

# MAINE STATE LEGISLATURE

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PUBLIC REPRESENTATION IN MAINE

VOLUME I: PROPOSAL

COMBINED PUBLIC DEFENDER - COORDINATED ASSIGNED COUNSEL SYSTEM

Prepared by:

The Cumberland Legal Aid Clinic

under a grant from the

Maine Criminal Justice Planning and Assistance Agency

NOTE:

This proposal (volume I) and report (volume II) were prepared by the Cumberland Legal Aid Clinic of the University of Maine School of Law under a grant from the Maine Criminal Justice Planning and Assistance Agency. The purpose of the grant was to evaluate Maine's assigned counsel system and to recommend any changes deemed necessary.

Except when otherwise indicated, all of the information contained in the subsequent pages was collected by Stephen L. Diamond, Esq., who authored both the proposal and the report under the supervision of Professors Stephen R. Feldman, Judy R. Potter, and Melvyn Zarr of the Law School. As the reader will quickly appreciate, this undertaking could not have been completed without the assistance of numerous persons connected with Maine's court system.

## PUBLIC DEFENDER - COORDINATED ASSIGNED COUNSEL PROPOSAL

### I. Preface

This proposal was prepared in conjunction with a comprehensive study of Maine's assigned counsel system. The findings and conclusions of that study are contained in a document entitled "Public Representation in Maine - Report and Recommendations" (hereinafter referred to as the Report). Since every effort was made to limit the length of this proposal, more detailed discussions of both the reasons for the recommendations and the mechanics of specific facets of the plan can be found in the Report.

Although the proposal calls for a statewide defender organization, it is designed in such a fashion as to render it amenable to implementation as a pilot project in a limited geographical area. For example, the essential features of the plan could easily be instituted in one of the newly created judicial regions. Numerous other jurisdictions have taken advantage of funding from the Law Enforcement Assistance Administration for such pilot projects. Should Maine decide to follow their example, it is possible that the system could be established on an experimental basis at no additional cost to the State. It must be remembered, of course, that unless changes occur in the funding policies of the federal government, the State would ultimately have to assume full financial responsibility.

### II. General Description of the Plan

This is a plan for a statewide program to provide legal representation to needy defendants accused of criminal offenses and to needy juveniles. To implement and administer the program, an Office of Public Defense would be established with State funds. A Chief Defender, assisted by a staff of attorneys, would assume the responsibility for furnishing defense services to eligible persons. Except as indicated below, the Office of Public Defense would replace the current system under which judges appoint counsel on an essentially ad hoc basis.

In light of unending debate over defense delivery systems, perhaps the most significant feature of this proposal lies in its recommendation for the large scale use of both staff attorneys and private practitioners. Stated in the terms of that debate, the program could thus be described as a combined public defender-coordinated assigned counsel system. While the proposal draws upon two sources of legal manpower, it is important to emphasize that both components would be housed under the

same administrative roof, namely, the Office of Public Defense. To the extent possible, they would also be fully integrated, in that they would not be assigned different geographical areas or different types of cases.

Given the unified nature of the program, the staff attorneys would serve in the dual capacity of public defenders and coordinators of assigned counsel. In the latter role, they would relieve the judiciary of certain responsibilities, including the determination of eligibility, the appointment of counsel, and the awarding of compensation. They would also act as "duty counsel" in the busier district courts, where they would assist the judges in informing potentially eligible defendants of their rights.

The second major feature of this plan stems from the recognition that different areas of the State vary enormously with respect to both their need for defense services and their ability to support particular types of delivery systems. By way of illustration, district court assigned counsel caseloads in 1973 ran from a low of ten assignments to a high of 645 assignments. To be economically feasible, a defense plan must develop different procedures suitable to local conditions.

In response to these variations, this proposal would designate each of the State's trial courts as either a primary or secondary court. The significance of these designations, which would depend largely on caseloads, is that they would determine the nature of the services available to the court. Generally speaking, a staff attorney would be assigned to every primary court to handle cases and to supervise the program on a daily basis. By contrast, the Office of Public Defense would exercise a more indirect form of control over the secondary courts through the development of uniform procedures and the maintenance of records. Although the implementation of these procedures would fall to the presiding judge, it should be stressed that the services of both the staff and panel attorneys in the primary courts would be available to the secondary courts when necessary.

The impact of the above recommendation is best illustrated with statistics. Although only 12 of the 33 district courts would be classified as primary, these courts handled seventy percent of the assigned counsel caseload in 1973. The corresponding figure for the nine primary superior courts was eighty six percent.

To cover the entire State, the proposal calls for the establishment of eight defender districts, each of which would be subject to the administrative control of one of three regional offices. The legal staff would consist of the following: a

Chief Defender; an Assistant to the Chief Defender; eight District Defenders; five Assistant District Defenders; and two half-time Assistant District Defenders.

### III. Brief Statement of Reasons For a Combined Approach

The decision to recommend a combined public defender-coordinated assigned counsel approach is predicated both on its desirability and its necessity. From the former perspective, sufficiently persuasive arguments have been advanced on behalf of staff and panel attorneys to justify the conclusion that the selection of one alternative would sacrifice certain advantages offered by the other. Combining them should enable the State to benefit from the unique contributions that can be made by public defenders and private practitioners. Significantly, most organizations which issue recommendations in this area do not opt for any specific system. The notable exception is the National Advisory Commission on Criminal Justice Standards and Goals, which advocates that the "service of a full-time public defender organization, and a coordinated assigned counsel system involving substantial participation by the private bar, should be available in each jurisdiction to supply attorney services to indigents accused of crime."

Although logic might suggest that a combined approach would confront the State with the potential drawbacks inherent in each system, this is not the case. The historical enemy of both systems is a shortage of their most important resource, competent legal manpower. For defender organizations, this shortage manifests itself in an overworked staff unable to devote sufficient time to its caseload. For assigned counsel jurisdictions, the manifestation takes the form of a concentration of appointments in the hands of a small number of attorneys, who are often not the most capable. The advantage of a flexible combined approach, with two sources of legal representation from which to draw, is that it should minimize the possibility of these dangers.

From the perspective of practicality, there exists serious doubt as to whether either a public defender or assigned counsel program alone is suitable for Maine. Limited caseloads and long distances would render complete coverage of all the courts by full-time defenders an extremely expensive proposition. For the same reasons, even the use of circuit-riding staff attorneys does not seem to offer a workable solution. Apart from financial considerations, the elimination of assigned counsel might adversely affect the availability of private practitioners to represent paying clients in criminal matters.

The two ingredients necessary for a successful assigned counsel system are the existence of a large pool of competent

attorneys and the development of a selection process designed to take advantage of this pool. Whether sufficient bar involvement could be guaranteed without raising compensation to prohibitive levels is open to serious question. In addition, there is strong evidence that the selection process must be rather closely administered if the system is to operate effectively. No authority on this subject recommends an assigned counsel system without an administrative component, preferably staffed by lawyers.

It is the cost of this component that militates in favor of a combined approach, since the employment of attorneys solely to administer assigned counsel would dramatically increase the per case cost of public representation. Economic feasibility dictates that these staff attorneys absorb a significant portion of the caseload, which means that they would have to serve as public defenders as well as coordinators of assigned counsel.

#### IV. Objectives of the Proposal

A. To provide the State with an additional source of legal representation for needy defendants accused of crime. This would be accomplished through the use of trained staff attorneys.

B. To relieve the judiciary in the primary courts of the obligation to determine eligibility, to secure counsel, to authorize the employment of investigators and experts, and to set compensation.

C. To use staff attorneys in the primary district courts to insure that potentially eligible defendants fully understand their rights.

D. To use staff attorneys in the primary district courts to insure compliance with case eligibility requirements.

E. To accelerate the delivery of defense services and to provide pre-first appearance and pre-arraignment representation in appropriate cases.

F. To reduce court delay through more efficient procedures for securing representation and disposing of cases.

G. To vest in the Office of Public Defense responsibility over determinations of financial eligibility toward the following ends: 1) implementing more precise guidelines; 2) conducting more thorough examinations into defendants' financial conditions; 3) attaining greater uniformity in eligibility determinations; and 4) increasing the use of alternative approaches, such as contribution, reimbursement, and possibly reduced fee panels.

H. To vest in the Office of Public Defense responsibility over assigned counsel toward the following ends: 1) increasing bar participation; 2) achieving a more balanced distribution of assignments; and 3) developing procedures whereby cases are assigned to attorneys according to their experience and ability.

I. To vest in the Office of Public Defense responsibility over assigned counsel compensation toward the following ends: 1) upgrading levels of reimbursement; 2) attaining greater uniformity of fees; and 3) making compensation more commensurate with the services rendered.

J. To vest in the Office of Public Defense responsibility over the employment and compensation of investigators and experts.

K. To develop an administrative component to perform the following tasks: 1) maintain records; 2) monitor the system; 3) furnish supporting services such as brief banks, student assistance, etc.; 4) offer continuing education to both staff and panel attorneys; and 5) solicit and receive grants for purposes of innovations in the field of criminal defense.

#### V. Organization of the Program - Geography and Personnel

Under this plan, the State would be divided into eight districts, each of which would have an office and at least one defender responsible for the operation of the program in his district. Despite the desirability of administrative simplicity, the limited size of the staff necessitates that the districts be consolidated into three regions. The main purpose of regionalization is to enhance the mobility of the staff; accordingly, a defender could be assigned to cover any court within his region on any given day. Ultimate authority over the region would fall to the district defender located in the regional office. These offices would also serve as administrative clearinghouses.

