

Recommendations for Addressing Excessive Caseloads of the American Public Defender: Re-
Classification of Offenses, Programming, and Suggestions for the Monitoring and Regulation of
Caseloads

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Abstract

This research paper was written to investigate previous studies conducted and provide information gathered on the current excessive caseload crisis in public defender offices. Nationwide, public defender offices are unable to provide adequate representation because of these excessive caseload numbers. In the case, *Gideon v. Wainwright*, the Supreme Court determined that the right to legal counsel is established by the sixth amendment and shall be guaranteed in both federal and state courts. When public defenders are unable to conduct investigations, maintain consistent contact with defendants, and represent their clients in an ethical manner as a result of excessive caseloads, this pivotal case no longer holds the importance that it should.

Secondary research was utilized to provide detailed information on how the excessive caseload crisis not only impacts the public defender, but also the defendant and court system. Program evaluations from various jurisdictions approach to the caseload crisis were used to provide recommendations and support for potential changes within the criminal justice system to resolve the caseload crisis. Recommendations provided include the reclassification of certain criminal charges, limiting caseload sizes, as well as increasing the community-based programming that has been effective with crime prevention and recidivism.

Research findings have shown that setting caseload limits can be effective, but limits cannot be universal as each jurisdiction must set standards based on crime trends in the area. The reclassification of charges, specifically those relating to minor marijuana offenses have been shown effective at limiting cases that clog the public defender system. Reclassification of charges have also provided an increased budget allowing for fines to be given rather than taxpayer money being used for a drawn-out court process. Lastly, providing treatment and other

community programming is shown to lower crime rate, which then impacts the number of cases entering the public defender office.

Changes are needed to provide indigent individuals with a constitutional right. A difference in ones experience with the criminal justice system should not defer from others based on financial status.

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INTRODUCTION

Introduction of the Problem:

More than 80 percent of those charged with felonies are considered indigent. Because of this, they are unable to pay to hire their own attorney and instead rely on public defenders for representation. Public defenders are one of the hardest working sects of the legal bar. Unfortunately, the nation's public defender system continues to struggle with underfunding and excessive caseloads (VanBrunt, 2015).

In 1984, the United States Supreme Court stated in *United States v. Chronic*, "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". The right to counsel contained in the Sixth Amendment is an indispensable protection of the "fundamental right to a fair trial" (Payne, 2018).

In 1963, the landmark case *Gideon v. Wainwright*, it was ruled that indigent criminal defendants facing the possibility of imprisonment must be provided counsel at the government's expense. Following this ruling, the court declared that no person may be imprisoned for any offense, whether it is classified as a misdemeanor or a felony, unless they are represented or had the opportunity to be represented by counsel at the trial. States are obligated to provide counsel to indigent defendants, but the Court iterated that each state remains free to carry out the obligation as they feel fit (Hinkebein, 2017).

Over 80 percent of individuals charged with felonies are indigent. As a result, they cannot afford to hire an attorney and rely on representation by a public defender. In general, public defenders are the hardest working sect of the legal bar but has been plagued by underfunding and excessive caseload sizes. In 2009, the state of Florida reported that over 500 felonies and 2,225

misdemeanors were assigned to each attorney. The U.S. Department of Justice reported in 2007 that approximately 73 percent of county public defender offices exceeded the maximum recommended limit of cases. As a result, individuals who live in poverty are more likely to receive lower quality defense than those who have the finances to provide their own representation (Van Brunt, 2015).

The on-going carnage of public defense prevents public defenders/defense attorneys from conducting core functions. These core functions include factual investigation into the underlying charges. In a lawsuit brought in Washington State, it was reported that publicly appointed defense attorneys were working less than one hour per assigned case, with caseloads of 1,000 misdemeanors per year (Van Brunt, 2015).

Relying on attorneys who are overburdened with excessive caseloads can impact the assurance of a fair trial. 95 percent of criminal cases end in plea bargaining (Van Brunt, 2015). Plea bargaining is the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge (Merriam-Webster, 2020).

Inadequate representation has increased the number of lawsuits challenging the adequacy of the public defender system. Civil litigation can be long and costly. Rather than waiting, local governments should not wait to be subject to lawsuits before taking action to provide an adequate constitutional service. Implementing adequate defense systems also comes with a significant cost. The office of Indigent Legal Services in the state of New York reported that addressing the excessive number of caseloads and bringing them to a manageable level would require approximately \$105million each year which would more than likely fall onto the taxpayer (Van Brunt, 2015).

Public defenders across the United States lack funding, time, and resources prevent public defenders from adequately representing their clients. Public defense is a component of criminal justice that is rarely discussed on the national platform. The caseload crises experienced by many public defender organizations has led some public defenders to resort to drastic measures to draw attention to the myriad of barriers they face (Murphy, 2017).

Challenges of providing high-quality public defense can be seen at all levels including federal, state, and local. The most vexing and persistent problem in public defense is the excessive caseloads that interfere with the ability of defense programs to implement effectively the Sixth Amendment right to counsel. When caseloads are excessive, indigent defendants are at risk of serious harm. Public defenders have faced excessive caseloads for decades, and all over the country they are forced to cut corners (Brink, 2019).

At every level, public defenders are worrying that, due to the high caseloads, they are unable to perform in the manner required. Defendants are also complaining much more frequently that their attorneys are too busy to help them or even provide basic information (Pudlow, 2008).

The constructive denial of counsel for indigent defendants in state court stems directly from lack of funding. “Poor training, perverse incentives, and massive caseloads [among many other consequences] all stem from the lack of resources devoted to criminal defense”. Recognizing procedural ineffectiveness for caseloads higher than ABA maximus would bootstrap adequate indigent defense funding onto the effective assistance of counsel guarantee (Jaffe, 2018).

Knowing that simply establishing caseload limits is not a catch-all, some states have explored ways of providing more resources. Massachusetts’ governor tried shifting more of the state budget toward public defenders and away from private attorneys, estimated to save \$45 million. Some states like Florida are charging a fee for indigent defense to increase funding for

public defenders' offices. While this is effective in increasing revenue, this solution violates the Sixth Amendment right to free representation. In 2013, one proposed solution was the establishment of a Public Defender Corps comprised of recent law graduates placed in public defender fellowships nationwide. In collaboration with Equal Justice Works and Southern Public Defender Training Center, the corps would seek to increase the number of attorneys available to redistribute high caseloads. Additional policy recommendations have been made. Establishing National caseload limits and the right of refusal and advocacy for smart-justice policy to reduce crime (Johnson).

Significance of the Study:

There have been many attempts at addressing and changing policies and procedures to address the on-going issue of excessive caseloads. This study will provide offices, departments, government officials, and others the framework to review what has and has not worked and utilize it to begin making the necessary changes needed within the public defender sect.

Purpose of Research:

The specific contributions of this research will be to provide recommendations for changes needed to address excessive caseloads and to allow public defenders to appropriately conduct their job to meet their client's needs. The previously cited literature provides support that excessive caseloads for public defenders is a nationwide issue that has lacked the attention it deserves. Court cases are becoming more complex due to changing mental health standards, criminalization of minor offenses, and new forensic technology, caseloads continue to rise (Johnson).

