce/JTFR5.pdf
South Carolina	South Carolina Commission on Indigent Defense	<i>Performance Standards for Public Defenders and Assigned Counsel (Non-Capital)</i>	2013	https://www.sccid.sc.gov/resources/policies
Tennessee	Tennessee Supreme Court	<i>Supreme Court Rule 13: Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants</i>	2015	https://www.tncourts.gov/rules/supreme-court/13
	Tennessee Comptroller of the Treasury	<i>Weighted Caseload Study Update: District Public Defenders</i>	2005	http://www.comptroller.tn.gov/orea/PublicationDetails?ReportKey=2d3063ae-73d5-4572-a28e-27b99f47b095

Table D1
State Indigent Defense Standards Reviewed (continued)

State	Issuing Organization	Standards	Year	Retrieved From
Texas	Texas A&M Public Policy Institute for the Texas Indigent Defense Commission	<i>Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission</i>	2015	http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf
	State Bar of Texas	<i>Performance Guidelines for Non-Capital Criminal Defense Representation</i>	2011	https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703
Virginia	Virginia Indigent Defense Commission	<i>Standards of Practice for Indigent Defense Counsel</i>	2016	http://www.indigentdefense.virginia.gov/PDF%20documents/SOP%209-29-16.pdf
Washington	Washington State Bar Association	<i>Standards for Indigent Defense Services</i>	2011	http://opd.wa.gov/index.php/program/trial-defense
		<i>Performance Guidelines for Criminal Defense Representation</i>	2011	http://opd.wa.gov/index.php/program/trial-defense
	Washington Supreme Court	<i>Standards for Indigent Defense</i>	2016	http://opd.wa.gov/index.php/standards
	Washington State Office of Public Defense	<i>Determining and Verifying Indigency for Public Defense</i>	2014	http://www.opd.wa.gov/documents/0185-2014_Determining_Indigency.pdf
Wisconsin	Wisconsin State Public Defender Board	Administrative Code Ch. PD 3. - Indigency Criteria	2014	Westlaw
	Wisconsin State Public Defender's Office	Trial ASPD Attorney Performance Evaluation Long Form	2014	Personal communication in response to public information request; received February 27, 2017.

APPENDIX E

Table E1
State Agency Reports Reviewed

State	Reports Reviewed	Retrieved From
Arkansas	Arkansas Public Defender Commission Annual Report Summary, FY 2015-16	http://www.apdc.myarkansas.net/news/posts/2015-2016-annual-reports/
Colorado	State Public Defender FY 2013-14 Strategic Plan & Program Evaluation	http://www2.cde.state.co.us/artemis/pdserials/pd111internet/pd111201314internet.pdf
	State Public Defender Annual Performance Report 2015	http://www.coloradodefenders.us/wp-content/uploads/2015/02/annual-performance-report-november-01-2015.pdf
Connecticut	Annual Report of the Chief Public Defender 2015	http://www.ct.gov/ocpd/lib/ocpd/publications/201415_annual_report_of_the_chief_public_defender_for_web_viewing.pdf
Delaware	Office of Defense Services FY 2016 - 2018 Budget Report	Personal communication in response to public information request; received February 24, 2017.
Idaho	Idaho State Public Defense Commission 2016 Legislative Report	https://pdc.idaho.gov/wp-content/uploads/sites/11/2017/01/Annual-Report-Calendar-2016.pdf
Indiana	Cover Letter to the 2015-2016 Annual Report of the Indiana Public Defender Commission	http://www.in.gov/publicdefender/files/FY%2016%20Annual%20Report%20Cover%20Letter.pdf
	2015-2016 Annual Report of the Indiana Public Defender Commission	http://www.in.gov/publicdefender/files/2016-ipdc-annual-report-online.pdf
Iowa	State Public Defender 2014-2018 Strategic Plan	https://spd.iowa.gov/sites/default/files/SPD%20Strategic%20Plan%20-%202014-2018%20Final.pdf
	State Public Defender FY 2016 Performance Report	https://spd.iowa.gov/sites/default/files/FY15%20Performance%20Report%20DOM.pdf
	State Public Defender Report on Iowa's Indigent Defense System	https://spd.iowa.gov/sites/default/files/2015%20Legislative%20Report.pdf
Kansas	Board of Indigents' Defense Services Annual Report FY 2016	Personal communication in response to public information request; received February 23, 2017.

Table E1

State Agency Reports Reviewed (continued)