In creating the regions and districts, the following factors were considered: caseloads, population, number of courts, court schedules, distances between courts, and the new judicial regions.

##### Southern Region:

Counties Included: Cumberland and York (Corresponds to Region I of the Court Unification Plan).

Main Office: Portland.

Staff: 2 District Defenders; 2 Assistant District Defenders.

Superior Court Assigned Counsel Caseload in 1973: 312

District Court Assigned Counsel Caseload in 1973: 1030

Cost of Assigned Counsel in 1973: \$123,171.00.

Population (1970 census): 304,101.



## Suggested Districts

District I: Alfred; 2 Staff Attorneys

Primary Superior Court: York County (68 assignments in 1973).  
 Primary District Courts: Saco (127) and Sanford (101).  
 Secondary District Court: Kittery (47).

District II: Portland; 2 Staff Attorneys.

Primary Superior Court: Cumberland County (244).  
 Primary District Court: Portland (645).  
 Secondary District Courts: Bridgton (33) and Brunswick (77).

Discussion: Although each county would have one district defender and one assistant, the heavy caseload in Cumberland would undoubtedly require the periodic assistance of the staff attorneys in District I. While District II might still appear understaffed, the location of the program's main office in Portland would provide additional manpower when necessary.

Central Region:

Counties Included: Androscoggin, Franklin, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, and Waldo (corresponds to Regions II and III of the Court Unification Plan).

Main Office: Augusta.

Staff: 4 District Defenders; 2 Assistant District Defenders.

Superior Court Assigned Counsel Caseload in 1973: 434

District Court Assigned Counsel Caseload in 1973: 941

Cost of Assigned Counsel in 1973: \$124,974.00.

Population (1970 census): 389,326.

## Suggested Districts

District III: Auburn; 2 Staff Attorneys.

Primary Superior Court: Androscoggin County (86).  
 Secondary Superior Courts: Oxford County (36) and Sagadahoc County (17).  
 Primary District Court: Lewiston (176).  
 Secondary District Courts: Livermore Falls (23); Rumford (38); South Paris (33); and Bath (67).

District IV: Rockland; 1 Staff Attorney.

Primary Superior Court: Knox County (40).  
 Secondary Superior Court: Lincoln County (23).  
 Primary District Court: Rockland (116).  
 Secondary District Court: Wiscasset (58).

District V: Augusta; 2 Staff Attorneys.

Primary Superior Court: Kennebec County (141).  
 Secondary Superior Court: Waldo County (20).  
 Primary District Courts: Augusta (138) and Waterville (75).  
 Secondary District Court: Belfast (45).

District VI: Skowhegan; 1 Staff Attorney.

Primary Superior Court: Somerset County (47).

Secondary Superior Court: Franklin County (24).

Primary District Court: Skowhegan (114).

Secondary District Court: Farmington (58).

Discussion: Given the large number of courts, the Central Region poses the most problems and offers the greatest number of options. Based exclusively on the 1973 caseload, which seems to have been unusually low for Androscoggin County, five staff attorneys might suffice, were it not for the danger that there would be too many courts for too few defenders. Accordingly, the proposal considers it advisable to include a sixth staff attorney.

Another option would be the reversal of the district assignments for Lincoln and Waldo Counties, since that would reduce the distance between Augusta and its secondary courts. The present inclusion of Lincoln County in District IV stems from the fact that the same district court judge sits in both Rockland and Wiscasset, which should facilitate the working relationship between the program and the judiciary.

Under any arrangement, this area demonstrates the need for regionalization. Without the authority to assign defenders to cases outside of their districts, the Central Region might experience frequent scheduling problems, which would cause unnecessary court delay.

Northern Region:

Counties Included: Aroostook, Hancock, Penobscot, Piscataquis, and Washington (Corresponds to Region IV of the Court Unification Plan).

Main Office: Bangor.

Staff: 2 District Defenders; 1 Assistant District Defender; 2 half-time Assistant District Defenders.

Superior Court Assigned Counsel Caseload in 1973: 330

District Court Assigned Counsel Caseload in 1973: 829

Cost of Assigned Counsel in 1973: \$113,458.00.

Population (1970) census: 289,590.

Suggested Districts

District VII: Bangor; (with a satellite office in Washington County)

2 Full-time Staff Attorneys; 1 Half-time Staff Attorney (located in Washington County).

Primary Superior Courts: Penobscot County (182) and Washington County (37).

Secondary Superior Courts: Hancock County (19) and Piscataquis County (14).

Primary District Courts: Bangor (284) and Machias (40).  
 Secondary District Courts: Lincoln (33); Millinocket (12);  
 Newport (42); Calais (74); Bar Harbor (10); Ellsworth  
 (22); and Dover-Foxcroft (45).

District VIII: Houlton; 1 Full-Time Staff Attorney; 1 Half-time Staff Attorney.

Primary Superior Court: Aroostook County (78).  
 Primary District Courts: Houlton (72) and Presque Isle (81).  
 Secondary District Courts: Caribou (74); Van Buren (10);  
 Madawaska (13); and Fort Kent (17).

Discussion: Despite the divided loyalty problem connected with part-time defenders, their use seems virtually unavoidable in the most eastern and northern areas of the State. To cover Washington County from Bangor would involve a prohibitive amount of travel time and money, and the County lacks the caseload to justify a full-time staff attorney. The even greater isolation of Aroostook County requires that the personnel be geared precisely to the District's needs. Considering both the number of cases and courts, satisfactory coverage probably could not be achieved with less than one district defender assisted by an attorney working on a half-time basis.

#### Main Office of the Program:

Under present circumstances, Portland represents the logical site for the program's main office, insofar as the Law Court, the Administrative Office of the Courts, and the Law School are also located there. In addition, the proposed deployment of the staff leaves Cumberland County in the greatest need of occasional assistance from the Chief Defender and the Assistant to the Chief Defender. It is anticipated that the main office would share space and facilities with the District Office.

#### VI. Operation of the Program in the Primary District Courts

Responsibility for coverage of the primary district courts would rest largely with the assistant district defenders, except that in those areas with only one staff attorney, the district defender would assume this obligation. In this capacity, the defender would have to be present or available for first appearances and arraignments involving unrepresented defendants.

The staff attorney would have the following duties: 1) assisting the court in informing defendants of their rights; 2) determining financial eligibility; 3) determining case eligibility when necessary; and 4) arranging for the provision

of counsel. Since each of these subjects receives elaborate treatment in the Report, brief explanations should suffice here.

The use of an attorney to inform needy defendants of their right to counsel is a practice utilized by the Ontario Legal Aid Plan and endorsed by the American Bar Association. It is predicated on the notion that a lawyer can spend more time with the accused, can conduct the colloquy in a private setting, and can answer all questions and offer advice. By contrast, especially when confronted with a heavy arraignment calendar, the judge often must limit the extent of his remarks, which accounts for the not infrequent reliance on mass notice. In addition, the overall setting, with the accused standing alone before a busy judge in a crowded courtroom, may inhibit the defendant from seeking a further clarification of his rights. Finally, as the potential trier of fact, the judicial officer is severely restricted in the types of questions he can entertain and in the answers he can give.

Procedurally, the assistant defender would be available to advise defendants prior to the commencement of arraignments. After arraignments have begun, the judge would refer to the staff attorney all potentially eligible defendants who appear before the bench.

The decision on financial eligibility would be made in accordance with the attached plan and with the recommendations contained in the Report. Simply stated, the defendant would complete under oath a standard form prepared by the Office of Public Defense. The information would then be analysed pursuant to the eligibility formula attached to this proposal. When he deemed it necessary, the staff attorney would have the authority to order an investigation of any or all of the defendant's answers. The reasons for the transfer of this responsibility to the staff attorney have already been listed in the objectives of the proposal; in addition, this change should result in substantial savings of court time.

With respect to case eligibility for misdemeanor and traffic offenses, the staff attorney would render a preliminary decision. There are two reasons for this recommendation, both of which stem from the findings of the study discussed in the Report. First, there exists considerable evidence of widespread non-compliance with the holding in Newell v. State, 277 A.2d 731 (Me. 1971), which should be rectified by the careful attention of the assistant defenders. Second, Argersinger v. Hamlin, 407 U.S. 25 (1972), places an undue burden on the court, insofar as an intelligent prediction of the probable sentence may require that the judge receive information which theoretically should not be communicated to him until after a determination of guilt.

Unlike the judge, the staff attorney could make a thorough pre-trial examination of the matter for purposes of assessing the need for public representation. To preserve its sentencing power, however, the court could reverse a denial of counsel.

Assuming a finding of eligibility, the assistant defender would either act as counsel, refer the case to the district defender, or appoint a panel attorney. Although the factors behind this decision will receive extended treatment elsewhere in this proposal, it should be emphasized that the staff must have some degree of discretion in the allocation of cases to account for local conditions. For example, there are indications of greater bar involvement in Bangor than in Portland. Should that prove true, the staff attorney in Bangor might handle fewer cases in his primary court than his Portland counterpart, but would thus be able to devote more time to the various secondary courts attached to District VII. If the accused were found ineligible for public representation, the assistant defender could well serve as a lawyer referral service, or adjunct thereto, should the county bar association prove amenable to such a plan.