Excessive caseloads and severe underfunding of public defenders' offices systematically deprive criminal defendants of their right to effective counsel. These are well-documented problems, and the need for reform is not new. The harder question is how that reform should happen (Factor, 2017).

A review of the issues surrounding excessive public defender caseloads will provide recommendations to government entities seeking change. This will lead to a higher quality of representation for individuals who cannot afford private counsel, lower public defender turnover rates, and provide the resources needed for a public defender to conduct their job according to standards.

Therefore, first this research will examine the causation of excessive caseloads. Secondly, the research will review prior policies and procedures executed in other public defender agencies to address excessive caseload sizes. Lastly, the research will explore the impact that excessive caseloads have on not only the public defender, but the courts and the clientele as well. The goal of this research will hopefully be to provide resources and recommendations to public defender agencies seeking to address their excessive caseload sizes.

To get a better understanding of the severity of excessive caseloads in the public defender's office and the argument for intervention, this section will address several things. First, it will review the history of the sixth amendment and this history as to why the public defender position exists. Second, because it is important to understand the different types of attorneys in the criminal court, it will explain the difference between each type often seen. Third, this research will provide information on the impact of excessive caseloads on each the public defender, the client, and the courts. Lastly, it will support the argument that excessive caseloads have a negative impact on the public defender and the justice system in hopes to recommend the need for

policies and procedural changes within the public defender office and the criminal justice system.

Section II. History of the Public Defender

On March 18th, 1963, the U.S. Supreme Court ruled that states are required to provide legal counsel to indigent defendants charged with a felony. This ruling was made in the influential case *Gideon v. Wainwright* (Ashenmiller, 2020).

Clarence Earl Gideon had been charged with a felony for allegedly burglarizing a pool hall in Panama City, Florida in June 1961. Clarence Gideon had requested a court-appointed attorney at his first hearing because he could not afford one but was denied (Ashenmiller, 2020). Clarence Gideon, a man with an eight-grade education who ran away from home when he was in middle school, was left to represent himself. Clarence Gideon had made an opening statement to the jury, cross-examined the prosecution's witnesses, presented witnesses in his own defense, declined to testify himself, and made arguments emphasizing his innocence. With these efforts, a jury had found Clarence Gideon guilty and was then sentenced to five years of imprisonment (United States Courts).

Following his conviction, Clarence Gideon sought relief by petitioning for writ of habeas corpus in the Florida Supreme Court. This petition challenged his conviction and sentence on the ground that the trial judge's refusal to appoint counsel violated his constitutional rights. The Florida Supreme Court denied this petition (United States Courts).

Following the denial of his first petition, Clarence Gideon filed a handwritten petition in the Supreme Court of the United States. The Court agreed to hear the case and determine whether the right to counsel guaranteed under the Sixth Amendment of the Constitution applies to defendants in state court. At the time of this petition, the Supreme Court had already dealt

with several cases concerning the right to counsel. In *Powell v. Alabama* (1932), which involved the “Scottsboro Boys,” nine black youths who had been found guilty of raping two white women-the court had ruled that state courts must provide legal counsel to indigent defendants charged with capital crimes. In *Betts v. Brady* (1942), the court decided that assigned counsel was not required for indigent defendants in state felony cases except when there were special circumstances such as being illiterate or mentally challenged (Ashenmiller, 2020).

January 15, 1963, the Supreme Court heard oral arguments in *Gideon v. Wainwright*. Clarence Gideon was now being represented by Abe Fortas, a Washington D.C. attorney who in the future would become a Supreme Court justice. Abe Fortas represented Clarence Gideon for free and avoided the argument that this was a special case because Clarence Gideon had only achieved an eighth-grade education. Rather, Fortas argued that no defendant, whether competent or well educated, could provide an adequate self-defense against the state. Fortas also argued that the U.S. Constitution ensured legal representation to anyone charged with a felony. Two months later the court unanimously accepted this view, ruling that the right to legal counsel established in federal courts by the sixth amendment must also be guaranteed in state courts. Specifically rejecting the majority’s assertion in *Betts* that “appointment of counsel is not a fundamental right, essential to a fair trial,” the court held that the right is obligatory on the states by the Fourteenth Amendment’s due process clause, by which states are prohibited from depriving “any person of life, liberty, or property, without due process of law.” The decision in *Betts v. Brady* was overturned. Clarence Gideon was granted a retrial and was acquitted in 1963 (Ashenmiller, 2020).

Understanding the history and why public defense has been required to be provided to indigent individuals an important part to explaining the excessive caseload crisis. Not all

individuals qualify for a public defender, so it is important that the type of legal representation is explained in more detail.

Types of Counsel and Their Purpose

In 1964, Congress enacted the Criminal Justice Act, 18 U.S.C. § 3006A, which requires federal district courts to adopt a local plan for providing counsel to indigent defendants. This act required that the plans include the appointment of “private attorneys”, but also allowed most districts to provide an alternative system of a Federal Public Defender Organization (a governmental entity established within the judicial branch) or a Community Defender Organization (a private, non-profit organization, established by the local legal aid society or local bar association) (Michigan Law, 2021).

State structures used to provide government-funded counsel vary in several ways from the structure of the federal Criminal Justice Act. First, the governmental unit providing the funding has the choice of the delivery system rather than the local court. Usually, the governmental entity has been the county, but over the last few decades, states have shifted to primary or exclusive state funding. The three most common indigent defense systems are: (1) individually appointed private attorneys, (2) public defender offices, and (3) contract-attorney organizations (usually private law firms or a non-profit that is sponsored by the local bar association or legal aid society) (Michigan Law, 2021).

Public defender agencies have been more favorable in highly populated areas, and in a recent survey of the 100 most populous counties concluded that 90 percent had public defender programs. In states that provide the funding, statewide programs with regional offices are more common. In larger public defender offices, staff often includes investigators, social workers, lawyers, and paralegals. Justice systems that use public defender offices usually assign almost all

indigent cases. There are several exceptions to this assignment including (1) cases that may have potential conflict of interest, and (2) “overflow cases” (cases that would cause the department to exceed imposed caseload limits) (Michigan Law, 2021).

Federal defenders are different than state defenders. In fact, almost all work done by a federal defender is felony work. There are times where a federal defender may have to represent minor offenses that had occurred on federal park lands, but it is rare to have many misdemeanor prosecutions. In comparison, the state public defender office’s caseload is going to consist of misdemeanor offenses (Michigan Law, 2021)

Another major difference between federal and state defender offices are the police force in which they use. Federal law enforcement agents tend to be more highly educated and better trained than the state/county/city police officers. Federal officers usually make their arrests after an extensive investigation (Michigan Law, 2021). For a federal crime to occur, it must be a crime that takes place on federal land or involves federal officers, a crime involving fraud, deception, r misrepresentation on the federal government and/or agencies, a crime where the defendant crosses state lines, a crime where criminal conduct crosses state lines, or immigration and customs violations.