State	Reports Reviewed	Retrieved From
Kansas	Kansas Legislator Briefing Book 2016, Q-1 Indigents' Defense Services	http://www.kslegresearch.org/KLRD-web/Publications/2016Briefs/2016_briefing_book.pdf
Kentucky	Department of Public Advocacy Annual Litigation Report FY 2016	http://dpa.ky.gov/lp/Documents/2016%20Annual%20Report.pdf
	Department of Public Advocacy Strategic Plan 2016-2020	http://dpa.ky.gov/lp/Pages/DPA-Strategic-Plan.aspx
Louisiana	Louisiana Public Defender Board 2016 Annual Report	http://lpdb.la.gov/Serving%20The%20Public/Reports/txtfiles/pdf/2016%20LPDB%20Annual%20Report.pdf
Maine	Maine Commission on Indigent Legal Services February 2017 Legislative Memo	Personal communication in response to public information request; received March 10, 2017.
Maryland	Office of the Public Defender FY 2016 Annual Report with Strategic Plan	http://www.opd.state.md.us/AboutOPD/AnnualReport.aspx
Massachusetts	Massachusetts Indigent Defense: Best practices, objectives, and performance indicators.	http://www.courtinnovation.org/indigent-defense
	A Study of the Expansion of the Committee for Public Counsel Services' Representation of the Indigent June, 2014	Personal communication in response to public information request; received March 10, 2017.
Michigan	Report of the Advisory Commission on Indigent Defense (2012)	http://michiganidc.gov/wp-content/uploads/2015/05/Final-Report-Advisory-Commission.pdf
	Michigan Indigent Defense Commission Impact Report (2016)	http://michiganidc.gov/wp-content/uploads/2017/02/MIDC-2016-Annual-Impact-Report.pdf
	Snapshot of Indigent Defense Representation in Michigan's Adult Criminal Courts: The MIDC'S First Survey of Local Court Systems (2016)	http://michiganidc.gov/wp-content/uploads/2015/04/MIDC-Court-Survey-Report-Feb-16.pdf
	Michigan Indigent Defense Commission Delivery System Reform Models (2016)	http://michiganidc.gov/wp-content/uploads/2015/04/Delivery-System-Reform-Models-Final-Dec-2016.pdf

Table E1
State Agency Reports Reviewed (continued)

State	Reports Reviewed	Retrieved From
Mississippi	Assessment of Caseloads in State and Local Indigent Defense Systems in Mississippi	http://www.ospd.ms.gov/Task%20Force%20Info.html
	The State of the Right to Counsel in Mississippi Report and Recommendations (2014)	http://www.ospd.ms.gov/Task%20Force%20Info.html
	Mississippi Public Defender Task Force 2016 Report to the Mississippi Legislature	http://www.ospd.ms.gov/Task%20Force%20Info.html
Missouri	Public Defender Commission FY 2016 Annual Report	http://www.publicdefender.mo.gov/about/aboutMSPD.htm
Montana	Montana Public Defender Commission FY 2016 Report to the Governor, Supreme Court and Legislature	http://leg.mt.gov/content/Publications/services/2016-agency-reports/Public-Defender-Report-2016.pdf
Montana	Office of the State Public Defender Strategic Plan	http://publicdefender.mt.gov/publications.asp
Nebraska	2014/2015 Annual Report of the Nebraska Commission on Public Advocacy	Personal communication in response to public information request; received January 30, 2017.
New Hampshire	New Hampshire Public Defender Second Quarter FY 2017 Report	Personal communication in response to public information request; received March 7, 2017.
New Jersey	Office of the Public Defender Performance Indicator Report, 1st and 2nd Quarter FY 2017	Personal communication in response to public information request; received March 20, 2017.
New Mexico	Law Offices of the Public Defender 2014 Annual Report	http://www.lodnm.us/pdf/2014_annl_rpt_rev9214.pdf
	Law Offices of the Public Defender FY 2016 Strategic Plan	http://www.lodnm.us/pdf/FY16_strateplan_Rev9214.pdf
New York	Commission on the Future of Indigent Defense Services Final Report to the Chief Judge of the State of New York (2006)	https://www.nycourts.gov/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf
	Determining Eligibility for Assignment of Counsel in New York (2016)	https://www.ils.ny.gov/content/research-and-data-analysis
	Estimate of the Cost of Compliance with Maximum Caseload Limits in Upstate New York - 2015 Update	https://www.ils.ny.gov/content/research-and-data-analysis
	The Impact of Eligibility Standards in Five Upstate New York Counties	https://www.ils.ny.gov/content/research-and-data-analysis

Table E1

State Agency Reports Reviewed (continued)

State	Reports Reviewed	Retrieved From
North Carolina	Report of the Commission on Indigent Defense Services (2016)	http://www.ncids.org/Reports%20&%20Data/Prior%20GA%20Reports/LegislatureReport2016.pdf
Ohio	Office of the Ohio Public Defender Annual Report 2015	http://opd.ohio.gov/About-Us/The-Commission
Oklahoma	Oklahoma Indigent Defense System 2016 Annual Report	https://www.ok.gov/OIDS/documents/2016%20Annual%20Report.pdf
Oregon	Public Defender Services Commission Executive Director's 2015 Annual Report	https://www.oregon.gov/OPDS/pages/pdscreports.aspx
	Public Defender Services Commission 2016 Annual Performance Progress Report	https://www.oregon.gov/OPDS/pages/pdscreports.aspx
	Office of Public Defense Services Executive Director's Biennial Report to the Oregon Legislative Assembly, FY 2014-2015	https://www.oregon.gov/OPDS/pages/pdscreports.aspx
	Public Defender Services Commission Strategic Plan 2016-2021	https://www.oregon.gov/OPDS/pages/pdscreports.aspx
South Carolina	Commission on Indigent Defense FY 2015-16 Accountability Report	http://dc.statelibrary.sc.gov/handle/10827/22819
	FY 16-17 Human Resources and County Funding Survey as of January 1, 2017	Personal communication in response to public information request; received February 23, 2017.
Tennessee	Tennessee District Public Defenders Conference, Indigent Representation Task Force Presentation (2016)	http://tncourts.gov/IndigentRepresentationTaskForce
Texas	Texas Indigent Defense Commission Annual Report FY 2016	http://www.tidc.texas.gov/resources/publications.aspx?ptype=1409
Utah	Report of the Judicial Council Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts (2015)	http://www.upc.utah.gov/guestArticles/IndigentDefenseCommitteeReport.pdf
Vermont	Office of the Defender General, FY 2017 Budget - Caseload, Performance and Cost Per Case	http://www.leg.state.vt.us/jfo/dept_budgets_fy_2017.aspx
Virginia	Virginia Indigent Defense Commission Annual Report 2016	http://www.indigentdefense.virginia.gov/PDF%20documents/2016%20annual%20report%20final%20commission%20approved.pdf
Washington	2015 Status Report on Public Defense in Washington State	http://www.opd.wa.gov/documents/0366-2016_StatusReport.pdf