A possible problem with the primary district court scheme results from the input of time that complete coverage might require. If the assistant defender is to assume the responsibilities of informing defendants of their rights, determining eligibility, and assigning counsel, then he seemingly will have to be present, or at least readily available, whenever the court is in session. Since needy defendants do not appear according to a schedule, the fear is that the assistant defender will waste a significant amount of time waiting for something that may or may not occur.

This problem might be largely overcome by the location of the program's offices. Since seven of the twelve primary district courts meet in county courthouses, the placement of the offices in or very near these buildings would eliminate the need for continuous presence in court. The proximity of Lewiston and Sanford to their respective county seats, coupled with the fact that the Sanford Court sits only one day a week, should minimize the difficulty in these areas. Insofar as the Aroostook County staff would include one half-time lawyer, that assistant defender might work out of Presque Isle. The problem would thus remain only for the Saco (2 court days per week) and the Waterville (2½ court days per week) district courts.

Other means of alleviating the loss of time include formal arraignment calendars, after which the defender could leave if he had no continued cases, and good communications with the clerk, who could notify the staff attorney when his presence was required. Continuances could also be arranged for released defendants when necessary. Finally, the staff attorney, in cooperation with the local judiciary, should develop alternative procedures to be used in his absence.

### VII. Operation of the Program in the Primary Superior Courts

Superior court procedures would closely resemble those used in the primary district courts. The defenders in charge of these courts, however, should devote considerably less time to the screening of clients, insofar as the determination of eligibility and the selection of counsel would usually have already been made. With fewer administrative responsibilities, the district defenders could function more in the traditional role of defense counsel. Similarly, they should be available with greater frequency to handle matters in the secondary courts and in other districts within the region.

The division of the courts between the district defender and the assistant defender would not operate as an absolute principle. In fact, the importance of continuity of representation would necessitate that the staff attorney represent his clients in all tribunals. To perform efficiently, the program would have to be able to assign its defenders to different court levels as circumstances dictated.

There is substantial support for the proposition that some serious cases are effectively, if not formally, decided prior to the defendant's initial court appearance. Maine's assigned counsel system presently lacks the means to extend legal representation to arrested persons not yet brought before a judge. It would fall to the district defenders to establish and implement the necessary procedures at least for the nine primary counties. The experiences of other jurisdictions suggest that cooperative working relationships with local law enforcement authorities offer the most effective solution to this problem.

### VIII. Operation of the Program in the Secondary Courts

The details of secondary court coverage must inevitably remain somewhat vague, as a result of differences among these courts and among the primary courts in their districts. The secondary district courts best exemplify these variations in terms of the ease with which they can be served, their need for defender services, and the feasibility of providing them.

Some secondary district courts should receive rather close attention from a staff attorney. Kittery is one example, insofar as the assistant defender in District I has no primary court responsibilities on the days that Kittery meets. Other courts, such as Brunswick, already have a comparatively good distribution of assignments among private attorneys, and thus, may require only limited input from the program. A third category consists of those courts with such a small number of eligible defendants that they must be served on an "as needed" basis. Included in this group are Van Buren (10), Madawaska (13), Fort Kent (17),

Ellsworth (22), Bar Harbor (10), and Millinocket (12). Located eighty-five miles from the county seat, and averaging one assignment per month, Millinocket represents the perfect example of a court for which systematic coverage would be economically infeasible.

The other major determinant of secondary court procedures is the staff time required in the primary courts. As this will depend in part upon caseloads, bar participation, and court schedules, it is a factor likely to differ among the districts. Accordingly, the extent of the coverage available to the secondary courts cannot be predicted with precision.

Although daily responsibility for public representation would by necessity remain with the judiciary in most of these courts, certain aspects of the proposal could be implemented. The district defender could participate in the creation of the panels and in the development of the procedures for making assignments from these panels. A mechanism for determining eligibility, similar to that used in the primary courts, might be instituted under the aegis of the judge. Finally, the district defender would advise the court on all aspects of the program.

A more direct form of supervision would result from the control of the Office of Public Defense over compensation. Since attorneys' bills would be forwarded to, and paid by, the Office, complete records would be maintained on the appointment of counsel. More detailed billing forms would allow for evaluation of those areas not covered regularly by a staff attorney. To insure even earlier monitoring, the district office would receive immediate notification in those instances when the assignment of a case to a panel attorney was made by the local judge. In addition, assigned counsel in the secondary courts would have access to all supporting services.

Of greater importance is the fact that a secondary court judge could, whenever he deemed it necessary, contact the district office to secure representation by a staff or panel attorney. That practice might be followed as a matter of course in all serious cases. Given the nature of its caseload and its system of rotating judges, the superior court might need such assistance more frequently than the district court. Fortunately, the program could provide this assistance with little difficulty, since all seven of the secondary courts would be within forty miles of a defender office, and in only two instances would the distance exceed thirty miles. Thus, a justice, sitting briefly on secondary circuit, could call the district defender to arrange in advance for the appointment of counsel.

It should be emphasized that the above discussion outlines the minimum involvement of the program in the secondary courts.

More likely, the degree of supervision will depend upon local conditions. Although preferable in theory, economic realities preclude full coverage of every court by a staff attorney.

#### IX. Coordination of Assigned Counsel

The coordination of assigned counsel would be oriented toward three objectives: 1) maximizing bar participation; 2) achieving a more even distribution of assignments; and 3) distributing cases according to attorneys' experience and ability. Although ultimate responsibility for this component would rest with the district defender, much of the daily operation could be delegated to the assistant defender.

Certain features of the proposal should make assigned counsel representation more palatable to the average practitioner. These include compensation increases, a systematic appointment process, and expanded supporting services. Nevertheless, since the program intends to rely essentially on voluntary bar participation, its success will turn on its ability to solicit the cooperation of Maine lawyers. Unlike the present system, an administered program could make active and ongoing efforts in this direction. The private bar would have an interest in the outcome of these efforts, insofar as the failure to generate widespread attorney involvement could lead to greater, and perhaps exclusive, dependence on professional defenders.

The traditional modus operandi of rotating assignments from rosters would be utilized to bring about a more balanced allocation. The basic improvement over current procedures would rest in the simple fact that the staff attorneys would have the capability to monitor the actual distribution of cases. As a result of this administrative component, moreover, the program should prove able to keep closer tabs on attorney availability and to implement a more efficient notification system, whereby a panel lawyer frequently could be notified in advance that he should expect an appointment in the near future. The objective of an even distribution of assignments would thus be accomplished not through drastic innovations in methodology, but rather through careful administrative control.

Insuring that attorneys receive only those cases for which they possess the requisite competence and interest constitutes the facet of public representation which is both the most critical and the most difficult to institutionalize. Since the Report offers a variety of suggestions on this subject, that discussion need only be summarized here.



With regard to recently admitted practitioners, it would seem reasonable for the program to make judgments as to the types of assignments for which they qualify. At a minimum, these decisions could be based on training and past experience. In addition, assignments might be carefully escalated from less to more difficult matters. Finally, an evaluation of performance, with input from the judiciary, should be a prerequisite at least for appointment to the most serious cases.

Another possible innovation would involve the creation of an "assistant counsel panel" comprised of younger attorneys who would receive only nominal fees. This panel would have two purposes, namely, to serve as a training mechanism and to provide assistance to experienced practitioners in complicated cases. From the former perspective, the assistant counsel would gain experience which would prepare him for more serious assignments; this experience, moreover, would not come at the possible expense of the needy defendant. From the latter perspective, the practice might eliminate the current use of co-counsel, which, as will be demonstrated shortly, entails substantial costs.

Delicate questions arise with respect to the competence of "established" practitioners. Since this proposal takes the position that some distinctions must be made with respect to the experience and ability of attorneys, the central issue concerns the means to this end. Although a myriad of possibilities exist, the most realistic approach at this time would seem to lie in informal procedures involving significant participation on the part of the judiciary.

Simply stated, the district defender could meet periodically with the presiding justice of the region to review the list of local attorneys available for public representation. The purpose of these meetings would be to identify those practitioners who should be appointed in serious cases and who should be allocated a larger portion of the caseload. This system would not seek to exclude willing lawyers from assignments, but rather to take maximum advantage of the services of the most competent criminal practitioners. A basic asset of an organized program rests in its potential capacity to use its resources in such a manner as to provide the best possible legal representation.

The alternative means to this end entail formal procedures which may amount to certification of criminal practitioners. Although certification may well prove a desirable, and perhaps even a necessary, development, the professional ramifications of such an innovation require that the issue be considered in a larger context than a defender plan. Decisions on certification must be made in a broadly based forum, consisting of representatives of the judiciary and the bar.

## X. Compensation of Assigned Counsel

The Office of Public Defense would determine and pay assigned counsel compensation. This should result in greater uniformity of compensation, further insulation of the judiciary from involvement in defense, and increased program control over panel attorneys. In addition, it would place budgetary responsibility in a centralized authority.

Since a revised fee schedule is attached to this proposal, it should suffice to offer some general observations on compensation levels. In comparison with the present approach, the attached schedule contains far more detailed rates, based upon the type of case and the nature of the services rendered. Furthermore, the schedule is designed to produce increases in mean compensation of 100% in the district court and 50% in the superior and supreme courts. The only exception pertains to homicide cases, in which the fees are already rather high.