There are several different types of criminal defense lawyers. For indigent defendants, obtaining an attorney can become a confusing process. The first type of attorney is the Panel Attorney (Court Appointed). This type of attorney is paid for by the government to take place of a public defender. These attorneys do not replace a public defender rather they take on the excess caseload that the public defender is unable to do (Homer, 2017).

The second type of attorney is the public defender. Like stated before, most jurisdictions nationwide have some type of public defender system, but the quality of this system depends on

the jurisdiction. Public defenders are typically paid by the state and given high caseload sizes to represent. Public defenders are specifically used for clients who cannot afford to hire a private attorney (Horner, 2017).

The third type of legal defense used in the criminal court is a private attorney. Private attorneys are paid for by their client specifically. As a result, the quality of work conducted by the private attorney is much higher than an attorney hired by the government. Private attorneys can limit their caseload sizes allowing them to build a stronger personal relationship with their clients. Private attorneys usually have an abundance of additional staff to help with their caseloads (Horner, 2017).

Understanding the different types of counsel is important for understanding the key issue of excessive caseloads in the public defender programs. With more than 80 percent of those charged with felonies relying on public defense, caseload sizes increase while the number of public defenders decrease (VanBrunt, 2015). The increase of individuals relying on public defense is a key factor in explaining the causation of excessive caseloads. The next section will provide other explanations for excessive caseloads in the public defender's office.

Causation of Excessive Caseloads

The most vexing and persistent problem in public defense is the excessive caseloads that interfere with the ability of defense programs to implement effectively the Sixth Amendment right to counsel. When caseloads are excessive, indigent defendants are at risk of serious harm. Public defenders have faced excessive caseloads for decades, and all over the country they are forced to cut corners (Brink, 2019).

Excessive caseloads in the public defender offices are becoming more of a problem nationwide, but what has caused it to get to this point? With economic distress and the expansion of

citizens' right to public defense, more citizens are qualifying for public defense. Court cases have also become more complex due to changing mental health standards, criminalization of minor offenses and new forensic technology (Johnson, 2019).

The present systems for providing indigent defense are failing. Many bar leaders and commentators agree that one of the things contributing to poor quality of defense are excessive caseloads. This factor contributes to a system where clients rarely see their lawyers. Clients are basically processed through the system, receiving "assembly-line justice" (Joy, 2010).

No matter the education, dedication, and experience, an excessive caseload will prevent any attorney from providing their clients with ethical and effective assistance of counsel (Joy, 2010).

The Impact - Impact on the Public Defender

There is undeniable evidence that nationwide, attorneys who provide legal representation to indigent clients have excessive caseloads. This has an impact on the quality of services the attorney can provide their client. Public defenders and other attorneys who provide legal representation to indigent clients are unable to provide competent and diligent services as required by rules of professional conduct (Lefstein, 2011).

Public defenders are often asked to represent too many clients. In some offices, public defenders have over 100 clients at a time. Of these clients, many are charged with serious offenses, and their cases move quickly through the court system. Unfortunately, public defenders are left to violate their oaths as attorneys because their caseloads make it impossible for them practice as required by the profession's rules. They are left with little to no time to interview their clients, seek pretrial release (bail/bond), file motions, conduct investigations, negotiate with the

prosecutor, adequately prepare for hearings, and perform other tasks that would normally be conducted by an attorney allotted the appropriate time (Lefstein, 2011).

Karl William Hinkebein (“Hinkebein”) is a public defender with Missouri State Public Defender (MSPD). At the time the instant case was filed, Hinkebein had worked for MSPD for over twenty years. His primary work was representing indigent clients who moved, pro se, for post-conviction relief (Payne, 2018).

The instant case arose from a complaint filed by Darin Robinson with the Office of Chief Disciplinary Counsel (“OCDC”). The complaint to the OCDC reported that Hinkebein had failed to uphold his professional conduct obligations. Specifically, Robinson had indicated that Hinkebein failed to keep him informed about the status of his post-conviction case and failed to file required motions (Payne 2018)

Through investigation of this complaint, OCDC discovered that Hinkebein did in fact fail to uphold his professional conduct obligations with Robinson and five additional clients to which Hinkebein had been assigned (Payne, 2018).

On March 31, 2016, OCDC filed an information charging Hinkebein with violating Missouri Rules 4-1.3 (diligence) and 4-1.4 (communication). Rule 4-1/3 mandates that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” Rule 4-1.4 dictates that (a) A lawyer shall: (1) keep the client reasonably informed about the status of the matter; (2) promptly comply with reasonable requests for information; and (3) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law, (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (Payne, 2018).

Findings had shown that Hinkebein did not write to the prison to contact Robinson who was incarcerated to arrange telephone calls until just three days before the motion was due on March 13th. Following this, Hinkebein stopped communicating with Robinson entirely after March 2011. Robinson was reassigned to a different public defender, and a trial court subsequently found that Hinkebein had abandoned Robinson as well as the other complainants in his post-conviction relief action (Payne, 2018).

In May of 2015, a disciplinary hearing panel was appointed to this case and a hearing was held on July 26th, 2016 in Jefferson City, Missouri. The panel concluded and recommended that Hinkebein “be placed on probation for one year with conditions that he not violate the Missouri Rules, and he must report to the Chief Disciplinary Counsel, or his designee, every ninety days (Payne, 2018).

Hinkebein had freely admitted to his violations of the Missouri Rules, but argued they were “primarily attributable to his severe health problems and excessive caseload.” Hinkebein argued that these factors were “outside of his control” and he had “no viable options related to his workload”. Hinkebein asserted he did not have an option to reject case assignments unless it created a conflict of interest. He asserted his superior “really would not have had any options” even if Hinkebein had informed him that he was missing deadlines. Hinkebein believed that “[i]ndividual public defenders [were] trapped” and despite the excessive caseloads, rejecting an assignment would result in being fired. At the time of the disciplinary hearing, Hinkebein’s caseload was “approximately 110, which was higher than anyone else in the office”. Hinkebein “work[ed] more hours than any other public defender in [his] office,” and the supervisor had testified stating “[Hinkebein] is dedicated and has a very good work ethic” (Payne, 2018).

As a result, the Supreme Court of Missouri found Hinkebein in violation of Rules 4-1.3 and 4-1.4(a) and that he should be disciplined. The Court suspended Hinkebein's license indefinitely but stayed the suspension, placing Hinkebein on probation for one year (Payne, 2018).

MSPD has been subject to criticism in recent years. MSPD has been independently evaluated on ten occasions since 1989. Lack of funding and excessive caseloads have been a target of concern in almost all evaluations (Payne, 2018).

In 2009, a report by The Spangenberg Group and the Center for Justice, Law, and Society at George Mason University concluded that MSPD's caseload burden was "a crisis so serious it has pushed the entire criminal justice system in Missouri to the brink of collapse." The Spangenberg group concluded that MSPD "lack[ed] the necessary resources to provide competent representation" and that "[t]he legal staff need[ed] to be increased as soon as possible" (Payne, 2018).

Public defenders are experiencing disciplinary action against them because of the excessive caseloads. The Hinkebein case is an example of the repercussions that public defenders face because of this. In many if not all offices, caseload sizes and caps are out of the control of the individual public defender and rather in control big higher government officials.