Table E1

State Agency Reports Reviewed (continued)

State	Reports Reviewed	Retrieved From
Washington	Washington State Office of Public Defense Annual Report FY 2015	http://www.opd.wa.gov/index.php/reports
West Virginia	Public Defender Services Annual Report 2016	http://www.pds.wv.gov/Reports/Pages/FY-Annual-Reports.aspx
Wisconsin	Wisconsin State Public Defender 2013-2015 Biennial Report	Personal communication in response to public information request; received February 27, 2017.
	Wisconsin State Public Defender Quarterly Report - 2nd Quarter 2017	Personal communication in response to public information request; received February 27, 2017.
Wyoming	Office of the State Public Defender Annual Report FY 2014	http://wyodefender.wyo.gov/annual-report

APPENDIX F

Table F1

Budget Documents Reviewed

State	Budget Documents Reviewed	Retrieved From
Alabama	State of Alabama Executive Budget, FY 2018	http://budget.alabama.gov/pages/buddoc.aspx
Alaska	State of Alaska Department of Administration Enacted Budget, FY 2017	https://www.omb.alaska.gov/ombfiles/17_budget/Admin/Enacted/17compdetail_admin.pdf
Arizona	Arizona Criminal Justice Commission Statistical Analysis Center Fill the Gap Report, FY 2015	http://www.azcjc.gov/ACJC.Web/Pubs/Home/FY2015%20Fill%20the%20Gap%20Report.pdf
	Maricopa County Adopted Budget, FY 2016	https://www.maricopa.gov/3668/Budget-Documents
Arkansas	Arkansas Public Defender Commission Budget Request, FY 2015-17	http://www.dfa.arkansas.gov/offices/budget/budgetRequests/0324_public_defender.pdf
	State of Arkansas Appropriations Summary, FY 2017	http://www.dfa.arkansas.gov/offices/budget/Documents/authorizedAppropriation.pdf
Colorado	Colorado State Public Defender Budget Request, FY 2017-18	http://www.coloradodefenders.us/wp-content/uploads/2016/12/FY18-OSPD-Budget-Request.pdf
	State of Colorado Judicial Branch Staff Budget Briefing, FY 2017-18	http://www.coloradodefenders.us/wp-content/uploads/2016/12/fy2017-18_BudgetBriefing.pdf
	Judicial Branch Staff Budget Hearing, Office of the State Public Defender, FY 2017-18	http://www.coloradodefenders.us/wp-content/uploads/2016/12/FY18_BudgetHearing.pdf
Connecticut	Connecticut State Budget, Public Defender Services, FY 2016 and FY 2017	https://www.cga.ct.gov/ofa/Documents/year/BB/2016BB-20151007_FY%2016%20and%20FY%2017%20Connecticut%20Budget.pdf
Delaware	Office of Defense Services Budget Report, FY 2016-18	Personal communication in response to public information request; received February 24, 2017.
	Office of Defense Services Budget Presentation, FY 2016-18	Personal communication in response to public information request; received February 24, 2017.
	Governor's Recommended Operating Budget Volume 1 - Legal, Office of Defense Services, FY 2017	http://budget.delaware.gov/budget/fy2017/documents/operating/vol1/legal.pdf
Florida	State of Florida Governor's Budget, Justice Administration, FY 2017-18	http://fightingforfloridasfuturebudget.com/web%20forms/Budget/BudgetService.aspx?rid1=327694&rid2=298928&ai=21000000&title=JUSTICE%20ADMINISTRATION

Table F1

Budget Documents Reviewed (continued)