With respect to homicide appointments, the Report discloses that a substantial amount of the cost stems from the use of co-counsel. By way of illustration, the three highest fees for legal services in the superior court in 1973 all involved murder charges in which the defendant was represented by two attorneys. Compensation in these cases totaled \$6,000, \$5,190, and \$4,551 respectively. A partial solution to the high cost of defense in these cases might lie in the "assistant counsel panel" suggested above. Assuming the primary attorney is skilled in criminal litigation, the associate counsel could assist in the research and preparation. In return, the latter would receive valuable experience which would help to qualify him for more serious assignments.

Procedurally, assigned counsel would submit their bills for district and superior court cases to the district office, which would forward copies to the main office for payment. Although the district defender might enter a recommendation as to the appropriate fee, the final decision would rest with the Chief Defender. The law court system would vary only to the extent that bills would be sent directly to the main office.

A potential problem with this arrangement stems from the fact that the district defender would probably not be familiar with the specifics of every case, and thus, might have to rely almost exclusively on the bill submitted by appointed counsel. Whether some attorneys would abuse this situation by exaggerating their time and efforts or by performing unnecessary services is an open, but not insignificant, question. Should this prove a major problem, then the judges might have to become involved in the compensation process, at least to the extent of verifying

work performed in their presence. It bears noting that the coordinated assigned counsel system in San Mateo County, California has experienced only isolated instances of "overbilling," and with the complete backing of the county bar association, has handled these cases with stern warnings.

#### XI. Distribution of Cases Between Staff and Panel Attorneys

Since most jurisdictions use either assigned counsel or public defenders, there is no precedent on the question of how to distribute the caseload under a combined system. The nature of a joint approach, however, does suggest an answer, in that one of its major advantages lies in its flexibility. A precise formula for dividing the caseload would undercut this flexibility and would invite the very problems that the system was designed to avoid.

As a starting point, then, the salaried staff would handle as many cases as they could, consistent with their duty to provide effective representation and with their administrative responsibilities. This would allow them to vary the caseload according to the complexity and difficulty of the cases. By contrast, a rigid formula might leave them with too many or too few defendants at any given time. Similarly, the defenders should have the flexibility to serve the geographical areas of greatest need within their regions.

Assuming some numerical guidelines might prove helpful, it could reasonably be expected that the defenders would handle between two-thirds and three-fourths of the caseload maxima promulgated by the National Advisory Commission. There are three reasons for the recommendation for limits lower than those advocated by the Commission. First, the staff attorneys under this proposal would have substantial administrative responsibilities not found in the traditional public defender systems. Second, the rural nature of Maine would probably require more travel time than is customarily necessary. Third, a recent study by the NLADA found that many public defenders considered the Commission's limits excessive, especially in the absence of a full-time investigative staff. In recognition of the limitations inherent in numerical guidelines which do not distinguish between a jury trial on a murder charge and a plea to receiving stolen goods, the above figures, or any others that might be used, should be merely advisory in nature.

Using these guidelines as a point of departure, a hypothetical division of the 1973 statewide assigned counsel caseload has been prepared. This division makes the following allocation to the staff attorneys: sixty percent of the district court cases; sixty-five percent of the superior court cases, excluding

homicides; fifty percent of the murder and manslaughter cases; and sixty-five percent of the law court cases. Although more of a parity between staff and panel attorneys might be desirable, these figures result from the need to take maximum economic advantage of the staff. Since caseload increases, which one must assume are likely to materialize in the near future, would be allocated to private practitioners, this caseload differential should diminish. In addition, absent dramatic changes in the criminal justice system, major adjustments in the size of the staff should not be necessary for some time.

Generally speaking, the same policy of flexibility should apply to the distribution of assignments according to the nature of the cases. Unless there exist compelling reasons to the contrary, however, the staff should attempt to involve both components in all types of cases and all types of proceedings. Apart from fairness to the attorneys, this procedure should prevent a schism of the staff and panel into two separate bars, which would limit input into the system and deprive the State of a potentially necessary resource. An example of compelling reasons that might justify deviation from this policy would be a finding that one component could handle a particular type of case far more economically or effectively than the other.

Notwithstanding the above discussion, there are certain situations that require special attention. In cases in which the local defenders may have a conflict of interest, private counsel should be appointed. The same practice would apply where there were co-defendants who required different attorneys. On the other hand, matters which are susceptible of disposition at arraignment should be handled by the staff. In these circumstances, the cost of appointing counsel and the attendant loss of court, prosecutor, and police time mandate that the defenders resolve the cases without delay.

Murder and manslaughter cases may also necessitate special procedures, in light of the time they frequently involve. The staff attorney, acting as defense counsel in a homicide trial, may not have the time to carry out his other responsibilities. Accordingly, general supervision over these cases might be vested in the Chief Defender, who could actually provide the representation, assist the local defender, or assume his other duties. This same backup procedure could apply to other lengthy cases and to emergency situations.

Another type of factor bearing on the selection of counsel is the defendant's preference. Although most judges appear to honor these preferences, there is at least some dissent on the grounds that the choices are often based on bad advice and that

the requests are frequently for the same attorneys. According to this viewpoint, the practice of permitting needy persons to select their own counsel benefits neither the defendant nor the system of public representation.

While this proposal would leave it to the Defender Commission and the Office of Public Defense to formulate a policy on preferences, it does suggest the following guidelines. As a general rule, preferences should not be solicited or encouraged. When a defendant does request a particular lawyer, however, the staff attorney should ascertain the basis for the request. Assuming the selected practitioner were available, the preference should be honored only if the accused has a good reason, such as representation in prior cases, and if the requested lawyer possesses the qualifications for the case at hand. In the final analysis, the decision should be within the staff attorney's discretion as the coordinator of assigned counsel. Furthermore, the present practice of refusing to appoint a lawyer from another county should be maintained in all but the most extreme cases.

Once counsel has been appointed and has become the attorney of record, permission to withdraw should rest with the court.

### XIII. Administration of the Program

In contrast with the present system, administrative and fiscal control over the program should be vested in one level of government, preferably the State. Statewide organization offers maximum efficiency, in that it eliminates duplication of effort with respect to funding, regulations, procedures, and record keeping. It allows greater flexibility over manpower and other resources, which may well be a necessity, and not a luxury, in a small program. Supporting services, such as investigators, training, continuing education, and brief banks, which might strain local budgets, become feasible when provided on a larger scale. Finally, statewide supervision and standards should result in greater consistency in the quality of representation, the determination of indigency, and the levels of compensation, all of which make for a more equitable system.

Reasons of efficiency also militate in favor of statewide funding, which already exists for some of the courts. In addition, the unpredictable nature of the need for public representation can create budgetary havoc in the smaller counties, where one homicide arrest or one drug raid can dramatically alter the amount necessary for assigned counsel. Since they tend to balance out over larger geographical areas, these local variations can be more readily absorbed by the State. Prejudice against expenditures for alleged "criminals" may also be less severe at the State level.

It should be emphasized that the above discussion is not predicated on a belief that centralized authority is inherently superior to local control. The recommendation for statewide organization stems rather from the comparatively modest size of the program, the limited number of cases in most counties, and the nature of the services being provided. Since the proposed legal staff averages out to one attorney per county, each defender would virtually become a program unto himself under a county run system.

Assuming statewide organization, this proposal recommends the creation of a Defender Commission, consisting of twelve persons, to oversee the operations of the Office of Public Defense. The Governor, the Chief Justice, and the Bar Association would each appoint four members to this Commission. The Governor's appointees would have to include some individuals from the general public, whereas the judges might represent the four judicial regions. Membership on the Commission would be for a period of four years, with the terms staggered so as to assure continuity.

The most important function of the Commission would lie in its power to select the Chief Defender, whose term of office should run for at least five years, and to remove him for cause. In addition, all regulations governing the program would require Commission approval. Examples of areas which would be covered by such regulations include eligibility for services and compensation of counsel. The Commission, or a special subcommittee thereof, would also hear any grievances concerning the administration of the program. To keep the members informed, the Chief Defender would submit periodic reports to the Commission.

Except as otherwise provided, the Chief Defender, would have virtual independence in the selection of his subordinates and in the administration of the program. This autonomy is considered as vital as that possessed by private practitioners representing paying clients.

Although the proposal attempts to limit judicial responsibility for the defense of needy persons, it will undoubtedly achieve only a partial realization of that objective. The reason is illustrated by some simple statistics. Given the size of the State judiciary, 35 courts can be in session simultaneously. Since the defender staff is comparable to 16 full-time attorneys, the physical impossibility of their appearing in all of these courts is obvious. To a lesser degree, the same problem would obtain were the program limited to the 22 primary courts.

While the secondary court concept was designed to minimize this dilemma, it cannot eliminate it completely. There will

inevitably be occasions, the frequency of which will vary from district to district, when schedule conflicts will render the staff attorney unavailable even to the primary court. In these instances, the judge must have the power to appoint counsel to avoid delays detrimental to both the defendant and the court. From a broader perspective, the limited size of the staff necessitates close cooperation between the program and the judiciary. Optimally, the judges and the defenders would develop procedures to be applied in the latter's absence, for the alternative might be a part-time system, tantamount to no system at all. Since the best of procedures cannot institutionalize a good working relationship, the success of the program will depend in part upon the support of the judiciary.

### XIII. Miscellaneous Aspects of the Program

There are a number of facets of the program which require only brief mention at this time. Although appeals to the law court should not pose any special problems under the format described above, the coordination of these cases by one individual should result in greater expertise and efficiency. Located in Portland and not assigned to any court, the Assistant to the Chief Defender would be charged with this responsibility. As the appellate specialist, he could also maintain the brief bank and supervise the educational component of the program.