Impact on the Client

Excessive caseloads are surprisingly most harmful to the defendants. Current caseload levels cause public defenders to have to prioritize cases. Doing this can cause implicit bias can lead to lower priority for defendants of color. This is more common when public defenders are limited on time, are cognitively drained, and the decision making is extremely discretionary – the exact scenario in which a public defender works. No specific category of public defender is exempt from this, and even public defenders of color are influenced by implicit bias. (Johnson 2019).

The lack of adequate indigent defense funding at the state and local levels have cause a crisis. In many states, public defenders face excessive and overwhelming caseload numbers. Excessive caseload numbers of impact public defenders' ability to provide quality legal representation. Regardless of what the U.S. federal and state constitutions state, indigent people charged with a crime are increasingly unequal before the law. The criminal justice system is not functioning fairly, ethically, and within constitutional mandates. (Joy, 2010).

In Chicago, clients are spending longer times in jail (an average of 56 days for drug charges.) One explanation for this is the use of continuances which can be a sign of an overworked public defender system. Individuals who decide to fight their case are forced to experience a longer stint in jail than those who plead guilty (VanBrunt, 2015).

Racial Implications in the public defender system is evident. Black people are disproportionately caught up in the system. In 2011, black Americans who only make up 12 percent of the U.S. population made up 30 percent of persons arrested for property offense and 38 percent of persons arrested for a violent offense. Black Americans receive the biggest impact from underfunding and excessive caseloads in the public defender systems (VanBrunt, 2015).

Impact on the Justice System

Excessive caseloads can lead to long backlogs in the court setting, including trials, and bottom-line plea bargain offers. Overburdened prosecutors, who are sworn to achieve justice, not to win at all costs, lack time and resources necessary to assess which defendants are most deserving of punishment. In some cases, prosecutors cannot distinguish the most culpable defendants from those who committed crimes but are not deserving of harsh punishment. An example would be a defendant with a low IG had stolen something to support his family rather than for illicit

purposes. A prosecutor might not have the time to dig into the case and offer a plea bargain (Gershowitz & Killinger, 2011).

Pressures of excessive caseloads are present with prosecutors. Once the decision is made to proceed with a case, resource limitations and caseload numbers are causing prosecutors to seek minimized efforts to achieve a favorable disposition. These practices can include obtaining sanctions against offenders through diversion agreements and plea bargaining (Israel, 1996).

Excessive caseloads are critical in fostering judicial practices that are designed to promote less time-consuming dispositions. In jurisdictions where judges have sentencing discretion, caseload pressures were reported to contribute to patterns in sentencing for individuals who plead guilty or were willing to accept a bench trial. Individuals who go to a lengthy jury trial will more likely receive a harsher sentence for wasting resources. Judges will also seek less time-consuming dispositions by reducing felony charges to misdemeanors. This occurs in cases where the felony sentence is similar to the misdemeanor sentence and increases the likelihood of a guilty plea and a lower bail/bond condition (Israel, 1996).

Caseload pressure is argued to produce frustration and disillusionment that affects the performance of police, prosecutors, defense counsel, and judges. In response to this, loss of respect for the system and process occurs (Israel, 1996). This is an important factor to take into consideration when determining the need for change. With lack of respect, the system begins to fail at what it is designed for.

Reiteration of the Research Problem, Argument for Needed Change

Since the mid-1960's, excessive caseloads in the criminal justice system have received more attention and been accorded greater importance than any other issue. National commissions

continue to complain that the criminal justice system is “overcrowded, over-worked, [and] undermanned,”. Excessive caseloads are responsible for a variety of administrative shortcomings found at almost every stage in the criminal justice system, including the public defender’s office (Israel, 1996).

Most public defender systems operate with minimal support conditions, making caseload guidelines unrealistically excessive for even the best attorneys to represent clients effectively. Excessive caseloads are forcing public defenders to cut corners. A public defender may fail to investigate the facts and law of the case thoroughly, forget to file important motions, neglect to understand and/or explain consequences of conviction with the client with discussing plea negotiations, and fail to adequately prepare for trial (Joy, 2010).

The supreme court has held that “the constitution guarantee of effective assistance of counsel at trial applies to every criminal prosecution, without regard to whether counsel is retained or appointed.” Ethical rules also impose the same obligations for public defenders and privately retained attorneys. Ethically, each lawyer “shall provide competent representation to a client,” “shall act with reasonable diligence and promptness in representing a client,” and “should not accept representation in a matter unless it can be performed competently, promptly, and to completion.” In addition, “[a] lawyer’s workload must be controlled so that each matter can be handled competently.” When an attorney has an excessive number of cases “representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client,” and cause conflict of interest (Joy, 2010).

There is an obvious need for change within the criminal justice system to address the excessive caseloads that the public defender offices are experiencing. In the next section, Critical

Theory will be utilized to provide an explanation to what impact excessive caseloads have on the public defender programs.

Section III. Theoretical Framework

The Critical Theory

The critical theory in criminology reveals how inequality and power relations shape who commits crime, why someone commits crime, what becomes labeled as crime, and how the criminal justice system responds to crime (Long, 2015). What distinguishes a critical theory from traditional forms of social theory is critical theory portrays itself as a part and parcel of a struggle for an “association of liberated human beings, in which everybody would have an equal chance of self-development”

Critical criminologists usually advocate some degree of direct engagement with the range of social injustices clearly exposed by their analysis and the application of theory to action, or praxis. Each version of critical criminology discusses the possibility of effecting fundamental reforms or transformations within society to promote greater equality and a higher quality of life for the disadvantaged and the disenfranchised and not just the privileged members of society. They wish to provide a more humane and authentic society for everyone (Criminal Justice Research, 2021).

In the American justice system, individuals have acknowledged that the law and the justice system produced is disproportionately focused on the interest of the privileged. Edwin H. Sutherland was arguably one of the most important American criminologists of the 20th century. Sutherland was influenced by the American populism of his native Midwest and was angered by stock market manipulators who caused the 1929 stock market crash and the economic depression

following. In 1939, Sutherland introduced the notion of white-collar crime into criminology. At the time, criminologists focused on conventional crime and the crimes of the poor. Sutherland had recognized that the middle and upper classes of society also participate in criminal activity, and spent time examining crimes carried out by the rich and powerful (Criminal Justice Research, 2021).

Critical criminologists have focused on different ways that the principal agents of social control- including law enforcement, the court system, and prisons- reflect the values and interests of the privileged and powerful members of society and often realized repressive and counterproductive outcomes (Criminal Justice Research, 2021).

Critical theory is highly relevant in today's American society. The basics of the theory believe that democracy is too imbalanced; that a small number of government officials and power holders make laws and, thus, the definition of crime. People who commit crimes do not have conflict with the laws, but the law makers themselves. It is believed that capitalism creates an environment that provides special opportunities for the powerful to take advantage of law makers, law enforcement, and others. Critical theory is a theory of inequality. The indigent knows of the inequality and what causes it, so the crime is a result (Udemy, 2021).