State	Budget Documents Reviewed	Retrieved From
Georgia	Governor's Budget Report, Georgia Public Defender Council, FY 2018	https://opb.georgia.gov/sites/opb.georgia.gov/files/related_files/site_page/FY%2018%20State%20of%20Georgia%20Budget.pdf
Hawaii	Executive Biennium Budget, Department of Budget and Finance, Office of the Public Defender, FY 2017-19	https://budget.hawaii.gov/wp-content/uploads/2016/12/11.-Department-of-Budget-and-Finance-FB17-19-PFP.pdf
Idaho	State of Idaho Executive Budget, Public Defense Commission, FY 2018	https://dfm.idaho.gov/publications/bb/eb/eb2018/sectionb/economic/sg_publicdefense.pdf
Indiana	State of Indiana Budget Report, Biennium, Public Defender Commission, FY 2017-19	http://www.in.gov/sba/files/AS_2017_Full_Budget_Report.pdf
Iowa	State of Iowa Budget Report, FY 2017	https://dom.iowa.gov/sites/default/files/documents/2016/01/bbb_final_1.12.2016.pdf
Kansas	State of Kansas Governor's Budget Report, Volume 1, FY 2017	http://budget.ks.gov/publications/FY2017/FY2017_GBR_Vol1--UPDATED--04-12-2016.pdf
Kentucky	Commonwealth of Kentucky, Budget, Operating Budget - Volume 1 (Part B), FY 2016-18	http://osbd.ky.gov/Publications/Documents/Budget%20Documents/2016-2018%20Budget%20of%20the%20Commonwealth/1618BOC_VolumeI%20-%206-30-16.pdf
Louisiana	Louisiana Governor's Executive Budget, FY 2016-17	http://www.doa.la.gov/opb/pub/FY17/FY17_Executive_Budget.pdf
Maine	Louisiana Governor's Proposed Biennial Budget, FY 2018-19	http://www.maine.gov/budget/
Maryland	State of Maryland Operating Budget, Volume I, FY 2018	http://www.dbm.maryland.gov/budget/Documents/operbudget/2018/Volume1.pdf
Massachusetts	Committee for Public Counsel Services Budget Summary, FY 2017	http://www.mass.gov/bb/gaa/fy2017/app_17/dpt_17/hcpc.htm
Michigan	State of Michigan Executive Budget, FY 2018 and FY 2019	http://www.michigan.gov/documents/budget/FY18_Exec_Budget_550967_7.pdf
Minnesota	Board of Public Defense Biennial Budget, FY 2016-17	http://www.mn.gov/mmb-stat/documents/budget/gov-budget-archives/gov-2015/background/j52.pdf
	Board of Public Defense Budget Memo, FY 2018-19	Personal communication in response to public information request; received January 30, 2017.
Missouri	Office of the State Public Defender Financial Summary, FY 2017	https://oa.mo.gov/sites/default/files/FY_2017_Public%20Defender_EB.pdf

Table F1
Budget Documents Reviewed (continued)

State	Budget Documents Reviewed	Retrieved From
Montana	State of Montana Judicial Branch Budget, FY 2016-17	https://budget.mt.gov/Portals/29/execbudgets/2017_Budget/Volume_1_Section_D.pdf
Nebraska	State of Nebraska Annual Budgetary Report, FY 2016	http://das.nebraska.gov/accounting/budrept/buddoc16.pdf
New Hampshire	New Hampshire Governor's Operating Budget, FY 2016 and FY 2017	https://das.nh.gov/budget/Budget2016-2017/GovernorsBudgetBill.pdf#02-07
New Jersey	State of New Jersey Detailed Budget, FY 2018	http://www.nj.gov/treasury/omb/publications/18budget/pdf/FY18BudgetBook.pdf
New Mexico	Report of the Legislative Finance Committee to the 52nd Legislature	https://www.nmlegis.gov/lcs/lfc/lfcdocs/budget/2017RecommendVolII.pdf
	New Mexico Executive Budget Recommendation, FY 2017	https://govrel.unm.edu/legislative-sessions/2016/FY17%20Executive%20Budget%20Recommendation.pdf
New York	State of New York Executive Budget, FY 2018	https://www.budget.ny.gov/pubs/executive/eBudget1718/fy1718littlebook/BriefingBook.pdf
	Office of Indigent Legal Services Budget Appropriations, FY 2018	https://openbudget.ny.gov/budgetPrepForm.html
North Carolina	North Carolina's Governor's Recommended Budget, FY 2016-17	https://ncosbm.s3.amazonaws.com/s3fs-public/documents/files/BudgetBook_2016-17_2.pdf
North Dakota	State of North Dakota Legislative Appropriations, FY 2015-17 Biennium	https://www.nd.gov/omb/sites/omb/files/documents/agency/financial/state-budgets/docs/budget/appropbook2015-17.pdf
Ohio	State of Ohio Main Operating Budget in Detail as Enacted, FY 2016-17	http://obm.ohio.gov/budget/operating/doc/fy-16-17/enacted/budgetindetail-hb64-en.pdf
Oklahoma	State of Oklahoma Executive Budget, FY 2017	https://www.ok.gov/OSF/documents/bud17_tagged.pdf
Oregon	State of Oregon Legislatively Adopted Budget Detailed Analysis, FY 2015-17	https://www.oregonlegislature.gov/lfo/Documents/2015-17%20LAB%20Detailed%20Analysis.pdf
Rhode Island	Rhode Island Budget Volume IV - Public Safety, Natural Resources and Transportation, FY 2017	http://www.omb.ri.gov/documents/Prior%20Year%20Budgets/Operating%20Budget%202017/BudgetVolumeIV/39_Office%20of%20Public%20Defender.pdf
South Carolina	State of South Carolina Executive Budget, FY 2016-17	http://www.scstatehouse.gov/sess121_2015-2016/appropriations2016/gab0000.php
	Commission on Indigent Defense Budget Proviso, FY 2016-17	https://www.sccid.sc.gov/resources/policies

Table F1
Budget Documents Reviewed (continued)