Compared with the standards contained in the literature, Maine's assigned counsel seemingly make very limited use of defense investigators and experts. Despite the commonly espoused recommendation for full-time investigative staffs, it would appear prudent to allow the program to gain some operating experience to determine the necessity of such an innovation. Accordingly, the budget attached to the proposal simply includes an allocation for these services, based upon estimated need. As with other facets of public representation, responsibility for the authorization and compensation of experts and investigators would be transferred from the judiciary to the Office of Public Defense.

Although the lack of procedures for the collection and evaluation of data may seem a peripheral problem, it deprives the State of the hard information necessary for effective planning. It may explain in part why the numerous complaints voiced in recent years have produced few concrete reforms. In addition, this component should not require sophisticated data processing techniques. The use of standardized billing forms, carefully designed to obtain certain facts, and the housing of these bills in one location should enable the staff to monitor the system with relative ease. Similar forms would be utilized for cases handled by the defenders.

A final question, which may also be best resolved after the program has some experience, is whether defender services should be extended to cases where the right to appointed counsel is not yet guaranteed by either a constitutional provision or a statute. For the present, the proposal recommends that the staff attorneys and judges have the discretion to afford public representation whenever they consider it necessary. Should the program prove to have the capacity to include other offenses, such as those involving the loss of an operator's license, on a regular basis, the Defender Commission could adopt an appropriate regulation.

#### XIV. Cost of the Program

As the attached budget indicates, the annual cost of the program, excluding the initial capital outlay, should amount to approximately \$750,000. Since this represents a substantial increase over past expenditures, a comparison with other states and other systems is necessary.

For purposes of this comparison, the operative figure is the per capita cost of defender services, which would be \$.75 under this proposal. Although costs vary widely, many states, such as Colorado and Florida, spend over \$1.00 per capita, with the amount running as high as \$2.32 in Alaska. Equally instructive are two recent studies done in New Mexico and Indiana. The former, conducted in a state with a population almost identical to Maine's, recommends an annual defender budget of \$1,424,500, about twice the amount called for by this proposal. In light of inflationary trends, it bears noting that the New Mexico study is already three years old. A later undertaking, performed for the State of Indiana, advises per capita expenditures of almost \$1.50 for public representation.

Along similar lines, the National Center for State Courts has designed a defender system for a hypothetical state with a population of 1.1 million. Under that system, annual recurring costs would total \$2,370,500, or \$2.15 per capita.

While there are undoubtedly jurisdictions which spend less than \$.75 per capita (some lower courts still lack funds with which to compensate counsel), the above figures illustrate that the attached budget is not excessively high, and that it might even be criticized for its parsimony in certain areas. Furthermore, larger caseloads will lead to greater costs, a factor beyond the control of this or any other program. Accordingly, no responsible person would insure against future increases.

Although hidden administrative expenses make a precise estimate impossible, it can be stated with some assurance that the adoption of the revised fee schedule, without the other



facets of the proposal, would result in a comparable budget. In other words, the retention of the present system with higher levels of compensation offers no significant economic advantages. From this perspective, cost increases seem almost inevitable, since it is questionable whether Maine's assigned counsel system can continue to obtain even minimal bar involvement, especially in the district courts, without significant adjustments in compensation. Given the likelihood of higher expenditures, an advantage of this proposal is that it should effect some indirect savings, insofar as it would reduce the burden on judges and speed up the disposition of cases.

The impetus for the proposal, and the ultimate test of its merit, however, are contained in the simple proposition that it will significantly improve Maine's criminal justice system. Since the Report analyzes in more detail the reasons for the recommended changes, suffice it to state here, in rather summary fashion, that the program is designed to provide a more consistently high quality of representation for defendants, more equitable reimbursement for attorneys, and more efficient procedures for the courts. Underlying, and perhaps obscured by, all of the verbiage on systems, procedures, and figures, is the basic objective, which is to insure, in the most effective way possible, the implementation of fundamental rights under the Maine and United States Constitutions.

## FEE SCHEDULE - GENERAL GUIDELINES

I. Definition of a Case: For purposes of this schedule, a case shall be defined as follows: 1) One or more charges against a single defendant arising out of a single set of circumstances; or 2) One or more charges against a single defendant arising out of more than one set of circumstances, if the charges are disposed of in the same proceedings.

II. Representation of Co-Defendants: When two or more defendants are charged as a result of acts or omissions arising out of a single set of circumstances, and only one attorney is appointed, the matter shall be considered one case plus one-half case for each defendant in excess of one.

III. Distinction between Trial and Non-Trial Time: Trial time shall be limited to the time actually devoted to the trial of the case. Unless specifically indicated to the contrary, other court appearances shall be billed at the rates established for non-trial time.

IV. Billable Time: Billable time means time in which the attorney is actively working on the case. It shall not include court appearances for the sole purpose of obtaining continuances, unless such continuances are shown to be absolutely necessary or beyond counsel's control. It shall not include time waiting for the case to be called, if the attorney must also appear in court on behalf of a private client.

Assigned counsel are expected to cooperate with any procedures established by the program to reduce billable time. Such procedures may include a notification system to avoid unnecessary waiting time, and a method of arranging continuances through the staff to reduce the number of court appearances.

V. Billing Forms: Bills must be submitted on the forms provided by the Office of Public Defense.

VI. Determination of Compensation: The amount of compensation will be determined by the Office of Public Defense. Compensation in excess of the maximum limits will be allowed only in exceptional cases.

## DISTRICT COURT FEE SCHEDULE

## I. Misdemeanor and Traffic Cases.

## A. Cases Closed Without Trial.

1. Rate of compensation: \$20 per hour for first 2 hours: \$15 per hour for each additional hour.
2. Minimum per case: \$40.
3. Maximum per case: \$100.

## B. Trials.

1. Non-trial time: \$15 per hour up to \$75.
2. Less than half-day of trial: \$20 per hour up to \$60.
3. Half-day trial: \$60.
4. Full-day trial (5 hours or more): \$100
5. Separate appearance for sentencing: \$20
6. Minimum per case: \$50.
7. Maximum per case: \$150.
8. Applicability: This section shall apply if at least one witness has been sworn.

C. Hearings on Motions.

1. If the hearings do not require the testimony of witnesses, the time should be billed at the non-trial rate.
2. If the hearings require the testimony of witnesses, the time should be billed at the trial rate.
3. Motions shall not affect the compensation limits indicated above, except that the maximum compensation for a case closed without trial, which requires the testimony of witnesses for the purpose of a hearing on a motion, shall be \$150.

II. Juvenile Cases.

1. Non-hearing time: \$15 per hour.
2. Hearing time: \$20 per hour.
3. Minimum per case: \$40.
4. Maximum per case: \$150.

III. Revocation of Probation.

1. Same rates as in misdemeanor cases.
2. Maximum per case (if same attorney): \$50.
3. Maximum per case (if new attorney): \$75.

IV. Civil Cases: Same rates as in misdemeanor cases.

V. Fugitive from Justice Proceedings: Same rates as in misdemeanor cases.

VI. Counseling and Appearance for Testimony of Witness.

1. Two hours or less: \$40.
2. More than two hours: \$65.

VII. Felony Cases.

A. Dismissal of Felony and Plea to a Misdemeanor: Same rates as in misdemeanor cases.

B. Preliminary Hearings in Felonies Other Than Murder and Manslaughter Cases.

1. Hearings lasting two hours or less: \$50.
2. Hearings lasting more than two hours: \$75.
3. Hearings lasting more than one-half day: \$100.

C. Preliminary Hearings in Murder and Manslaughter Cases.

1. Hearings lasting two hours or less: \$75.
2. Hearings lasting more than two hours: \$100.
3. Hearings lasting more than one-half day: \$150.

Note: The District Court bill for preliminary hearings is not intended to cover time spent in investigation, preparation, etc. That time should be included in the Superior Court bill. If preliminary hearing is waived, no bill should be submitted until completion of the case in Superior Court.

VIII. Mental Health Hearings: Although not specifically covered by this proposal, it is recommended that assigned counsel be compensated at the rates established for misdemeanor trials, except that there be a limit of \$200 for all cases closed on the same day. This limit is based on statistics which indicate that the same attorney may appear at hearings on behalf of as many as ten clients in a single day.

#### SUPERIOR COURT FEE SCHEDULE

##### I. Misdemeanor and Traffic Cases Appealed Without Trial in the District Court.

In these cases, compensation shall be paid only after completion of the case in the superior court. Work performed at the district court level should be included in the superior court bill. The maximum limits set out below apply to work done in both courts.

A. Cases Closed Without Trial: Same fee schedule as in district court.

B. Bench Trials: Same fee schedule as in district court.

##### C. Jury Trials.

1. Non-trial time: \$15/hour.
2. Less than half-day of trial: \$25/hour up to \$75.
3. Half-day trial: \$75.
4. Full-day trial (5 hours or more): \$125.
5. Separate appearance for sentencing: \$20.
6. Maximum per case: \$300.

##### II. Misdemeanor and Traffic Cases Appealed After Trial in the District Court.

These matters shall be treated as two separate cases. For work performed at the superior court level, the above rates shall apply.

##### III. Juvenile Appeals: Same fee schedule as in district court.

## IV. Felony Cases Other Than Murder and Manslaughter.

## A. Cases Closed Without Trial.

1. Rate of compensation: \$25/hour for the first 4 hours; \$20/hour for each additional hour.
2. Minimum per case: \$75.
3. Maximum per case: \$250.