Critical theorists believe that a small few, the elite of society, decide laws and the definition of crime; those who commit crimes disagree with the laws that were put into place to control them. Critical theory provides an explanation to the excessive caseload crisis.

Poverty influences crime in many ways and it is not just about lack of resources. Individuals with lower income have higher rates of untreated mental illness. Though most people who struggle with mental illness will never commit a crime, there are some types of severe mental illness that increase the likelihood of an individual committing a crime (Gaille, 2016).

Being in poverty can lead to high levels of stress. There is a desire to meet certain basic needs and that becomes a priority. If those needs cannot be met, some individuals will commit robberies, burglaries, and other forms of theft. Stress from being unable to meet certain needs can also lead to violent acts. In the eyes of the perpetrator, these actions are self-defense (Gaille, 2016).

For individuals who live in poverty, fewer opportunities are available. A lack of resources can create inferior educational opportunities for individuals in poverty, some actual and some perceived. The perception of a lack of education can cause individuals in poverty to create self-fulfilling prophecies regarding their future. They begin to believe quality education does not exist as well as quality jobs. Individuals in this situation feel the need to fight for themselves which can create gangs and increase gang affiliation. This cycle continues and crime becomes a means to an end (Gaille, 2016).

In a free-market society, it is commonly believed regarding poverty, that each person is responsible for their own circumstances. This stereotype feeds into other stereotypes, for example, drug and alcohol use is more prevalent amongst households in poverty. This is also true for alcoholism. Many individuals believe that everyone in poverty is struggling with some form of addiction (Gaille, 2016).

All stereotypes aside, poverty influences crime rates because it highlights and reinforces the differences between the wealthy class and those who are poor. Children who come from homes in poverty are more likely to be expelled from school or to have a police record than a child who makes the same choices as the poor child but has more overall wealth. Many minority households live in urban areas and may have “built-in” struggles with poverty stemming multiple generations (Gaille, 2016)

If the United States has a growing poverty rate, crime will continue to increase, as well as the need for more public defenders. This has become a cycle within the justice system. Resources and policy changes can help assist with addressing the current crime rates as well as the excessive caseloads within the public defender offices. The next section will evaluate other programs and agencies that have implemented changes within their systems to address the current caseload crisis.

Section IV. Program Evaluation: Current Agencies and their Approach

Hamilton County

Many difficulties are faced by indigent people while dealing with the criminal justice system. One specific area where problematic experiences arise is in the criminal courts. Indigent individuals often have difficult interactions with prosecutors, judges, and/or defense counsel. It is the prosecutor's role to convict these individuals, and judges sentence them, it is more understandable to have occasional conflict. Interactions with the public defender should be different, as it is their job to advocate for the individual's best interest (Campbell, Moore, Maier, & Gaffney, 2015).

The quality of public defender-client interactions is often overlooked by policymakers, researchers, and practitioners. Studies that focus on indigent defendants often rely on secondary data collected by justice agencies. This leaves their qualitative characteristics far from scholarly journals and associated readership. There is limited attention to the client's perceptions of the public defender/client relationships and the performance of the public defender (Campbell, Moore, Maier, & Gaffney, 2015).

Problems associated with indigent defense are not new. Problems have plagued indigent defense since the inception of public defense in the United States. There are several causes including, excessive caseloads/workloads, inadequate resources, nonexistent or weak standards for attorney qualifications, training, and performance (Campbell, Moore, Maier, & Gaffney, 2015).

Hamilton County, Ohio, is one of the many jurisdictions that have experienced these continuous problems. The Cincinnati based public defender's office (HCPD) was included in a special state-wide task force investigation conducted by the Ohio Supreme Court. In 2008, continuing problems prompted the Hamilton County Board of Commissioners to ask the National Legal Aid and Defender Association (NLADA) to conduct a study focused specifically on public defender's office. Despite the recommendations made from the Ohio Supreme Court Task Force for improving services, the NLADA still concluded that the quality of service in Hamilton County violated the federal constitution (Campbell, Moore, Maier, & Gaffney, 2015).

The findings from the evaluations conducted on HCPD showed similarities found across the nation. Public defender offices are often held to a lower standard of operational minimums. These minimums involve more instrumental or functional characteristics, such as expenditures and administrative resources. Since the mid-1990's, there has been a push by legal scholars, practitioners, and activist groups to incorporate a more holistic, client-centered approach. This approach focuses on the relationships of the client and attorney that include trust and satisfaction. In relation, the evaluations conducted by the Ohio Supreme Court Task Force and the NLADA have emphasized a need for performance-based measures, including the development of more client-centered representation practices (Campbell, Moore, Maier, & Gaffney, 2015).

In 1986, 150 criminal defense attorneys were interviewed about their relationship with their clients. The interviews showed that attorneys recognized their clients' willingness to trust

and cooperate as important factors in their relationship. The findings emphasized that there is often a disconnection between the public defenders and their clients regarding trust (Campbell, Moore, Maier, & Gaffney, 2015).

In 2009, Ohio Justice Policy Center (OJPC) solicited the help of Washington State University's division of Governmental Studies and Services to conduct a pilot study on the client's perceptions of the quality of service from their public defense as well as possible methods of strengthening client voice to improve defense services. The pilot study was conducted over a few months and a selection of 568 client's and their information was compiled. Because there was a lack of prior literature suggesting how to obtain input from public defender clients who were not incarcerated, multiple methods were employed. These surveys were administered using the addresses and mailing the surveys. Face-to face administration as well as self-administered handouts were also utilized. Of the 568 clients', a total of 156 responses were obtained (Campbell, Moore, Maier, & Gaffney, 2015).

After reviewing the findings from the responses, a recurring point that was reverberated was frustration with public defenders who did not listen to the them Participants expressed that their public defenders lacked care. The indifference with their public defender was one of the key factors as to why they felt already defeated in their case. The public defenders age and/or inexperience attributed to this feeling of indifference. Others expressed frustration with the lack of effort by their public defender and felt that they would be experiencing something different if they were paying clients (Campbell, Moore, Maier, & Gaffney, 2015).

Participants discussed how much they were included in, informed about, case processes, and outcomes. Participants indicated that they were never told what would happen during their up-coming court proceedings. There was a lack of information provided by their public

defenders. Public defenders are expected to inform clients of rights, process, and outcomes which is also expected of attorneys who have been hired privately. Many participants were not aware that they could question what was going on in their cases (Campbell, Moore, Maier, & Gaffney, 2015).

Other problems expressed by participants was with distrust and frustration with the little investigations conducted by the public defender. Participants indicated that if the public defenders tried to investigate the case, even if it meant visiting the client while incarcerated and talking to them, they might find more that is worth working with rather than just the police report they had been provided. Distrust was also evident in participants' recognition of the potential influence of race and class. This does not only affect public defenders but also private defense who are predominately middle-class and Caucasian and indigent criminal defendant are disproportionately impoverished African Americans. Regardless of these issues involving trust, effort, communication, and inclusion of the indigent client, participants knew of the hardships that public defenders face. For example, there was repeated acknowledgement of the excessive caseloads that public defenders experience (Campbell, Moore, Maier, & Gaffney, 2015).