State	Budget Documents Reviewed	Retrieved From
Tennessee	State of Tennessee Budget FY 2016-17	http://www.tn.gov/assets/entities/finance/budget/attachments/2017BudgetDocumentVol1.pdf
	Shelby County, Tennessee Adopted Budget, FY 2017	http://shelbycountyttn.gov/DocumentCenter/View/27597
Texas	Texas Indigent Defense Commission Annual Expenditure Report, FY 2016	http://www.tidc.texas.gov/resources/publications.aspx?ptype=1409
Vermont	Office of the Defender General Budget Narrative, FY 2017	http://www.leg.state.vt.us/jfo/dept_budgets_fy_2017.aspx
	Office of the Defender General Budget, FY 2018	http://www.leg.state.vt.us/jfo/webreports/webreports/Web/FY2018%20Bi g%20Bill%20Web%20Report%202-24-2017%2010_07_37%20AM.html#id2110000100
Virginia	State of Virginia Judicial Department Budget, FY 2017	http://dpb.virginia.gov/budget/buddoc17/partb/JudicialDepartment.pdf
Washington	State of Washington Judicial Branch Budget Request, FY 2017-19	https://www.courts.wa.gov/content/Financial%20Services/documents/2017/17-19BiennialBudgetAsSubmittedtoLegislature.pdf
	Office of Public Defense Budget Request, FY 2017-19	http://www.ofm.wa.gov/budget17/detail/nl056.pdf
	Operating Budget as enacted, FY 2015-17	http://www.ofm.wa.gov/budget/legbudgets/1517biennial.asp
West Virginia	West Virginia Executive Budget, FY 2017	http://www.budget.wv.gov/executivebudget/Documents/VI2017.pdf
Wisconsin	Public Defender Board Agency Budget Request, FY 2017-19 Biennium	http://www.doa.state.wi.us/Documents/DEBF/Budget/Biennial%20Budget/201719%20Agency%20Requests/550%20SPD%20Budget%20Request%2017-19.pdf
	State of Wisconsin Executive Budget, FY 2017-19 Biennium	http://doa.wi.gov/Documents/DEBF/Budget/Biennial%20Budget/201719%20Executive%20Budget/Budget%20Book%20Combined%20v3%20Provisional.pdf
	Public Defender Board Governor's Budget Recommendations, FY 2017-19 Biennium	http://doa.wi.gov/Documents/DEBF/Budget/Biennial%20Budget/2017-19%20Executive%20Budget/550-2017-19ExecutiveBudget.pdf
Wyoming	Office of the Public Defender Budget Request, FY 2017-18 Biennium	https://drive.google.com/file/d/0B9L2AFFD9o_LOWhCUDRfVWgwa0k/view
	Office of the Public Defender Budget Summary, FY 2017-18 Biennium	https://drive.google.com/file/d/0B7jTI_rKFKSsZ3RhMjNxUElhSkU/view

APPENDIX G

Table G1
Indications of Indigent Defense Underfunding

State	Indications of Underfunding
California	Structural reform class action lawsuit filed in 2015 against Fresno County for Sixth Amendment right to counsel violations claims the county's indigent defense system is severely underfunded and understaffed (Phillips v. State of California, Fresno County, Complaint, 2015)
Colorado	The Colorado Office of the State Public Defender FY 2017-2018 budget request reported that changes in the criminal justice environment including changed in criminal penalties, newly enacted criminal offenses, increased use of specialty courts, and changes to the complexity and types of evidence all compound the challenges to existing workloads and increase the need for additional staff so that the office can provide effective representation of its clients (Colorado Office of the State Public Defender, 2016).
Connecticut	The <i>Annual Report of the Chief Public Defender</i> for 2015 reported that the "Chief Public Defender continues to request that additional assistant public defender positions be added" to address the fact that prosecutor's offices are staffed with two to five times more prosecutors than public defenders in the same districts (Connecticut Division of Public Defender Services, 2016).
Florida	According to the Florida Justice Administrative Commission's Long Range Program Plan, FYs 2015-16 through 2020-21, "Although Public Defenders were appointed to fewer cases and clients than projected, offices remain inadequately funded as a result of years of excessive caseloads combined with increased penalties for criminal offenses and without corresponding increases in staffing levels (Florida Justice Administrative Commission, 2015, p. 125).
Illinois	In 2013, the Illinois Bar Association issued its <i>Report on the Funding Crisis in the Illinois Courts</i> , which reported that in at least some counties, delays in criminal case processing are attributable to lack of resources for both state's attorneys and public defenders and that often the lack of resources for public defenders means cases do not get adequately investigated (Illinois Bar Association, 2013).
Indiana	The State Public Defender Commission "reimbursements" to counties, which were designed to be 50% of the costs paid in capital cases and 40% in felony cases commonly dips below that percentage because the state does not appropriate sufficient funds for that purpose. The Commission's assessment of county compliance with Commission standards, which is required to be eligible for state reimbursements, is limited due to insufficient funding and staffing (Sixth Amendment Center, 2016).
Kentucky	The <i>Annual Litigation Report</i> for FY 2016 issued by the Department of Public Advocacy cited acute deficiencies in the state's indigent defense system, including workloads in violation of professional standards, inadequate compensation to reimburse contract attorneys for necessary work, and public defender employee compensation "substantially lower than the surrounding states" (Kentucky Department of Public Advocacy, 2017).
Louisiana	Structural reform class action lawsuits filed in 2016 and 2017 claim that Louisiana's mechanism for funding indigent defense is unreliable and unpredictable. Public defender offices in many judicial districts in Louisiana have stopped accepting new cases or otherwise restricted services due to funding shortfalls (<i>Yarls v. Bunton</i> , Complaint, 2016; <i>Allen et al v. Edwards et al.</i> , Complaint, 2017).