## B. Bench Trials.

1. Non-trial time: \$20/hour.
2. Trial time: Less than half-day: \$25/hour up to \$75.
3. Half-day trial: \$75.
4. Full-day trial (5 hours or more): \$125.
5. Separate appearance for sentencing: \$25.
6. Maximum per case: \$1000.

## C. Jury Trials.

1. Non-trial time: \$20/hour.
2. Less than half-day trial: \$30/hour up to \$90.
3. Half-day trial: \$90.
4. Full-day trial (5 hours or more) \$150.
5. Separate appearance for sentencing: \$25.
6. Maximum per case: \$1200.

## D. Post-trial Motions.

1. Non-hearing time: \$20/hour.
2. Hearing time: \$25/hour.
3. Maximum per case: \$100.

Note: Hearings on motions that require the testimony of a witness may be billed at the same rate as a bench trial.

## V. Murder and Manslaughter Cases.

## A. Cases Closed Without Trial.

1. Rate of compensation: \$25/hour for the first 4 hours; \$20/hour for each additional hour.
2. Maximum per case: \$2000.

## B. Bench Trials.

1. Non-trial work: \$20/hour.
2. Less than half-day of trial: \$30/hour up to \$90.
3. Half-day of trial: \$90.
4. Full-day of trial: \$150. (5 hours or more.)
5. Separate appearance for sentencing: \$30.
6. Maximum per case: \$3000.

## C. Jury Trials.

1. Non-trial work: \$20/hour.
2. Less than half-day of trial: \$35/hour up to \$120.
3. Half-day of trial: \$120.

4. Full-day of trial: (5 hours or more) \$175.
5. Separate appearance for sentencing: \$30.
6. Maximum per case: \$4000.

D. Post-trial Motions.

1. Non-hearing time: \$20/hour.
2. Hearing time: \$30/hour.
3. Maximum per case: \$200.

Note: Hearings on motions that require the testimony of a witness may be billed at the same rate as a bench trial.

VI. Petition for Release from State Hospital: Same Fee Schedule as in Felony Bench Trial.

VII. Revocation of Probation.

1. Non-hearing time: \$15/hour.
2. Hearing time: \$20/hour.
3. Maximum (if same attorney): \$75.
4. Maximum (if new attorney): \$100.

VIII. Counseling and Appearance for Witness.

1. Two hours or less: \$50.
2. More than two hours: \$75.
3. More than half-day: \$100.

LAW COURT FEE SCHEDULE

- I. Murder Appeals: Fixed rate of \$750.
- II. Other Appeals: Fixed rate of \$375.
- III. Habeas Corpus Hearings: Fixed rate of \$225.

PARTIAL REPRESENTATION

Should an attorney represent a defendant for only a part of the case, the Office of Public Defense shall have the authority to determine an appropriate amount of compensation.

DESIRED MEAN COMPENSATION LEVELS

- I. District Court.
  - A. Desired mean compensation: \$100.
  - B. Present mean compensation: Approximately \$50.

II. Superior Court.

A. Desired mean compensation for felonies other than murder and manslaughter: \$270.

B. Present mean compensation for felonies other than murder and manslaughter: \$180.

C. Desired mean compensation for murder and manslaughter cases: \$2175.

D. Present mean compensation for murder and manslaughter cases: \$2175.

E. Desired mean compensation for misdemeanor and traffic cases: \$180.

F. Present mean compensation for misdemeanor and traffic cases: \$120.

G. Desired mean compensation for other Superior Court assignments: \$150.

H. Present mean compensation for other Superior Court assignments: Not available.

III. Law Court.

A. Proposed rate for murder appeals: \$750.

B. Present mean compensation for murder appeals: \$611.

C. Proposed rate for other appeals: \$375.

D. Present rate for other appeals: \$250.

E. Proposed rate for habeas corpus hearings: \$225.

F. Present rate for habeas corpus hearings: \$150.

BUDGET

## Recurring Expenses

## I. Annual Office Expenses (for office with two attorneys).

1. Rent and Utilities:	\$3500.
2. Telephone and Postage:	1600.
3. Equipment Lease:	1200.
4. Travel:	1300.
5. Office Supplies:	700.
6. Miscellaneous (Janitorial, Library, Upkeep, Membership and Subscriptions):	<u>1800.</u>
TOTAL PER OFFICE:	\$10,100.
STATEWIDE TOTAL: \$10,100 x 8:	\$80,800.

## II. Salaries.

## A. Staff Attorneys.

1. Chief Defender: \$25,000 x 1:	25,000.
2. Ass't to Chief Defender: \$14,000 x 1	14,000.
3. District Defenders: \$18,000 x 8	144,000.
4. Ass't Dist. Defenders: \$14,000 x 6	84,000.
	<u>\$267,000</u>
5. Fringe Benefits: \$267,000 x 15%	40,050
	<u>\$307,050</u>

## B. Secretarial Staff.

1. Salaries: \$6800 x 9	61,200.
2. Fringe Benefits: \$61,200 x 15%	9,180.
	<u>\$70,380.</u>

C. STATEWIDE TOTAL: \$377,430

## III. Assigned Counsel Compensation.

A. District Court:	\$112,000.
B. Superior Court:	115,275.
C. Law Court:	6,900.
D. Sub total:	234,175.
E. 10% Allowance for Possible Caseload Increases Over 1973:	23,418.
F. STATEWIDE TOTAL:	<u>\$257,593.</u>



IV. Investigators and Experts: \$ 25,000

TOTAL RECURRING EXPENSES: \$740,823

Non-Recurring Capital Outlay

I. For Each Attorney.

1. Desk.	\$	390.
2. Chair.		209.
3. Bookcase.		78.
4. Side Chairs.		180.
	\$	<u>857.</u>

STATEWIDE TOTAL: \$857. x 16 \$ 13,712

II. For Each Secretary.

1. Modular Desk.	\$	350.
2. Chair.		50.
3. File Cabinet.		115.
4. Typewriter.		600.
	\$	<u>1,115.</u>

STATEWIDE TOTAL: \$1115. x 9: \$ 10,035.

III. For Each Office.

1. Dictaphone.		500.
2. Adding Machine.		100.
3. Reception Chairs.		120.
4. Library.		1,000.
5. Miscellaneous:		200.
	\$	<u>1,920.</u>

STATEWIDE TOTAL: \$1920. x 8: \$ 15,360.

TOTAL NON-RECURRING CAPITAL OUTLAY: \$39,107.

## FINANCIAL ELIGIBILITY FORMULA

The Report includes an extended discussion of both the many problems connected with financial eligibility and of possible solutions thereto. Accordingly, reference should be had to that document for a more complete understanding of the workings of the eligibility formula. It should, however, be emphasized here that the eligibility determiner must have wide latitude in applying the formula, and in deviating from it when warranted by special circumstances.

The following formula resembles, with some variations, one utilized by the defender program in the District of Columbia.

## ELIGIBILITY FORMULA

1. Net value of qualifying assets: \_\_\_\_\_
2. Net monthly income: \_\_\_\_\_
3. Total of lines 1 and 2: \_\_\_\_\_
4. Monthly living allowance: \_\_\_\_\_
5. Difference between lines 3 and 4: \_\_\_\_\_

Line 5 represents the amount available to the accused for his defense. Depending upon the amount, one of the following dispositions would ensue.

If line 5 were zero or a minus figure, the defendant would be eligible for public representation with no requirement that he contribute to the cost of his defense.

If line 5 were greater than zero but less than the applicable maximum compensation under the program's fee schedule, the defendant would be eligible for public representation, but he would be required to contribute the amount on line 5 to his defense.

If line 5 were at least equal to the applicable maximum compensation under the program's fee schedule, but less than the applicable fee charged by the private bar, the defendant would be expected to employ an attorney from the "reduced fee panel." The rationale for such a panel rests upon the following premise. Assuming a defendant cannot afford private counsel, but can afford to compensate an attorney at the rates set by the program, it makes sense from the perspective of the State, the defendant, and the bar for a lawyer to take the case at a reduced fee. The State will benefit since the case will be transferred into the private sector, thereby relieving the program of any costs or administrative responsibilities. The defendant will benefit by having the same type of legal representation available to more affluent persons. The lawyer will benefit in that he will receive a fee at least equal to, and possibly greater than, that which would be paid under the program.

If line 5 were at least equal to the applicable rates of the private bar, the defendant would be ineligible.

#### General Directions.

To permit a determination of his financial status, the defendant would have to complete, under oath, a form prepared by the program. Assuming they are unwilling to contribute to the cost of the defense, the assets and earnings of the spouse and other dependents could be used to offset part of the monthly living allowance. A finding of ineligibility, or a finding of eligibility with a requirement of contribution, would be subject to review by the judge in the court in which the case is pending.

#### Specific Directions.

##### Line 1.

Net value corresponds to the defendant's equity in the assets.

"Qualifying" has two meanings. First, it is intended to exclude those assets necessary to the welfare of the defendant or his family. In the case of an asset, which is a necessity in the generic sense, but which in fact goes beyond the necessity level, the difference could be included in line 1. For example, a defendant who owns a comparatively expensive automobile which he uses in his employment might be expected to trade it in for a less expensive model.

Second, an asset qualifies if it is reasonably liquid. To require the sale or mortgage of an asset that would involve an extended period of time could conflict with the defendant's right to a speedy trial. In these instances, the defendant might be expected to sign a repayment agreement.