The potential benefits of ensuring a better client-centered approach among public defenders include decreased recidivism among clients and increased client compliance. Research has shown that client perceptions of trust in public defenders have shown increased perceptions of legitimacy and fairness in the criminal justice system and its agents. This then leads to overall higher satisfaction with the process as well as a higher likelihood that the law will be obeyed (Campbell, Moore, Maier, & Gaffney, 2015).

Understanding how the client perceives their public defender and the process is important to addressing the current excessive caseload crisis. Clients are aware of the stressors that their

representation are experiencing with excessive caseloads, lack of resources, and others. The research conducted by Hamilton County had shown that the increase in satisfaction and trust that clients have with their public defender, the likelihood of future criminal behavior decreases. This in turn lowers the number of cases entering the public defender's offices.

Though satisfaction and trust between client and public defender is one step to addressing the excessive caseload crisis, it is not a guaranteed solution. There are many other things that impact the number of cases entering the public defender's office.

The State of Missouri

In the state of Missouri, public defenders continuously experienced excessive caseloads. Public defenders had sought court orders to put a halt to future appointments because of this (Hanlon & Brink, 2019).

In 2012, in *State v. Waters*, 370 S.W.3d 592, the Missouri Supreme Court considered a request by the Missouri Public Defender (MPD) to be relieved of further representation of clients due to excessive caseloads. The MPD had developed a protocol that allows for relief when caseloads were becoming excessive. The court held that when a public defender office can demonstrate that caseload sizes are so excessive that they are unable to provide competent and effective representation to all its clients, public defenders may and/or must refuse additional cases and judges are not to appoint them any additional cases (Hanlon & Brink, 2019).

Not long after the Missouri Supreme Court issued this decision in the *Waters* case, the State Auditor issues a report reviewing MPD's caseload protocol. It was noted that the maximum caseload determination in the protocol was based substantially on the National Advisory Commission on Criminal Justice Standards and Goals (NAC) caseload standards. These standards

were created in 1973 and suggested that caseloads should not exceed 150 felonies, 400 misdemeanors (excluding traffic), 200 juvenile cases, 200 mental health cases, or 25 appeals. What the Auditor suggested is that because there was little information regarding the methodology used to arrive at these standards and that it failed to distinguish between various types of felony offenses, the MPD lacked adequate support and could not substantiate its maximum caseload limits (Hanlon & Brink, 2019).

This report rendered the Waters decision as unenforceable. Public defenders could not seek relief because there was lack of reliability in determining when a caseload becomes excessive (Hanlon & Brink, 2019).

Recently, the Missouri Public Defender sought relief again from excessive caseloads. A statute in the state of Missouri allows for a District Defender to file a motion requesting a conference with the presiding judge to address whether an individual attorney has an excessive caseload. In St. Louis and Jackson county, District Defenders filed these motions. In both motions, evidence supporting excessive caseloads were provided to the judge as well as evidence to support their position. The evidence included The Missouri Project report and the public defender's determinations of weighted case hours, calculated using the report's workload standards (Hanlon & Brink, 2019).

In Jackson County, the judge initially refused to hold the conference. Eventually a conference was held after the third motion was filed but wasn't recorded. The Jackson County Judge denied relief and rejected the standards in the Missouri Project report. It was later overturned by an appellate court and remanded for any future proceedings to be held on the record (Hanlon & Brink, 2019).

In St. Louis, the judge agreed to hold a conference and was held February 2018. An Order and Judgement was issued on March 19, 2018. Citing the Waters case, the court noted that public defenders violate the Rules of Professional Conduct if they “accept a case that results in a caseload so high that it impairs the ability to provide competent representation.” The court also noted that this duty was to all existing clients as well as new clients. The court also recognized that it had its own duty to ensure due process was being provided for all defendants. Quoted from the court “this court has a responsibility to the defendant as well if there is a clear failure systematically to provide adequate tools for proper representation” (Hanlon & Brink, 2019).

The specific finding was found by the court: “This Court finds the RubinBrown calculations to be meaningful.” The public defender’s motion was granted, determining that 16 of the St. Louis County public defenders had presented “cognizable reasons...why(they) would be unable to provide effective assistance of counsel due to their individual caseload concerns.” Each of the 16 public defenders identified were “at risk of incurring claims of ethical violations and claims of ineffective assistance of counsel (Hanlon & Brink, 2019).

Statutory Caseload Provisions

Several public defender jurisdictions have workload limitations written into statutory provisions. Many of these do not set specific numeric limitations but include language requiring public defenders to accept caseloads that allow them to provide effective representation, or representation that complies with the codes of professional responsibility (U.S. Department of Justice, 2001)

The state of New Hampshire requires the statewide public defender program to adopt a plan for the allocation of cases between the office staff attorneys and assigned counsel. The

purpose of this is to establish caseload limits for public defenders in accordance with professional standards under the code of professional responsibility. It also provides for appointment of assigned counsel when public defenders reach maximum caseload limits. The state of New Hampshire also considers factors such as travel time and average case processing time when considering the maximum limit standard (U.S. Department of Justice, 2001)

In New Hampshire, a greater emphasis is focused on an informal, weighted caseload plan developed over the years. This plan guides the public defender program's internal case assignment process. The case weights and/or units have been developed based on summaries of the time reported by the public defender on how long they could devote to an individual case (U.S. Department of Justice, 2001).

The state of Washington mandates each county or city to adopt standards for their public defender offices, court appointed attorneys, and/or contract attorneys. These standards include setting caseload limits (U.S. Department of Justice, 2001).

Wisconsin's statute sets out annual caseload standards for assistant state public defenders that are used to help with budget decisions. The standards take into consideration the results of a case-weighting study conducted by The Spangenberg Group for the Wisconsin state public defender in 1990 and are adjusted occasionally by the state legislature. The state public defender provides input to this decision. This state's statute acts as a safety net when caseloads reach the standards set out, allowing the public defender to seek legislative approval to assign overload cases to the private bar (U.S. Department of Justice, 2001).

Setting caseload sizes may help with excessive caseload sizes within the public defender's office, but to truly address this on-going issue, it is important to dig down to the root

cause. For there to be excessive caseloads within the public defender's office, crime must be committed. Crime reduction and the prevention is also a key factor into reducing caseload sizes.

Treatment Courts

Recent research done by the Substance Abuse and Mental Health Services Administration indicated that more than 22 million people experience substance abuse in America. In 2006, The National Drug Threat Assessment performed by the US Department of Justice National Drug Intelligence Center (NDIC), the effects of drug abuse harm not only the drug abuser, but also their family and their community. There are significant financial costs that go along with substance abuse in the United States. The NDIC reported that illicit drug use costs in 2007 were \$193 billion. Court systems have been attempting to find more effective approaches to substance abuse (Jewell, Rose, Bush, & Bartz, 2016).