Table G1

Indications of Indigent Defense Underfunding (continued)

State	Indications of Underfunding
Maryland	According to the Office of the Public Defender's (OPD) <i>Fiscal Year 2016 Annual Report with Strategic Plan</i> , "[b]y any measure, attorney caseloads continue to exceed acceptable caseloads" and "[b]udget constraints continue to prevent OPD from increasing its attorney positions to meet the demand of staffing" hearings in certain courts (Maryland Office of the Public Defender, 2016).
Minnesota	According the FY 2018-2019 budget request memo from the State Public Defender to the Board of Public Defense, just to meet the "goal" of increasing staffing to levels needed to have 75% of the attorneys recommended by the state's weighted caseload standards, 19 additional attorneys are needed in FY 2018 and an additional 19 will be needed in FY 2019 (Kajer, 2016).
Mississippi	The state's Legislative Budget Office recommended a 37.4% budget cut for the Office of the State Public Defender (OSPD) for FY 2018, and the OSPD letter in response indicates that funding has been inadequate for five years and additional cuts would require a 40-50% staff reduction (Mississippi OSPD, 2017).
Missouri	<i>The State of Missouri Public Defender Commission Fiscal Year 2016 Annual Report</i> warned that caseloads are so high for every staff attorney the risk of wrongful conviction of its clients is "a substantial likelihood." The annual report and press reports suggest that political disputes between the governor and the state's public defender have led to budget cuts and even the governor's withholding of funds that were originally appropriated for indigent defense (Missouri Public Defender Commission, 2016, p. iii).
Nevada	A February 2015 letter from the ACLU of Nevada to the state legislature's judiciary committee put "the State of Nevada, and its counties...on notice that the state of [its] indigent defense system, particularly in [its] rural counties, is constitutionally inadequate" due in large part to a lack of sufficient funding (ACLU of Nevada, 2015).
New Mexico	The New Mexico Law Office of the Public Defender (LOPD) Fiscal Year 2016 Strategic Plan reported that despite a small reduction in the number of cases handled from the previous year, caseloads "remain high enough to question whether defendant's [sic] are receiving constitutionally adequate representation." The report also cited a 2014 internal study by the New Mexico Sentencing Commission that found that the LOPD was short 70 attorneys and 58 support staff positions. Finally, the report cited difficulty recruiting enough contract attorneys to handle cases in rural parts of the state due to "extremely low compensation" paid through flat rate contracts for \$700 for non-capital first degree felony cases. The report contrasted the low flat rate payments to the state's payment for civil contract attorneys at an <u>hourly rate</u> of \$90 to \$160 depending upon experience (New Mexico LOPD, 2015, p. 10-11).
New York	A 2007 structural reform class action lawsuit filed by the New York CLU on behalf of indigent defendants claimed Sixth Amendment right to counsel violations due to New York's failure to provide adequate funding, resources, and oversight to the public defender system. In 2014, the state settled the lawsuit agreeing to make reforms to the system, but at the end of 2016 a key bipartisan bill that was key to addressing some of those reforms by creating a state-administered, fully state funded indigent defense system in the state was vetoed by the New York governor (NYCLU, 2017a).

Table G1

Indications of Indigent Defense Underfunding (continued)

State	Indications of Underfunding
North Carolina	The 2016 Office of Indigent Defense Services (OIDS) annual report indicates that despite cost control measures, "indigent defense remains underfunded" and projected that OIDS would end fiscal year 2016 with \$5 million in debt. As a "first step," OIDS requested an additional \$5 million one-time infusion of funds to cover the debt and an annual increase of \$5.75 million for FY 2017 to increase pay rates of assigned and contract counsel (North Carolina OIDS, 2016, pp. 1-2).
North Dakota	A July 2016 article published online by the Bismarck Tribune reported results of a salary survey conducted by the North Dakota Commission on Legal Counsel for Indigents, which found wide disparities in salaries between prosecutors and public defenders. According to the article, the survey found that public defenders earn from \$12,000 to \$32,000 less than their counterparts in the state attorneys' office. The article cites the executive director of the Commission as who noted a lack of funding to increase salaries and who planned to request \$790,000 from the legislature during 2017 budget process to bring public defender and support staff salaries up to meet those of their counterparts (Ingersoll, 2016).
Ohio	The <i>Ohio Office of Public Defender Annual Report 2015</i> included an introductory statement from the chair of the Public Defender Commission, who noted: "Ohio's indigent defense system is in dire need of reform and additional resources. Defense services are provided, controlled, and funded by each of Ohio's counties, resulting in vast differences in the quality and cost of services provided. Ohio's patchwork system of indigent defense is remarkably inefficient, causing increased costs in other parts of the criminal justice system." The chair's message continued, "[f]ixing Ohio's long-neglected indigent defense system will cost the state more than it currently spends, but savings will be realized in other areas of the criminal justice system" (Ohio OPD, 2016, p. 1).
Oklahoma	According to the <i>Oklahoma Indigent Defense System 2016 Annual Report</i> published by the state's Office of Indigent Defense Services (OIDS), "[t]he loss of over \$1.8 million in funding during fiscal years 2016 and 2017 has jeopardized the agency's ability to continue to provide constitutionally effective legal representation to its court-appointed clients. The fallout from this funding crisis, absent relief, will include the release of defendants awaiting trial in certain cases if no counsel can be provided, the reversal of various cases in which necessary expert services could not be funded, and either preventing death penalty cases from going forward or causing subsequent case reversals where required services could not be provided" (Oklahoma OIDS, 2016, p. 2).
Oregon	The Oregon state budget for the 2015-2017 biennium reported, "attorneys in public defense organizations are, on average, paid approximately 21% less than their district attorney counterparts, with the percentage varying greatly among the organizations. Organizations have had to accept more cases in order to maintain funded levels necessary for operations. This has led to attorney caseloads that exceed national standards" (Oregon Legislative Fiscal Office, 2015, p. 208).