##### Line 2.

Net monthly income would include take home pay and income from any other sources. Mandatory monthly payments on debts would be subtracted from income to reach net monthly income.

##### Line 4.

The amount of this item will be taken from a standard table scaled according to the number of the accused's dependents. A similar table, computed on a weekly basis, is used in the District of Columbia.

In a sense, the monthly living allowance will determine the severity or liberality of the eligibility requirements. A recent

report by the Boston University Center for Criminal Justice recommends the "moderate living standard" or the "lower living standard" as determined by the Bureau of Labor Statistics. Both of these standards might be unrealistically high for Maine. Another possibility would be the income guidelines, attached to this document, issued by the Supreme Court of Colorado. The final decision on the monthly living allowance should probably be deferred pending the collection of information from state and federal agencies whose regulations require similar determinations of financial eligibility.

#### Mechanics of the Formula.

With regard to the possibility that this plan might bury the defenders under an avalanche of paper work, there are two mitigating factors. First, the majority of defendants would probably fit rather clearly into either the "eligible" or "ineligible" category. Second, the secretarial staff could handle most of the intake, especially for those primary courts located in county seats. The defenders would thus become involved only upon completion of the necessary forms.

In the secondary courts, not covered by a staff attorney, a similar intake form could be filled out and sworn to under the supervision of the clerk. Based upon this information, and upon any additional inquiries he might make, the judge would reach a decision on eligibility. For purposes of record keeping, a copy of the completed form would be sent to the district office, along with a notification of the assignment of counsel.

Finally, the increased use of contribution, reimbursement, and reduced fee panels is strongly recommended. The Report sets out the procedures, whereby each of these alternatives could be implemented.

## COLORADO INCOME GUIDELINES

The following table contains the income guidelines for financial eligibility recently adopted by the Supreme Court of Colorado. Although technically these do not represent minimum living allowances, they could be used in that context. It should also be noted that the Colorado scheme does not require strict adherence to the guidelines.

Dependents	Annual Income	Monthly Income	Weekly Income
Single Person	\$2,600.00	\$216.67	\$ 50.00
One Dependent	3,400.00	283.33	65.38
Two Dependents	4,200.00	350.00	80.77
Three Dependents	5,000.00	416.66	96.15
Four Dependents	5,800.00	483.33	111.54
Five Dependents	6,500.00	541.66	125.00
Six Dependents	7,100.00	591.66	136.54
Seven Dependents	7,600.00	633.33	146.15
Eight Dependents	8,000.00	666.66	153.85
Nine Dependents	8,300.00	691.66	159.62
Ten Dependents	8,500.00	708.33	163.46

## Hypothetical Statewide Allocation of Cases (Based on 1973 Figures)

## District Court

<u>Nature of Case</u>	<u>Total</u>	<u>Staff Attorneys</u>	<u>Panel Attorneys</u>
Felonies	1084	650	434
Misdemeanors	848	509	339
Juvenile	641	385	256
Traffic	171	103	68
Miscellaneous	56	34	22
	<u>2800</u>	<u>1681</u>	<u>1119</u>

Note: The total for each category is computed by multiplying the total district court indigent caseload times the percentage for that category of case as determined from a sample consisting of one-third of the courts.

## Superior Court

<u>Nature of Case</u>	<u>Total</u>	<u>Staff Attorneys</u>	<u>Panel Attorneys</u>
Murder and Manslaughter	24	12	12
Other Felonies	792	515	277
Misdemeanors	92	60	32
Traffic	35	22	13
Juvenile	44	29	15
Petition for Conditional Release	14	9	5
Probation Revocation	34	22	12
Civil	5	0	5
Witness Representation	6	4	2
Other	16	10	6
	<u>1062</u>	<u>683</u>	<u>379</u>

Note: The 15 assignments in which the offense is unknown are included as felonies. Co-counsel assignments are not included.

## Law Court

<u>Nature of Case</u>	<u>Total</u>	<u>Staff Attorneys</u>	<u>Panel Attorneys</u>
Murder Appeals	4	2	2
Other Appeals	35	22	13
Habeas Corpus	11	7	4
	<u>50</u>	<u>30</u>	<u>20</u>

## Caseload Guidelines

The following are limits on the number of cases that one defender should handle in one year. For purposes of these limits, the National Advisory Commission defines a case as a "single charge or set of charges concerning a defendant (or other client) in one court in one proceeding."

The figures for the proposal are more in the nature of suggested caseloads than upper limits.

<u>Type of Case</u>	<u>NAC Limits</u>	<u>Proposal Guidelines</u>
Felony	150	100
Misdemeanor	400	275
Juvenile	200	150
Mental Health	200	150
Appeals	25	20

## OFFICE OF PUBLIC DEFENSE

## § 1000. Creation.

There is hereby created the Office of Public Defense.

## § 1001. Duty of the Office of Public Defense.

It shall be the duty of the Office of Public Defense to represent and act as counsel for needy persons in the courts and other tribunals of the State of Maine. The services of the Office of Public Defense shall be available to needy persons in all criminal and juvenile cases in which they are entitled to appointed counsel pursuant to a judicial decision, statute, rule of court, and in all other cases wherein representation is authorized by a regulation of the defender commission.

To effectuate its purpose, the Office of Public Defense shall utilize staff attorneys, employed by the Office, and private attorneys, engaged on a case by case basis. The Office of Public Defense shall divide the case workload between the professional staff and private attorneys in such a manner as to assure a high caliber of representation, promote efficiency, and stimulate the continual development of professional expertise and interest in the field of criminal justice.

## § 1002. Creation of defender commission.

There is hereby created a defender commission to oversee the operations of the Office of Public Defense.

## § 1003. Membership of commission; expenses.

The defender commission shall consist of 12 members, 4 of whom shall be appointed each by the Chief Justice of the Maine Supreme Court, the Maine State Bar Association, and the Governor. The appointees of the Chief Justice shall be active or retired members of the State judiciary, the appointees of the Bar Association shall be attorneys admitted to practice in Maine, and the appointees of the Governor shall be representatives of the general public.

Appointment to the commission shall be for a term of 4 years, except that half of the original members appointed by each official or organization shall have a term of 6 years.

If any vacancy occurs on the commission, the official or organization by whom the retiring member was appointed shall select a replacement.



No member of the commission shall receive a salary, but each member shall be reimbursed for expenses incurred while engaged in the duties of the commission. No member shall be employed by the Office of Public Defense.

§ 1004. Regulations adopted by commission.

The commission shall adopt regulations, consistent with the provisions of this Part, governing:

1. Financial eligibility for the services of the Office of Public Defense;
2. The types of cases in which the services of the Office of Public Defense shall be available.
3. The nature and extent of the services to be provided by the Office of Public Defense; and
4. The selection and compensation of private attorneys engaged under this Part.

§ 1005. Chief Defender; appointment; qualifications; compensation.

The defender commission shall appoint a Chief Defender for a term of 5 years and until the appointment and qualification of his successor. Any vacancy in the office of Chief Defender shall be filled by the commission for the balance of the term of the person he succeeds.

The Chief Defender shall be a qualified attorney, licensed to practice law in this State. He shall not be removed or suspended from office during his term except by order of the commission for just cause after due notice and hearing.

The Chief Defender shall devote full time to the performance of his duties and shall not engage in the private practice of law. He shall receive an annual salary equal to that of a Superior Court Justice, and shall be reimbursed for all reasonable expenses incurred in the performance of his duties.

§ 1006. Duty of the Chief Defender.

It shall be the duty of the Chief Defender to head the Office of Public Defense and to provide for the legal representation required by this Part.

§ 1007. Staff attorneys; appointment; salary.

The Chief Defender shall appoint staff attorneys in such number as he shall require to assist him in the performance of the duties of his office. The staff attorneys shall be licensed to practice law in this State and competent to represent a person charged with a crime. The staff attorneys shall serve at the pleasure of the Chief Defender and shall receive such salaries as he shall from time to time designate.

§ 1008. Powers of the Chief Defender.

The Chief Defender shall:

1. Establish and maintain suitable headquarters for the office and such district quarters within the State as he shall deem necessary for the proper functioning of the office;

2. Employ, or engage on a case by case basis, such investigators, experts, stenographers, and clerical personnel as necessary to perform the duties of his office;

3. Maintain one or more pools of private attorneys who shall be available to serve as counsel;

4. Engage counsel from said pools on a case by case basis to effectuate the purposes of this Part;

5. Supervise the training of the staff attorneys, and whenever appropriate, offer continuing legal education to the professional staff and to private attorneys engaged by the office;

6. Whenever appropriate, use the services of law students who are otherwise authorized to appear on behalf of needy persons, in accordance with existing laws and rules governing the appearance of law students;

7. Apply for and accept on behalf of the Office of Public Defense any funds which may be offered or may become available from governmental grants, private gifts, donations or bequests, or any source;

8. Report, at least once a year, to the defender commission on the number of persons represented under this Part, the nature and outcome of the cases involved, the expenditures totaled by kind, and to the extent experience may indicate, such recommendations for statutory changes and changes in court rules as may be appropriate to the improvement of the system of criminal justice or the administration of the Office of Public Defense; and

9. Exercise general responsibility for the operation of the office.

§ 1009. Financial eligibility for services; determination; appeal.

The services of the Office of Public Defense shall be available to needy persons. A "needy person" means a person who at the time his need is determined is financially unable without undue hardship to provide for the full payment of an attorney and all other necessary expenses of representation or who is otherwise unable to employ an attorney.