Several factors, rooted in advances in the medical field, and the structure of the justice system contributed to the creation and development of drug treatment courts (DTC's). In the late 20th century, substance abuse began to be seen as a chronic mental health disorder. In the 1980's, Americans began to embrace the zero-tolerance mindset. This mindset caused the United States to experience financial strain as their jail populations dramatically increased. The number of drug offenders was on the rise and conventional procedures of incarceration were ineffective at stopping the cycle of crime associated with illegal drugs. To slow the increasing number of individuals being processed for drug crimes, the courts in Miami-Dade County, Florida took notice and developed the nation's first drug court (Jewell, Rose, Bush, & Bartz, 2016). This was the beginning for more than three decades worth of criminal justice reform.

There is mounting research that DTC's are an effective approach to decreasing recidivism in a substance abusing population. A recent study by Brown (2011) used a matched case-cohort

design with 137 DTC participants who were matched to a comparison group of 274 traditionally adjudicated participants based on age, gender, ethnicity, and severity of drug-related offense. Brown found significantly lower recidivism in the DTC group than the comparison group. The participants in the DTC group who did reoffend took longer to do so than the participants in the control group. For this research, recidivism was defined as a re-offense that resulted in a conviction (Jewell, Rose, Bush, & Bartz, 2016).

Other studies examining the effectiveness of drug court programs on recidivism rates have found results similar to Brown's. One example is Gottfredson et al. (2003) used a randomized design in the Baltimore City Drug Treatment Court. Researchers examined the recidivism of the participants over a 2-year period and found that the drug court group had lower rates of recidivism (Jewell, Rose, Bush, & Bartz, 2016).

This study included adults who were admitted into drug court in a single county in the Midwest from 2006 to 2011. The county is a mix of urban, rural, and suburban communities, with a total population of approximately 270,000 residents. The participants were grouped into three mutually exclusive groups. The first group was the graduated group who consisted of adults who entered the drug court program with satisfactorily completed and graduated from the program. The second group was the withdrew group. This group consisted of adults who entered the program but voluntarily withdrew from the program. This group did not include individuals who were involuntarily dismissed or terminated from drug court. The third group was the declined group. This group consisted of individuals who were admitted into the drug court program but voluntarily declined entry (Jewell, Rose, Bush, & Bartz, 2016).

The sample size included 144 individuals, 60 percent were male, and the gender distribution across groups did not significantly differ. Age was the only factor that was the only significant difference between participants (Jewell, Rose, Bush, & Bartz, 2016).

For the six-year window of time where data was collected, results confirmed the effectiveness of DTC and its relationship to lower recidivism in graduates. The study showed that the outcomes for graduates of the program were superior to those who withdrew and/or declined on almost all measures of recidivism even after controlling for differences between groups on demographic and background variables. There were significant differences between those who graduated to those who withdrew on five out of six recidivism measures, the graduated group also had significantly fewer re-offenses by filing to date than participants who declined the program (Jewell, Rose, Bush, & Bartz, 2016).

This research is important when developing recommendations to address the ongoing caseload crisis. The research conducted in Hamilton County showed the importance of client satisfaction with public defenders. Findings supported the on-going concern with public defenders experiencing excessive caseload sizes. Clients are feeling unheard, unsupported, and unaware of the process of their criminal case. Public Defenders are unable to provide adequate client services due to caseloads being high and the attention of the public defender being so spread across all cases that many of the cases pushed through the system without a fair opportunity to the client.

In the state of Missouri, public defender offices fought in court to develop policies and procedures to turn down acceptance of new cases if their cases were already excessive. Eventually the offices were granted by the courts to allow to do this and set standards for what is

considered an excessive caseload. Other offices have set statutory caseload provisions to allow their public defender offices to turn down additional cases.

The next section will provide recommendations using the program evaluations in this section. These recommendations will provide an idea and resources for agencies nationwide who are experiencing excessive caseloads within their public defender system.

Section V. Recommendations

For many public defender offices nationwide, who provide legal representation to indigent individuals, there is a need for intervention when it comes to caseload sizes. As seen in the previous section, research conducted provided information on the need for change as well as procedural changes to help address the caseload crisis.

This section will provide recommendations for addressing excessive caseloads within the public defender's office. This section will also provide a steppingstone and encourage changes needed to policy makers and other government entities who have an impact on caseload sizes within these legal offices.

Reclassification of Criminal Charges

The present system for providing indigent defense is failing in many ways. In recent years, many scholars have become increasingly supportive of reclassification as a solution to the excessive caseload problem that currently exists.

When looking at the reclassification of crimes, universal focus has been on "minor offenses" or "nonserious misdemeanors." These crimes can be defined as "crimes that [are] currently punishable by imprisonment but for which an actual sentence of imprisonment [is] only

rarely imposed.” Some of these charges include minor traffic offenses, public intoxication, possession of an open container of alcohol, and possession of drug paraphernalia. Others that can be included in this are “feeding the homeless, riding a bicycle on the sidewalk, fish and game violations, and public urination.” Scholars who propose the reclassification of these crimes use the argument that these offenses clog the court system (Gratton, 2012).

For this to be done, each state must “undertake a systematic review of misdemeanor offenses” to make the determination of which offenses which imprisonment is available is rarely used. Each state must conduct an individualized review of its own criminal code. This cannot be done nationwide because states take varied approaches to punishment of minor crimes. Unfortunately, a state systematic review would come with substantial costs on the states (Gratton, 2012).

In the state of Hawaii, the House of Representatives passed a concurrent resolution in 2004 calling for the review of its criminal offenses for the purpose of a minor crimes’ reclassification. In January 2005, the state’s Legislative Reference Bureau issued a report that detailed its efforts to comply with this. The bureau began with a search of Hawaii’s Revised Statutes for all statutes that “denominate” or “define” a “misdemeanor or petty misdemeanor”. The initial review produced over 350 statutes that required further review for the possibility of reclassification. Because of the volume of minor offenses identified, the Bureau recommended a more practical approach. With this approach, the judiciary takes the initiative to periodically identify the offenses that could result in a serious penalty but are routinely sentenced with fines (Gratton, 2012).

Drug possession offenses have a historic and demonstrable connection to the excessive caseloads that public defenders experience. Drug prosecutions remain “high volume offenses” in

state criminal courts across the country. Reclassification of drug possession offenses would have a major impact on public defender caseloads (Gratton, 2012).

Several states have already reclassified marijuana possession laws. Massachusetts voters approved a marijuana reclassification with 65 percent of the vote. This approach is desirable in several ways. First, offenders are subject to “a civil penalty of one hundred dollars and forfeiture of the marijuana.” This clarifies that this is a civil violation rather than a criminal offense. Law makers do not have to fix the penalty at \$100 as this amount is reasonable low, but still high enough to generate substantial revenue for the state. A reclassification statute would still prohibit drug possession, forfeiture requirements are appropriate. Secondly, the Massachusetts approach specifies that the offender should not be subject “to any other form of criminal or civil punishment or disqualification” making this specifically civil. Lastly, it also specifies a specific amount of marijuana an individual may possess without the risk of it becoming criminal (Gratton, 2012).

A defense system that is supposed to represent and protect indigent individuals is currently failing them. Reclassification of minor offenses can be done and should be done when it comes to addressing the public defender caseload crisis. Lawmakers must avoid drug policy debate’s and reframe the discussion. Arguments that the harm drug possession laws cause outweigh the benefits that they provide (Gratton, 2012). With current drug policy changes occurring in many states, now would be the time to consider reclassification of these offenses.