Table G1
Indications of Indigent Defense Underfunding (continued)

State	Indications of Underfunding
Pennsylvania	In 2012, the ACLU filed suit against one Pennsylvania county, Luzerne County, on behalf of the then chief public defender and indigent defendants "alleging that gross and chronic underfunding of its Office of the Public Defender (OPD) has led to widespread violations of poor criminal defendants' constitutional right to adequate counsel" (ACLU of Pennsylvania, 2017, para. 1). The court of common pleas ordered the county to add funding for additional attorneys to begin remedying the problem, but instead of adding funding, the county fired the chief public defender and argued to the trial court that the only plaintiffs (since the chief public defender was no longer in office), indigent defendants, had no standing to sue - in advance to protect their 6th amendment rights. The trial court agreed and dismissed the case. The case is on appeal (ACLU of Pennsylvania, 2017).
Texas	Currently, Texas counties "bear most of the financial burden of complying with constitutional and state law in funding criminal indigent defense..." (Texas Indigent Defense Commission, 2016, p. 13). The TIDC is required by statute to "provide technical support to assist counties in improving their indigent defense systems and promote compliance by counties with the requirements of state law related to indigent defense" and to do so, the TIDC is authorized to distribute monetary grants to assist a county in providing indigent defense services. However, currently and historically, state contributions represent a low percentage of the state's total indigent defense costs. In FY 2016, state contributed amounted to 13% of the total costs. Only about 10% of the state's contribution comes from general fund revenue, the rest comes from court costs and fees. In its FY 2016 annual report, the TIDC recommended to the state legislature that it fully fund criminal indigent defense using a stepped-up funding approach - beginning by funding 50% of the costs in FY 2018 with the goal of 100% funding by the FY 2022-2023 biennium (Texas Indigent Defense Commission, 2016).
Utah	In June 2016, the ACLU of Utah filed a federal class action lawsuit pursuant to 42 U.S.C. § 1983 against the state of Utah and the Utah attorney general claiming 6th and 14 amendment rights violations stemming from the fact that the system is underfunded and poorly and unevenly managed and that the state has failed to provide adequate defense services, adequate guidelines, and resources for defense services (<i>Remick v. State of Utah</i> , 2016). Following the filing of the lawsuit, Utah initiated reforms to its indigent defense system in late 2016, including establishing a statewide commission and preparing to disburse state-funded grants to counties (Utah Code Ann. § 77-32-801 et seq., 2016), but none of those reforms has yet resulted in additional funds for service delivery.
Vermont	The <i>Office of the Defender General, Fiscal Year 2018 Budget Narrative</i> , published in January 2017 states, "[p]ublic defenders routinely represent significantly more clients than is recommended under guidelines developed in 1973 to assure competent representation..." (Vermont Office of the Defender General, 2017, p. 5). The report goes on to note that "[p]ersistent fiscal and caseload pressures continually threaten to undermine the integrity of the criminal and juvenile justice system. If this office fails to deliver on the promise of effective representation, the validity of each and every conviction obtained is subject to credible attacks by those individuals deprived of their constitutional right" (Vermont Office of the Defender General, 2017, p. 6).

Table G1

Indications of Indigent Defense Underfunding (continued)

State	Indications of Underfunding
Washington	Class action lawsuits against one Washington county and two cities, one in 2004 and a second in 2011, challenged the constitutionality of the counties' public defense systems, which the lawsuits allege violated indigent defendants' right to effective assistance of counsel, in part, due to the failure of the counties to provide adequate funds for public defense (<i>Best v. Grant County</i> , Complaint, 2004; <i>Wilbur v. Mount Vernon</i> , Complaint, 2011). Since 2005, the state has allocated some funds for a "Public Defender Improvement Program" including allocating some funds to eligible counties and cities for public defense improvements. In 2016, the OPD disbursed about \$6.8 million to cities (\$680,000) and counties (\$6.2 million) through this program. <u>The total state disbursements, however, only total about 5% of all trial-level indigent expenditures by Washington counties</u> (Washington State Office of Public Defense, 2016).
West Virginia	For the 2015-2017 budget biennium, the West Virginia Public Defender Services (PDS) office requested \$17.4 million more than the previous biennium to fund indigent defense services in the state, but the governor's recommended maintaining the previous level. That the PDS requested \$17.4 million in additional funds suggests that the system is underfunded (West Virginia State Budget Office, 2016).
Wisconsin	For the 2017-2019 budget biennium, the Wisconsin State Public Defender requested \$16.1 million in additional funds for indigent defense service delivery. However, the governor's recommended budget for the biennium only increased the appropriation by \$674,000, and the governor recommended reducing the SPD's staff by five full time positions (Wisconsin Public Defender Board, 2016).
Wyoming	For fiscal year 2017, the state's Office of the Public Defender requested additional funding and positions to bring caseloads below recommended levels. The OPD requested the addition of \$4.82 million, but the governor only approved \$1.82 million (Wyoming OPD, 2016).