Whenever it appears that a person may qualify for the services of the Office of Public Defense, a staff attorney shall make a determination of financial eligibility in accordance with the above definition and with any regulations adopted pursuant to § 1004. If a determination has not been made at the time of the person's first appearance in court, and if a staff attorney is unavailable, the judge in the court in which the matter is pending may either continue the matter or make a determination of the person's financial eligibility for services under this Part.

Following an adverse determination of eligibility by a staff attorney, the judge in the court in which the matter is pending shall inform the person of his right to appeal. Such appeal shall be heard by the judge, and shall be in the form of a hearing de novo on the facts relating to the person's eligibility for services under this Part.

§ 1010. Part payment; repayment; reimbursement.

Whenever the Office of Public Defense finds that a needy person has sufficient means with which to bear some of the expense of his representation, it may require that he pay a specified portion of the costs of its services. The imposition of such a requirement is subject to the regulations of the defender commission and is appealable in the same manner as an adverse determination of eligibility.

The Office of Public Defense may require a needy person to execute an agreement that he will repay the office for all or part of the costs of its services to the extent that he acquires the means to do so. A suit to enforce a repayment requirement must be brought within 3 years after the date on which the services were rendered. The imposition of a repayment requirement is subject to the regulations of the defender commission and is appealable in the same manner as an adverse determination of eligibility.

The Office of Public Defense may recover reimbursement from each person who has received services under this Part to which he was not entitled or with respect to which he was not a needy person when he received such services. A suit for reimbursement must be brought within 6 years after the date on which the services were rendered.

§ 1011. Certification and authorization by applicant.

The Office of Public Defense may require the applicant for its services, subject to the penalties for perjury, to certify in writing or by other record such material factors relating to financial eligibility as the Office prescribes.

The Office of Public Defense may require the applicant for its services to execute and deliver such written requests or authorizations as may be requisite under applicable law to provide the Office with access to records of public or private sources, otherwise confidential, as may be of aid to it in evaluating eligibility.

§ 1012. Right to representation; determination; review.

The right of a needy person to the services of the Office of Public Defense shall extend to all matters enumerated in § 1001.

The right of a needy person to the services of the Office of Public Defense shall be **determined by** a staff attorney, except that in the absence of a staff attorney, the judge in the court in which the matter is pending shall make this determination.

Notwithstanding an adverse determination by a staff attorney, the judge in the court in which the matter is pending may, either at the request of the needy person or on his own initiative, order that the services of the Office of Public Defense be made available.

§ 1013. Services to which needy person entitled; public expense.

A needy person who qualifies for the services of the Office of Public Defense shall be entitled:

1. To be represented by an attorney to the extent required by judicial decision, statute, court rule, or regulation of the defender commission; and

2. To be provided with all the necessary services and facilities of representation, including investigation and preparation.

The services of the Office of Public Defense shall be furnished at public expense, except as provided in § 1010.

§ 1014. Provision of counsel; replacement attorney.

Whenever it is determined that a needy person is entitled to services under this Part, the staff attorney shall either assign the matter to the professional staff of the Office of Public Defense or engage a private attorney to act as counsel. Whenever it is determined that a needy person is entitled to services under this Part and a staff attorney is unavailable, the judge in the court in which the matter is pending shall appoint a private attorney to act of counsel. A private attorney so appointed shall be deemed to have been engaged by the Office of Public Defense.

At any stage of a case, the judge in the court in which the matter is pending, or the Chief Defender, may, for good cause, assign a replacement attorney. The replacement attorney shall have the same function with respect to the needy person as the staff attorney or private attorney whom he replaces.

§ 1015. Private attorneys; regulations; compensation.

Private attorneys representing needy persons under this Part are required to conform to all regulations adopted by the defender commission. Pursuant to § 1004, the defender commission may establish, for any and all types of cases and proceedings, qualifications which private attorneys must possess to act as counsel under this Part.

Private attorneys, engaged or appointed to represent needy persons pursuant to §. 1014, shall receive reasonable compensation for services rendered, to be paid by the Office of Public Defense. The Chief Defender shall fix the compensation in each case in accordance with the rates and procedures established by the defender commission. An attorney who represents a needy person under this Part shall not receive any fee for his services in addition to that provided by the Office of Public Defense.

## DATA ON DEFENDER DISTRICTS (Based on 1973 Figures)

District I

Superior Court Caseload: 68  
District Court Caseload: 275  
Population: 111,576  
Costs: \$36,157

District II

Superior Court Caseload: 244  
District Court Caseload: 755  
Population: 192,528  
Costs: \$87,014

District III

Superior Court Caseload: 139  
District Court Caseload: 337  
Population: 158,188  
Costs: \$40,492

District IV

Superior Court Caseload: 63  
District Court Caseload: 174  
Population: 49,550  
Costs: \$20,263

District V

Superior Court Caseload: 161  
District Court Caseload: 258  
Population: 118,547  
Costs: \$42,499

District VI

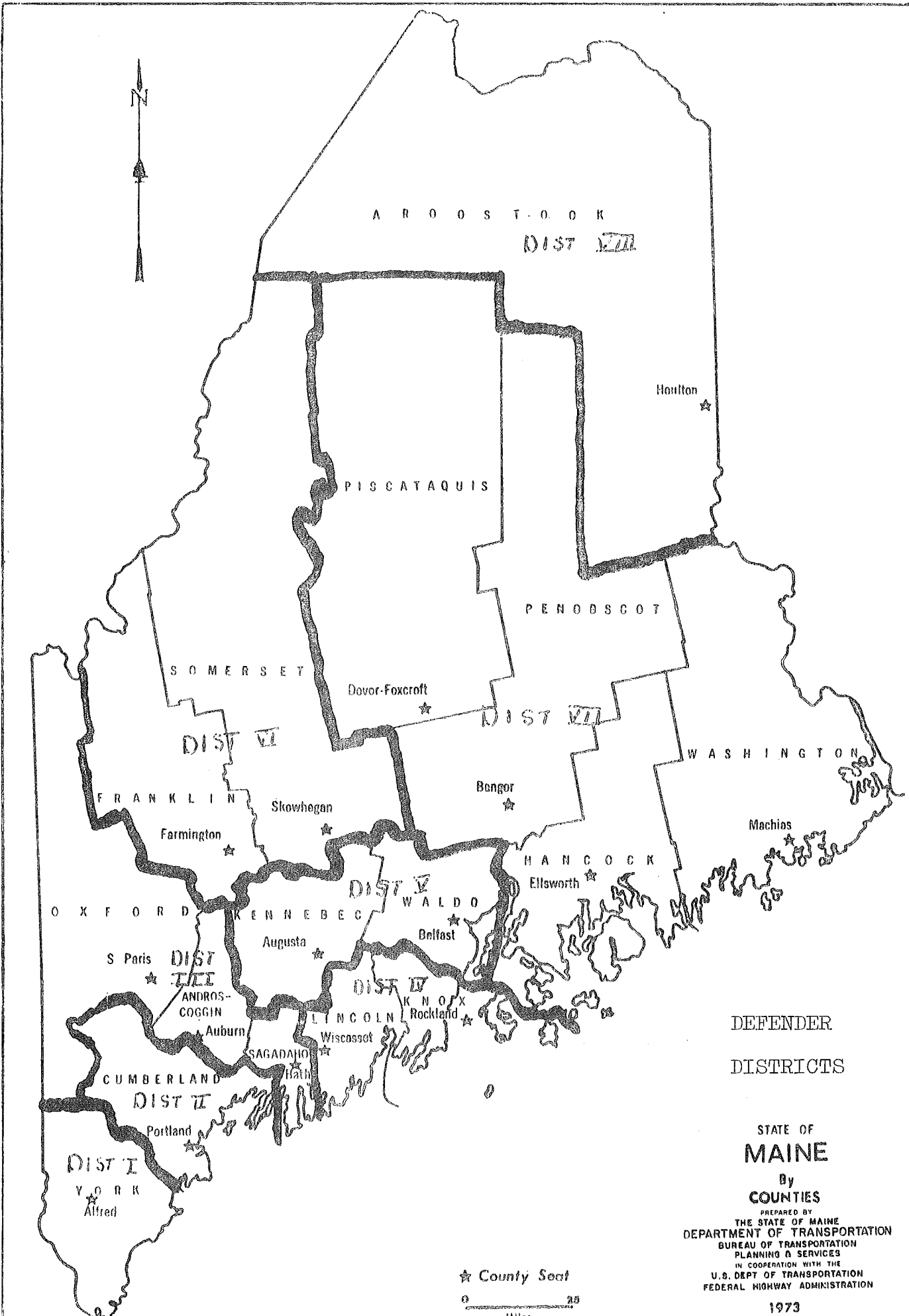
Superior Court Caseload: 71  
District Court Caseload: 172  
Population: 63,041  
Costs: \$21,720

District VII

Superior Court Caseload: 252  
District Court Caseload: 562  
Population: 206,127  
Costs: \$88,170

District VIII

Superior Court Caseload: 78  
District Court Caseload: 267  
Population: 92,463  
Costs: \$25,288



DEFENDER  
DISTRICTS

STATE OF  
**MAINE**  
By  
**COUNTIES**

PREPARED BY  
THE STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF TRANSPORTATION  
PLANNING & SERVICES  
IN COOPERATION WITH THE  
U.S. DEPT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

☆ County Seat

0 25  
Miles