Limiting Caseload Sizes

Public defenders or court-appointed private attorneys represent approximately 80 percent of criminal cases, all consisting of indigent individuals. The present system for providing

indigent defense at state level is failing in many ways. Excessive caseloads are a major contributing factor to poor quality defense services (Joy, 2010).

No matter how smart, dedicated, and experienced the public defender is, too much work will prevent even the best lawyer from providing clients with ethical, effective assistance of counsel. The National Advisory Commission on Criminal Justice Standards and Goals set the following caseload guidelines for full-time public defenders: a maximum of 150 felonies, or 300 misdemeanors, or 200 juvenile cases, or 200 mental health matters, or 25 appeals a year. These standards have been in place for over thirty years yet almost every jurisdiction in the United States exceeds them. Most public defender offices operate with minimal support conditions, making these caseload guidelines unrealistic, even for the best legal team (Joy, 2010).

The Supreme Court has held that “the constitutional guarantee of effective assistance of counsel at trial applies to every criminal prosecution, without regard to whether counsel is retained or appointed.” Similarly, ethic rules impose the same obligations on public defenders as privately retained defense lawyers. Ethically, each lawyer “shall provide competent representation to a client,” “shall act with reasonable diligence and promptness in representing a client,” and “should not accept representation in a matter unless it can be performed competently, promptly, ...and to completion.” Additionally, “[a] lawyer’s workload must be controlled so that each matter can be handled competently.” When a lawyer has so many clients that “representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client,” conflict of interest exists (Joy, 2010).

The lack of control over caseload sizes places public defenders in an ethical bind because excessive caseloads are not a recognized excuse for violating ethical obligations. A public defender may be disciplined for failing to research the law, perform an investigation, advise a client

on possible defenses, or take other necessary steps to provide competent representation (Joy, 2010).

Most public defenders on who represent clients in courts at trials and appellate levels report to a supervisory lawyer. These lawyers are usually called supervisory lawyers or district defenders. These supervisory lawyers are typically supervised and held accountable by some higher level of attorney management within the public defender system (Joy, 2010).

The first responsibility for supervising and managing public defenders is to set reasonable caseload expectations and have a system in place to monitor and balance individual caseloads. This would include the development of a uniform case definition that the system consistently uses. When developing a definition, it is useful to adopt a definition that is consistent with the way that prosecutor offices and courts define cases. The development of case definition is necessary in developing a caseload standard. Without a standard, it is unlikely that a judge will allow the public defender to refuse a case (Joy, 2010).

Once a uniform case definition is developed, the public defender system should develop a system for accurately recording individual case information and monitoring attorney workloads. Recommended adjustment of caseloads for factors such as “case complexity, support services, and an attorney’s nonrepresentational duties” was made by the ABA’s Ten Principles of a Public Defense Delivery System (Joy, 2010).

A combination of increased funding and the cooperation of prosecutors and judges to identify legally acceptable ways of reducing public defender caseloads while still protecting rights and public safety is needed to provide fair and adequate representation. Courts must permit public defender programs to limit case intake to acceptable and ethical limits. Until the public defender system can provide indigent clients with time and support to comply with both ethical

standard and legal standard for adequate representation of counsel, it will continue to break the promise of a fair and equal opportunity (Joy, 2010).

Programming

As discussed in the prior, crime prevention also plays an important role in addressing excessive caseloads within the public defender system. Approaching crime prevention can be done in many ways, including providing programming to communities.

Researchers at NYU compared crime rates and the formation of new non-profits that focus on crime prevention, neighborhood development, substance abuse, workforce development, and youth programming across 264 cities in the United States between 1990 and 2013. What researchers had found was that in a city of 100,000, each new nonprofit community organization lead to a 1.2 percent drop in the homicide rate, a one percent reduction in the violent crime rate, and a 0.7 percent reduction in the property crime rate. Substance abuse programming was responsible for the largest drops, followed by workforce development organizations (Atchison, 2018).

Supporting low-income communities and providing resources is one of the best ways to impact crime rates. The cost of public college has more than doubled since 1990, leaving workforce development programs the most viable option for millions of Americans. Similarly, private drug treatment programs can cost thousands of dollars a year. Community-based nonprofits provide an obtainable way for individuals to receive treatment. Incarceration is no longer a solution for drug abuse and should not be used as a substitute for treatment. Incarceration has a very minimal impact on crime reduction (Atchison, 2018).

Providing programming in an institution setting is as important to addressing recidivism and lowering future crime rates. The Bureau of Prisons provided inmates with an intensive substance abuse treatment program. The Residential Drug Abuse Program (RDAP) has been one of the Bureau's most effective recidivism-reduction programs. Recent expansion to this program included programs for Spanish speaking inmates, inmates with dual mental health diagnosis, high security level inmates, and female inmates (U.S. Department of Justice, 2017).

Programming to provide inmates in both the jail system and the prison system with transitional assistance is also important to reducing crime. Re-entry can be difficult on individuals, especially after a significant amount of time has been spent in an institution. Re-entry services can aid with obtaining housing, employment, and treatment. All of which impact an individual's likelihood of recidivism.

Through research, these recommendations have been shown effective when addressing the public defender caseload crisis. Each jurisdiction can utilize these given recommendations and implement what they feel is appropriate based on their specific needs and resources available to do so.

Section VI. Summary and Conclusion

In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court recognized that the Sixth Amendment to the United States Constitution guarantees all indigent criminal defendants the right to a lawyer at the state's expense. The courts later expanded the right to counsel to defendants charged with misdemeanors in *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (Mandel, 2009).

The court has failed to give any direction to the states on how to appropriately manage public defender offices and caseloads. Even with the recommendations made by The National Advisory Commission on Criminal Justice Standards and Goals, many public defender offices have no set caseload standards for their attorneys. The *ABA Standards Relating to Providing Defense Services* does not endorse specific caseload limits, it does state that public defenders should not “accept workloads that, by reason of their excessive size, interfere with the rendering of quality of representation or lead to the breach of professional obligations (Mandel, 2009).

Excessive caseloads within the public defender’s office impacts not only the defendant, but also the public defender and the court system. Public defenders are facing and experiencing discipline because of their inability to provide adequate representation. These reasons are not due to their work ethic, but due to their excessive caseload sizes that limit their time given to each case they actively carry.

As discussed, excessive caseloads are most harmful for the defendant. Over 80 percent of felony charges are represented by public defense. With public defenders having to prioritize cases, other cases are left neglected. There is an assumption that everyone that is arrested is provided a fair process and adequate representation, and this is untrue. Defendants are being coerced to take plea deals, even if they are innocent of the charges. With budget cuts and political realities preventing states from providing resources to their public defense systems, public defender offices have become overburdened. It is easy for officials in a state or local government to cut budget money for indigent criminals.

Access to a public defense is useless if public defenders’ lack time, resources, and/or skills to provide adequate representation to indigent individuals. Taking the recommendations to begin implementing changes will provide public defenders with the necessary relief needed to

conduct their job. Research has shown that these approaches are effective, and that change is needed.

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