APPENDIX H

COPYRIGHT PERMISSION – NLADA

Request to Use Copyrighted Information

1 message

Marea Beeman <M.Beeman@nlada.org>

Mon, Mar 13, 2017 at 9:11 AM

Dear Ms. Wynne,

The National Legal Aid & Defender Association (NLADA) grants you permission to use and modify the format of information appearing on pages 11-15 of *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* for your dissertation, as long as appropriate attribution is provided to the copyright owners (both NLADA and the Constitution Project).

Best,

Marea Beeman

MAREA L. BEEMAN, Esq.

Director, Research Initiatives, Defender Legal Services

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1901 Pennsylvania Avenue, NW, Suite 500, Washington, DC 20006



APPENDIX I

COPYRIGHT PERMISSION – THE CONSTITUTION PROJECT

Seeking copyright permission - Justice Denied (2009)

8 messages

Susan Wynne [REDACTED]
To: sturberville@constitutionproject.org

Wed, Mar 8, 2017 at 12:09 PM

Good afternoon, Ms. Turberville -

I received your name and email address from Ms. Marea Beeman with the NLADA.

I am a PhD candidate in the College of Criminal Justice of Sam Houston State University located in Huntsville, Texas. Currently, I'm working on my dissertation, which involves a review of the indigent defense delivery systems in place in all 50 states in light of national standards, guidelines and studies that have set forth what are believed to be critical elements of successful indigent defense systems. One of the studies I am relying on in my literature review is the National Right to Counsel Committee's *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, which was published in 2009. My understanding is that the Constitution Project and the National Legal Aid & Defender Association co-own the copyright to that report.

Therefore, the purpose of this email is to request the Constitution Project's permission to paraphrase and/or reprint, in my dissertation, selected recommendations that appear first on pp.11-15 the *Justice Denied* report. In particular, I have reflected, and in some cases paraphrased, the selected recommendations in the attached table, which I would like to include in Chapter 2 of the dissertation.

I appreciate your assistance with this request, and I would appreciate the approval of the Constitution Project to include this table in my dissertation. Please let me know if you should need additional information.

Sincerely,

Susan L. Wynne
Sam Houston State University



Table 1_Selected NRCC Justice Denied Recommendations.docx
127K

Sarah Turberville <sturberville@constitutionproject.org>
To: Susan Wynne <[REDACTED]>

Mon, Mar 27, 2017 at 8:54 AM

Hi, Susan! Absolutely! As long as you give us attribution, it is absolutely fine. Thanks so much and please let me know when your dissertation is published. It certainly sounds like a much-needed publication.

Yours,
Sarah

Sent from my iPhone. Apologies for likely typos.

[Quoted text hidden]

<Table 1_Selected NRCC Justice Denied Recommendations.docx>

VITA

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EDUCATION

Doctor of Philosophy in Criminal Justice, (expected) May 2017
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Master of Science in Criminal Justice, December 1999
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PROFESSIONAL EXPERIENCE

Project Manager, Litigation Expert Witness Consulting Team, Austin, TX. July 2009 – present.

Manager of Fraud Investigations, Office of the City Auditor, City of Austin, TX. Austin, TX. May 2005 – Jul 2009.

Adjunct Professor of Criminal Justice – Huston-Tillotson University, Austin, TX. January 2004 – 2009.

Graduate Research Assistant – Sam Houston State University, Huntsville, TX. Spring 2007.

Fraud Investigator, Office of the City Auditor, City of Austin, TX. Austin, TX. March 2002 – October 2006.

PUBLICATIONS

Peer Reviewed Journals

Wynne, S. L., & Joo, H. J. (2011). Predictors of school victimization: Individual, familial, and school factors. *Crime & Delinquency*, 57(3), 458-488.

Law Journals

Wynne, S. L., & Vaughn, M. S. (2016). Eligibility for court-appointed counsel in state criminal cases: An analysis of state indigency statutes. *Tennessee Journal of Race, Gender, & Social Justice*, 5(2), 166-195

Wynne, S. L., & Vaughn, M. S. (forthcoming). Eligibility for court-appointed counsel in federal cases: A review of legislation and case law. *Albany Law Review, Miscarriages of Justice* volume (August/September 2017).

Wynne, S. L., & Vaughn, M. S. (forthcoming). Silencing matters of public concern: An analysis of state legislative protection of whistleblowers in light of the Supreme Court's ruling in *Garcetti v. Ceballos*. *Alabama Civil Rights and Civil Liberties Law Review*, 8(2) (Summer 2017).

PRESENTATIONS AT PROFESSIONAL MEETINGS

Evolving Expectations for Auditors: The Emerging Need for "Audi-gators." A presentation on the evolving roles and responsibilities of auditors to detect and investigate fraud presented in April 2008 to the Austin Association of Women Accountants. Also presented April 2009 to the Association of Government Accountants.

Crimes against the Public Trust: A comparison of state anti-corruption statutes. Presented at the Annual Meeting of the Academy of Criminal Justice Sciences, Seattle, WA: March 2007.

Fraud at the Austin Community Access Center: New case study, same old story. Presented at the monthly meeting of the Austin Chapter of the Association of Certified Fraud Examiners, Austin, TX: October 2006.

COURSES TAUGHT

Introduction to Criminal Justice (6 sections)
Criminal Law and Procedure (1 section)
American Court System (1 section)
Comparative Criminal Justice (1 section)

HONORS

Excellence in Writing Award - Sam Houston State University. March 2005, May 2007, May 2008, and May 2009.